

Winthrop Resources Corporation v. Apollo Education Group, Inc.
Case No. 0:17-cv-01448 (DWF/SER)

Exhibit A

(Apollo Education Group, Inc.'s Counterclaims)

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

APPENDIX H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS James M. Natale

DEFENDANTS Winthrop Resources Corporation

(b) County of Residence of First Listed Plaintiff Montgomery
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Minnesota
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)
BATEMAN CALLENDO LLC
420 A DRESHER ROAD
HORSHAM PA 19044 (215) 443-9060

Attorneys (If Known)
Elizabeth Abrams, Esq.
REED SMITH LLP
2500 ONE LIBERTY PLACE, 1650 MARKETS
PHILADELPHIA, PA 19103

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332 Diversity

Brief description of cause: Employment Breach of Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 7,500,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): N/A

JUDGE _____

DOCKET NUMBER _____

DATE 12/17/07

SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

James M. Natale

v.

Winthrop Resources Corporation

CIVIL ACTION

NO. 2:07-cv-04686-243

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (✓)

12/17/07

Date

(215) 443-9060

Telephone

David P. Bateman

Attorney-at-law

(215) 443-9061

FAX Number

Plaintiff James M. Natale

Attorney for

bateman@bateman-calvendo.com

E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 575 Hawthorne Lane, Harleysville, PA, 19438
Address of Defendant: 11100 Wayzata Blvd., Suite 800, Minnetonka, MN, 55305
Place of Accident, Incident or Transaction: Trevoze, PA (E.D. Pa.)
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes No

Does this case involve multidistrict litigation possibilities? Yes No
RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases
(Please specify) Employment Contract

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, David P. Bateman, counsel of record do hereby certify:

- Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- Relief other than monetary damages is sought.

DATE: 12/17/07 David P. Bateman
Attorney-at-Law

63347
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 12/17/07 David P. Bateman
Attorney-at-Law

63347
Attorney I.D.#

BATEMAN CALIENDO LLC
BY: David P. Bateman, Esquire
PA Attorney I.D. No.: 63347
420A Dresher Road
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bateman@batemancaliendo.com
Attorneys for Plaintiff,
James M. Natale

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES M. NATALE, :
 :
 Plaintiff, :
 :
 v. :
 :
 WINTHROP RESOURCES CORPORATION :
 d/b/a WINTHROP FINANCIAL SERVICES, :
 :
 Defendant. :
 :
 :

FILED

DEC 18 2007

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

CIVIL ACTION NO.: 2:07-cv-04686-RB

COMPLAINT AND JURY DEMAND

Plaintiff, James M. Natale, by and through the undersigned counsel, Bateman Caliendo LLC, by way of Civil Action Complaint against Defendant, Winthrop Resources Corporation d/b/a Winthrop Financial Services, hereby avers as follows:

I. The Parties

1. Plaintiff James M. Natale (hereinafter "Natale") is an adult individual and citizen of the Commonwealth of Pennsylvania residing at 575 Hawthorne Lane, Harleysville PA 19438.
2. Defendant Winthrop Resources Corporation d/b/a Winthrop Financial Services (hereinafter "Winthrop"), is upon information and belief, a Minnesota corporation

with a principal place of business located at 11100 Wayzata Blvd, Suite 800, Minnetonka MN, 55305. Winthrop is in the business of leasing of computers, telecommunications equipment, point-of-sale systems, and other essential business equipment to various companies throughout the country including within this judicial District and for that purpose, maintains a local office at 5 Neshaminy Interplex, Suite 204, Trevese, PA 19053. Upon information and belief, Winthrop is a wholly-owned subsidiary of TCF Corporation.

II. Jurisdiction

3. Plaintiff resides and was at all times material hereto employed within this jurisdiction working out of Defendant's local Trevese office.
4. Defendant did conduct and continues to conduct regular business activity within this jurisdiction and venue.

III. Facts Common to All Counts

5. Plaintiff Natale was offered employment in sales by Defendant Winthrop on January 29, 1999 and commenced employment with the Defendant Winthrop on February 15, 1999.
6. Salespersons working for Winthrop are compensated by commissions from the income generated by the leases between Winthrop and its customers.

7. In a written engagement letter/contract, Frank Gabriele of Winthrop hired Natale for a sales position based in Trevoise, Pennsylvania. A copy of the employment contract is attached hereto as Exhibit "A". Natale was hired for the Northeastern United States. Natale's specific territory was to be finalized prior to Natale's start date of February 15, 1999.
8. In the offer letter, Mr. Gabriele writes on behalf of Defendant:

We are confident that you will make significant contributions to the growth of our Company and will enjoy the level of success you aspire to. **I can assure you that we will do everything possible to assist you in that success.** (Emphasis added).
9. After 7 years of service to the Defendant by Plaintiff Natale, the Defendant breached its assurances to Natale in several material respects and in essence did everything possible to try to make him fail.
10. During Natale's tenure with the Company, sales personnel located in Trevoise, lost their positions or resigned; all the accounts and prospects of the seven departing salespersons were distributed solely to Frank Gabriele and Jim Carroll. This directly impacted the performance and revenue of Mr. Gabriele and Mr. Carroll. Inexplicably, no accounts were ever distributed to Natale with a converse affect on his performance and revenue.
11. This discrepancy was in an obvious violation of the Company's commitment to do everything possible to assure Natale's success.
12. Upon information and belief, Defendant Winthrop engages in a pattern and practice of assigning accounts of resigning or terminated employees to two select employees who accordingly make over a million dollars of income annually; other salespersons such as Natale are required to generate their sales from scratch and are put at a disadvantage

- for generating revenue and for purposes of statistical evaluation.
13. In Trevoise, during Natale's tenure, due to the amount of turnover in the Trevoise sales force and the windfall assignments to Mr. Gabriele and Mr. Carroll, Natale was prevented from succeeding. If Defendant Winthrop had simply been **fair** in the allocation of accounts (let alone, done **everything possible** to assure Natale's success), his revenue would have increased substantially and he would not have fallen statistically in the ranks.
 14. Furthermore, while Natale was employed with the Defendant, he was given the specific assignment of approximately half the State of New Jersey as his sales territory. During that time, Natale learned that Winthrop was surreptitiously permitting an Executive Manager and local inside sales personnel to solicit business for their own personal benefit within the State of New Jersey. The Company not only permitted this, but actively supported the Vice President of Sales involved in preparing a public request for bid. However, the Defendant hid this from Natale.
 15. After being established in his territory for nearly six years, in the beginning of the second quarter of 2005, Natale was reassigned brand new sales territory. Northern New Jersey, the main portion of Mr. Natale's territory was divided between Mr. Gabriele and Mr. Carroll. Plaintiff was required to generate new accounts from scratch. Defendant realized that it took a minimum of three (3) years to build a territory. Notwithstanding, Paul Gendler, Esquire placed Natale on probation without notice and demanded that he meet short-term performance goals. In essence, Winthrop through Gendler guaranteed that Natale could not succeed during probation.
 16. More specifically, in the probation period, the sales territory to which Natale was

reassigned was deliberately carved to prevent his success. In contrast, Mr. Gabriele and Mr. Carroll were given territories providing ample opportunity for success. By using Winthrop's model for defining territory, Mr. Gabriele was given 3600 Company-defined "opportunities"; Mr. Carroll was provided 3400 opportunities; and Natale was given 1900 opportunities. The disparity had a direct impact on Natale's achievement.

17. In addition, during Natale's probation, Paul Gendler, Esquire personally instructed Rob Flynn, the inside sales representative supporting the Trevoise outside sales team, to make "cold calls" on behalf of Mr. Gabriele and Mr. Carroll; however, Gendler instructed Flynn **not** to make calls on behalf of Natale in order to guarantee that Natale would not succeed during probation.
18. During his employment, Plaintiff Natale learned that Winthrop management had disparaged Natale's reputation.
19. While Natale's historic profit and/or new accounts were on par with other employees, Company support for him evaporated when Natale came under the supervision of Paul Gendler, Esquire. Company support for Plaintiff had begun to erode in 2004 when Natale informed his superior Frank Gabriel that the Company was not holding Safilo Corporation to a 12 month contract extension for missing written notice.
20. During his employment, Natale had established close relationships with clients built upon trust and respect and which generated substantial revenue for Winthrop. Winthrop however made its most substantial revenue from customers paying "**interim rent**" and **missing contractual "notice" dates**, which even sophisticated clients such as Aventis Pasteur, Inc, Applied Card Systems, Inc., Vishay, The New York Stock

Exchange, Aaron Rents, and Taro Pharmaceuticals U.S.A. Inc. did not understand. More specifically, Winthrop only did business with clients who never leased before or who did not understand leasing. Such clients, referred to as “anchor clients” did not alter “interim rent” and “missed notice” provisions – the two most profitable terms and conditions of Winthrop’s Lease Agreement. Natale had a difficult time with his clients not fully understanding and moreover not being fully apprised of the financial burden of interim rent and missed notice.

21. Accordingly Natale was advised by Mr. Gendler and by Mr. Gabriele before him that Natale was too nice a guy and not cut out for Winthrop.
22. Natale was advised he was being terminated through a “Separation” Memorandum dated January 5, 2006.
23. Prior to his departure, Natale generated sales and revenue which has been received by the Defendant but has never been paid to the Plaintiff. Amounts due and owing for commissions generated are \$46,000.
24. Plaintiff was terminated for failing to generate new accounts per performance standards Gendler put in place. Plaintiff submits that he generated new accounts that were on par with other salespersons; however, due to changes in his territory, the disproportionate assignment of territory, and the uneven assignment of departing employees’ accounts to other salespersons, Plaintiff Natale was intentionally deprived of succeeding by Gendler and Winthrop.
25. In his last year of employment, Natale generated over \$1M of company profit and \$200,000.00 in personal income. Upon information and belief, Mr. Gabriele and Mr. Carroll each made over one million dollars, with the bulk of their income revenue

coming from interim rent and missed notice accounts.

COUNT I – BREACH OF CONTRACT

26. The averments of all the preceding paragraphs are incorporated by reference as if set forth fully herein.
27. Plaintiff Natale was provided an engagement letter/contract specifying the terms and conditions of his employment. See Exhibit “A”.
28. Defendant, through Frank Gabriele, guaranteed the Plaintiff: **“I can assure you that we will do everything possible to assist you in that success.”**
29. During Frank Gabriele’s supervision of Plaintiff Natale, and later, Paul Gendler, Esquire’s supervision of Natale, Defendant did not support Plaintiff; rather, the Company took actions which thwarted Natale’s success.
30. Specifically, the Company breached its covenant to do everything possible to assist Natale, and instead harmed Natale in the following respects:
 - (a). reassigning the accounts and prospects of salespersons who left the company exclusively to Frank Gabriele and Jim Carroll, who made substantial revenue (in excess of one million dollars annually) from these reassignments;
 - (b). permitting the Company Executive Manager and sales personnel to solicit business for their own personal benefit within the State of New Jersey while this territory was assigned to Natale. The Company not only permitted this, but actively supported the Sales VP involved in preparing a public request for bid;
 - (c). placing Natale on probation without cause or justification and setting short-term performance goals which could not be met because the Company had recently

assigned Natale a new sales territory;

(d). reassigning Natale a sales territory which was deliberately carved to limit his opportunities and cause him to fail;

(e). instructing Ed Maciejewski and Rob Flynn, the inside sales representatives supporting the Trevoise outside sales team, to make “cold calls” on behalf of Mr. Gabriele and Mr. Carroll, but **not** to make calls on behalf of Natale; and

(f). making disparaging remarks about Natale to Winthrop employees and executives.

31. Furthermore, Winthrop terminated Natale because he did not adhere to the Company’s less than forthright sales model which created substantial revenues based upon “interim rent” and missed contractual written notices.
32. As a consequence of Defendant’s breach of contract, Plaintiff suffered substantial monetary harm including the loss of substantial commissions from missed business opportunities and lost income following his termination. In essence, had Natale been given the opportunities provided to Mr. Gabriele and Mr. Carroll, he would have derived substantially greater income.
33. Defendant’s breach of contract was the direct and proximate cause of Plaintiff’s loss of income and opportunities.
34. Since Plaintiff’s termination, Natale has obtained employment in the financial services industry but continues to suffer substantial income loss on account of Defendant’s breach of contract.

WHEREFORE, Plaintiff, James M. Natale demands judgment in his favor and against

Defendant Winthrop in an amount in excess of \$75,000.00, as well as attorneys fees, costs and whatever other relief this Court deems appropriate.

COUNT II – Breach of the Covenant of Good Faith and Fair Dealing

35. The averments of all preceding paragraphs are incorporated herein by reference.
36. Every contract in Pennsylvania imposes on each party a duty of good faith and fair dealing in its performance and its enforcement.
37. The duty of good faith has been defined as "honesty in fact in the conduct or transaction concerned."
38. Plaintiff submits (and several employees of the Defendant have admitted to the Plaintiff) that Defendant, and in particular, Dean Stinchfield, Frank Gabriele and Paul Gendler, Esquire have been dishonest with Natale in the performance of his employment including limiting his sales territory and opportunities, reassignment of accounts and provision of inside support.
39. Defendant has engaged in bad faith in the following respects:
 - (a). reassigning the accounts and prospects of salespersons who left the company exclusively to Frank Gabriele and Jim Carroll, who made substantial revenue (in excess of one million dollars annually) from these reassignments;
 - (b). permitting the Company Sales VP and sales personnel to solicit business for their own personal benefit within the State of New Jersey while this territory was assigned to Natale. The Company not only permitted this, but actively supported the Sales VP involved in preparing a public request for bid;
 - (c). placing Natale on probation without cause or justification and setting short-

term performance goals which could not be met because the Company had recently assigned Natale a new sales territory;

(d). reassigning Natale a sales territory which was deliberately carved to limit his opportunities and cause him to fail;

(e). instructing Ed Maciejewski and Rob Flynn, the inside sales representatives supporting the Trevose outside sales team, to make “cold calls” on behalf of Mr. Gabriele and Mr. Carroll, but **not** to make calls on behalf of Natale; and

(f). making disparaging remarks about Natale to Winthrop employees and executives.

40. Furthermore, Winthrop terminated Natale because he did not adhere to the Company’s less than forthright sales model which created substantial revenues based upon “interim rent” and missed contractual written notices.
41. As a consequence of Defendant’s breach of the covenant of good faith and fair dealing, Plaintiff suffered substantial monetary harm including the loss of substantial commissions from missed business opportunities and lost income following his termination. In essence, had Natale been given the opportunities provided to Mr. Gabriele and Mr. Carroll, he would have derived income equal to or greater than they earned.
42. Defendant’s breach of covenant of good faith and fair dealing was the direct and proximate cause of Plaintiff’s loss of income and opportunities.
43. Since Plaintiff’s termination, Natale has obtained employment in the financial services industry but continues to suffer substantial income loss on account of Defendant’s

breach of contract.

WHEREFORE, Plaintiff, James M. Natale demands judgment in his favor and against Defendant Winthrop in an amount in excess of \$75,000.00, as well as attorneys fees, costs and whatever other relief this Court deems appropriate.

**COUNT III – VIOLATION OF PENNSYLVANIA
FAIR WAGE AND COLLECTION LAW**

44. Plaintiff incorporates by reference all preceding paragraphs as if set forth fully herein.
45. Since receipt of Defendant's Separation memorandum, and prior to his last date of employment, Plaintiff Natale earned commissions due and owing in the amount of \$46,000.00.
46. These commissions are subject to the Pennsylvania Fair Wage and Collection Law.
47. Plaintiff has demanded payment of these commissions but they have not been paid.

WHEREFORE, Plaintiff, James M. Natale demands judgment in his favor and against Defendant Winthrop for the sum certain of \$46,000.00, interest, punitive damages as permitted by the Pennsylvania Fair Wage and Collection Law, as well as attorneys fees, costs and whatever other relief this Court deems appropriate pursuant to said Law.

COUNT IV – WRONGFUL DISCHARGE

48. Plaintiff incorporates by reference all preceding paragraphs as if set forth fully herein.
49. Defendant's termination of Plaintiff Natale was in violation of the public policy of the Commonwealth of Pennsylvania which mandates that persons employed in sales utilize "good faith and fair dealing" when conducting their business affairs with

consumers.

50. Defendant's termination of Plaintiff Natale arose from Defendant's specific intent to injure Natale and to thwart his success.
51. More specifically, Defendant manifested its intent to injure Natale in the following respects:
 - (a). reassigning the accounts and prospects of salespersons who were forced out of the company exclusively to Frank Gabriele and Jim Carroll, who made substantial revenue (in excess of one million dollars annually) from these reassignments;
 - (b). permitting the Company Executive Manager and sales personnel to solicit business for their own personal benefit within the State of New Jersey while this territory was assigned to Natale. The Company not only permitted this, but actively supported the Executive Manager involved in preparing a public request for bid;
 - (c). placing Natale on probation without cause or justification and setting short-term performance goals which could not be met because the Company had recently assigned Natale a new sales territory;
 - (d). reassigning Natale a sales territory which was deliberately carved to limit his opportunities and cause him to fail;
 - (e). instructing Ed Maciejewski and Rob Flynn, the inside sales representatives supporting the Trevoise outside sales team, to make "cold calls" on behalf of Mr. Gabriele and Mr. Carroll, but **not** to make calls on behalf of Natale; and
 - (f). making disparaging remarks about Natale to Winthrop employees and executives.

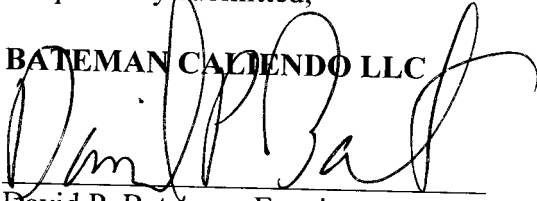
52. Plaintiff was wrongfully discharged because he did not support the Defendant's corporate culture that derived millions of dollar in income from naïve clients, i.e., per the Defendant's management, Mr. Natale was "too nice."
53. Plaintiff was discharged because he openly questioned the ethics of Defendant's business model (holding customers, like Safilo Corporation, to business terms which Defendant's customers did not understand and which led to substantial profit windfalls to the Company and unforeseen obligations to the customers).
54. Plaintiff was wrongfully discharged because he did not want his clients tricked by "interim rent" and "missed notice" provisions.
55. On account of his wrongful discharge, Plaintiff has suffered lost back-pay, front-pay, diminished earnings and earning capacity, as well as lost past and future fringe benefits.

WHEREFORE, Plaintiff, James M. Natale demands judgment in his favor and against Defendant Winthrop in an amount in excess of \$75,000.00, as well as attorneys fees, costs and whatever other relief this Court deems appropriate.

Respectfully submitted,

BATEMAN CALIENDO LLC

By:


David P. Bateman, Esquire
420 A Dresher Road
Horsham, PA 19044
(215) 443-9060
bateman@batemancaliendo.com
Attorney for Plaintiff, James M. Natale

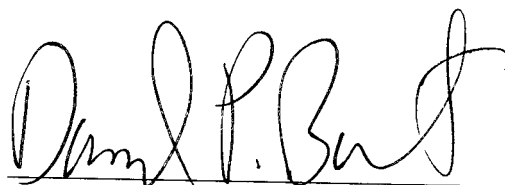
Date: December 17, 2007

CERTIFICATION OF SERVICE

I, David P. Bateman, Esquire, hereby certify that on this 17th day of December, 2007, I have served a copy of Plaintiff, James M. Natale's Complaint upon the following individual via first class mail, postage prepaid:

Elizabeth Abrams, Esquire
Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103

FILED
DEC 18 2007
MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk



DAVID P. BATEMAN, ESQUIRE

Winthrop Resources Corporation v. Apollo Education Group, Inc.
Case No. 0:17-cv-01448 (DWF/SER)

Exhibit B

(Apollo Education Group, Inc.'s Counterclaims)

EXHIBIT 1-A

01 IN THE UNITED STATES DISTRICT COURT
02 FOR THE DISTRICT OF MINNESOTA

03 - - -
04 WINTHROP RESOURCES : CIVIL ACTION
05 CORPORATION, et al :

06 :
07 :
08 VS. :

09 :
10 :
11 SABERT CORPORATION, :
12 et al : NO. 07-CV-1735

13 - - -
14
15 VIDEOTAPE DEPOSITION OF JAMES M. NATALE

16
17 October 16, 2007

18 - - -
19

20
21
22
23
24
25

01 A. Correct.
02 Q. What was your title when you were hired
03 by Winthrop in 1999?
04 A. Account executive, I believe.
05 Q. Did your title change at some point?
06 A. They're not really big on titles. So,
07 your responsibility is to go out and cultivate
08 business, you know, through individuals,
09 companies, who are looking to purchase technology
10 and leasing that technology on their behalf.
11 Q. And we'll talk a little bit more about
12 that in a few minutes.
13 Did you -- as far as you know,
14 did your title change, at all, between the time
15 that you were hired and the time that you left?
16 A. No.
17 Q. And when did you leave Winthrop
18 Resources?
19 A. February 2005.
20 Q. So, you worked there from 1999 until
21 February of 2005?
22 A. Correct.
23 Q. To whom did you report?
24 A. Frank Gabriel, for the majority of my
25 tenure.

01 page five did Winthrop provide to Sabert?

02 MR. KRAUSS: Renew objection.

03 THE WITNESS: I think all the
04 services are available.

05 I mean, Gary was doing a
06 technology project, which was an ERP
07 project, if I remember correctly, and, you
08 know, so, he -- we, basically -- Winthrop
09 leased new, possibly used equipment, and I
10 believe there were some purchase
11 lease-backs.

12 I'm not sure what other options
13 were rendered or exercised, you know,
14 throughout the relationship.

15 - - -

16 BY MR. BOOS:

17 Q. I'm going to take another -- strike
18 that.

19 MR. BOOS: Just mark this as
20 the next exhibit, if you would?

21 - - -

22 (Letter Bates stamped WRC000120
23 received and marked for identification as
24 Exhibit 21)

25 - - -

01 BY MR. BOOS:

02 Q. Take a look at exhibit 21, if you
03 would?

04 A. Okay.

05 Q. Do you recognize this document?

06 A. Yes.

07 Q. And what is it?

08 A. It's a letter of introduction that was
09 given to Sabert Corporation.

10 Q. Is it dated Friday, March 7, 2003?

11 A. Yes, it is.

12 Q. Do you recall preparing and sending
13 this letter?

14 A. It's a standard letter. Winthrop's
15 model is pretty standardized.

16 Q. Do you specifically recall preparing
17 and sending this letter?

18 A. No.

19 Q. If you did -- if you did prepare and
20 send it, would it have -- would a copy of it have
21 been kept in your file?

22 A. Possibly, yes.

23 Q. Taking a look at --

24 A. I am familiar with the letter, though.

25 Q. In what sense are you familiar with it?

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01 A. It's -- it's a letter that I would use
02 and give to prospects and clients.
03 Q. Was this the first communication that
04 you had with Sabert?
05 A. It's a possibility, yes.
06 Q. And in this --
07 A. Meaning that this is -- mind if I
08 elaborate?
09 Q. No, please do.
10 A. Meaning that this is -- again, it's a
11 standard letter. It's an introduction letter.
12 So, you usually give this in the beginning of, you
13 know, a -- a sales cycle or as you're trying to
14 determine if a customer is a good fit.
15 Q. Now, Sabert didn't seek out Winthrop;
16 did it?
17 A. I'm not sure.
18 Q. I mean, does it -- based on exhibit 21,
19 does it appear that Winthrop, through you, made
20 the first contact or connection with Sabert?
21 MR. KRAUSS: Objection.
22 Document speaks for itself.
23 THE WITNESS: Again, my
24 recollection is that I was referred by a
25 vendor that Sabert was using, and I made a

01 phone call into Sabert, and I could almost
02 guarantee that, you know, I would have
03 called the C level executives within
04 Sabert, meaning CFO, CIO or direct levels,
05 to introduce the product and the service.
06 - - -

07 BY MR. BOOS:

08 Q. When you called the C level individuals
09 at Sabert to introduce Winthrop's product and
10 services, would that call have taken place
11 sometime around the date of this letter that is
12 exhibit 21?

13 A. That would make sense.

14 Q. And, in the letter it looks like you're
15 setting out various ways that you believe Winthrop
16 could help or service Sabert; is that right?

17 A. It's a letter that bullet points or
18 highlights Winthrop's defined value proposition.

19 Q. What do you mean by that?

20 A. It's the value proposition that -- that
21 they are, you know, marketing or trying to
22 communicate to their clients.

23 Q. And how would you describe what that
24 value proposition is to somebody who's not
25 familiar with the industry?

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01 BY MR. BOOS:

02 Q. And after you've taken a look at
03 exhibit 22, please take a look at exhibit 23.

04 A. Okay.

05 Q. Starting with exhibit 23, is that --
06 can you identify that document for the record?

07 A. Yes.

08 Q. And what is it?

09 A. It's a standardized proposal.

10 Q. Have you seen that proposal before?

11 A. Yes.

12 Q. In what connection?

13 A. In connection with Sabert Corporation.

14 Q. Is that a proposal you prepared for
15 Sabert?

16 A. Yes.

17 I'm not sure whose notes these
18 are.

19 Q. Oh, let's see.

20 A. Is that your writing?

21 Q. Can I see that?

22 MR. BOOS: Let's go off for a
23 second.

24 MR. BERGER: Nine fifty-one,
25 pause.

01 Do you mind if I ask a
02 question? Where did these documents come from?

03 MR. BOOS: Yeah, I don't --
04 let's go off the record for a second.

05 MR. BERGER: Nine fifty-four,
06 pause.

07 - - -
08 (Lease proposal Bates stamped
09 SAB000003 to 12 received and marked for
10 identification as Exhibit 24)

11 - - -
12 MR. BERGER: Please proceed.
13 - - -

14 BY MR. BOOS:

15 Q. Take a look at exhibit 24, is that
16 another copy of a proposal provided to Sabert that
17 appears to have some handwriting on it?

18 A. Yes.

19 Q. That's not your handwriting; is it?

20 A. No.

21 Q. And you'll note in the right hand
22 corner, the lower right hand corner, the numbers
23 and letters SAB000003?

24 A. Yes.

25 Q. And I'll just indicate to you that that

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01 means it was produced by Sabert in this
02 litigation.
03 A. Thank you.
04 Q. Now, taking a look at the exhibit, does
05 it -- does the proposal, itself, without the
06 writing, look like the proposal that you sent to
07 Sabert?
08 A. Yes. I mean, it clearly has my
09 signature on it.
10 Q. And do you remember having discussions
11 with Gary Ziznewski at Sabert about this proposal?
12 A. I do recall sitting and talking to
13 Gary, yes.
14 Q. And where did those discussions take
15 place?
16 A. In Gary's office.
17 Q. And so you traveled to Gary's office?
18 A. That is correct.
19 Q. On how many occasions do you recall
20 traveling to Gary's office to discuss this
21 proposal?
22 A. At least two.
23 Q. Might there have been other discussions
24 about this proposal over the phone?
25 A. Yes.

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01 Q. Any estimate as to how many
02 discussions?

03 A. I would say multiple, you know, at
04 least two, three.

05 Q. Now, in the proposal what's proposed is
06 a credit line up to a million dollars; is that
07 right, essentially?

08 A. A lease line.

09 Q. Is there a difference between a lease
10 line and a credit line?

11 A. You know, the way we're taught is to
12 discuss it as a -- as a lease agreement, not a --
13 not a credit line, or a -- you know, a traditional
14 loan.

15 Q. But, it essentially operates like a
16 line of credit up to the authorized amount, and,
17 in this case, that authorized amount was a million
18 dollars; is that right?

19 MR. KRAUSS: Objection.
20 Misstates the testimony.

21 THE WITNESS: The way it
22 operates is, it operates as a lease.

23 With a facility -- in this
24 instance, it was based on cost of a million
25 dollars and they would draw on that cost up

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01 to a million dollars.

02

03 BY MR. BOOS:

04 Q. It also talks about installation, and
05 at least at this point it says installation April
06 to September 2003.

07 Do you see that?

08 A. I do.

09 Q. It also talks about a term of forty-two
10 months.

11 Do you see that?

12 A. Yes.

13 Q. And forty-two months, with a monthly
14 payment of twenty-five thousand, four hundred and
15 twenty-eight dollars; is that right?

16 A. Yes.

17 Q. How did you come up with these numbers
18 in -- in this proposal?

19 A. The -- you know, there's a formula that
20 Winthrop uses to calculate, you know, a monthly
21 payment based on the profile of a client.

22 Q. Tell -- tell us what you mean by
23 profile of a client?

24 How could the profile of a
25 client change the numbers that are in this

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01 proposal on the front page of exhibit 24?

02 A. You know, it's -- Winthrop's model is
03 pretty premeditated, in the sense that they --
04 they know, specifically, what type of client they
05 are looking for, what type of project they're
06 looking for, what type of credit they're looking
07 for, what type of contract they're looking for.

08 Q. When you say premeditated, what do you
09 mean?

10 A. They're in business to make money, and,
11 you know, they make money and make a lot of money
12 off of leasing.

13 Q. And you talk about how it's
14 premeditated in terms of Winthrop knowing what
15 type of client it wants.

16 What type of client is Winthrop
17 seeking?

18 A. They call it an anchor profile type of
19 client. A client that has good credit. A client
20 that has an appetite for technology.

21 Q. What -- what else do they look for in
22 terms of clients who may have experience or no
23 experience with leasing?

24 A. They're looking for that.

25 I mean, ideally there's a

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01 couple of components of what they look for, which
02 I had outlined for you.

03 One is credit. One is project,
04 you know, the project type, meaning the roll out
05 of the project, what type of assets are in the
06 project, how critical those assets are to the
07 business of the -- the company who's buying the --
08 the technology.

09 Q. You said that Winthrop is in business
10 to make money.

11 Are they -- are they looking
12 for clients that don't have experience in the
13 leasing area?

14 A. It's part of the profile.

15 Q. And why are they seeking clients that
16 don't have experience in leasing, based on your
17 knowledge?

18 A. Well, I mean, they're looking for --
19 basically, they're looking for a contract that is
20 unaltered.

21 Q. What do you mean by unaltered?

22 A. Well, there's a couple ways that
23 Winthrop makes money, and they make money,
24 basically, in three areas of the relationship, so
25 to speak.

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01 And one would be on interim
02 rents. Two would be mid lease changes. Three
03 would be, you know, some type of either misnotice
04 or extended use on the equipment.

05 Q. And how -- let's start with the first
06 one. How does Winthrop make money on so-called
07 interim rent?

08 A. You know, it's pure profit to -- to
09 Winthrop.

10 Q. First of all, what do you mean by
11 interim rent?

12 A. Interim rent is the period where the
13 clients are adding cost or installing the
14 equipment, and they're billed on what was
15 installed, what was accepted, until the entire
16 equipment is accepted, and that's when the actual
17 lease will commence.

18 Q. So, are you saying that Winthrop is
19 motivated and motivates its sales people like you
20 to encourage companies to pay as much interim rent
21 as possible because it's profit for Winthrop?

22 A. Can you repeat that?

23 MR. BOOS: Can you read that
24 back?

25 - - -

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01 MR. KRAUSS: Objection.
02 Assumes facts not in evidence.
03 THE WITNESS: Their model is --
04 again, it's very premeditated. It's very
05 well thought out. They're looking for a
06 specific client.
07 You spend the majority of your
08 time looking for the anchor profile client.
09 I mean, they -- they teach. They educate,
10 you know, defining and looking for the
11 anchor profile client.
12
13 BY MR. BOOS:
14 Q. You mean Winthrop teaches and educates
15 you, the salesperson?
16 A. Their sales force, correct.
17 Q. And, again, if you could explain to the
18 jury what it is precisely that they're looking
19 for, it would be helpful?
20 A. You know, they're looking for, first
21 off, it has to be credit -- the customer has to
22 have credit, good strong credit.
23 If they don't have credit, then
24 there's no relationship. There's no -- when I say
25 relationship, there's -- it doesn't go any

01 Is that your understanding?
02 A. I think there was a degree of lease buy
03 back, yes.

04 Q. Do you recall that this was something
05 new to Sabert at the time and didn't have
06 experience with type of transaction?

07 MR. KRAUSS: Objection. Lack
08 of foundation.

09 THE WITNESS: I don't recall,
10 no.

11
12 BY MR. BOOS:

13 Q. Is it possible that Gary Ziznewski
14 conveyed to you that this was a new type of
15 situation, in terms of this type of lease buy back
16 program that Winthrop was selling to it?

17 MR. KRAUSS: Objection. Calls
18 for speculation.

19 THE WITNESS: I don't recall,
20 no.

21
22 BY MR. BOOS:

23 Q. Is it possible that Gary Ziznewski
24 conveyed that to you?

25 MR. KRAUSS: Renew objection.

01 Calls for speculation.
02 THE WITNESS: There is a
03 possibility, yes.
04
05 BY MR. BOOS:
06 Q. Do you recall explaining to
07 Mr. Ziznewski that a lot of companies do this type
08 of lease arrangement?
09 Was that --
10 A. Yeah.
11 Q. -- was that part of your sales
12 approach?
13 A. I guess the proof lies in the fact that
14 there are a lot of companies who do lease
15 technology, yes.
16 Q. So, it's possible that that was part of
17 your sort of sales pitch, for lack of a better
18 phrase, in talking to Sabert about possibly doing
19 business with Winthrop?
20 A. You have an ongoing dialogue. So,
21 there's just not one thing that is discussed, but
22 there's a possibility that that could have been
23 discussed, yes.
24 Q. Is it also possible that you talked
25 about how this was a straightforward, simple type

01 Q. What is your education or experience in
02 accounting?

03 A. My education experience is limited.

04 Q. What -- to what degree do you have
05 experience in accounting?

06 A. I was a finance major in college. I
07 took, you know, some accounting credits and, you
08 know, I -- and I've been in some form of finance
09 for, you know, over -- over eight to ten years at
10 this point.

11 Q. In addition to explaining to Sabert
12 that a lot of companies were doing this, if that
13 was your testimony -- was that your testimony?

14 A. The testimony was, we -- I mean, even
15 if you look at the brochure, there are a lot of
16 companies doing it, and it possibly could have
17 been a conversation that we discussed.

18 Q. Did you -- do you recall explaining to
19 Sabert that this is something it should be doing?

20 A. No, I don't -- I don't recall that.

21 But, you know, again, it could
22 have been -- could have been part of the
23 conversation.

24 Q. I would imagine that part of your sales
25 approach would be to encourage companies to enter

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01 BY MR. BOOS:

02 Q. Would you have any reason to doubt that
 03 much, if not all, of the equipment that was funded
 04 in the June 2003 time frame, had already been in
 05 place at Sabert and purchased by Sabert before it
 06 had ever signed any agreements or documents with
 07 Winthrop?

08 MR. KRAUSS: Objection to the
 09 form.

10 THE WITNESS: It goes back to
 11 your earlier question. I do recall that
 12 they had purchased a system and that a
 13 portion of it was installed, yes.

14
 15 BY MR. BOOS:

16 Q. Do you remember having discussions with
 17 Gary Ziznewski about how that would affect your
 18 agreement with -- between Winthrop and Sabert.

19 In other words, did you say --
 20 well, you know, we really can't fund any items
 21 that you've already purchased or any services that
 22 you've already received, consulting services?

23 Or did you say, look, that
 24 doesn't matter, we can still do a deal here? We
 25 can still work this out and have a business

01 party vendors?
 02 A. Correct.
 03 Q. And so over fifty-one percent of the
 04 deals you worked on were situations where Winthrop
 05 would actually be purchasing the equipment from
 06 third party vendors?

07 A. Yes. I would say the majority, meaning
 08 over fifty-one percent.

09 Q. Take a look at exhibit 24, page
 10 SAB10 -- actually, let's go back to page one and
 11 we'll page through this and ask a few questions.

12 A. Which one is page one?

13 Q. The first page, the front page that
 14 says exhibit 24.

15 Had you provided background to
 16 Gary that Winthrop was a New York Stock Exchange,
 17 eleven billion dollar company?

18 MR. KRAUSS: Objection.

19 THE WITNESS: There's a good
 20 possibility I would have described, you
 21 know, the profile of Winthrop Corporation.

22 - - -

23 BY MR. BOOS:

24 Q. Would you have provided to Gary
 25 information that Winthrop was a premier provider

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01 of services that wanted long term relationships?

02 A. Yes.

03 Q. And would you have conveyed to Gary
04 that Winthrop had no hidden agenda?

05 A. Only in reference to hidden agenda with
06 regards to, you know, technology vendors or who he
07 chose as far as technology vendors.

08 Q. But, you wouldn't have used a blanket
09 term saying, look, we have no hidden agendas,
10 period?

11 A. No.

12 Q. And we'll get back to that in a little
13 bit.

14 Taking a look at the front
15 page, the front page indicates a term of forty-two
16 months; right?

17 A. Yes.

18 Q. And it makes an assumption of a million
19 dollar cost; do you see that?

20 A. Yes.

21 Q. And it assumes a twenty-five thousand,
22 four hundred and twenty-eight dollar monthly
23 payment?

24 A. Yes.

25 Q. Do you recall that Gary plugged in a

01 number and came up with a three point seven
02 percent interest rate on this deal?

03 A. No.

04 Q. Do you -- did you ever plug in the
05 number to -- to figure out what the interest rate
06 Sabert would be paying would be?

07 A. No.

08 Q. Is it possible that Gary discussed that
09 with you --

10 MR. KRAUSS: Objection. Lack
11 of foundation.

12 - - -
13 BY MR. BOOS:

14 Q. -- in terms of what interest rate he
15 believed Sabert would be paying under this
16 agreement?

17 MR. KRAUSS: Objection. Calls
18 for speculation.

19 THE WITNESS: There -- there --
20 there's always a possibility, yes.

21 As a matter of fact, you know,
22 a lot of times CFOs or executives in the
23 finance position wanted to look at this
24 from an APR standpoint or an interest rate
25 standpoint.

01 BY MR. BOOS:

02 Q. And did you find that Gary was an
03 exception to that rule?

04 A. I don't --

05 MR. KRAUSS: Objection.

06 THE WITNESS: I don't recall.

07

08 BY MR. BOOS:

09 Q. Did he seem to be the type of person
10 who would -- would want to know or was interested
11 in knowing the interest rate that his company
12 would be paying under this proposed lease?

13 MR. KRAUSS: Objection. Calls
14 for speculation.

15 THE WITNESS: I don't recall
16 having a specific conversation with regards
17 to interest rate with Gary on this, but
18 it's not -- it was not unusual for finance
19 executives to want to look at this as an
20 interest rate.

21

22 BY MR. BOOS:

23 Q. And is it possible that there was some
24 discussion among your meetings, phone and in
25 person, that the topic did come up?

01 MR. KRAUSS: Objection. Asked
02 and answered, calls for speculation.

03 THE WITNESS: Topic could have
04 come up, but, generally speaking, it was
05 not something we were taught to engage in.
06 - - -

07 BY MR. BOOS:
08 Q. So, who at Winthrop would teach you not
09 to engage in discussions of interest rates --

10 MR. KRAUSS: Objection.
11 - - -

12 BY MR. BOOS:
13 Q. -- with the customers?

14 MR. KRAUSS: Misstates the
15 testimony.
16 - - -

17 BY MR. BOOS:
18 Q. Is that your testimony, that somebody
19 at Winthrop teaches you, as a salesperson, not to
20 discuss the interest rates that customers are
21 going to be paying?

22 A. They teach you that it's a lease
23 contract, and -- which is similar to a rental and
24 there's really not an APR or interest rate.
25 That's what's taught.

01 BY MR. BOOS:
02 Q. In the management during installation
03 period paragraph at the bottom, do you see that?
04 A. I do.
05 Q. It says, about four lines down, you see
06 where it says, as you accept equipment and other
07 costs, only then will we pay your vendors and
08 begin prorated interim rent billings to you until
09 the lease commences.
10 Do you see that?
11 A. Yes.
12 Q. By the way, is this proposal document,
13 the entire exhibit 24, is this kind of a standard
14 form proposal that you used with all of your
15 customers?
16 A. Yes. Winthrop's model is very
17 standardized. Meaning, you know, if -- meaning
18 that pretty much they give you the documentation
19 to provide.
20 Q. And is this similar documentation to
21 that which you would use with other customers in
22 2003 and 2004?
23 A. Yes.
24 I mean, for instance, you know,
25 the language that you see on exhibit 24, SAB10,

01 is, you know, provided language from the company
02 to us.

03 Q. And it would have been provided to you
04 as a salesperson in connection with all your
05 deals?

06 A. Correct.

07 Q. So, it's not tailor made for Sabert; is
08 that right?

09 A. Correct.

10 Q. And the language in the proposal is not
11 tailor made to suit any unique aspects of your
12 dealings or relationship with Sabert; correct?

13 A. Not -- not entirely.

14 I mean, there's -- you know,
15 there's some tailoring specific to type of
16 project, assets, cost, term.

17 Q. And those -- would that -- is that the
18 tailoring that appears on page one?

19 A. There's not a page one.

20 Q. I'm sorry, on what is SAB003?

21 A. Correct.

22 Q. And, so, I suppose you would have to
23 plug in different numbers on SAB003 documents to
24 reflect, you know, the amount of the credit line,
25 the dates of the installation and so forth; is

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01 that right?
02 A. Yes.
03 Q. But, in terms of the rest of exhibit
04 24, is it standardized information that would be
05 provided to each of your customers?
06 A. Yes.
07 Q. Okay, now, going back to page SAB10 and
08 the language that I mentioned a minute ago under
09 the management during installation period.
10 Where it says, as you accept
11 equipment and other costs, only then will we pay
12 your vendors, now with regard to Sabert, Winthrop
13 never paid any Sabert vendors; correct?
14 MR. KRAUSS: Objection. Lack
15 of foundation.
16 THE WITNESS: I don't know.
17
18 BY MR. BOOS:
19 Q. I mean, if all the equipment and
20 services had already been purchased by Sabert,
21 isn't it true that Winthrop did not pay any
22 vendors of Sabert?
23 MR. KRAUSS: Objection. Asked
24 and answered, lack of foundation, assumes
25 facts not in evidence.

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01 up this nine hundred and ninety-two thousand
02 dollars of funding, then there would be no need
03 for Winthrop to pay Sabert's third party vendors;
04 right?

05 A. Correct.

06 Q. And if that was the case, this sentence
07 beginning, as you accept equipment and other costs
08 only then will we pay your vendors, doesn't apply;
09 correct?

10 MR. KRAUSS: Objection. Lack
11 of foundation, calls for speculation, calls
12 for legal conclusion.

13 THE WITNESS: You know, I can't
14 really interpret that, to be honest.

15 I mean, I think the intent of
16 the paragraph is to -- is for Winthrop to
17 explain their interim rent and how interim
18 rent works.

19
20 BY MR. BOOS:

21 Q. Is it clear to you how interim rent
22 works based on that sentence that starts with, as
23 you accept?

24 MR. KRAUSS: Objection. Calls
25 for speculation and the limitation that

01 it's based simply on that one sentence.

02 There's an entire paragraph.

03 - - -

04 BY MR. BOOS:

05 Q. Or based on this paragraph, is it -- is
06 it clear to you precisely how prorated interim
07 rent works or is it somewhat unclear?

08 A. You know, my -- my -- I would say
09 it's -- you know, it's clear to me.

10 Q. Is that because of your familiarity
11 with this language and how Winthrop makes money?

12 A. I would say that's a safe assumption.

13 Q. And -- by the way, you never discussed
14 this paragraph with Gary Ziznewski; did you?

15 A. We are instructed to go over the
16 paragraph with all our clients. I say our, I'm
17 not employed. So, we were instructed to go over
18 this paragraph.

19 Q. Do you have any specific recollection
20 as to whether you actually did?

21 A. I'm -- I'm sure I did but I don't have
22 a specific recollection.

23 Q. If you would have gone over this
24 paragraph with a customer, what would you have
25 done? What would you have gone over it? How

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01 about -- strike that.

02 How would you have gone about
03 going through this paragraph with a customer?

04 A. Generally speaking, would ask the
05 client to -- and, is your question specifically
06 that paragraph?

07 Q. Yes.

08 A. You would ask the client to read it.
09 Ask them if they have any questions, and then you
10 would explain interim rent to them.

11 Q. And how would you explain prorated
12 interim rent to a customer?

13 A. The way that we were, you know, taught
14 to explain it would be, as you gather the assets
15 and the equipment and accept the equipment into
16 the lease, we will pay your vendors and start
17 billing you based on what you accepted, when you
18 accepted that equipment, on a prorated basis.

19 Q. Now, had you explained it that way to
20 Sabert, it wouldn't have applied to the Sabert
21 situation in the sense that you weren't paying any
22 Sabert vendors, first of all; right?

23 MR. KRAUSS: Objection. Calls
24 for speculation, legal conclusion,
25 argumentative.

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01 THE WITNESS: Well, with
02 regards to paying the vendors, no, but we
03 would have paid, you know, to -- it's not
04 really a matter of who we're paying. It's
05 a matter of we're paying for equipment as
06 we add it to the schedule.

07 I think the point that's being
08 articulated is that Sabert is in control of
09 who we pay, when we pay and what equipment
10 is added, and when they start, you know,
11 paying interim rent.

12 - - -
13 BY MR. BOOS:

14 Q. Okay, but that's not fully explained in
15 this management during installation period
16 paragraph at page SAB10; correct?

17 MR. KRAUSS: Objection.

18 THE WITNESS: No, I mean, you
19 know, the proposal doesn't have -- doesn't
20 explain everything holistically.

21 - - -
22 BY MR. BOOS:

23 Q. And, in fact, prorated interim -- well,
24 take a look at exhibit 1, if you would, which is
25 the lease agreement between the parties. Can you

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01 as you explained and used the examples in the
02 lease agreement.

03 But I know that there are
04 explanations of interim rent throughout
05 documentation --

06 Q. Can you --

07 A. -- that we provide to our clients.

08 Q. Let's talk about Sabert, specifically.

09 Other than a reference to
10 interim rent in lease schedule number 0001 under
11 the see attachment A line, are you aware of
12 interim rent appearing in any other documents,
13 other than lease schedules like exhibit 2?

14 A. Yes.

15 I mean, the proposal, there
16 were flow charts and other documentation
17 explaining the interim rent process.

18 Q. So, are you saying that -- well,
19 let's -- let's break it down.

20 A. Or I should really say, the
21 administrative process, which detailed and
22 explained interim rent.

23 Q. Flow charts, where would a flow chart
24 appear in connection with Sabert?

25 A. You know, it would appear, generally

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01 speaking, in literature that would be given to
02 Sabert.

03 Q. What -- do you recall giving literature
04 to Sabert that would have a flow chart explaining
05 administrative processes and/or interim rent?

06 A. I don't -- I mean, I don't see anything
07 in these proposals, but, generally speaking, I
08 would give -- you know, I would give, a lot of
09 times, clients, you know, an explanation of the
10 administrative process.

11 Q. A written explanation?

12 A. Yeah, in writing; correct.

13 Q. Well, we've seen the proposal that you
14 provided to Sabert in this case; right, that's
15 exhibit 24?

16 A. Yes.

17 Q. And that doesn't contain the flow chart
18 you're talking about; does it?

19 A. No, I didn't see it.

20 Q. Is it possible that you didn't provide
21 that flow chart to Sabert?

22 A. I mean, generally speaking, I would
23 provide it, but to get back to your -- I guess, to
24 get back to an earlier -- earlier explanation, I'm
25 not sure if it was provided or not.

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01 (At this point, a short recess
02 was taken, after which time the deposition
03 resumed.)

04 - - -
05 MR. BERGER: We're back on the
06 record.

07 - - -
08 BY MR. BOOS:
09 Q. Okay, sir, I know you and your counsel
10 have spent some time now off the record perusing
11 the document.

12 Have you found any reference or
13 have you found the word interim rent or prorated
14 interim rent anywhere in the lease agreement?

15 MR. KRAUSS: Defining lease
16 agreement as exhibit 1 and not including
17 the schedules?

18 MR. BOOS: Let me strike it and
19 ask the question again.

20 - - -
21 BY MR. BOOS:
22 Q. In reference to defendant's exhibit 1,
23 which is titled lease agreement, did you -- you've
24 had a chance to peruse the document along with
25 your lawyer; is that right?

01 A. Yes.
02 Q. Have you found the words interim rent
03 or prorated interim rent anywhere in that
04 document?
05 A. In exhibit 1, no.
06 Q. Now, taking a look at exhibit 2, the
07 lease schedule, can you locate exhibit 2, please,
08 the lease schedule 001?
09 The word interim rent does
10 appear on the lease schedule in the middle
11 paragraph; doesn't it?
12 A. Yes.
13 Q. It does not appear to be a defined
14 term, in the sense that it has quotes around
15 interim rent and then goes on to explain exactly
16 what that means; does it?
17 A. There's no quotes.
18 Q. The other place where the word interim
19 rent appears is in the document we discussed
20 earlier, exhibit 24, the lease proposal, at page
21 SAB10; do you recall that?
22 A. Yes.
23 Q. And, similarly, the reference to
24 prorated interim rent in that document did not
25 contain a defined term, prorated interim rent with

01 quotes around it, that contain an explanation;
02 correct?

03 A. Yes.

04 Q. Now, as you sit here, are you aware of
05 interim rent appearing anywhere else in documents
06 involving Sabert?

07 MR. KRAUSS: Objection. Lack
08 of foundation.

09
10 BY MR. BOOS:

11 Q. I'm just asking what -- whether you're
12 aware of any, as you sit here?

13 A. Based on what was shown to me, no.

14 Q. Now, on the subject of interim rent,
15 isn't it true that you were instructed by your
16 superiors at Winthrop not to educate the customer
17 with respect to what interim rent was?

18 MR. KRAUSS: Objection to the
19 form. Assumes facts not in evidence.

20 THE WITNESS: It's not -- it's
21 not a true statement, no.

22
23 BY MR. BOOS:

24 Q. What is the truth, with respect to how
25 Winthrop felt about educating its customers with

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01 customers would not do business with you if
02 they understood the full impact of interim
03 rent.
04

05 BY MR. BOOS:

06 Q. And why was that?

07 A. Because it -- you know, there was
08 additional cost to -- to them.

09 Q. And isn't interim rent essentially
10 additional monthly rental payments that don't
11 count toward the actual number of payments agreed
12 to between the parties?

13 For example, if two parties
14 agreed to forty-two payments, interim rent might
15 be, you know, several payments that don't count
16 towards those forty-two?

17 Is that kind of a simplistic
18 way of putting it?

19 A. That's a simplistic way of putting it.

20 Q. Would you put it some other way that's
21 more helpful or accurate?

22 A. Yeah, I mean, I could kind of --
23 basically, you're -- it's additional costs that
24 you're paying for -- as the equipment is either
25 being used or installed for that period of time,

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01 and it's additional cost, in addition to the term
02 of -- the initial term, you know, Winthrop defines
03 term by the word initial term.

04 Q. And was it your testimony that if
05 clients fully understood the impact of interim
06 rent, it became more likely that they wouldn't do
07 business with Winthrop?

08 MR. KRAUSS: Objection. Go
09 ahead.

10 THE WITNESS: I would say that
11 a lot -- a lot of clients would not do
12 business if they fully understood the
13 impact of interim rent, but there are
14 clients that would.

15
16 BY MR. BOOS:

17 Q. And is -- is that reality part of the
18 reason that you believe Winthrop didn't make it
19 entirely clear to customers as to what interim
20 rent was and how it kicked in?

21 MR. KRAUSS: Objection.
22 Assumes facts not in evidence. It calls
23 for speculation.

24 THE WITNESS: There's kind of
25 a -- you're making me to -- you're making

01 me assume -- there's kind of a secret code
02 within the company. I mean, certain things
03 you don't talk about, and they -- they like
04 it that way.

05 - - -

06 BY MR. BOOS:

07 Q. When you talk about a secret code
08 inside Winthrop, what do you mean?

09 A. Well, there's certain things that, you
10 know -- that just aren't -- you know, it's just
11 the way things are done. You don't really
12 question or, you know, discuss it.

13 I mean, interim rent is part of
14 the lease agreement and here's the way that you
15 explain it.

16 Q. Is interim rent part of the secret code
17 within Winthrop?

18 A. Well, you know, when I say secret code,
19 they -- they have their own way of -- you know,
20 I've been in sales my whole life and they have
21 their own process and it's a very defined process.
22 It's a very well thought out process of finding,
23 identifying, profiling a client, to actually
24 working with a client.

25 Q. Okay, you need to, if you can, be more

01 specific, so that the jury can understand what
02 you're saying.

03 When you talk about there being
04 a secret code within Winthrop that the company
05 likes it that way and that certain things are, you
06 know, I guess, secret within Winthrop, what do you
07 mean -- what do you mean, as it relates to interim
08 rent?

09 A. That's a good question.
10 More specifically, I mean,
11 interim rent has a -- it's a profit center for the
12 organization. So, you know, the question is, do
13 customers fully understand it or don't fully
14 understand the impact of interim rent.

15 And that's -- that's the big
16 question, but it's not something that is discussed
17 openly within, you know, the organization.

18 It's -- you know, it's just --
19 it's -- you're taught that it's part of the deal
20 and it's part of, you know, our contract. It's
21 part of the agreement. Here's the way you explain
22 it. So, that's how I'm defining -- defining
23 secret code.

24 Q. And how specifically do they tell you
25 to explain to the customer?

EXHIBIT 1-C

01 A. Like I explained to you, which I think
02 is on record.

03 Q. Can you just summarize it?

04 A. Sure.

05 MR. KRAUSS: Objection. Asked
06 and answered.

07 THE WITNESS: As you gather the
08 assets and accept the equipment, we will
09 pay your vendors, we'll pay for the
10 equipment, and then we will bill you on a
11 prorated basis, based on what you accepted
12 and when you accepted the equipment.

13 You're in total control of that
14 process. I mean, that's kind of the way
15 they like it explained.

16 So, can you explain it to me
17 again, Jim, and the explanation would be
18 the same explanation.

19
20 BY MR. BOOS:

21 Q. So, if they asked you to -- if they
22 questioned that explanation that you just gave,
23 which -- which I think you testified is the
24 explanation that is supposed to encompass interim
25 rent; is that what you're saying?

01 A. That's correct.
02 Q. That you would simply just repeat that?
03 A. There's styles that you learn from
04 other people within the organization and that's
05 definitely one approach.
06 Q. And what is the purpose of using that
07 approach, as opposed to saying, look, I got to
08 tell you that it's in your best interest as a
09 customer to get all this equipment installed by a
10 certain date and get the lease commenced, so that
11 you're not paying huge amounts of interim rent?
12 Why isn't that latter approach
13 used?
14 A. Again, it's never, never discussed.
15 That's subject to interpretation. That's the
16 code. It's not discussed. You want to keep your
17 job, it's not part of something that's really
18 discussed openly.
19 Q. So, Winthrop is saying to you as the
20 sales person, if you want to keep your job, you
21 don't discuss interim rent openly with the
22 customer?
23 MR. KRAUSS: Objection.
24 Mischaracterizes testimony.
25 THE WITNESS: Well, if you want

01 pressure on fulfilling your job and maintaining,
02 you know, employment.

03 They go out and they hire
04 successful account executives, who have -- and
05 success is defined by previous work experience
06 relative to other employees within those
07 organizations, you know, your ranking.

08 Do you want to continue?

09 Q. We got five minutes left on the tape.

10 A. Okay. So, you know, you did -- if you
11 wanted to keep your job, you had to write
12 business.

13 So, you know, I always tried to
14 disclose as much as possible that I could
15 disclose, so I could look in the mirror in the
16 morning and feel good about myself.

17 If direct questions were asked
18 of me, I would answer them honestly and directly,
19 but, again, you know, the model was, certain
20 things you didn't talk about.

21 Q. And one of those things was the interim
22 rent?

23 A. Well, you didn't talk about it openly.
24 You didn't talk about the economic impact. You
25 didn't talk about if it was right or wrong or what

01 your opinion was on it. Your opinion really
02 didn't matter.

03 Q. You just left well enough alone and
04 let -- tried to skate over the issue?

05 MR. KRAUSS: Objection.

06 THE WITNESS: It was the model,
07 and if you wanted to stay within the
08 company, you followed the model. And if
09 you wanted to leave -- if you didn't follow
10 the model, you either left on your own or
11 you were asked to leave.

12

13 BY MR. BOOS:

14 Q. Just so we're clear on what this model
15 is, I think what your testimony is, if I have it
16 right, is that part of the model was that you did
17 not openly discuss with the customers and offer
18 additional information where they asked for it,
19 regarding interim rent, among other things?

20 MR. KRAUSS: Objection to the
21 form.

22

23 BY MR. BOOS:

24 Q. Is that fair?

25 MR. KRAUSS: Mischaracterizes

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01 testimony.
02 THE WITNESS: I didn't
03 understand your --
04 MR. BOOS: Could you read back
05 the question, please.
06 THE WITNESS: Thank you.
07 MR. BOOS: Or, actually, let
08 me -- let me try to cure it.
09
10 BY MR. BOOS:
11 Q. We're talking about the model that
12 you've referenced a few times; right?
13 A. There is a model. I mean, it's a very
14 defined model.
15 Q. Is it a written model?
16 A. You try not -- they don't put anything
17 in writing.
18 Q. But there is a model and you're -- they
19 train their sales people on this model; correct?
20 A. Correct.
21 Q. And part of that model involves interim
22 rent and how that is dealt with between Winthrop
23 and its customers; correct?
24 A. You are taught how to explain interim
25 rent.

01 Q. And you are encouraged and taught to
02 explain interim rent only in that particular way;
03 correct?

04 A. Correct.

05 Q. And is it fair to say that the way in
06 which you are taught to discuss interim rent is to
07 keep it as vague as possible?

08 A. That's the secret code. That's never
09 really discussed. They don't say, hey, Jim, keep
10 it as vague as possible.

11 They say, here's how you
12 explain it, interim rents, and to the point of why
13 don't you explain rent to me, great, you got it.
14 Let's -- let's move on to other parts of, you
15 know --

16 Q. And -- and, so, you are encouraged by
17 your employer, Winthrop, to move on to other
18 issues and not fully explain and fully get into a
19 discussion of what interim rent means?

20 MR. KRAUSS: Objection.

21 Mischaracterizes the testimony.

22 THE WITNESS: Again, I think
23 you might be misinterpreting what I'm
24 saying.

25 I think it's very clear in the

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01 witness did not characterize the
02 description of interim rent as vague.
03 That's counsel's term.

04 - - -
05 BY MR. BOOS:

06 Q. Is that a fair description of the
07 explanation of interim rent, that it was
08 calculated to be somewhat vague by Winthrop, so
09 that it wouldn't elicit a lot of discussion on
10 interim rent from the customer?

11 Is that fair and consistent
12 with your testimony?

13 A. Yes.

14 I mean, I, personally, think
15 that the explanation was vague. Though some
16 customers would -- you know, either based on
17 experience, history, whatever, would discuss it in
18 further detail and either choose to do a deal with
19 you or not do a deal. It -- it didn't matter.

20 Ideally Winthrop was looking
21 for somebody, who was willing to do a deal with
22 interim rent and with certain terms and conditions
23 in the contract that would be profitable, either
24 in the beginning, middle or end, or on all three,
25 and if you found a customer, then that was the

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01 you would look for, someone who was naive, in the
02 sense that they hadn't been down this road before
03 on a lease contract, where there was such a
04 concept of interim rent?

05 A. You know, I laugh, not because it's
06 funny, I laugh because, you know, you were
07 profiling. So, it happened to be that some of the
08 clients that you built relationships were -- with,
09 were that type of profile.

10 Q. You mean --

11 A. Meaning, that they didn't have lease
12 experience in the past.

13 Q. And -- strike that.

14 So -- so, am I to understand
15 your testimony, that was part of the profile, is
16 looking for a client that didn't have that type of
17 lease experience in the past?

18 MR. KRAUSS: Objection.
19 Mischaracterize his testimony.

20 THE WITNESS: If you found a
21 client, who had lease experience in the
22 past and they were to alter interim rents
23 or lease extension or notice, any of the
24 economic benefits within the lease, you've
25 read the lease; correct, then -- then you

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01 would not do business with them.
02 BY MR. BOOS:
03 Q. So, in order to be able to do business
04 with somebody, as a matter of necessity, you
05 needed to find someone who had not been down the
06 road before on this type of lease or had
07 experience with the interim rent profit center
08 clauses?

09 MR. KRAUSS: Objection.
10 Mischaracterizes testimony.

11 THE WITNESS: My personal
12 opinion is it helped increase your
13 probability of closing business and you
14 were employed by closing net new deals.
15

16 BY MR. BOOS:

17 Q. What else is part of this model or
18 secret code that you talked about?

19 We talked about interim rent
20 was part of that model. What else was part of
21 that model?

22 A. You know, just the -- the whole concept
23 of building relationship. Everything was about,
24 you know, finding the right profile client and
25 building relationship.

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01 explanation was, it's depreciating assets, you
02 know, what's your 486 worth now.

03 Q. So, if there was a hundred and
04 sixty-five thousand dollars of hard equipment that
05 was involved in this business relationship, I take
06 it that that equipment depreciates or obsolesces
07 rather rapidly; would that be fair?

08 A. Technology depreciates rapidly.

09 Q. So, what's your estimate as to what it
10 would be valued at today, several years later, the
11 hundred and sixty-five thousand dollars worth of
12 equipment?

13 A. Well, you know, the -- the art of the
14 model is not what -- it's what it's worth to the
15 customer. Not necessarily -- I mean, you know, I
16 don't know what it's worth in the open market,
17 but, the terminology that's used in the purchase
18 option is, you know, mutually agreed upon price.

19 So, greater value that the
20 equipment has to the client, more Winthrop could
21 charge.

22 Q. And is it your understanding that there
23 was an arrangement with regard to the software, as
24 well, that is reflected in rider three?

25 A. Yes.

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01 Q. And was that arrangement that Sabert
02 would have no obligation to purchase software from
03 Winthrop?

04 A. Correct.

05 Q. And, in addition, was it your
06 understanding that -- that Sabert would have no
07 obligation to return any software that is bundled
08 with licensed hardware to Winthrop at the end of
09 the lease?

10 A. I kind of want to restate my earlier
11 answer, because I just want to be careful on, you
12 know, answering some of these questions.

13 The assumption would be that if
14 they followed the agreement and the terms of the
15 agreement, then they would have the -- they would
16 not have to buy the software.

17 If they didn't follow the terms
18 of the agreement, then, you know, that would be
19 null and void.

20 These are all standard
21 documents and standard language, that as an
22 account executive, you have no control in
23 ordering. I mean, they are what they are.

24 They either -- if the customer
25 wants a rider on software, they either sign this

01 rider or they don't. If they don't, go find a new
02 customer.

03 Q. So, like the other contracts --

04 A. That's the model.

05 Q. So, like the other agreements that were
06 executed in this case by Sabert, it was boiler
07 plate language provided on a take it or leave it
08 basis to Sabert?

09 A. It's pretty much the way it works.

10 Q. Take a look at exhibit -- defendant's
11 exhibit 6?

12 A. If there were any alterations in the
13 contract, it could not have any economic impact on
14 the relationship.

15 Q. Please take a look at exhibit 6; do you
16 see that?

17 A. Yes.

18 Q. Does this reflect an equipment purchase
19 by Winthrop of equipment from Sabert?

20 A. Say again.

21 Q. Is this -- does this document reflect
22 that Winthrop purchased equipment in the amount of
23 six hundred and sixty-six thousand, two hundred
24 and twenty-seven dollars and seventy-two cents
25 from Sabert on or around June 10th of 2003?

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01 was to use some small percentage of that, then the
02 pricing might be more expensive or here the deal
03 would have been a different deal.

04 Q. Well, here, as of June 19th anyway, in
05 the first three fundings Sabert had used nine
06 hundred and ninety-two thousand dollars of its
07 credit line; correct?

08 A. If you say that, then I would agree
09 with you.

10 Q. Do you have any reason to dispute that?

11 A. No. I mean, I don't think you would
12 lie to me.

13 Q. And -- thank you.

14 A. And would knowing that --
15 strike that.

16 Q. Ninety-nine -- I'm sorry, nine
17 hundred and ninety-two thousand dollars was
18 certainly a good amount of the credit line
19 available to Sabert; correct?

20 A. You know, honestly, it's -- it's up to
21 the -- the client of what is a good amount to be
22 used.

23 Q. I mean, ideally, as account
24 executives or sales people for Winthrop, you're
25 trying to get as much cost into the lease as

01 possible.
02 Q. When you say as much cost into a lease
03 as possible, do you mean actually funding as much
04 money as possible?

05 MR. KRAUSS: Objection to the
06 form.

07 THE WITNESS: We didn't call it
08 funding. We called, the term -- the
09 terminology we used was cost or get as much
10 equipment into the lease as possible.
11 - - -

12 BY MR. BOOS:

13 Q. And, as of June 19 would it be your
14 understanding that Winthrop had nine hundred and
15 ninety-two thousand dollars of equipment into the
16 lease?

17 MR. KRAUSS: Objection. Lack
18 of foundation.

19 THE WITNESS: That's my
20 understanding, yes.
21 - - -

22 BY MR. BOOS:

23 Q. And -- strike that.
24 Had Winthrop put no more money,
25 other than that nine hundred and ninety-two plus

01 thousand into the lease, the commencement date
02 would have been July 1 of 2003; correct?

03 MR. KRAUSS: Objection. Calls
04 for legal conclusion and misstates the
05 lease documents.

06 THE WITNESS: It's really --
07 honestly, it's up to the client what they
08 want to put into the lease.

09
10 BY MR. BOOS:

11 Q. Well, that's not my question.
12 My question is, make an
13 assumption, assume that no more equipment would
14 have been put into the lease after June 19th of
15 2003; are you with me?

16 A. Yep.

17 Q. Had that been the case, the
18 commencement date of the party's lease would have
19 been July 1, 2003?

20 MR. KRAUSS: Renew objection.

21
22 BY MR. BOOS:

23 Q. Right?
24 MR. KRAUSS: Calls for legal
25 conclusion and misstates the lease

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01 documents.
02 THE WITNESS: With the
03 assumptions overlooking, it's up to
04 management what they want to do with the
05 lease at that point.
06 - - -

07 BY MR. BOOS:

08 Q. Okay. And what are the management --
09 what is management's -- strike that.

10 What are management's options
11 at that point? Let's say that no more equipment
12 is put into the lease after June 19th of 2003,
13 what are management's options?

14 A. That's my beeper.

15 Their options would be to go
16 out and get more equipment in the schedule.

17 Q. In other words, convince the customer
18 to buy more equipment and take more funding
19 from -- from Winthrop?

20 A. Find -- find -- find more equipment,
21 yes.

22 Q. That's one option.

23 What's another option?

24 A. Another option would be to, you know,
25 commence the schedule based on that. Another

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01 option would be, just keep it open.

02 Q. So, the second option you said is
03 commence the schedule based on that.

04 Do you mean commence the
05 schedule based on the nine hundred and ninety-two
06 thousand dollars that was funded as of June 19,
07 2003?

08 A. Correct.

09 Q. And the third option you said was to
10 simply leave it open.

11 What would that mean?

12 A. Just keep the schedule open and
13 continue billing interim rent.

14 Q. And why would that be an option?

15 A. If they weren't happy with the amount
16 of equipment in the schedule or cost in the
17 schedule, based on what was initially negotiated
18 between the client and -- and Winthrop.

19 Q. So, are you saying that under the
20 party's contract here, that Winthrop could have
21 unilaterally simply left the lease open and
22 continued to charge interim rent ad infinitum,
23 even if Sabert never bought additional equipment
24 that was put into this lease?

25 MR. KRAUSS: Objection. Lack

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01 of foundation. Calls for a legal
02 conclusion.

03 THE WITNESS: There's a lot of
04 speculation and you're creating a
05 hypothetical situation.

06 But, based on your hypothetical
07 situation, you know, pretty much when any
08 lease was either proposed or any lease was
09 commenced, there's a sign off process that
10 upper management -- and, there's, you know,
11 three or four, if not more, signatures have
12 to sign off on the deal and the economics
13 of the deal.

14
15 BY MR. BOOS:

16 Q. That's something that's done internally
17 at Winthrop; correct?

18 A. Correct.

19 Q. That's not done vis-a-vis the customer?

20 A. So, really every deal is at the mercy
21 of, you know -- or, at the -- what's the word?

22 Q. Discretion?

23 A. Discretion, yes, that's a good word,
24 discretion of, you know, executive management or
25 management.

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01 Q. So, is it your view that executive
02 management at Winthrop had the right, under the
03 contracts, to leave this lease open after June 9th
04 of 2003 and charge interim rent forever, if Sabert
05 did not buy more equipment, resulting in that
06 equipment being put into this lease?

07 MR. KRAUSS: Objection. Lack
08 of foundation and it calls for a legal
09 conclusion.

10 THE WITNESS: You're making me
11 assume on how they would view this
12 particular scenario. I don't know.

13 Alls I can tell you is that
14 they had the discretion to approve and
15 signed off on each and every deal that was
16 done, and they would look at the deal and
17 either sign off on it or not sign off on
18 it.

19
20 BY MR. BOOS:

21 Q. Well, what bargain did you strike with
22 Sabert? In other words, did you talk to Sabert
23 and say, look, you know, this lease term is not
24 going to, quote, unquote, commence until we say
25 so?

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01 I mean, was that something you
02 even discussed with the customer?

03 MR. KRAUSS: Objection.

04 THE WITNESS: You're asking me
05 to go back and try to recollect what was
06 discussed and what wasn't.

07 But, on the normal case of
08 things, it's something that wouldn't be
09 discussed.

10 What would be discussed
11 pertaining to the amount in a lease is, you
12 know, you need to utilize a good percentage
13 of -- of, you know, that -- that dollar
14 amount or cost.

15 - - -

16 BY MR. BOOS:

17 Q. And what happens if they -- when you
18 explain this to Sabert and say that you need to
19 use a percentage of the credit line, if you will,
20 what do you tell Sabert will happen if and when it
21 does use a good percentage of the credit line?

22 A. Well, it just follows the normal course
23 of the contract. I mean, pretty much the entire
24 lease follows the contract, and that's the way,
25 you know, Winthrop would prefer to have it.

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EXHIBIT 1-D

01 THE WITNESS: You -- you know,
02 you discuss the term of -- the initial term
03 of the lease with the client; sure.
04

05 BY MR. BOOS:

06 Q. And there's no doubt in this case that
07 the term that you discussed with Sabert was a
08 forty-two month term, right?

09 A. You know, it appears to be. I would
10 have to go back and look at the proposal, but I'm
11 looking at the lease schedule, which indicates
12 forty-two months, and if the proposal indicates
13 forty-two, then I don't have any reason to
14 question that.

15 MR. BOOS: Should we take a
16 five minute break?

17 MR. BERGER: We are now going
18 off the record, twelve-o-seven.
19

20 (Documents Bates stamped
21 WRC000075 to 79 received and marked for
22 identification as Exhibit 25)
23

24 MR. BERGER: We are back on the
25 record.

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01 BY MR. BOOS:

02 Q. Mr. Natale, there's nothing in the
03 documents between Sabert and Winthrop that
04 indicates that Sabert would pay so-called interim
05 rent until it essentially borrowed a million
06 dollars or more; is there?

07 A. No.

08 Q. And what I'm wondering is, again back
09 in June of 2003, after Sabert had taken nine
10 hundred and ninety-two thousand dollars in funding
11 or loans from Winthrop, was it your testimony that
12 had -- had Sabert taken no more funding and no
13 more equipment was put on this lease, that the
14 commencement date would be July 1 of 2003?

15 A. When would be the last installation
16 date?

17 Q. The last installation date would have
18 been --

19 A. June something 19 --

20 Q. -- June 19th of 2003.

21 A. If that was the last form of
22 installation, then, you know, per the agreement it
23 would commence on July 1st.

24 MR. KRAUSS: I'll object to --

25 Renew the same objection to the question,

Page:176 - 176

01 in terms of lack of foundation, in calling
02 for a legal conclusion.

03 - - -

04 BY MR. BOOS:

05 Q. That was your understanding of the deal
06 based on your work as the sales rep on the Sabert
07 account; is that right?

08 MR. KRAUSS: Vague and renewed
09 objection.

10 THE WITNESS: Generally
11 speaking, yes.

12 - - -

13 BY MR. BOOS:

14 Q. Take a look at exhibit 25. Do you see
15 that?

16 A. I do.

17 Q. Do you see the first page of exhibit
18 25? Does that look familiar to you?

19 A. It does.

20 Q. And what is it?

21 A. It's just an internal working document
22 that I had put together to reflect costs
23 associated with the project.

24 Q. And does it -- what does CAPX stand for
25 up on top?

01 A. Just the capital requirement for the
02 project.

03 Q. And that would have been the amount
04 that you were going -- that Winthrop was going to
05 pay or fund Sabert; is that right?

06 A. It could be that or it could be -- you
07 know, it could be project specific or it could be
08 the total capital expenditure on technology for
09 the year.

10 Q. And it says approximately one million;
11 correct?

12 A. That's what I put down, yes.

13 Q. Now, looking at the various rows and
14 columns here, what does HW -- the column HW stand
15 for?

16 A. Hardware.

17 Q. And SW?

18 A. Software.

19 Q. And SVSC?

20 A. Services.

21 Q. So, what is this -- does this refresh
22 your memory as to how much of the funding related
23 to hardware, how much is related to software and
24 how much related to services?

25 A. I don't know the date of this document,

01 but -- yeah, I was trying to get an idea of what
02 some of the costs were going to be.

03 Q. And what is your recollection then as
04 to how much of the funding related to hardware?

05 A. It looks like a hundred and eighty
06 thousand.

07 Q. And then does it look like four
08 hundred, fifty-five thousand of it related to
09 services?

10 A. That's correct.

11 Q. And then, another three hundred and
12 three thousand, six, forty-two related to
13 software?

14 A. Per the spreadsheet, yes.

15 Q. And that totals about nine hundred and
16 thirty-eight thousand; is that right?

17 A. Correct.

18 Q. I'm rounding down.

19 And, at some point that number
20 must have increased, based on some additional
21 hardware, software, services, by the time June
22 came around, because as of June the total amount
23 was around nine -- nine hundred and ninety-two
24 thousand; is that right?

25 MR. KRAUSS: Objection. Lack

01 of foundation. Calls for speculation.

02 THE WITNESS: That -- that

03 sounds appropriate.

04 - - -

05 BY MR. BOOS:

06 Q. Okay, take a look at the next page.

07 What is this document? I'm looking at WRC76.

08 A. It's a -- it complements a client's
09 credit or financial statements, income statement
10 balance sheet.

11 Q. Okay. So, this would have been
12 prepared in connection with looking at Sabert's
13 financial statements?

14 A. Correct.

15 Q. And the date of this is April 3, 2003;
16 is that right?

17 A. That's correct.

18 Q. And that's a week before the April 10th
19 proposal that you had prepared for Sabert; right?

20 A. That would make sense.

21 Q. And what is the -- do you prepare this
22 for somebody at Winthrop?

23 A. Yes.

24 Q. For whom do you prepare it?

25 A. Credit department.

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01 Q. And who was in the credit department at
02 that time?

03 A. You know, the head of credit would be
04 Rich Pieper, and I'm not sure who else was looking
05 at this.

06 Well, it looks like Travis
07 Johnson is, according to exhibit 22.

08 Q. Is Rich Pieper the head of the credit
09 department?

10 A. Yes, he's a VP and he does make,
11 ultimately, all credit decisions.

12 Q. Where is he located?

13 A. Minnesota.

14 Q. Take a look on the right side of -- of
15 page 76, where it says -- I think it says
16 lease-back over there. Is that what that word
17 says?

18 A. Uh-huh.

19 Q. Is that a yes?

20 A. Yes.

21 Q. What does this show? It appears to
22 add -- calculate some numbers that add up to six
23 hundred thousand dollars?

24 A. Right.

25 Q. What is that?

01 Why is -- why is there a number
02 six hundred thousand dollars associated with
03 lease-back?

04 A. I don't know why there is a six hundred
05 thousand dollar number, but my assumption would
06 be, that was the information and the knowledge I
07 had, at that point, from either Gary, or, you
08 know, someone in IT.

09 Q. Does lease-back -- I mean, if you're
10 talking about the nine hundred and ninety-two
11 thousand that was funded as of June 2003, would
12 all of that nine ninety-two be regarded as
13 lease-back or would just some of it be so
14 recorded?

15 A. Based on your earlier explanation, it
16 was all lease-back.

17 Q. So, at this point in -- at the time you
18 were preparing exhibit 25, there might have only
19 been six hundred thousand that had been discussed
20 with Sabert?

21 A. Just to make sure we're on the same
22 page. What you call the fundings, quote, unquote,
23 those three fundings added up to nine hundred and
24 sixty-six thousand dollars; right?

25 Q. Well, at the end of June, I'm

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01 representing to you that Winthrop, through three
02 different checks, had funded a total of just in
03 excess of nine hundred and ninety-two thousand.

04 A. And out of the nine hundred and
05 ninety-two thousand dollars, how much of that was
06 cut to Sabert?

07 Let me rephrase. Out of that
08 nine hundred and ninety-two thousand dollars, was
09 there a check of nine hundred and ninety-two
10 thousand dollars sent to Sabert? Was it all
11 lease-back?

12 Q. I want you -- I want you to assume that
13 there were three checks cut to Sabert in June of
14 2003 and they total -- you may recall they were
15 consistent with the numbers in the equipment
16 purchase agreement.

17 For example, the first one is
18 six hundred and sixty-six thousand? The second
19 one a hundred and ninety-nine plus thousand?

20 A. My question is, out of that nine
21 hundred and ninety-two thousand dollars, was that
22 all lease-back?

23 Q. That's my question to you.

24 MR. KRAUSS: And I'm going to
25 object on lack of foundation and calling

Page:183 - 183

01 for speculation.
02 THE WITNESS: I don't know.
03
04 BY MR. BOOS:
05 Q. What does something have to be to be
06 regarded as lease-back?
07 A. Generally speaking, lease-back doesn't
08 have any relevance, as long as the asset is not an
09 antiquated, old asset, which is defined by, you
10 know, executive management.
11 Ultimately, you put together a
12 working document. That working document, you
13 define the deal as much as possible.
14 That working document then is
15 passed around management and they make a decision
16 on, great, you got lease-back; how old is it. Six
17 months old; great, you can do the deal. Seven
18 months old; maybe not, you know, it's -- it's at
19 their discretion.
20 So, you're asking me questions
21 that really don't have any relevance to me.
22 Q. Whose writing is this?
23 A. Mine.
24 Q. Take a look at the bottom of the
25 document, and, again, this is a document that's a

01 credit analysis request.
02 Is this document prepared by
03 you and sent to the credit department?
04 A. Yes.
05 Q. Is it based on discussions you had with
06 Sabert about a potential deal?
07 A. Yes.
08 Q. And in this document it appears that
09 you reflect that the term of an agreement with
10 Sabert is forty-two.
11 Do you see that?
12 A. Yes, term.
13 Q. And what does that refer to; forty-two
14 months?
15 A. Yes.
16 Q. And that the install length -- what
17 does the install length refer to?
18 A. It's an internal term used for
19 installation, or interim rent. How long is the
20 installation period of the equipment.
21 Q. And as of the April 3rd --
22 A. Meaning, how long will the schedule be
23 open to gather the assets.
24 Q. And here, as of April 3rd you were
25 believing that the schedule would be open two to

Page:185 - 185

01 three months; right?
02 A. Based on -- yes, based on my knowledge
03 of the deal.
04 Q. Which was until June or July of 2003?
05 A. That's why it has an estimated
06 commencement date.
07 Q. Well, it doesn't say estimated
08 commencement date on it?
09 A. It says commencement date.
10 Q. So, as of --
11 A. By definition it's estimated because I
12 don't control commencement.
13 Q. Well, as of April 3rd, 2003 you were
14 reflecting that the commencement date would be
15 7/1/03 and sending that to the credit department;
16 correct?
17 A. Yes.
18 Q. Now, customer -- it also says on other
19 comments at the bottom, customer would like to
20 have lease in place before he leaves on vacation
21 on 4/11/03.
22 Do you see that?
23 A. Evidently Gary was going on vacation.
24 Q. So, does that reflect that you had some
25 discussions with Gary, where Gary told you, look,

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01 Q. Sir, take a look at exhibit 26, if you
02 would?

03 Do you see that?

04 A. Yes.

05 Q. Do you recognize any of the documents
06 in exhibit 26?

07 A. Yes.

08 Q. Starting with the first page, what is
09 it?

10 A. It's the internal document that I made
11 reference to in -- in earlier conversation.

12 Q. What is this document called?

13 A. It's called an ST.

14 Q. What does ST stand for?

15 A. Sales transaction.

16 Q. And we're looking at WRC672; is that
17 right?

18 A. That's correct.

19 Q. Whose handwriting is it on this
20 document?

21 Is your handwriting anywhere on
22 this document?

23 A. Yes.

24 Q. Where?

25 A. Master lease changes, bottom left.

01 Right here.
02 Q. Okay.
03 A. So, master lease changes, riders, IRR
04 all, meaning interest rate rider.
05 Q. Does your handwriting appear anywhere
06 else?
07 A. No.
08 Q. Do you see the initials DS?
09 A. Uh-huh.
10 Q. Do you know who -- whose initial that
11 is?
12 A. Sure, Dean Stinchfield.
13 Q. And what is his role in this
14 transaction?
15 A. I'm not sure of formal title, but he's
16 an account executive and also a senior VP --
17 Q. And RP --
18 A. -- in the sales department.
19 Q. And RP is that Richard Pieper?
20 A. Rich Pieper.
21 Q. And was this document prepared by you
22 on or around May 1st, 2003?
23 A. I'm looking for a date. Do you see a
24 date?
25 Q. Well, I see fax lines up on top.

01 A. But you don't see any date.
02 MR. KRAUSS: I note that it
03 says date prepared, Thursday, April 10,
04 2003.

05 MR. BOOS: Oh, thank you.
06

07 BY MR. BOOS:

08 Q. Okay.
09 Does that refresh your
10 recollection as to when this was prepared?

11 A. Sure.

12 Q. And was it around April 10th of 2003?

13 A. Yes.

14 Q. And then what did you do with it after
15 you prepared it?

16 A. You send it to corporate.

17 Q. In Minneapolis -- or, Minnesota?

18 A. That's where they're located, yes.

19 Q. And, then, what's the purpose of this
20 document?

21 A. To define the profile of the client, to
22 educate the details of the transaction to
23 executive management, and for them to understand
24 if economically the deal makes sense, and to,
25 ultimately, create a proposal to present to a

Page:191 - 191

01 is -- is not the entire nine, ninety-two a
02 lease-back?

03 A. I'm not sure, other than that was my
04 understanding that there was six hundred thousand
05 dollars of lease-back.

06 Q. Then, going down into the smaller box
07 on the left side, it looks like the rent figure is
08 twenty-five thousand, four twenty-eight.

09 Is that a monthly rent
10 estimate?

11 A. Yes.

12 Q. Then, again, term, it says forty-two.
13 Is that a reference to forty-two months?

14 A. Correct.

15 Q. Percentage five point three, what does
16 that refer to?

17 A. I'm -- I'm trying to remember. It's
18 kind of pathetic that I can't remember this.

19 MR. KRAUSS: I'm going to
20 object on lack of foundation, to the extent
21 it's not in the witness' knowledge.

22 THE WITNESS: Yeah, I believe
23 it's the internal cost of money.

24 - - -
25

01 Q. And, again, is that a cost of money
02 that -- a cost to Sabert or a cost to Winthrop or
03 to somebody else?

04 MR. KRAUSS: Objection. Asked
05 and answered.

06 THE WITNESS: It's an internal
07 cost to the sales department to base a
08 present value calculation on.

09

10 BY MR. BOOS:

11 Q. Take a look at the last column. It
12 says interim two to three months. What does that
13 refer to?

14 A. As we stated in the earlier exhibit,
15 it's the expected interim period based --

16 Q. Is that --

17 A. -- based on the details at hand.
18 Meaning, information that you gather in speaking
19 with the client.

20 Q. Are you providing that information for
21 your superiors, so that they'll have an idea of
22 how many months of interim rent they could expect
23 to see from this customer?

24 A. One could assume that.

25 Q. Is that -- was that your intention in

01 putting that number in the interim column?

02 A. Again, it's not really talked about.

03 It's -- you know, they want to

04 know how long the interim is and it's something

05 that you put down.

06 If you're asking me for my

07 assumption, yes, economically, they want to

08 understand what the overall economic impact of the

09 deal is going to be.

10 Q. And they can -- and Winthrop can

11 determine that better by having this interim

12 number filled in; is that your testimony?

13 MR. KRAUSS: Objection. Lack

14 of foundation. Calling for speculation.

15 THE WITNESS: My assumption is

16 that they can look at the economics of the

17 deal better and make a decision on if this

18 deal will be profitable or not profitable.

19

20 BY MR. BOOS:

21 Q. By having that interim number in this

22 document?

23 A. It's one aspect. It's part of the

24 profile of the deal.

25 Q. What else would they look at in this

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01 removed from the final version?
02 A. I have no idea.
03 MR. BOOS: Set that aside.
04 Mark this as the next.
05 - - -
06 (Sabert Corporation Financial
07 File Bates stamped WRC001071 to 1075
08 received and marked for identification as
09 Exhibit 27)
10 - - -
11 BY MR. BOOS:
12 Q. Take a look at exhibit 27, if you
13 would, specifically the third page, which is 1073?
14 Do you see that?
15 A. Yes.
16 Q. Does it appear to be dated April 4,
17 2003?
18 A. Yes.
19 Q. Is that Travis Johnson's initials up on
20 the right hand side?
21 A. I believe so.
22 Q. Is this a document you've seen before?
23 A. Yes.
24 Q. Is it a document that you prepared?
25 A. No.

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01 Q. Is it a document that would -- would be
02 kept in your files relating to Sabert?

03 A. Generally speaking, yes.

04 Q. And what's the purpose of this
05 document?

06 A. To give the credit. Again, it goes
07 back to profile of client.

08 It gives a little story board
09 to executive management of financially what the
10 client looks like, what type of industry the
11 client is in, and some details pertaining to the
12 actual project.

13 Q. Once again, if you look down -- about
14 two-thirds of the way down there's a reference to
15 a term.

16 Do you see that?

17 A. Yes.

18 Q. Once again, this document indicates a
19 term of forty-two months; correct?

20 A. Correct.

21 Q. And, again, it talks about a two to
22 three month install?

23 A. Yes.

24 Q. And, again, it talks about a
25 commencement -- or, it references a commencement

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EXHIBIT 1-E

01 date of 7/1/03.
02 Do you see that?
03 A. It's approximate, yes.
04 Q. But, it doesn't say approximate; right?
05 A. It doesn't, no.
06 Q. If you turn the page -- and, by the
07 way, who put this information into the document?
08 A. I don't know.
09 Q. Is it possible that the credit
10 department put it in based on the information you
11 had sent to it?
12 MR. KRAUSS: Objection.
13 Calling for speculation. Lack of
14 foundation.
15 THE WITNESS: Well, I'm
16 perusing it and it looks like on 4/8 Jim
17 Natale and I talked to Gary, in one of the
18 paragraphs on item 1074.
19 So, whoever I is in this
20 paragraph, got some information, but to
21 answer your question, it's -- it's based,
22 basically, on anybody who's been touching
23 the deal, who has any impact on
24 understanding the profile of the client,
25 and if there's an opportunity to make money

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01 luncheon recess was taken, after which time
02 the deposition resumed.)

03 - - -
04 MR. BERGER: We're back on the
05 record.

06 - - -
07 BY MR. BOOS:

08 Q. Okay, Mr. Natale, I might ask you a few
09 questions about exhibit 1.

10 Take a look at the preamble,
11 the second from the last line.

12 A. Here?

13 Q. Yes.

14 A. Okay.

15 Q. Do you see that there's a reference, it
16 says, the term lease agreement shall include this
17 lease agreement and the various lease schedules
18 identifying each item of the corporation?

19 A. Yes.

20 Q. Is it fair to say that that
21 contemplates that this deal between Sabert and
22 Winthrop could involve more than one lease
23 schedule?

24 MR. KRAUSS: Objection. Calls
25 for a legal conclusion, the way the

Page:213 - 213

01 question is phrased.
02 THE WITNESS: Yes, I think it,
03 basically, infers that there could be more
04 than one schedule.
05 - - -

06 BY MR. BOOS:

07 Q. And, in your experience with certain
08 customers, will you have, on occasion, more than
09 one lease schedule?

10 A. Yes.

11 Q. What drives the determination as to
12 whether there's more than one lease schedule used
13 in a given deal?

14 A. There's a lot of factors that drive it.
15 Generally speaking, if there's
16 going to be multiple schedules for a deal, then
17 there would be a different lease agreement, which
18 would be a master lease agreement put in place,
19 which this is not.

20 Q. Yet, this agreement, as we just noted,
21 where it talks about shall include this lease
22 agreement and various lease schedules, at least
23 contemplates that there could be more than one?

24 A. Correct.

25 Q. What are some of the factors that go

01 sense.
02 BY MR. BOOS:
03 Q. I take it that you were the key primary
04 contact on behalf of Winthrop, in terms of
05 communications with Sabert?

06 MR. KRAUSS: Objection. Vague.

07 THE WITNESS: During my tenure,
08 that would make sense.

09

10 BY MR. BOOS:

11 Q. How many communications did you
12 personally have with Sabert?

13 A. I don't know.

14 Q. Was it more than twenty?

15 A. During the entire relationship?

16 Q. Yes.

17 A. Twenty is a good number. I don't know.

18 Q. Is it possible that it was more than
19 twenty?

20 MR. KRAUSS: Objection. Calls
21 for speculation.

22 THE WITNESS: It's possible
23 it's more than twenty. It's possible it's
24 less than twenty.

25

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01 BY MR. BOOS:
 02 Q. Were there any other principal contacts
 03 on behalf of Winthrop, in terms of dealing with
 04 Sabert?
 05 A. Interacting with Sabert --
 06 Q. Yes.
 07 A. -- directly, meaning communicating with
 08 Sabert?
 09 Q. Yes.
 10 A. One of the documents had indicated that
 11 somebody within the credit report -- who had
 12 signed off on the credit report, had communication
 13 with -- with Gary.
 14 Q. Are you aware of any others?
 15 A. Not that I can recollect.
 16 Q. But, in terms of negotiating the deal,
 17 following up with the customer, Jim Natale was the
 18 Winthrop contact and key point person on behalf of
 19 Winthrop; correct?
 20 MR. KRAUSS: Objection. Vague
 21 and misstates the testimony.
 22
 23 BY MR. BOOS:
 24 Q. Is that correct?
 25 A. I was the key contact or the lead on

01 this account.
02 MR. BOOS: Next one.
03 - - -
04 (Lease Schedule 001 Bates
05 stamped WRC000667 to 671 document received
06 and marked for identification as Exhibit
07 29)
08 - - -
09 BY MR. BOOS:
10 Q. Take a look at exhibit 29, which is
11 probably a little bit like exhibit 2. Is this
12 lease schedule number 001?
13 A. Appears to be.
14 Q. And on this particular copy there are
15 three attachments, and the reason I'm showing you
16 this one is because, the way this was produced to
17 us, these documents were attached together, and if
18 you'd look -- please look at all the pages of the
19 document; if you would?
20 A. Okay. Okay.
21 Q. Would the riders one, two and three be
22 attached to a lease schedule like this; is that
23 typical for Winthrop?
24 A. Yes.
25 Q. So, if you were keeping a copy of lease

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01 MR. BERGER: We are now back on
02 the record. This commences tape number
03 three.
04 Please proceed.
05 - - -
06 BY MR. BOOS:
07 Q. Mr. Natale, do you see exhibit 34?
08 A. Yes.
09 Q. Do you recognize the document?
10 A. No.
11 Q. It notes on the top that you're the
12 salesperson on the account. Do you see that?
13 A. Yes.
14 Q. And it looks like it's some kind of
15 approval, dated June 5th of 2003. Do you see
16 that?
17 A. Yes.
18 Q. Does it look like it's initialed by
19 Richard Pieper?
20 A. Yes.
21 Q. Are you familiar with his initials?
22 A. Yes.
23 Q. And does it look like those are, in
24 fact, his initials?
25 A. Yes.

01 you were working under a million dollars or was
02 there a credit of one million, one hundred
03 thousand or don't you know?

04 A. I don't know. Though, we can look.

05 Q. Where would we look?

06 A. At the credit document that's in one of
07 these exhibits. Remember the one that was signed
08 off by Barb -- Barb King and Travis.

09 Q. So, that credit document would tell us
10 what the --

11 A. What their -- what their exposure, what
12 they were willing to provide as far as money or --
13 or exposure in the leasing contract. It's what
14 the credit department would approve.

15 Q. And do you have a specific
16 recollection, one way or the other, what the
17 amount was that was approved by the Winthrop
18 credit department?

19 A. It looks like, according to -- it looks
20 like it was a million dollars.

21 Q. Despite exhibit 34 saying a million,
22 one hundred thousand?

23 A. It looks like it was upped. It was
24 changed to a million, one.

25 Q. Do you have any reason why that would

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01 have come about?
02 A. I don't.
03 Q. And, again, this says, maximum lease
04 term forty-two months. Is that consistent with
05 your understanding of the deal with Sabert?
06 A. The lease term was supposed to be
07 forty-two months; correct, the initial lease term.
08 Q. Well, doesn't this say maximum lease
09 term instead of -- it doesn't say initial lease
10 term forty-two months; right?
11 A. This one says maximum lease term.
12 Q. It says maximum lease term forty-two
13 months; right?
14 A. Uh-huh.
15 Q. Is that a yes?
16 A. Yes. Sorry.
17 Q. Then, further on down under equipment
18 and location it says the term is forty-two months.
19 Do you see that?
20 A. I do.
21 Q. And is that consistent with your
22 understanding of Winthrop's deal with Sabert?
23 A. My understanding of the term of the
24 lease was initial forty-two months.
25 Q. And did you ever have a discussion with

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01 code model that you talked about earlier?
02 A. No, not with regards to initial lease
03 term.
04 Q. Okay.
05 A. That's basically -- they have you --
06 you know, if there's any documentation, I think
07 legal documentation they all talk about initial
08 lease term. They differentiate it, for whatever
09 reason.
10 Q. What do you mean, they differentiate
11 initial lease term in documentation? What do you
12 mean?
13 A. I don't know, you know, I believe that
14 they -- you know, they -- I didn't arbitrarily
15 come up with the -- the term initial lease term.
16 So, in my mind, the way it was
17 explained to me and the way I learned the business
18 is that there's an initial lease term of X amount
19 of months, and that lease term could be expanded,
20 modified, beyond that initial lease term.
21 Q. But you don't have a specific
22 recollection of whether you discussed that issue
23 with Gary Ziznewski?
24 A. I don't have a specific recollection,
25 no.

01 Q. And you were at the company, Winthrop,
02 for what, over five years?

03 MR. KRAUSS: Objection.
04 Mischaracterizes testimony.

05 THE WITNESS: Longer, six
06 years.

07 - - -

08 BY MR. BOOS:

09 Q. Six years?

10 A. If not seven, seven years.

11 MR. BOOS: This is going to be
12 one exhibit.

13 - - -

14 (Packet of documents Bates
15 stamped WRC000476 to 494 and WRC000520 to
16 530 received and marked for identification
17 as exhibit 35)

18 - - -

19 MR. BOOS: Are we on 34?

20 35.

21 BY MR. BOOS:

22 Q. Mr. Natale, take a look at the first
23 page of exhibit 35; if you would?

24 Do you see that?

25 A. Yes.

01 BY MR. BOOS:
02 Q. Go ahead?
03 A. Exhibit 31 indicates that there was
04 four.
05 Q. So, there were four Certificates of
06 Acceptance, or as I've been referring to them
07 fundings, with regard to Sabert; right?
08 A. Yes.
09 Q. The first three were in June of 2003;
10 correct?
11 A. According to exhibit 31, yes.
12 Q. And on exhibit 35 it appears that
13 Certificate of Acceptance one, which is referenced
14 in exhibit 35 -- strike that.
15 It appears that exhibit 35 is
16 dated June 6th of 2003 and it refers to
17 Certificate of Acceptance 1; correct?
18 A. Yes.
19 Q. And, again, it mentions a term of
20 forty-two months. Do you see that on the upper
21 right hand corner of exhibit 35?
22 A. Yes.
23 Q. But you didn't prepare these documents;
24 is that right?
25 A. No.

01 MR. BOOS: Did it fall?

02

03 BY MR. BOOS:

04 Q. Mr. Natale, I understand your -- this
05 was -- the events here were several years ago, but
06 I'm going to ask you a few questions about exhibit
07 36.

08 Do you see that?

09 A. 36, yes.

10 Q. Is that an e-mail that you sent to
11 Brenda Bradley on July 25, 2003?

12 A. It looks that way, yes.

13 Q. And below that is there an e-mail that
14 you received from Brenda Bradley on July 24th, the
15 day before?

16 A. Yes.

17 Q. And in that e-mail Brenda Bradley says
18 that she was supposed to ask about Sabert;
19 anything.

20 What was she conveying to you?

21 A. You know, I don't know, when you look
22 at this by itself.

23 But, generally speaking, you
24 know, it's coming from Brenda. Brenda is an
25 account manager, who's administering the lease.

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01 She would want to know where -- you know, where we
02 are as far as cost in filling up the schedule.
03 Q. And filling up the schedule, is that
04 another way of saying getting Sabert to fund
05 additional equipment?

06 MR. KRAUSS: Objection.

07 THE WITNESS: No.

08

09 BY MR. BOOS:

10 Q. And what's another way of saying that?
11 I mean, when you say filling up the schedule, was
12 the schedule -- when would the schedule be full?

13 A. When there was -- at its -- at its
14 limit.

15 Q. And what was its limit, approximately?

16 A. In the documentation that we've been
17 discussing, it was a million dollars.

18 Q. And there was no requirement that
19 Sabert fill up the schedule, as you put it; right?
20 And the agreement wasn't, you
21 need to fill up this schedule? It was a credit
22 line up -- up to a million bucks; right?

23 MR. KRAUSS: Objection.

24 THE WITNESS: Not necessarily,

25 no.

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01 BY MR. BOOS:

02 Q. Is it your testimony that under the
03 contract with Sabert, Sabert was required to take
04 funding in the amount of a million dollars or
05 more?

06 MR. KRAUSS: Objection to the
07 form, and calls for legal conclusion.

08 THE WITNESS: Yeah, we were --
09 the -- your assumption is your assumption.

10 You know, basically, the way
11 that Winthrop looks at these leases are not
12 as a credit line, though it's a lease for a
13 million dollars, and the customer will be
14 using, if not the entire million, a very
15 good portion of the entire million.
16

17 BY MR. BOOS:

18 Q. But, it had already -- as of June, it
19 had already used up a good portion of the million;
20 right, in the amount of nine hundred and
21 ninety-two plus thousand dollars; correct?

22 A. Based on the previous document, that's
23 what it looked like.

24 Q. So, why was there -- why was there a
25 question from superiors at Winthrop saying, I'm

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01
02 BY MR. BOOS:
03 Q. Is that fair?
04 MR. KRAUSS: Objection to the
05 characterization. The e-mail says, I spoke
06 to Sabert three or four times over the last
07 two weeks.
08
09 BY MR. BOOS:
10 Q. Well, please clarify, if I'm -- if
11 something is not right.
12 I'm asking you, did you make a
13 number of attempts to get ahold of Gary in the
14 July 2003 time frame?
15 A. The e-mail indicates that I called
16 Sabert three or four times, and that, in this
17 instance, I spoke to the CIO. So, it looks like,
18 you know, whomever I was trying to call and reach,
19 I had success in speaking to the CIO.
20 Q. Well, the e-mail -- to clarify, the
21 e-mail says you spoke to Sabert three or four
22 times.
23 Is it a fact that you may have
24 called more than that?
25 A. That's a possibility, yeah. Again, it

01 depends on who I was calling.
02 Q. And were you --
03 A. If I was calling Gary, then it's safe
04 to assume I called a lot more than three or four
05 times.

06 Q. Take a look at the next exhibit, 37,
07 and, by the way, do you know who it was that was
08 asking Brenda to ask you about Sabert?

09 MR. KRAUSS: Objection. Lack
10 of foundation.

11 THE WITNESS: I don't, other
12 than, you know, Winthrop is not a huge
13 company. There's a total of a hundred type
14 of employees and, generally speaking, you
15 have a handful of executives who sign off
16 on these documents and are involved in the
17 transaction very closely.

18 So, it was probably one of the
19 executive managers.
20

21 BY MR. BOOS:

22 Q. As you sit here today, do you remember
23 who that might have been?

24 A. Don't have a clue.

25 Q. Exhibit -- next exhibit 37, do you see

01 schedule?

02 Do you remember either way?

03 A. I don't specifically remember, but, you
04 know, this is helping me to refresh my memory. I
05 mean, this document, exhibit 40, is specific to
06 gathering hardware.

07 Q. Do you ever remember having any
08 discussions with Gary Ziznewski saying, Gary, we
09 need to have more hardware on the schedule so that
10 you're up over that fifteen percent?

11 I mean, do you ever remember a
12 specific discussion like that?

13 MR. KRAUSS: Objection to the
14 form. Fifteen point five percent, not
15 fifteen percent.

16 THE WITNESS: I don't, but if
17 that's what was being required by Winthrop
18 to close the schedule, I would have had
19 that conversation.

20

21 BY MR. BOOS:

22 Q. But, it's not clear what's being
23 required by Winthrop, based on this document, is
24 it?

25 A. Well, it's -- this document specifies

Page:273 - 273

01 that there's more hardware needed on the schedule.

02 Q. Don't other documents tell us what
03 percentage of hardware is already on the schedule?

04 We looked at some other
05 documents that talked about that; haven't we?

06 A. We have.

07 Q. And wasn't it clear from those
08 documents that roughly a hundred and sixty-five
09 thousand dollars had already been attached to the
10 schedule and that that was hardware?

11 MR. KRAUSS: Objection to the
12 form. Mischaracterizes the testimony.
13 Mischaracterizes the evidence.

14 THE WITNESS: I don't know. We
15 would have to look at it.

16

17 BY MR. BOOS:

18 Q. Do you ever recall -- strike that.

19 Do you ever recall you or
20 anyone else at Winthrop sending a letter or an
21 e-mail to Mr. Ziznewski saying, under the terms of
22 our agreement, Sabert needs to have more hardware
23 on the lease schedule?

24 A. I don't recall, no.

25 Q. Now, also in exhibit 40 you'll see,

Page:274 - 274

01 MR. KRAUSS: Objection to the
02 form. Also calls for a legal conclusion.
03 THE WITNESS: No, it just says
04 that the total cost of equipment on this
05 lease schedule shall include a minimum of a
06 hundred and fifty-five thousand of
07 hardware.

08
09 BY MR. BOOS:

10 Q. Right.
11 So, there's nothing Gary
12 Ziznewski could have looked at to think to
13 himself, oh, geez, if I -- if I have a hundred and
14 fifty-one thousand dollars of hardware, the term
15 of my lease is not going to be starting?

16 I mean, there's nothing clear
17 from this lease schedule 001 that would give Gary
18 Ziznewski that information; is there?

19 MR. KRAUSS: Objection. Calls
20 for a legal conclusion. Argumentative,
21 lack of foundation.

22 MR. BOOS: Counsel can object
23 all day and you can --

24 MR. KRAUSS: Well, if
25 necessary. I'm not --

EXHIBIT 1-F

01 MR. BOOS: -- answer the
02 question if you understand.
03 MR. KRAUSS: I'm not preventing
04 the witness from answering, but I am
05 lodging my objection.

06 THE WITNESS: I mean, I don't
07 see anything that would explain that.

08 MR. BOOS: I'm going to turn to
09 another exhibit, exhibit 41.

10 - - -
11 (Winthrop Resources letter
12 Bates stamped WRC000131 and 132 received
13 and marked for identification as Exhibit
14 41)

15 - - -
16 BY MR. BOOS:
17 Q. By the way, do you remember discussions
18 in your discussions with Gary Ziznewski in the
19 July, August or September 2003 time frame, do you
20 remember Gary indicating to you that they really
21 didn't need additional materials, any equipment?
22 A. I don't.
23 Q. Is it possible that he conveyed that to
24 you?
25 A. There's -- sure, there's a possibility.

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01 Q. Is that a man or a woman?
02 A. There's two Denes, but this would be a
03 woman, I'm assuming.
04 Q. How do you say her full name; do you
05 know?
06 A. Dene Hoida-Wright, though it's not
07 indicated on this document.
08 Q. And who was Dene Hoida-Wright in
09 connection with the Sabert matter?
10 A. Dene is in account management.
11 Q. Was she a supervisor of you on this
12 project?
13 A. No.
14 Q. Did she supervise anyone?
15 A. Yes.
16 Q. Who?
17 A. Account managers.
18 Q. So, she supervised Brenda Bradley?
19 A. I believe so.
20 Q. And, so, Dene is sending you this fax
21 on October 17, 2003; is that right?
22 A. Yes.
23 Q. And she's cc'g the account manager; do
24 you see that?
25 A. I do.

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01 Q. Is the account manager Brenda Bradley?
02 A. It appears to be. Not on this
03 document, but in previous documents.
04 Q. And she's asking you to please write a
05 interim rent letter for your customer listed
06 below. Do you see that?
07 A. I do.
08 Q. And she's asking you to use the
09 attached form letter?
10 A. Okay.
11 Q. And she's also asking you to please
12 obtain approval from your manager before sending
13 the letter?
14 A. Okay.
15 Q. Do you see that?
16 Do you see that in the first
17 page?
18 A. I'm -- what page are you referring to?
19 Q. WRC131.
20 A. Okay. Yes, I do see that.
21 Q. As you sit here today, do you have any
22 recollection whether your -- whether you ever
23 prepared this interim rent letter for Sabert?
24 A. I don't have a recollection, but I can
25 tell you that if they wanted an interim letter to

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01 go out, the interim letter would go out.
02 Meaning, if -- even if you
03 forgot to do it or whatever the case might be,
04 they would call you and ask you to -- well, why --
05 one, why you didn't send it, and then, more
06 importantly, get it out.
07 Q. And are these important letters, from
08 Winthrop's standpoint, these interim letters?
09 A. Evidently, yes.
10 Q. Would you typically retain a copy of an
11 interim rent letter in your files?
12 A. I would.
13 Q. And would you retain a signed copy in
14 your files?
15 A. No.
16 Q. It would just be -- it would show your
17 name on the bottom of it as being the person
18 sending it, but it wouldn't be the signed copy; is
19 that what you're saying?
20 A. Correct.
21 Q. And would you send a copy of the letter
22 to your manager, Brenda Bradley?
23 A. Brenda wasn't my manager.
24 Q. The account manager, I'm sorry. Would
25 you -- had you prepared this letter in connection

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01 A. There's always a probability in life
02 for everything, but, you know, pretty much the
03 model is a science and if they want it sent, it
04 will be sent.

05 Q. In Dene's instruction to you in her fax
06 cover sheet, she says, please give the account
07 manager and me a copy of the letter when mailed.

08 Do you see that?

09 A. I do.

10 Q. Do you recall whether or not you gave
11 them a copy of any letter, any interim rent letter
12 that you mailed to Sabert?

13 A. I don't.

14 Q. And if there isn't one produced in this
15 litigation, does that suggest the possibility that
16 you did not send the letter?

17 A. There is -- there's a probability
18 that -- yes, I mean, there's a probability it
19 wasn't sent. But, like I said, if they were
20 demanding a letter to be sent, it would have been
21 sent.

22 Q. Take a look at the actual wording of
23 the form interim rent letter. Is there anything
24 that would be different on the form that you would
25 send or would it be identical?

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01 A. It would be similar. There might be
02 some verbiage before or after the paragraph that
03 you see, or the two paragraphs that you see.

04 Meaning, they would always like
05 us to call the customer and understand from the
06 customer or the client exactly when they would be
07 gathering the remaining equipment, what the
08 remaining equipment was. Some of the details that
09 are missing in this document.

10 So, maybe the letter would say,
11 Dear Gary, you know, per our conversation, blah,
12 blah, blah on such and such a date, you know,
13 here's what we discussed and we still -- you know,
14 and then it would kind of get into the overall
15 gist of the letter.

16 Q. It says in the first line, the above
17 mentioned schedule has not been fully installed
18 and your company has been paying interim rent.

19 Do you see that?

20 A. I do.

21 Q. Would that phrase -- phraseology have
22 been in the letter you would send out to
23 customers?

24 A. Yes, yes.

25 Q. Do you remember Gary Ziznewski ever

01 calling you up and saying, hey, what's this
02 interim rent letter you sent me? What do you mean
03 my company has been paying interim rent?

04 Do you ever remember any
05 discussion like that with Gary?

06 A. I mean, honestly -- I'll go back to my
07 earlier statement. I would have probably fell off
08 my seat if Gary picked up the phone and called me.

09 I don't know if Gary was really
10 paying attention to this, you know, he was --
11 Gary's role was, you know, an important role
12 within the organization and I don't know how
13 important technology leasing or a relationship
14 with Jim Natale was.

15 Q. So, the answer to the question is, no,
16 you don't remember any call like that from Gary
17 saying what does this mean by interim rent?

18 A. I don't.

19 Q. Based on all the discussions -- well,
20 strike that.

21 MR. BERGER: Excuse me,
22 counsel, we need to go off the record to
23 change tapes.

24 - - -
25 (Discussion off the record)

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01 MR. BERGER: We're now back on
02 the record. Please proceed.
03
04 BY MR. BOOS:
05 Q. Sir, we were talking about the sending
06 or non sending of an interim rent letter, and I
07 think the question I have is, if Winthrop wanted
08 the letter -- I think you testified that if
09 Winthrop wanted the letter sent, it would be sent;
10 is that your testimony?
11 A. Yes.
12 Q. But since there's no copy anywhere
13 that's been produced, I mean how would you know
14 that a letter was sent?
15 A. Either by remembering that it was sent,
16 you know, physically putting it in a mailbox.
17 That doesn't mean that it was still sent, meaning
18 that it actually made it to Gary or -- you know,
19 I'm not sure how to answer that question.
20 Q. And you don't have any memory of
21 actually --
22 A. I don't --
23 Q. -- preparing or sending this letter?
24 A. I don't remember, no.
25 MR. BOOS: We're still on?

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01 Let's go off for one second.

02 MR. BERGER: Three-seventeen,

03 pause.

04 - - -

05 (Packet of documents Bates
06 stamped WRC000580 to 585 received and
07 marked for identification as Exhibit 42)

08 - - -

09 MR. BERGER: We're back on the
10 record.

11 - - -

12 BY MR. BOOS:

13 Q. Take a look at exhibit 42, if you
14 would?

15 The question is, do you
16 remember -- the first three fundings occurred in
17 June of 2003 as we've already discussed; is that
18 right?

19 MR. KRAUSS: Objection to the
20 form.

21 THE WITNESS: As we discussed,
22 yes.

23 - - -

24 BY MR. BOOS:

25 Q. And, subsequent to that period in July,

01 August, September, October, November, were you
02 calling up Sabert, and, I guess, trying to get it
03 to take additional fundings?

04 MR. KRAUSS: Objection to the
05 form.

06 THE WITNESS: I would assume
07 so, based on some of the documentation that
08 we've looked at.

09
10 BY MR. BOOS:

11 Q. And you testified earlier that had
12 Sabert not taken any additional fundings after
13 June, commencement date for that nine hundred and
14 ninety-two thousand dollars of equipment would
15 have been July 1, 2003; right?

16 MR. KRAUSS: Objection.

17 THE WITNESS: That's correct.

18
19 BY MR. BOOS:

20 Q. So, by urging or trying to get Sabert
21 to take an additional funding in some amount, did
22 you know that that would have the effect, from
23 Winthrop's point of view, of changing the
24 commencement date to December of 2003?

25 MR. KRAUSS: Objection. Calls

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01 trying to testify to.
02 It's not a matter of talking
03 them into anything.
04 It's a matter of understanding
05 what they have, explaining to them that
06 there are certain requirements associated
07 with the lease that we entered into and
08 when are you going to fulfill those
09 obligations.
10

11 BY MR. BOOS:

12 Q. So, tell --

13 A. Like, for instance, if corporate put a
14 hundred and fifty-five thousand dollar minimum
15 requirement, that was a minimum requirement. It
16 wasn't predicated by me. It was predicated by
17 them, and that's what they were looking for, for
18 whatever reason.

19 Q. But I thought you testified that you
20 don't recall any discussions with Gary about this
21 hundred and fifty-five dollar equipment minimum in
22 the, you know, July through November 2003 period?

23 A. I don't.

24 Q. So, if you don't remember any
25 discussions about that, you don't know what the

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01 that the agreement did not require a minimum of a
02 million dollars in funding -- remember we looked
03 for the agreement, we -- we went through
04 agreements and tried to find that and I don't
05 think we found anything like that requirement;
06 right?

07 A. Correct.

08 Q. So, if we assume that, and -- and we
09 assume that there was no issue with the equipment,
10 because you don't recall any discussions with Gary
11 or Sabert about not meeting a minimum amount of
12 equipment -- I mean, you don't remember any of
13 those discussions with Gary; right?

14 A. I don't remember any specific
15 conversations, but, again, it's -- it's in
16 writing. It's on the document. Evidently, there
17 was a minimum requirement of a hundred and
18 fifty-five thousand dollars.

19 Q. Yeah, but you don't -- I think your
20 testimony was that you don't remember talking to
21 Gary and saying, hey, for this reason you need
22 to -- in order to be compliant under our
23 agreement, you need to take additional equipment?

24 A. I don't remember speaking to Gary at
25 all.

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01 Q. Or the CIO, about that particular
02 issue?

03 A. Now you're throwing that in, but, you
04 know, on Gary, I don't remember speaking to Gary
05 about that.

06 And, no, I do not remember
07 speaking to the CIO specifically about that.

08 Q. And so, based on those understandings,
09 had there been no more fundings after June of '03,
10 is it your understanding that the commencement
11 date would have been July 1, 2003?

12 MR. KRAUSS: Objection. What
13 are the understandings?

14 MR. BOOS: I think he just
15 stated them.

16 MR. BATEMAN: He has -- listen,
17 Matt, I've been patient in terms of -- you
18 know, Jimmy has been here. He's been
19 attentive all day, but I think the record
20 is going to reflect this exact question has
21 been covered four or five times.

22 MR. BOOS: Okay. Let's move
23 on. Let's move on.

24 MR. BATEMAN: Wherever you're
25 going with it, let's get there.

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01 MR. BOOS: Okay, let's move on.
02 Let's move on.
03 THE WITNESS: Thank you.
04 - - -
05 BY MR. BOOS:
06 Q. So, we get to November, and there's
07 this final funding of thirteen thousand, five
08 hundred dollars, roughly; right?
09 A. Yes.
10 Q. And I apologize if I asked you this,
11 but you don't recall any discussions with anyone
12 at Sabert about the impact on the commencement
13 date of taking that final thirteen thousand in
14 funding; right?
15 A. No.
16 Q. How do commissions work at Winthrop?
17 A. I don't understand the question.
18 Q. Were you paid on a commission basis?
19 A. Yes.
20 Q. And how -- for example, on the Sabert
21 deal, how would you be paid on the Sabert deal?
22 A. You were paid a percentage of the
23 overall profit margin on the deal.
24 Q. And the profit margin increases --
25 strike that.

01 The profit margin for Winthrop
02 increases as the amount of interim rent paid
03 increases; I would take it? That's one element of
04 it?

05 A. That's one element -- element of it,
06 yes.

07 Q. And what is the percentage of the
08 profit margin that you are paid as the
09 salesperson?

10 A. It varies according to number of new
11 accounts, but between twenty and twenty-five
12 percent.

13 Q. So, if the -- and interim rent is pure
14 profit; is it not?

15 A. To whom?

16 Q. To Winthrop.

17 A. To Winthrop, yes.

18 Q. So, if the interim rent payments are a
19 hundred and twenty-five thousand dollars, your
20 commission would be twenty percent of that,
21 assuming there are no other pure profit numbers
22 related to the Sabert contract?

23 A. Well, you're referring to interim rent
24 in this instance.

25 There's other expenses that are

01 levied or that we incur as -- as we -- that we
02 incurred as account executives, like carrying
03 costs of the money and so on and so forth.

04 But, for the most part, the
05 majority of it was profit.

06 Q. And --

07 A. They might have given you eighty or
08 ninety percent of that as profit, and then you got
09 a percentage of that as your overall income.

10 Q. And was your percentage of that of
11 what's left of the profit after those costs, would
12 be twenty percent?

13 A. Twenty to twenty-five.

14 Q. So, in this case, if we assume there
15 was a hundred -- let's, for ease of math, assume
16 that the -- the profit off of the Sabert interim
17 rent was a hundred thousand dollars, and assume
18 that some cost to Winthrop took it down to say
19 ninety thousand dollars, would you, as a
20 salesperson, get twenty percent of that ninety
21 thousand dollars?

22 A. No.

23 Q. Where am I off? How would -- how would
24 your commission work?

25 A. You know, after six or seven years, I'm

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01 carrying costs that were levied on the deal for
02 the money being out for the interim period, and
03 God knows what other expenses they might have
04 incurred.

05 So, you know, if there was a
06 hundred -- in your example, a hundred and
07 twenty-five thousand dollars interim, you would
08 knock off almost twenty-five thousand dollars of
09 investment, plus some carrying cost.

10 Maybe there's eighty thousand
11 dollars of profit to the representative, and then
12 you would get your percentage of that.

13 Q. So, you'd get twenty percent of the
14 eighty thousand under our example?

15 A. Hypothetically. The rest went to
16 Winthrop.

17 Q. What percentage of Winthrop's profits
18 are derived from interim rent?

19 MR. KRAUSS: Objection. Lack
20 of foundation.

21 THE WITNESS: I don't know.

22 You know, it's more hearsay.

23 - - -

24 BY MR. BOOS:

25 Q. Have you heard it discussed at

01 Winthrop?

02 A. No.

03 I say hearsay and maybe I was
04 wrong. Maybe just some assumptions that you make.

05 I mean, they, basically, made
06 the majority of their money on interim rents, mid
07 lease changes and misnotice on the end, or just
08 true extensions on the end, which, you know, is
09 part of -- of leasing.

10 The difference here is, if you
11 misnotice, it's twelve months, not a month or two
12 months or whatever period of time. It's a whole
13 year.

14 Q. So, the majority of their profits come
15 from those four areas that you just mentioned?

16 A. Correct.

17 Q. And of those four areas, how prominent
18 is interim rent? I mean, how much of that profit,
19 how much of it do you think is derived from
20 interim rent versus lease changes and the other
21 two items?

22 MR. KRAUSS: Objection. Lack
23 of foundation.

24 THE WITNESS: It just depends
25 on the profile of opportunity or deal.

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01 On an ERP project, you could
02 have roll outs of twelve and twenty-four
03 months of customers installing equipment.

04 So, you can -- you know, when
05 this ST document is calculated, the
06 executive managers, based on their
07 experience, can kind of make some
08 assumptions of, okay, the interim period is
09 going to be twelve months, you know, the
10 rule of thumb was that, if it's twelve
11 months, you're going to get fifty percent
12 of your payments. So, six payments.

13 And, economically, then, they
14 could say, you know, here's what we're
15 going to make on the deal or you can take a
16 deeper investment in the equipment.

17 - - -
18 BY MR. BOOS:

19 Q. And here, early on, you remember there
20 are documents reflecting an installation period of
21 two to three months?

22 Do you remember that?

23 A. I do.

24 Q. How do you reconcile that with the fact
25 that it ultimately took until November?

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01 A. You're asking me to make some
02 assumptions. I'll give you my opinion.
03 My opinion would be that it was
04 difficult in communicating with Sabert to
05 understand what was going on, how the project was
06 going to roll out, and, I mean, I know that's a
07 fact. That's not assumption.

08 My assumption would be that
09 was, you know, the problem I just -- you know,
10 there was no communication and it -- it went from
11 month-to-month until there was some communication
12 or we got additional costs.

13 Q. Given that it was so hard to
14 communicate with Gary Ziznewski, didn't you feel
15 the need to take it upon yourself to try to make
16 things a little clearer to him or explain to him a
17 little more your understanding of the party's
18 agreements?

19 MR. KRAUSS: Objection.

20 THE WITNESS: I'm not -- how
21 would I do that?

22 - - -

23 BY MR. BOOS:

24 Q. Well, by once getting him on the phone,
25 you know, really getting him to focus on some of

EXHIBIT 1-G

01 the aspects of the contract that could become
02 issues at some point?

03 A. Like what?

04 Q. Is that something you considered doing?
05 For example, interim rent?

06 A. It wasn't something that was ever fully
07 discussed.

08 Q. For the reasons that you talked about
09 earlier?

10 Is that yes?

11 A. Yes.

12 MR. BERGER: Excuse me, we need
13 to go off the record.

14 - - -

15 (At this point, a short recess
16 was taken, after which time the deposition
17 resumed.)

18 - - -

19 MR. BERGER: We're back on the
20 record.

21 - - -

22 BY MR. BOOS:

23 Q. Sir, did you understand, based on your
24 discussions with Mr. Ziznewski, that the -- that
25 the Sabert SAP ERP implementation went live on May

01 5th of 2003?
02 A. I don't recollect.
03 Q. Is it possible that that was
04 communicated between you and Sabert at some point?
05 MR. KRAUSS: Objection. Calls
06 for speculation.
07 THE WITNESS: It is a
08 possibility.
09 MR. BOOS: What are we on, 43?
10 - - -
11 (Interim Rent Log Bates stamped
12 WRC000640 received and marked for
13 identification as Exhibit 43)
14 - - -
15 BY MR. BOOS:
16 Q. Take a look at exhibit 43, if you
17 would, please?
18 Do you see that document?
19 A. I do.
20 Q. Whose handwriting is on that document;
21 if you know?
22 A. I don't know.
23 Q. All right, you can set that one aside.
24 MR. BOOS: 44.
25 - - -

01 involvement in the Sabert contract up to the time
02 that you left?

03 A. I don't recall.

04 Q. And what's the date that you left

05 Winthrop?

06 A. Is it February 2005 -- '6?

07 February 2006.

08 Q. Did you ever see Abigail Nesbitt's name
09 associated with any document or discussion
10 relative to Sabert the time -- during the time you
11 were at Winthrop?

12 A. I don't recall, you know, Abby is legal
13 counsel internal to Winthrop and if there were any
14 legal issues, questions, contract issues, they
15 would have either been communicated with Abby,
16 Rich Pieper or Frank Gabriel, assuming that Abby
17 was the legal counsel at that point.

18 Paul Gendler was prior, the
19 prior in-house legal counsel.

20 Q. Is Mr. Gendler still at the company?

21 A. I believe so. I think he heads up
22 sales.

23 Q. Early on, during your -- the proposal
24 discussions in April of 2003 and in connection
25 with the lease schedules, both in May of 2003 and

Page:331 - 331

01 then lease schedule 001R in November of 2003,
02 there were references to term being forty-two
03 months; right?

04 A. Yes.

05 Q. And there are also references to term
06 being forty-two months in some other documents
07 that we looked at today; right?

08 A. Yes.

09 Q. Do you think -- could you understand if
10 Gary Ziznewski was under the impression all along
11 that he had entered into a contract where his
12 obligation was to make forty-two payments and no
13 more?

14 MR. KRAUSS: Objection. Calls
15 for speculation.

16 - - -
17 BY MR. BOOS:

18 Q. I mean, would that make sense?

19 MR. KRAUSS: Objection.

20 THE WITNESS: I can't really
21 speak for what Gary understood or what he
22 didn't understand.

23 - - -
24 BY MR. BOOS:

25 Q. But, if Gary testified that, look, I

01 being explained to them.
02
03 BY MR. BOOS:
04 Q. Have you had experience with customers
05 who didn't understand interim rent?
06 A. Yes.
07 Q. Which customers?
08 A. I'm trying to recall.
09 Q. While you're thinking, I would just ask
10 you, are these situations where their lack of
11 understanding of interim rent came up after the
12 facts or after documents were signed and became an
13 issue, down the road after the agreement was
14 signed?
15 Is that what you're thinking
16 of?
17 A. Versus?
18 Q. Versus just not understanding it up
19 front when you're talk -- when -- at the very
20 beginning --
21 A. I see.
22 Q. -- of discussions?
23 A. No. More didn't understand it, you
24 know, at some point in time down the road.
25 Q. And so, give me an example of some

01 customers that you've dealt with that didn't
02 understand interim rent at some time down the
03 road, after they had executed agreements with
04 Winthrop?

05 A. Yeah, I believe one of them was Cherry
06 Road or Acuent. It's the same company.

07 Q. Others?

08 A. That's all I can think of right now.

09 Q. Are you aware, though, that there were
10 others?

11 A. I'm -- I'm assuming that there were,
12 yes.

13 Q. And with Cherry Road, what was the
14 nature of their raising the issue of interim rent
15 in -- in the time frame after they had signed the
16 agreement?

17 How did it come up?

18 A. You know, I don't remember the details.
19 It would have been before Gary's relationship.

20 The reality is it's -- again,
21 it goes back to the model being a very defined
22 model, a very premeditated model.

23 Q. You're talking about the premeditated
24 model to be vague about exactly what interim rent
25 means?

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01 A. Looking for a certain profile customer,
02 who has never leased before, doesn't understand
03 leasing, doesn't understand the impact of interim
04 rent, doesn't understand extensions, you know,
05 where they make money, or if they do understand
06 it, they're not paying attention to it, and it's
07 not a contractual issue.

08 So, the reality is, at the --
09 you know, if -- if there's some trigger at some
10 point in time throughout the relationship where --
11 you know, whatever it might be, if -- if they --
12 you know, if they misnotice or thought the term
13 was over before it was over, you know, similar
14 situation to evidently Gary's situation.

15 I don't know exactly what
16 transpired with Gary, other than there was some
17 trigger where he thought the lease was over before
18 it was over. So, you know, similar situations.

19 Q. And you'd had some of these similar
20 situations prior to ever meeting Gary and Sabert,
21 I take it?

22 A. Yes.

23 Q. Would it be fair to characterize them
24 as disputes about what interim rent was or meant?

25 A. You know, I don't know if it was

01 specifically interim rent or if it was misnotice
02 or if it was a combination of both.

03 But, you know, it's some
04 conversation, which are harder conversations to
05 have with regards to, you know, understanding the
06 agreement.

07 Q. And so, do you remember situations
08 where you had, for lack of a better term, disputes
09 or complaints from your customers prior to the
10 Sabert situation?

11 A. I did, yes.

12 Q. Where they were -- where they were
13 disputing or raising issues about what interim
14 rent meant?

15 A. You know, I believe the Acuent deal or
16 the Cherry Road deal was a situation similar to
17 that, and, you know, I felt awful.

18 Q. And were they raising claims along the
19 lines of, look, interim rent is not defined in the
20 contract? You didn't tell us what it meant? It's
21 not clear from the agreement what it meant? We
22 don't have to pay it; those types of claims?

23 A. I think it was --

24 MR. KRAUSS: Objection. Vague.

25 THE WITNESS: I don't remember

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01 A. Where?
02 Q. In these situations where you had
03 problems with customers, prior to meeting Sabert,
04 and a portion of those problems related to interim
05 rent?

06 MR. KRAUSS: Objection. Vague
07 and compound.

08 THE WITNESS: I'm trying to
09 recall actual interim -- interim rent
10 conversations. I believe the Cherry Road,
11 now that I'm thinking about it, was more
12 of, you know, misnotice on the end side of
13 it.

14

15 BY MR. BOOS:

16 Q. What about interim rent in particular,
17 what -- what discussions do you remember having
18 with customers about that prior to Sabert, whether
19 it was Cherry Road or somebody else?

20 A. As far as not understanding interim
21 rents after they were entered into it?

22 Q. Sure.

23 A. The one was Ultralife Battery. I'm
24 trying to remember. Ultralife Battery was one.

25 Q. What was the issue there?

01 A. It was interim rent.
02 Q. And what were -- what was that
03 customer's complaint with regard to Winthrop?

04 A. Evidently, they didn't understand
05 interim rent and the impact of it.
06 Q. So, were they upset about being asked
07 to pay for it?

08 A. Sure. I think it's an upsetting
09 situation when you don't want to understand
10 something that you enter into.

11 Q. Do you think Gary Ziznewski understood
12 how Winthrop was viewing this so-called interim
13 rent when Gary signed the documents in this case?

14 MR. KRAUSS: Objection. Lack
15 of foundation. Calls for speculation.
16

17 BY MR. BOOS:

18 Q. It's based on everything you know, your
19 dealings with Mr. Ziznewski, your experience with
20 other customers, the model at Winthrop.

21 Do you think Mr. Ziznewski knew
22 what Winthrop meant by this so-called interim rent
23 when he signed the documents?

24 MR. KRAUSS: Object to the
25 form. Calls for speculation and also lack

Page:340 - 340

01 of foundation.
02 THE WITNESS: I'm not sure what
03 Gary knew with regards to interim rent or
04 notice or the type of project that he was
05 getting into, and leasing of that project.
06 I can't speak to specifically
07 what Gary knew. I'm not sure.
08

09 BY MR. BOOS:

10 Q. At some point, sir, did you have a
11 crisis of conscience relative to working with
12 Winthrop?

13 A. Yes.

14 Q. And what -- explain that? How did it
15 come about and when did it come about?

16 A. You know, it probably came about right
17 away. Meaning, first couple months of
18 understanding the business model.

19 Q. Back in 199 --

20 A. '99.

21 Q. And what about the business model gave
22 you a crisis of conscience?

23 A. Well, I'm not sure what you mean by,
24 you know, a crisis of conscience.

25 Q. Let's use your words. How would you

01 define what you -- what you experienced once you
02 learned about the business model of Winthrop?

03 A. I guess it's just -- it goes back to,
04 you know, building a relationship based on -- on
05 trust, and if a customer doesn't fully understand
06 something, then -- I mean, you're building a
07 relationship with somebody.

08 So, you know, you -- you don't
09 want to, you know, take advantage of anybody or be
10 in a situation where they don't fully understand
11 things, where there could possibly be
12 miscommunication.

13 Q. And what was it about Winthrop's
14 business model that made it difficult for you, in
15 terms of taking advantage of customers or having
16 to deal with customers when they don't fully
17 understand things?

18 A. It's just that there's -- there's
19 conditions, like interim rents, like extensions,
20 where if they don't fully understand it or if they
21 don't give, you know, proper notice or follow the
22 contract, then you get into a situation that could
23 be adversarial.

24 Q. And how would you describe the business
25 model that you -- that you referenced, the

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01 business model of Winthrop?
02 MR. KRAUSS: Objection. Asked
03 and answered.

04
05 BY MR. BOOS:
06 Q. I mean, you talked a minute ago about
07 business model. That once you learned about the
08 business model, you had a reaction to that,
09 whether you want to use crisis of conscience or
10 something else, you can use your own words.

11 But, what was it -- what
12 business model did you learn about that -- that
13 gave you that reaction or that feeling?

14 A. That it just could be deceptive.

15 Q. So, that Winthrop's business model is
16 deceptive?

17 MR. KRAUSS: Objection.

18 THE WITNESS: Could be
19 deceptive.

20

21 BY MR. BOOS:

22 Q. And why do you say that its business
23 model could be deceptive?

24 A. Well, if -- if you got a situation like
25 interim rents, where a customer doesn't fully

01 understand it, for their own reason, let's say, it
02 could have, you know, a monetary impact on -- on
03 that customer.

04 Q. If it was your business model and you
05 were setting up a business model, would you do it
06 differently?

07 A. Well, yes. I mean, I tried to do it
08 differently, to be honest, and it wasn't my
09 business model.

10 Q. If you -- if it was up to you to
11 determine the business model, how would you do it
12 differently than Winthrop had you do it?

13 A. It's a good question.

14 Just trying to fully disclose
15 everything, so, you know -- so clients understood
16 the pros and the cons of the scenario.

17 Q. And you're talking about interim rent,
18 among other things?

19 A. Correct.

20 Q. You're talking about notice provisions,
21 among other things?

22 A. Correct.

23 Q. And so, under your business model, what
24 you would do that's different from Winthrop is to
25 try to be open and up front with customers and

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01 work with them, so that they fully understood the
02 terms of the contract and wouldn't be deceived?
03 MR. KRAUSS: Objection to the
04 form.

05
06 BY MR. BOOS:

07 Q. Is that a fair summary of what you're
08 saying?

09 A. I would try to -- if it was my business
10 model, I would -- you know, I mean, the contract
11 would be changed and altered and things would be
12 communicated differently, yes.

13 Q. And how would you change the documents
14 relative to the interim rent issue, so that you
15 could better communicate with customers?

16 A. I've never really thought about it, to
17 be honest.

18 Q. Thinking about it now, do you have any
19 thoughts as to what you might do to make it
20 clearer or to clarify documents in terms of
21 interim rent?

22 A. You know, you're making me think. I'm
23 not sure how I would do it, to be honest.

24 Q. Do you think it's possible that Gary
25 Ziznewski was deceived by Winthrop's business

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01 Q. At some point, did you -- maybe it was
02 in the early days when you started working with
03 Winthrop or maybe as time went on, but at some
04 point, did you say to yourself, I just don't think
05 that this is right, in terms of how to communicate
06 to customers?

07 Did you ever have that
08 conversation with yourself?

09 A. Yes, sure.

10 I mean, there was one instance
11 where -- you know, I've always been raised and my
12 philosophy is, you know, I am a man of my word.

13 So, you know, I had one client,
14 who was a very good client, who, you know, was
15 asking about notice, what he needed to do to
16 return the equipment. And I spoke to executive
17 management on, you know, what he needed to do, if
18 he needed to give, per the contract, written
19 notice. If that's what they wanted, how they
20 wanted me to handle the situation.

21 And they said no, he doesn't
22 need to give written notice. So, I never told him
23 to give written notice, and, you know, you develop
24 a relationship.

25 If the relationship -- if

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01 A. I'm sure.
02 You know, when you -- when you
03 make those decisions, it involves a lot of the
04 people that was on the -- that were on the sales
05 transaction, that ST document.

06 So, you're -- you're trying to
07 communicate with, quote, unquote, executive
08 management.

09 Q. And who were the people that we're
10 talking about?

11 A. I don't specifically remember, but I
12 think it involved Dean Stinchfield, Frank Gabriel,
13 Rich Pieper, probably Paul Gendler.

14 And, you know, I could not hold
15 that customer to -- to an extension.

16 Q. Had you had other run-ins with people
17 at Winthrop regarding its dealings with customers,
18 other than that -- that incident that you talked
19 about a minute ago?

20 A. You know, you -- you almost, I hate to
21 say it, adapt to the model. The model is what it
22 is. It's either you survive or you don't.

23 I mean, it's either you stay
24 there and keep your job or you don't.

25 My initial thought was, kind

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01 of, you were talking about my conscience, you
02 know, initially, you're not really in those
03 situations of dealing with interim rent or dealing
04 with extensions.

05 So, in the first year, you're
06 like, oh, I'm not really dealing with them. When
07 I get to that -- that problem, I guess I'll deal
08 with it then. So, you push it off a year or two
09 years.

10 Now you got three years into
11 it, and you left a job where you were making a lot
12 more money than what you've been making and, you
13 know, you're -- you're apt to maybe skew some
14 things.

15 Q. Skew, you mean you're apt to sort of
16 start to see the world from Winthrop's more
17 deceptive perspective than sort of a lily white
18 perspective that you may have had in -- in the
19 past?

20 MR. KRAUSS: Objection to the
21 form.

22 THE WITNESS: Well, I think
23 you're more apt to just deal with the
24 things the way they are. Deal with interim
25 rent, deal with extensions, deal with the

Page:358 - 358

01 I mean, if it's a very large
02 deal, millions of dollars, you were going to get a
03 lot of exposure because they want the larger size
04 deals. So, you're going to have more of executive
05 management involved.

06 Q. Do you think the model, whereby you're
07 told to deal with the subject of interim rent or
08 late notice in a very certain and rigid way, is
09 inequitable towards your customers, while you were
10 at Winthrop?

11 MR. KRAUSS: Objection. Calls
12 for speculation.

13 THE WITNESS: I think that
14 the -- some of the terms and conditions
15 that Winthrop benefited from could be
16 misunderstood by the customer, and, you
17 know, could put a customer in a situation
18 where they didn't understand the -- the
19 negative impact or the financial impact of,
20 you know, getting into this lease
21 agreement.

22 But that was really the model.

23 I mean, that's -- that's the model.

24 BY MR. BOOS:

25 Q. That's -- in other words, that's how

01 Winthrop benefited, by their customers not
02 understanding?

03 MR. KRAUSS: Objection.

04 THE WITNESS: That's -- it's
05 one way; sure.

06
07 BY MR. BOOS:

08 Q. Do you think that, as a result of that,
09 Winthrop takes advantage of its customer --

10 MR. KRAUSS: Objection.

11
12 BY MR. BOOS:

13 Q. -- including Sabert --

14 MR. KRAUSS: Objection.

15
16 BY MR. BOOS:

17 Q. -- for those reasons?

18 A. I've never really looked at it, you
19 know, that way. They're looking for a client that
20 meets a certain profile and if -- if -- if that --
21 if they meet that profile, then -- you know, then
22 Winthrop benefits.

23 Q. And what you mean by profile -- is what
24 you mean by profile -- strike that.

25 Is what you mean by profile,

01 someone that Winthrop can take advantage of for
02 the reasons that you talked about with the model
03 and so forth?

04 MR. KRAUSS: Objection.

05 THE WITNESS: Their model is --
06 I mean, they -- they intentionally
07 disclose, you know, all the information,
08 but in a way where customers not -- might
09 not fully understand what it is that they
10 are getting involved in.

11
12 BY MR. BOOS:

13 Q. So, they disclose information in a way
14 that's vague to customers or ambiguous to
15 customers, so they don't fully understand what
16 they're getting into?

17 MR. KRAUSS: Objection.
18 Misstates the testimony.

19
20 BY MR. BOOS:

21 Q. Is that what you're saying?

22 A. It could be vague to -- to some
23 customers.

24 Q. Including this idea of interim rent and
25 how that was prepared -- or, proposed?

01 A. Just leasing in general, yeah, and
02 interim rent is part of large ticket technology
03 leasing.

04 Q. Would -- put yourself in the shoes of a
05 customer and imagine you're doing business with a
06 company like Winthrop and you learn about their
07 model and how they deal with their customers and
08 how their model could be deceptive, would you want
09 to do business with that company, with that
10 information?

11 A. If I learned that they -- Winthrop was
12 potentially or was deceptive?

13 Q. Well, if you learned what you know now
14 about Winthrop and their model that you've talked
15 about today, would you want to do business with
16 Winthrop?

17 A. No.

18 Q. Why?

19 A. Because I wanted to be in a situation
20 where -- well, if somebody had told me they were
21 deceptive, I wouldn't want to work with a
22 deceptive organization; bottom line.

23 MR. BOOS: Can you read back my
24 question?

25

01 you're the sales representative selling this, the
02 question is, do they fully understand it or do
03 they not fully understand it. And if you fully
04 disclose it, are they going to enter into a
05 relationship and into a lease agreement or are
06 they not.

07 Q. Is the whole assumption behind this
08 model that can be deceptive, that you don't fully
09 disclose it because if you do, the customer is
10 going to walk?

11 A. Sure. I mean, that definitely crosses
12 your mind, you know, often.

13 And you want to keep your job.

14 Q. And did you feel that your job was in
15 jeopardy, if you fully disclosed what interim rent
16 and other provisions of the contract mean to
17 customers?

18 Did you feel that would put
19 your job in jeopardy?

20 A. I honestly felt that if you came out
21 and said to the customer that there's -- if your
22 roll out is six months, it's going to be six
23 months of interim payments, which is going to be
24 added on to the term of your lease, which is going
25 to turn your rate from X percentage that you

01 calculated into X plus something, would you get
02 the business; probably not. You wouldn't get the
03 business.

04 With that said, you know, I had
05 a customer who fully understood interim rent and
06 was very financially stable, as financially stable
07 as Sabert, if not more, and they were okay with
08 interim rent, but I think that was the exception.

09 Q. All right. One last question.

10 A. For the day?

11 Q. Possibly.

12 A. This is good.

13 MR. BOOS: Let me just take one
14 minute and check a note and --

15 MR. BERGER: We're now going
16 off the record.

17

18 (At this point, a short recess
19 was taken, after which time the deposition
20 resumed.)

21

22 MR. BERGER: We're back on
23 record.

24 BY MR. BOOS:

25 Q. Would you agree with a letter that was

01 schedule?

02 Do you remember either way?

03 A. I don't specifically remember, but, you
04 know, this is helping me to refresh my memory. I
05 mean, this document, exhibit 40, is specific to
06 gathering hardware.

07 Q. Do you ever remember having any
08 discussions with Gary Ziznewski saying, Gary, we
09 need to have more hardware on the schedule so that
10 you're up over that fifteen percent?

11 I mean, do you ever remember a
12 specific discussion like that?

13 MR. KRAUSS: Objection to the
14 form. Fifteen point five percent, not
15 fifteen percent.

16 THE WITNESS: I don't, but if
17 that's what was being required by Winthrop
18 to close the schedule, I would have had
19 that conversation.

20

21 BY MR. BOOS:

22 Q. But, it's not clear what's being
23 required by Winthrop, based on this document; is
24 it?

25 A. Well, it's -- this document specifies

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01 question?
02 MR. KRAUSS: I didn't realize
03 you weren't done.
04 - - -
05 BY MR. BOOS:
06 Q. You were encouraged by Winthrop to have
07 more, rather than less, interim rent because it
08 was a major profit center for Winthrop; is that
09 fair?
10 MR. KRAUSS: Renew objection,
11 as far as mischaracterizing the testimony.
12 THE WITNESS: You were
13 encouraged by Winthrop to make the company
14 a lot of money, and the way that you did
15 that was through signing new lease
16 schedules, signing new lease agreements
17 with existing customers, new customers,
18 what they call net new clients.
19 And ways that you made profit
20 were through interim rent, mid lease
21 changes and misnotice or end of lease
22 changes.
23 - - -
24 BY MR. BOOS:
25 Q. Last question.

Winthrop Resources Corporation v. Apollo Education Group, Inc.
Case No. 0:17-cv-01448 (DWF/SER)

Exhibit C

(Apollo Education Group, Inc.'s Counterclaims)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Winthrop Resources Corporation,

Case No. 0:15-cv-03987 (RHK/HB)

Plaintiff,

v.

Pennock Hospital and Pennock Healthcare
System

Defendants.

**Pennock Hospital and Pennock Healthcare System's
Answer to Plaintiff's Complaint, Affirmative Defenses, Counterclaim
and Demand for Jury Trial**

Pennock Hospital and Pennock Health Care System (collectively, "Pennock") for their Answer to the Complaint of Plaintiff Winthrop Resources Corporation ("Plaintiff"), state and allege as follows:

1. Upon information and belief, Pennock admits paragraph 1 of Plaintiff's Complaint.
2. Pennock admits paragraphs 2 and 3 of Plaintiff's Complaint.
3. Pennock states that paragraph 4 of Plaintiff's Complaint contains no factual allegations which call for a response.
4. Pennock admits paragraph 5 of Plaintiff's Complaint.
5. Pennock admits paragraphs 6, 7, and 8 of Plaintiff's Complaint.
6. With regard to paragraphs 9, 10, 11, 12, and 13 of Plaintiff's Complaint, Pennock admits that the parties entered into the agreement attached as Exhibits A and B to Plaintiff's Complaint (hereinafter and collectively, the "Lease") but because the Lease is a written contract which speaks for itself, any terms to the contrary stated herein are denied as untrue.
7. Pennock admits paragraphs 14, 15, and 16 of Plaintiff's Complaint.

8. With regard to paragraph 17 of Plaintiff's Complaint, Pennock admits that Spectrum Health System became the sole member of Pennock Hospital on May 1, 2015, and that Winthrop neither consented nor refused to consent to this change. Pennock further admits that the language stated in this paragraph is an excerpt of language contained in a press release posted thereafter on the Pennock website.

9. With regard to paragraph 18 of Plaintiff's Complaint, Pennock admits that Spectrum Health System became the sole member of Pennock Hospital and assumed all rights and responsibilities related thereto, but denies the remaining allegations in this paragraph because they are untrue.

10. Pennock denies the allegations contained in paragraph 19 of Plaintiff's Complaint upon information and belief, but admits that Plaintiff neither consented nor refused to consent.

11. Pennock denies paragraph 20 of Plaintiff's Complaint as untrue.

12. Pennock admits paragraph 21 of Plaintiff's Complaint that Plaintiff has demanded damages in excess of \$50,000, but denies that such damages are owed.

Count I
Breach of Lease

13. Pennock, in response to paragraph 22 of Plaintiff's Complaint, incorporates by reference its answers to the preceding paragraphs.

14. Pennock admits paragraph 23 of Plaintiff's Complaint.

15. Pennock denies paragraph 24 of Plaintiff's Complaint as untrue.

16. With regard to paragraph 25 of Plaintiff's Complaint, Pennock admits that the parties entered into the Lease, which is a written contract that speaks for itself. Pennock further states that any terms to the contrary stated herein are denied as untrue.

17. Pennock denies paragraph 26 of Plaintiff's Complaint as untrue.

Affirmative Defenses

Affirmative Defense No. 1

18. Plaintiff has suffered no compensable damages and is entitled to no remedy under the terms of the parties' contract / Lease.

Affirmative Defense No. 2

19. Plaintiff's conduct violates the covenant of good faith and fair dealing.

Affirmative Defense No. 3

20. Plaintiff's claims are barred in whole or part by the doctrine of unconscionability.

Affirmative Defense No. 4

21. Plaintiff's claims are barred in whole or in part because plaintiff seeks to enforce commercially unreasonable provisions.

Affirmative Defense No. 5

22. Plaintiff's claims are barred in whole or in part because plaintiff seeks to impose an unlawful penalty.

Affirmative Defense No. 6

23. Plaintiff's claims are barred in whole or part by the doctrines of unclean hands, estoppel, waiver or other equitable doctrine.

Affirmative Defense No. 7

24. The remedy sought by Plaintiff in this matter would result in unjust enrichment.

Affirmative Defense No. 8

25. Pennock reserves the right to plead additional affirmative defenses which become known through investigation or discovery.

Counter Claim

The Pennock Defendants, for their Counterclaim against Plaintiff, hereby states and alleges the following:

Counterclaim No. 1

Breach of the Implied Covenant of Good Faith and Fair Dealing

26. Pennock incorporates by reference its foregoing answers as if set forth fully herein.
27. Pennock has honored its obligations under the Lease, including without limitation fully paying all of the Lease payments when due.
28. Because of its various agreements and business relationship with Pennock, the law imposes upon Plaintiff an implied covenant of good faith and fair dealing.
29. Plaintiff maintains internal business and financial incentives that provide Plaintiff with great profit where it can allege that a Lessee under its agreements has defaulted or has not terminated the lease agreements at the end of their initial term. Plaintiff, its owners, and its employees, all receive substantial financial windfalls when Plaintiff is able to claim that a Lessee has defaulted or did not properly terminate the lease agreements.
30. For example, Plaintiff fully amortizes the cost of a lease over the original lease term. Plaintiff's sales personnel receive a commission on the net profit of the lease. However, once the original lease term is completed or a default is called, any additional revenue generated from that lease is 100 per cent profit. Plaintiff and its sales personnel, therefore, have great financial incentive to claim that Lessees have defaulted or failed to properly terminate the agreements, which according to Plaintiff, automatically extends or accelerates lease terms and payments.
31. These business practices were brought to light in detail in a lawsuit filed by former Winthrop employee James Natale, who brought a federal court action that outlined Plaintiff's

practice of attempting to catch Lessees in “missed notice” and other situations to claim that the Lessees were in default. The *Natale* complaint specifically alleges that Plaintiff tries to catch unsuspecting customers in “missed notice” and default situations to extend or increase payments allegedly owed by the Lessees. See *Natale* complaint, paras. 20, 31, 41, 53 and 54.

32. The *Natale* complaint also alleges that Plaintiff targets customers who are not familiar with the type of contractual arrangements at issue here because they are more likely to enter into these lease arrangements and are more likely to fall prey to “missed notice” or other circumstances that allow Plaintiff to claim default. Because Plaintiff’s sales people are paid a commission on the net profit of their deals, they have a strong incentive to generate additional commissions by alleging that the Lessee has defaulted. The *Natale* suit alleges that Plaintiff’s sales persons routinely used such practices to generate personal income of more than \$1 million a year. See paras. 25, 51(a).

33. In a similar fashion, Plaintiff seeks to exploit Pennock and falsely declare that a breach has occurred under the Lease in order to demand exorbitant penalties and generate additional income to which it is not entitled, even though Pennock has never missed a Lease payment and even though Plaintiff’s security interest in the equipment and profits interests under the Lease are wholly unchanged.

34. By its conduct, Plaintiff has, among other things, placed its interests above those of Pennock, engaged in deceptive and bad faith conduct toward Pennock, acted contrary to Pennock’s justified expectations, conjured up a pretended dispute, and engaged in rejection of performance for unstated reasons, and has thereby breached its covenant to deal with Pennock fairly and in good faith.

35. As a direct and proximate result of the above breaches of the implied covenant of good faith and fair dealing, Pennock has been damaged by Plaintiff's conduct in an amount to be determined at trial.

WHEREFORE, Pennock respectfully request that this Court dismiss Plaintiff's Complaint with prejudice, enter judgment in its favor on its Counterclaim and grant Pennock its reasonable attorney fees incurred in defending this action, its costs, and such other relief as this Court deems just and equitable.

Demand for Jury Trial

Pennock hereby demands a trial by jury on all matters raised in the Complaint for which a jury trial is available.

Dated: November 6, 2015

By: s/Shawn M. Raiter

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Attorneys for Defendants

Winthrop Resources Corporation v. Apollo Education Group, Inc.
Case No. 0:17-cv-01448 (DWF/SER)

Exhibit D

(Apollo Education Group, Inc.'s Counterclaims)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Winthrop Resources Corporation,

Case No. 14-cv-04455 (DSD/FLN)

Plaintiff,

v.

Corinthian Colleges, Inc.,

Defendant.

Answer, Counterclaim and Demand for Jury Trial by Corinthian Colleges, Inc.

Defendant, Corinthian Colleges, Inc. (“CCI”) for its Answer to the Complaint of Plaintiff Winthrop Resources Corporation (“Plaintiff”), states and alleges as follows:

1. CCI denies each and every allegation, matter, and thing contained in the Complaint, except as is herein admitted, qualified, or otherwise stated.
2. CCI is without sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations contained in paragraph 1 of the Complaint and therefore denies the same and places Plaintiff to its proof thereof.
3. CCI admits the allegations contained in paragraph 2 of the Complaint.
4. CCI denies the allegations contained in paragraph 3 of the Complaint. This matter has been removed to federal court and is now pending in the United States District Court for the District of Minnesota. This Court has jurisdiction over the claims asserted by Plaintiff pursuant to 28 U.S.C. § 1332(a), because the amount in controversy exceeds \$75,000 and the parties are citizens of different states.

5. With respect to paragraphs 4, 5, 6, 7, 8, 9, 10, and 11 of the Complaint, CCI admits that it entered into various agreements with Plaintiff in connection with the financing of certain equipment. Because the terms of any such written agreements speak for themselves, CCI denies Plaintiff's attempts to summarize, characterize, or describe the attachments to those agreements. To the extent a further response is required, CCI denies the allegations contained in paragraphs 4, 5, 6, 7, 8, 9, 10, and 11 of the Complaint.

6. With respect to paragraphs 12, 13, 14, 15, and 16 of the Complaint, the terms of any written agreements between the parties speak for themselves and CCI denies Plaintiff's attempts to summarize, characterize, or describe the attachments to those agreements and denies that Plaintiff has accurately recited the actual terms of the agreements. To the extent a further response is required, CCI denies the allegations contained in paragraphs 12, 13, 14, 15, and 16 of the Complaint.

7. CCI denies the allegations contained in paragraphs 17 and 18 of the Complaint and denies that it is in default under the terms of the agreements with Plaintiff.

8. Paragraph 19 of the Complaint is not an allegation requiring a response from CCI. To the extent a response is needed, CCI denies the allegations contained in paragraph 19 of the Complaint.

9. CCI does not recognize Plaintiff's attempt to aggregate all of the agreements described in the Complaint into a single "Lease" and therefore denies the allegations contained in paragraphs 20, 21, 22, and 23 of the Complaint. Answering further, the allegations contained in paragraphs 20, 21, 22, and 23 of the Complaint are legal conclusions

that do not require a response. To the extent a response is needed, CCI denies the allegations contained in paragraphs 20, 21, 22, and 23 of the Complaint.

10. Paragraphs 1 and 2 of the “WHEREFORE” portion of the Complaint are not an allegation requiring a response from CCI. To the extent a response is needed, CCI denies the allegations contained in paragraphs 1 and 2 of the “WHEREFORE” portion of the Complaint.

Affirmative Defenses

Affirmative Defense No. 1

Compliance with Agreements and Course of Dealing

11. CCI has complied with all terms of its agreements with Plaintiff and has paid all money to which Plaintiff is entitled under the parties’ agreements. CCI did not default on the agreements and instead terminated them in accordance with the parties’ agreed terms and course of dealing. CCI has complied with the agreements and the parties’ course of dealing regarding the termination of the agreements.

Affirmative Defense No. 2

Unilateral / Mutual Mistake

12. CCI made appropriate efforts to terminate the written agreements with Plaintiff and to negotiate any terms needed to conclude the parties’ relationship. However, Plaintiff’s actions in dealing with CCI impaired CCI’s ability to comply with the alleged termination provisions in the agreements. To the extent the written agreements are interpreted to mean that the relationship was to last longer, then the Court through rescission and/or reformation should conform the written agreements to reflect the

unilateral or mutual mistake. Specifically, the Court should hold that the relationship ended and that CCI complied with the parties' agreements, properly terminated the relationship, and is not in default.

Affirmative Defense No. 3

Estoppel

13. Plaintiff is estopped from arguing that CCI failed to properly terminate the parties' agreements and from arguing that CCI owes past rent, penalties, interest or other charges.

Affirmative Defense No. 4

Failure to State a Claim Upon Which Relief May Be Granted

14. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

Affirmative Defense No. 5

Conditions Precedent

15. Plaintiff's claims fail because Plaintiff failed to plead that the conditions precedent were complied with and because those conditions were not completed.

Affirmative Defense No. 6

Uniform Commercial Code

16. CCI hereby asserts and reserves any legal rights and defenses as may be applicable under the Uniform Commercial Code or similar laws.

Affirmative Defense No. 7

Doctrinal Defenses

17. Plaintiff's claims are barred, either in whole or in part, by the doctrines of unclean hands, waiver, unconscionability, failure of consideration, and payment.

Affirmative Defense No. 8

Unconscionability

18. The purported terms of the "Leases" Plaintiff attempts to enforce are unenforceable in whole or in part under the doctrine of unconscionability.

Affirmative Defense No. 9

Commercially Unreasonable

19. The purported terms of the "Leases" Plaintiff attempts to enforce are unenforceable in whole or in part because they are commercially unreasonable.

Affirmative Defense No. 10

Penalty

20. The purported terms of the "Leases" Plaintiff attempts to enforce are unenforceable in whole or in part because they seek to impose an unlawful penalty.

Affirmative Defense No. 11

Unjust Enrichment

21. The result sought by Plaintiff in this matter would unjustly enrich Plaintiff.

Affirmative Defense No. 12

Termination and / or Breach by Plaintiff

22. Plaintiff's claims are barred by CCI's termination of the agreements or are barred by Plaintiff's own breaches of the agreements.

Counter Claim

CCI, for its Counterclaim against Plaintiff, hereby states and alleges the following:

Counterclaim No. 1

Breach of the Implied Covenant of Good Faith and Fair Dealing

23. CCI incorporates by reference the allegations made herein as if set forth fully herein.

24. Because of its various agreements and business relationship with CCI, the law imposes upon Plaintiff an implied covenant of good faith and fair dealing.

25. Plaintiff maintains internal business and financial incentives that provide Plaintiff with great profit where it can allege that a Lessee under its agreements has not terminated the lease agreements at the end of their initial term. Plaintiff, its owners, and its employees, all receive substantial financial windfalls when Plaintiff is able to claim that a Lessee did not terminate the lease agreements or was in "default" for some reason.

26. For example, Plaintiff fully amortizes the cost of a lease over the original lease term. Plaintiff's sales personnel receive a commission on the net profit of the lease. However, once the original lease term is completed, any additional revenue generated from that lease is 100 per cent profit. Plaintiff and its sales personnel, therefore, have great financial incentive to claim that Lessees failed to terminate the agreements or were in default,

which according to Plaintiff, automatically extends the lease for another term and imposes additional charges on the Lessee.

27. A former employee of Winthrop Resources, James M. Natale, brought a federal court action that outlined Plaintiff's practice of attempting to catch Lessees in "missed notice" to terminate situations. The *Natale* complaint specifically alleges that Plaintiff tries to catch unsuspecting customers in "missed notice" situations to claim they had defaulted, which in turn further extended their payment obligations. See *Natale* complaint, paras. 20, 31, 41, 53 and 54.

28. The *Natale* complaint alleges that Plaintiff targets customers who are not familiar with the type of contractual arrangements at issue here because they are more likely to enter into these lease arrangements and are more likely to fall prey to "missed notice" circumstances. Because Plaintiff's sales people are paid a commission on the net profit of their deals, they have a strong incentive to generate additional commissions through "missed notice," "interim rent," and default claims against their customers.

29. The *Natale* suit also alleges that Plaintiff's sales persons routinely used the improper practices described in this Complaint to generate personal income of more than \$1 million a year. See paras. 25, 51(a).

30. By its conduct, Plaintiff has, among other things, placed its interests above those of CCI, engaged in deceptive and bad faith conduct toward CCI, acted contrary to CCI's justified expectations, conjured up a pretended dispute, and engaged in rejection of performance for unstated reasons, and has thereby breached its covenant to deal with CCI fairly and in good faith.

Winthrop Resources Corporation v. Apollo Education Group, Inc.
Case No. 0:17-cv-01448 (DWF/SER)

Exhibit E

(Apollo Education Group, Inc.'s Counterclaims)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Winthrop Resources Corporation, a
Minnesota corporation,

Court File No. 09-cv-267 (DSD/AJB)

Plaintiff,

v.

**ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIM, AND
JURY DEMAND**

Taro Pharmaceuticals U.S.A., Inc., a New
York corporation,

Defendant.

Defendant Taro Pharmaceuticals U.S.A., Inc. (“Taro”), for its Answer to the Complaint of Plaintiff Winthrop Resources Corporation (“Plaintiff”), states and alleges as follows:

1. Taro denies each and every allegation, matter, and thing contained in the Complaint, except as is herein admitted, qualified, or otherwise stated.
2. Taro is without sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations contained in paragraph 1 of the Complaint; therefore it denies the same and places Plaintiff to its proof thereof
3. Taro admits the allegations contained in paragraph 2 of the Complaint.
4. Taro denies the allegations contained in paragraph 3 of the Complaint.

This matter has been removed to federal court and is now pending in the United States District Court for the District of Minnesota. This Court has jurisdiction over the claims

asserted by Plaintiff pursuant to 28 U.S.C. § 1332(a), because the amount in controversy exceeds \$75,000 and the parties are citizens of different states.

5. Taro is without sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations contained in paragraphs 4 and 5 of the Complaint; therefore it denies the same and places Plaintiff to its proof thereof.

6. With respect to paragraphs 6, 7, 8, 9, 10, 11, 12, and 13 of the Complaint, Taro admits that it entered into various agreements with Plaintiff in connection with the financing of certain computer equipment. Because the terms of any written agreements speak for themselves, Taro denies Plaintiff's attempts to summarize or characterize those agreements. To the extent a further response is required; Taro denies the allegations contained in paragraphs 6, 7, 8, 9, 10, 11, 12, and 13 of the Complaint.

7. Taro denies the allegations contained in paragraphs 14 and 15 of the Complaint.

8. Paragraph 16 of the Complaint is not an allegation requiring a response from Taro. To the extent a response is needed, Taro denies the allegations contained in paragraph 16 of the Complaint.

9. Taro does not recognize Plaintiff's attempts to aggregate all of the agreements between Taro and Plaintiff into a single "Lease" and therefore denies the allegations contained in paragraph 17 of the Complaint.

10. Taro denies the allegations contained in paragraphs 18, 19, and 20 of the Complaint.

AFFIRMATIVE DEFENSES

Affirmative Defense No. 1

Compliance with Agreements and Course of Dealing

11. Taro has complied with all terms of its agreements with Plaintiff and has paid all money to which Plaintiff is entitled under the parties' agreements. Taro did not default and the agreements instead terminated in accordance with the parties' agreed terms and course of dealing. Taro has complied with the agreements and the parties' course of dealing.

Affirmative Defense No. 2

Unilateral / Mutual Mistake

12. In September 2007, Plaintiff and Taro spent considerable effort negotiating and agreeing upon a finite twelve month conclusion to their relationship. To the extent the written agreements between Plaintiff and Taro are interpreted to mean that the relationship was to last longer than those twelve months, then the Court through rescission and/or reformation should conform the written agreements to reflect the unilateral or mutual mistake. Specifically, the Court should hold that the relationship ended in August 2008 and that Taro complied with the parties' agreements and / or properly terminated the relationship.

Affirmative Defense No. 3

Estoppel

13. Plaintiff is estopped from arguing that Taro failed to properly terminate the parties' agreements or that the agreements lasted beyond the twelve month period negotiated and agreed upon in 2007.

Affirmative Defense No. 4

Failure to State a Claim Upon Which Relief May Be Granted

14. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

Affirmative Defense No. 5

Lack of Integration

15. Plaintiff's claims that Taro breached the agreements fail because the September 2007 amendment does not fully integrate the parties' agreements.

Affirmative Defense No. 6

Uniform Commercial Code

16. Taro hereby asserts and reserves all of its legal rights and defenses as may be applicable under the Uniform Commercial Code or similar laws.

Affirmative Defense No. 7

Doctrinal Defenses

17. Plaintiff's claims are barred, either in whole or in part, by the doctrines of unclean hands, waiver, unconscionability, failure of consideration, and payment.

Affirmative Defense No. 8

Unconscionability

18. The purported terms of the “Lease” Plaintiff attempts to enforce are unenforceable in whole or in part under the doctrine of unconscionability.

Affirmative Defense No. 9

Commercially Unreasonable

19. The purported terms of the “Lease” Plaintiff attempts to enforce are unenforceable in whole or in part because they are commercially unreasonable.

Affirmative Defense No. 10

Penalty

20. The purported terms of the “Lease” Plaintiff attempts to enforce are unenforceable in whole or in part because they seek to impose a penalty.

Affirmative Defense No. 11

Unjust Enrichment

21. The result sought by Plaintiff in this matter would unjustly enrich Plaintiff.

Affirmative Defense No. 12

Fraud in the Inducement

22. Plaintiff’s attempted interpretation of the parties’ agreements are unenforceable because Plaintiff fraudulently induced Taro to believe that the September 2007 agreement lasted a finite term of 12 months.

COUNTERCLAIMS

Taro, for its Counterclaims against Plaintiff, hereby states and alleges the following:

Counterclaim No. 1

Attorney Fees and Costs

23. Taro incorporates by reference the allegations set forth in paragraphs 1-22 as if set forth fully herein.

24. As set forth in paragraph 19 of lease agreement TA110196 between Plaintiff and Taro, the non-prevailing party is to pay to the prevailing party “its reasonable costs of collection or other out-of-pocket costs and expenses and reasonable attorneys’ fees on account thereof.” (Plaintiff Winthrop’s Complaint Exhibit A.)

25. If Taro prevails in this matter, it is entitled to its attorneys’ fees and costs incurred in this lawsuit in an amount to be determined.

Counterclaim No. 2

Breach of the Implied Covenant of Good Faith and Fair Dealing

26. Taro incorporates by reference the allegations set forth in paragraphs 1-25 as if set forth fully herein.

27. Because of its various agreements and business relationship with Taro, the law imposes upon Plaintiff an implied covenant of good faith and fair dealing.

28. By its conduct, Plaintiff has, among other things, placed its interests above those of Taro, engaged in deceptive and bad faith conduct toward Taro, acted contrary to Taro’s justified expectations, conjured up a pretended dispute, and engaged in rejection

of performance for unstated reasons, and has thereby breached its covenant to deal with Taro fairly and in good faith.

29. As a direct and proximate result of the above breaches of the implied covenant of good faith and fair dealing, Taro has been damaged by Plaintiff's conduct in an amount to be determined at trial.

WHEREFORE, Taro prays that Plaintiff's Complaint be dismissed with prejudice and on the merits, and that the Court enter judgment awarding Taro its costs, disbursements, and attorney fees pursuant to the contractual agreement between the parties, and damages in connection with Plaintiff's breach of the implied covenant of good faith and fair dealing, in an amount to be determined at trial.

REQUEST FOR JURY TRIAL

Defendant Taro hereby requests that all issues of fact be tried before a jury.

Dated this 13th day of February, 2009. **LARSON • KING, LLP**

By s/Shawn M. Raiter
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**Attorneys for Defendant and Counterclaim
Plaintiff Taro Pharmaceuticals, U.S.A., Inc.**

Winthrop Resources Corporation v. Apollo Education Group, Inc.
Case No. 0:17-cv-01448 (DWF/SER)

Exhibit F

(Apollo Education Group, Inc.'s Counterclaims)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Winthrop Resources Corporation

Case No. 14-cv-04455 (DSD/FLN)

Plaintiff

v.

Corinthian Colleges, Inc.,

Defendant.

**Corinthian Colleges, Inc.’s Opposition
to Plaintiff’s Motion for Replevin**

Introduction

Before discovery has started, Plaintiff Winthrop Resources Corporation has declared itself the victor in this case. It now seeks the Court’s endorsement of that declaration by summarily pronouncing a default and ordering replevin of property acquired under several lease agreements. However, despite Winthrop’s unilateral assertions, Corinthian Colleges, Inc. did not default on the leases. Corinthian made the lease payments—totaling nearly \$16 million—and properly terminated the leases at the end of their two-year terms. Corinthian has not defaulted and Winthrop’s motion should be denied.

This case is the latest of many in which Winthrop has attempted to set up its customer so it can claim that the customer has defaulted under a lease. A former Winthrop employee confirmed that the company routinely does exactly that: Winthrop tries to trap its customer so it can argue that the customer gave “late notice” to terminate the lease, thereby automatically renewing the lease. Through such unscrupulous practices, Winthrop and its employees reap even more profit on leases for which they have already profited. *See James*

M. Natale v. Winthrop Resources Corp., No. 07-4686 (E.D. Pa) (complaint by former Winthrop sales person describing internal policies to trap customers in default to extend lease terms.)

Corinthian paid Winthrop nearly \$16 million in lease payments related to the acquisition of approximately 11,000 laptop computers that are used by Corinthian's students. Corinthian made the required lease payments and properly terminated the leases to extinguish their purported "evergreen" clauses. Corinthian then engaged in what should have been good faith negotiations with Winthrop to agree upon the terms to transfer title of the computers to Corinthian. But instead of acting in good faith and dealing fairly with Corinthian—as Minnesota law required—Winthrop was again setting up its customer for a claim that the customer owed millions of dollars in extended lease payments.

The motion before the Court does not explain how Corinthian supposedly defaulted on these leases. The claimed "past due" invoices described in this motion relate only to Winthrop's allegation that the two-year leases were not terminated and automatically renewed for another year. Put differently, Winthrop attempts to manufacture a "default" by claiming that the leases automatically extended because Corinthian would not submit to Winthrop's strong-arm buyout negotiation tactics. Winthrop's default allegations here fall squarely within the corrupt practices described by its former employee. Corinthian will prove that the leases were terminated, that it has not defaulted, and that Winthrop has unclean hands, which precludes the use of the equitable remedy of replevin.

Factual Background

A. Parties And Lease Background.

Corinthian Colleges, Inc. is one of the largest for-profit, post-secondary education companies in North America, with more than 81,300 students at over 107 U.S. and Canadian campuses. (Affidavit of Shawn M. Raiter.) Corinthian campuses offer short-term diploma and/or degree programs in a variety of popular career fields like health care, business, criminal justice, transportation technology and maintenance, construction trades and information technology. (*Id.*)

Beginning in late 2011, Corinthian entered into several lease agreements with Winthrop through which Corinthian financed the acquisition of approximately 11,000 laptop computers. Those computers were in turn provided to Corinthian students, who use them during their time at the schools. (*See generally*, Declaration of Brendan Sheehy.) Importantly, the parties agreed to specially-negotiated Riders that allowed Corinthian to purchase the laptops at the end of the lease periods “for the then determined mutually-agreed Fair Market Value price” of the equipment. (Raiter Aff., Ex. A.)

B. Corinthian Made The Required Lease Payments And Notified Winthrop Of Its Intent To Terminate The Leases.

Notably absent from Winthrop’s motion is an acknowledgement that Corinthian made all payments required under the leases during their two-year terms. During those two-year lease terms, Corinthian paid Winthrop payments totaling \$15.8 million dollars. (Ex. B.) Those payments continued through the middle of 2014, including May 2014 when Corinthian paid Winthrop more than \$608,000. (*Id.*) And while Winthrop summarily

references “invoices” it claims Corinthian has not paid, Winthrop’s motion does not provide any evidence about what those invoices were for, or why Winthrop claims that Corinthian owed them. (*See* Nesbit Dec.)

C. Corinthian Negotiated In Good Faith To Agree On Buyout Terms But Winthrop Did Not Negotiate In Good Faith And Instead Tried To Trap Corinthian So It Could Claim Default.

Before entering into the lease agreements with Winthrop, Corinthian made it clear that it intended to buy the laptops at the end of the lease terms. Corinthian actively negotiated the buy-out terms that would be included in the leases, including how the “fair market value” (FMV) of the equipment would be determined and whether non-hardware “soft costs” would be included in the buy-out calculation. (Ex. C.) For example, on August 8, 2011 (and several months before the leases were executed), the following email exchange took place between Corinthian and Winthrop:

Corinthian E-Mail on 8/8/11

Subject: RE: Updated Lease Proposal

Hi Bill [Evors, a Winthrop employee],

Can you also confirm that the “equipment cost” referenced on pg2 under “End of Term Options” applies only to hardware and does not include soft cost.

Thanks.

Winthrop’s Response

Subject: RE: Updated Lease Proposal

That is correct. Only the hardware has resale value.

[Bill Evors]

(*Id.*) The parties discussed the buyout terms again in October 2013, where Corinthian reiterated the parties' agreement about soft costs being excluded from a buy-out calculation: "I'm following up from our conversation from last week for an update. Notwithstanding the contract, after discussing internally over the past week with appropriate stakeholders, we agree that Corinthian and Winthrop's intention regarding the buyout was that it would not apply to soft costs as indicated below." (*Id.*)

Before the last lease ended in 2014, Corinthian notified Winthrop of its intent to terminate the lease and to negotiate a buy-out, as the parties had agreed when they entered into the leases. Winthrop, however, refused to negotiate under the terms that had induced Corinthian to enter into the lease agreements. In March 2014—before the end of the last lease period—Corinthian emailed to object to Winthrop's attempt to add software costs to the buyout terms. (Ex. D.)

Corinthian made it clear before the last lease ended that it was terminating the lease and that it wished to exercise its right to purchase the equipment at the "mutually-agreed Fair Market Value price." (Ex. D.) Winthrop then demanded that Corinthian pay buyout costs for not only the computer hardware, but also for the software. (*Id.*) Corinthian, however, had only entered into these leases because Winthrop had represented that buyout costs would not apply to software. (*Id.*; *see also* Ex. C.)

On March 13, 2014, a Corinthian representative emailed Winthrop objecting to its buyout negotiation tactics and reminded Winthrop that Corinthian never agreed that software costs would be included in buyout calculations:

Bill and Jay,

It was extremely disappointing and surprising to hear from Bill yesterday that Winthrop has reversed course and will not honor its promises with regards to how the buyout for schedule A03 is to be assessed. Last quarter, we all agreed explicitly that the proposal documents we signed, and the intent of our lease arrangement, was that any lease buyouts (capped at 20%) would apply only to hardware costs. Corinthian has relied upon these explicit promises and assurances made to us before documents were signed and again last quarter. We strongly disagree with the change in assessment by Winthrop, and we request that the assessment be corrected so as to reflect what we all agreed upon in December for schedules A01 and A02, which came out to 20% of the hardware only.

* * *

Corinthian has relied upon the assurances and promises that Winthrop made last quarter that this situation would be corrected going forward, but these assurances and promises are not being honored by Winthrop even the very next quarter. We request that the appropriate Winthrop personnel be engaged to correct this situation promptly.

(Ex. D.) Because Corinthian would not bow to Winthrop's attempt to bait-and-switch the buyout terms, Winthrop filed suit and now claims that the leases automatically extended for another year and that Corinthian owes millions in additional lease payments. (*See generally*, Doc. No. 1, Ex. A.)

D. Winthrop Intentionally Attempts To Trap Its Customers In "Late Notice" Claims Hoping To Automatically Extend Lease Periods.

In its Answer and Counterclaim, Corinthian denied that it defaulted under the leases and asserted that Winthrop's attempt to extend the leases and to tack on millions of dollars in "late" rent was part of a scheme to attempt to unfairly extend the leases. Corinthian supported these allegations by referencing the federal court allegations of Winthrop's employee, James M. Natale. Natale sued the company and brought to light Winthrop's practice of claiming that its customers "missed notice" to terminate leases, which Winthrop

then claimed resulted in automatic lease renewals and payment of “interim rent.” (See Ex. E, ¶¶ 25-30; see also, Complaint in *James M. Natale v. Winthrop Resources Corp.*, No. 07-4686 (E.D. Pa), attached to Raiter Aff. as Ex. F.)

Winthrop “made its most substantial revenue from customers paying ‘interim rent’ and missing contractual ‘notice dates’” and that those missed notice provisions resulted in “the two most profitable terms and conditions of Winthrop’s Lease Agreement.” (Ex. F. ¶¶ 20, 21, 25.) Natale described being terminated from Winthrop because he did not adhere to Winthrop’s “less than forthright sales model which created substantial revenues based upon ‘interim rent’ and missed contractual written notices.” (*Id.* ¶ 31.) Natale alleged that he was discharged because “he did not want his clients tricked by ‘interim rent’ and ‘missed notice’ provisions.” (*Id.* ¶ 53.)

Before Winthrop settled with Natale on a confidential basis, Natale submitted a brief to the federal district court for the Eastern District of Pennsylvania and stated:

Mr. Natale has articulated in his Complaint (and testified under oath in another court proceeding in the United States District Court for Minnesota) that [Winthrop] has devised and perfected an unethical business model in which Winthrop sales associates offer technology leasing contract wherein business terms (interim rent, renewal notice formalities, at the core of [Winthrop’s] financial success and profit model) are deliberately left undefined, that is, traps set to the consumer -- even major businesses which one would suspect could look out for their own interests.

(Ex. G., p. 11.) Because Natale refused to hold one of his customers to a “missed notice” claim, he was deemed “too nice a guy” and was terminated. (*Id.*)

E. Corinthian Has A Defense On The Merits And That Defense Is A Fair Basis For Litigation.

Corinthian denies that it is in default under the terms of the lease. (Ex. E., ¶ 7.) Corinthian has specifically alleged that it complied with all lease terms, has paid Winthrop all rent owed under the leases, and did not default. (*Id.*, ¶ 11.) In addition, Corinthian properly terminated the leases by complying with both the written documents and the parties’ course of dealing regarding termination. (*Id.*) Corinthian has also asserted affirmative defenses including unilateral/mutual mistake, estoppel, and doctrinal defenses like unclean hands, waiver, unconscionability, and penalty. (Ex. E., ¶¶ 12, 13, 17, and 20.)

Corinthian also counterclaimed for Winthrop’s breach of the implied covenant of good faith and fair dealing. Through this claim, Corinthian alleges that Winthrop maintains internal business and financial incentives that cause it to seek ways to claim that its customers are in “default” under lease agreements. (Ex. E., ¶¶ 23-31.) In particular, Natale’s federal court action outlined Winthrop’s practice of attempting to catch lessees in “missed notice” situations that Winthrop uses to claim the lease terms were extended which, in turn, caused extended payment obligations. (*Id.*, ¶¶ 26-28.) This conduct, according to Corinthian, is used by Winthrop in deceptive and bad faith ways to act contrary to the justified expectations and duties owed to a party to a Minnesota contract. (*Id.*, ¶ 30.)

Argument

I. There Is No Replevin Claim Asserted In The Complaint.

The complaint here has a single claim alleging breach of lease. Winthrop did not assert a claim for replevin and did not cite or reference the Minnesota statute governing

replevin, Minn. Stat. § 565.21-23. Winthrop’s failure to assert a replevin claim prevents the court from considering this motion.

“A replevin action seeks to regain possession of items” and is governed by Minnesota statute. *B-Kam, LLP v. Floding*, No. 08-5168, 2011 WL 1258501 (D. Minn. Mar. 30, 2011); *see also*, Minn. Stat. §§ 565.21-23. Under Minnesota law, the party seeking replevin must specifically plead a claim for replevin—asserting a breach of contract claim is not sufficient. *Donley v. Olsen Aviation Alaska, Inc.*, 2014 WL 3798094 (Minn. Dist. Ct., June 13, 2014).

Winthrop asserted a single lease claim in its complaint. (*See* Doc. No. 1, Ex. A.) Winthrop did not plead a replevin claim and did not assert a cause of action under Minn. Stat. § 565. As in *Donley*, where the plaintiff had asserted only a claim for breach of contract, Winthrop did not assert a replevin claim and cannot now make a motion for replevin under Minn. Stat. § 565.23. *Donley*, 2014 WL 3798094 at *2 (denying motion for replevin where the complaint asserted only a contract claim.)¹ Winthrop’s failure to plead a claim for replevin requires the denial of this motion. *Id.*

II. Winthrop Cannot Meet The Replevin Requirements.

The party seeking replevin must establish, through affidavit evidence, a number of matters, including a probability of success on the merits. Minn. Stat. § 565.23. As an equitable remedy, replevin is not proper if the party seeking the remedy has not performed fairly, equitably, and honestly as to the particular controversy. *Slidell, Inc. v. Millennium Inorganic Chemicals, Inc.*, No. 02-213 JRT/FLN, 2004 WL 1447921 (D. Minn. June 28, 2004).

¹ The complaint does not use the word replevin and does not mention, much less assert, a claim for replevin under Minn. Stat. § 565. It does mention the return of property.

Replevin will not be allowed where the record establishes: (1) a defense to the merits of the moving party’s claim; (2) that the interest of the party currently in possession of the property will not be adequately protected by a bond filed pursuant to Minn. Stat. § 565.25, subd. 1, and (3) that the party in possession of the property would suffer substantially greater harm than any harm suffered by the party seeking replevin if the property were not delivered prior to a final decision on the merits. *See, e.g.*, Minn. Stat. § 565.23, subd. 3.

A. Winthrop Failed To Establish The Probability Of Success On The Merits Of Its Claims And Corinthian Has Defenses That Are A Fair Basis For Litigation.

As the moving party, Winthrop must prove that it has a “probability of success on the merits entitling claimant to possession of the property.” Minn. Stat. § 565.23, subd. 3. Similarly, Section 565.23, subd. 3 requires the Court to deny replevin where the party opposing the motion shows that it has defenses to the underlying claims and that those defenses are “a fair basis for litigation.” *Id.*

This action was just started and Corinthian vigorously disputes Winthrop’s claims. No discovery has been conducted, although Corinthian has noticed depositions and served document requests. (Raiter Aff.) Winthrop’s motion is based entirely on its own complaint—it never acknowledges Corinthian’s answer, defenses, and counterclaim. Summarily referring to one’s own complaint—while ignoring the opposing party’s pleadings—does not carry Winthrop’s burden of showing that it has a “probability of success” on the merits of its claims.

As set out in its Answer and Counterclaim, Corinthian will establish through discovery, and on the merits, that: (1) it paid everything it owed under the initial lease terms,

(2) it provided written of its intent to terminate those leases before they expired, and (3) it negotiated in good faith with Winthrop to reach a mutually agreed buyout amount. (Ex. E.) Winthrop, however, did not act in good faith or deal fairly with Corinthian because Winthrop has an internal policy of attempting to trap its customers in situations where it can claim—exactly as it does here—that the customer defaulted and that the lease terms automatically renewed. (*Id.*)

As a condition precedent to seeking the relief sought in this motion, Winthrop must show that Corinthian defaulted under the lease agreements. Its apparent theory for such a default in this case is that the leases automatically extended because Corinthian did not provide notice of its intent to terminate the leases. To prevail on such an argument, Winthrop must show that Corinthian did not terminate the lease agreements even though Corinthian and Winthrop attempted to negotiate a buy-out of the equipment. The record, though, shows that Corinthian advised Winthrop of its intent to terminate the lease.

On the limited record before the Court, Winthrop cannot prove that it has a probability of success on its claim that the leases automatically extended and that Corinthian defaulted by not paying more rent after the leases terminated and after Corinthian objected to Winthrop's attempts to change the negotiated buy-out terms. The merits of Winthrop's claim are hotly contested. Corinthian has valid defenses that provide a fair basis for litigation. The Court should deny this motion to allow the parties to develop an adequate record.

B. Winthrop’s Conduct Precludes A Replevin Motion.

Replevin is not proper here because Winthrop has not performed fairly, equitably, and honestly. *Slidell, Inc.*, 2004 WL 1447921 at *6-7. Corinthian has alleged, with factual support, that Winthrop has not acted equitably and has tried to “trap” Corinthian in a default. These allegations find strong support from Winthrop’s former employee, who describes Winthrop’s “less than forthright sales model,” its attempt to trick customers into default, and its “traps” to claim that customers had missed lease terminations. (Ex. F, ¶¶ 31, 53; Ex. G, p. 11.)

C. Corinthian Would Suffer Substantially Greater Harm Than Winthrop Would Sustain If The Property Was Not Delivered Prior To A Final Decision On The Merits.

Winthrop asks the Court to order the nearly immediate return of approximately 11,000 laptop computers that are being used by Corinthian students. Winthrop’s motion does not consider the relative harms associated with either granting or denying this request for replevin. However, the harm that Corinthian would suffer if the motion were granted far exceeds any downside to delaying Winthrop’s request for the return of the laptops until the merits are decided.

Winthrop wants the immediate return of 11,000 laptop computers currently being used by students who are trying to earn a certificate or degree. Winthrop also asks to be allowed to send hundreds of local Sheriffs into the homes and workplaces of these students to retrieve the laptops. Yet, the motion before the Court does not explain why Winthrop needs the laptops immediately. The potential harm to Corinthian for such an exercise far exceeds any potential harm caused by requiring Winthrop to actually prove its claims.

Corinthian would face significant disruption to its business, and to the education of its students, if the students were required to immediately return these computers. (Sheehey Decl.)

Corinthian may also face legal actions or claims from students whose homes are “broken open” to recover a laptop computer that Winthrop values at \$120. (*See* Winthrop proposed order allowing homes to be “broken open”; *see also* Sheehey Decl.) Similarly, Corinthian would face potential claims or liability relating to the confiscation of computers that contain the personal and private information of Corinthian’s students. (Sheehey Decl.) An individual’s computer often contains personal identifying information (name, address, date of birth, social security number), private information (like health records or information), financial account information, and passwords. (*Id.*) Corinthian may well face legal claims from students whose personal or private information is taken by Winthrop. (*Id.*)²

D. Corinthian’s Interests Cannot Be Adequately Protected By The Bond Proposed By Winthrop.

Winthrop proposes that it post a bond under Section 565 to cover Corinthian for damage caused by the replevin of the laptop computers. Winthrop, however, only proposes to post a bond of \$180 (one and one half times the estimated value of \$120 per laptop) for each laptop it takes via replevin. (*See* proposed Order.) If the Court granted this motion,

² Winthrop’s motion is silent about what protective measures it would take to ensure that personal and private information is not viewed, disseminated, or otherwise used by it or its vendors. Indeed, Winthrop itself may face litigation from Corinthian students if it were allowed to confiscated these computers.

Winthrop should be required to post a bond, at minimum, of \$1,980,000 (11,000 laptops x \$180.) The per-piece bond proposed by Winthrop is insufficient.

Even a \$1,980,000 bond would not sufficiently protect Corinthian. Winthrop seeks the immediate return of laptops being used by approximately 11,000 students. Those computers contain not only a student's school work but also personal and private information that is protected by numerous state and federal laws. (Sheehey Decl.) Through its order, Winthrop asks the Court to allow law enforcement authorities to cause buildings where students live and work "to be broken open" to recover these laptops. This case is therefore very different than a commercial setting in which one business seeks the right to enter another business's property to retrieve equipment. Here, Winthrop wants to enter the homes of thousands of Corinthian students.

The potential harm to Corinthian far exceeds the bond Winthrop seeks to post. Corinthian could face serious legal actions from students whose homes are "broken open" to recover a laptop computer that Winthrop values at \$120. Similarly, the bond proposed by Winthrop would not adequately protect Corinthian from potential claims or liability relating to the confiscation of computers that contain personal and private information of Corinthian's students. In addition, the relief sought by Winthrop would potentially violate the Family Educational Rights & Privacy Act (20 U.S.C. § 1232g; 34 C.F.R. §§ 99.1 et seq.) (Sheehey Decl.)

II. Other Remedies Offer Winthrop Adequate Security Until A Final Decision On The Merits.

Subdivision 4 of Section 565.23 allows the Court to enter an order to protect Winthrop's rights until a final decision has been made on the merits. In particular, the Court

Winthrop Resources Corporation v. Apollo Education Group, Inc.
Case No. 0:17-cv-01448 (DWF/SER)

Exhibit G

(Apollo Education Group, Inc.'s Counterclaims)

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Winthrop Resources Corporation,

Case No. 15cv3987 (RHK/KMM)

Plaintiff,

v.

Pennock Hospital and Pennock Healthcare
System

Defendants.

Defendants' Opposition to Plaintiff's Motion for Protective Order

Introduction

Plaintiff Winthrop Resources seeks a protective order for a subpoena served on a third-party, James Natale, who is a former Winthrop employee. In support, Winthrop argues that attending a single deposition in Pennsylvania would be unduly burdensome in this case in which it seeks more than \$1 million from Pennock Hospital. Winthrop is a subsidiary of TCF Financial Corporation, which had nearly \$18 billion in assets as of 2012.¹ The suggestion that it would be unreasonably burdensome for Winthrop to attend a single out-of-town deposition is both preposterous and without any factual support. Winthrop can attend by phone if it does not want to incur the travel expense or it can choose not to attend the deposition at all.

¹ See <https://www.winthropresources.com/about/financial-strength-stability.php>, last visited July 7, 2016.

Winthrop also argues that the information Natale has about how Winthrop conducts itself is irrelevant, outdated or stale. Importantly, the docket of this Court and others show currently pending cases in which Natale's allegations are referenced and in which claims have been asserted about Winthrop's lack of good faith and fair dealing. From all appearances, Winthrop's unsavory business practices continue to this day.

Winthrop's refusal to provide the documents from the *Natale* and *Sabert* lawsuits and its willingness to assert a baseless motion speak loudly about the relevance and condemning value of the discovery Pennock seeks. The fact that the discovery is damaging to Winthrop's claims in this lawsuit cannot provide the basis for a protective order. The Court should deny Winthrop's motion.

Argument

I. A Claim of Undue Burden Does Not Justify a Protective Order and Winthrop has Not Made a Factual Showing of Undue Burden for a Single Deposition.

A single deposition of a fact witness is not unduly burdensome to a company that is part of an \$18 billion organization and which seeks more than \$1 million in this lawsuit. Winthrop has not provided any factual basis to support its argument that going to a deposition in Pennsylvania is "unduly burdensome" under Rule 26. Winthrop has therefore, as a factual matter, failed to carry its burden for a protective order.

More importantly, a claim of undue burden is not a justifiable basis for seeking a protective order to limit discovery from a non-party. Rule 26 states that: "A party or any person *from whom discovery is sought* may move for a protective order" Fed. R. Civ. P. 26(c)(1) (emphasis added). The discovery at issue is not being sought from Winthrop, yet the only party unduly burdened by a subpoena for information is the party who *receives* the

subpoena. See, e.g., *Shukh v. Seagate Tech., LLC*, 295 F.R.D. 228, 236 (D. Minn. 2013) (“undue burden . . . is a fact potentially best known to the party *receiving* the subpoena”); *Riding Films, Inc. v. John Does 129-193*, 2013 WL 3322221, at *6 (S.D. Ohio July 1, 2013) (concluding that only the entity responding to the subpoena has standing to challenge the subpoena on the basis of undue burden); *Levitin v. Nationwide Mut. Ins. Co.*, 2:12-cv-34, 2012 WL 6552814 (S.D. Ohio Dec. 14, 2012) (“Here, the subpoenas are directed to Plaintiff’s prior employers. Thus, only Plaintiff’s prior employers have standing to challenge the subpoenas on the ground that production of the subpoenaed documents would pose an undue burden expense.”); *McNaughton-McKay, Elec. Co. v. Linamar Corp.*, No. 09-cv-11165, 2010 WL 2560047 (E.D. Mich. June 15, 2010) (“Defendant [which was not the recipient of the subpoena] does not have standing to argue that Chrysler’s compliance with the subpoena will cause undue burden where Chrysler has not objected to the subpoena on this ground.”). Winthrop therefore cannot seek a protective order based on undue burden.

James Natale has not objected to the subpoena Pennock served on him. He has instead cooperated through his counsel to schedule the deposition and produce the requested documents. Winthrop cannot rely on undue burden for a subpoena served on James Natale and even if it could, it has not provided any evidence to support that attending a single deposition would cause “undue burden or expense.”

II. The Information Sought From Natale is Not Outdated and is Relevant to Pennock’s Claims and Defenses.

Winthrop makes a last-ditch effort to avoid this discovery by claiming that Natale’s information is irrelevant, stale or outdated. In doing so, Winthrop essentially concedes that Natale’s testimony may have been relevant, but the passage of time somehow automatically

makes it irrelevant. Notably, however, Winthrop offers no evidence or proof that it has changed its unethical business practices since it fired Natale for complaining about them.

Rather, the information is completely relevant to Pennock's claims. Mr. Natale worked at Winthrop and has knowledge of its business practices, including how Winthrop enters into and out of contracts, and how Winthrop uses certain tactics to trap lessees in order to obtain a financial windfall. This information, which is contained in the documents Pennock seeks from Mr. Natale, is exactly what Pennock argues occurred here. Pennock is entitled to discovery from individuals such as Mr. Natale who possess information supporting its claims and who is willing to produce such information.

Additionally, cases currently pending in this Court and in others also include references to Natale's testimony and involve claims about Winthrop's lack of good faith and fair dealing. *See* Declaration of Shawn M. Raiter, Ex. A, B, and C. Those cases, coupled with Winthrop's conduct toward Pennock, make it reasonable to believe that the distasteful business practices about which Natale will testify continue to the present time.

To the extent Winthrop alleges Pennock is not entitled to this information because it is currently seeking a motion to compel, Winthrop provides no case law prohibiting a party from seeking relevant information from third parties. Rather, Pennock is entitled to obtain discovery from third parties under the Federal Rules. Indeed, "[p]ursuant to a subpoena, a non-party can be compelled to produce evidence regarding any matter relevant to the claim or defense of any party, unless a privilege applies." *Keefe v. City of Minneapolis*, No. 09-2941, 2012 WL 7766299, at *3 (D. Minn. May 25, 2012) (citing Fed. R. Civ. P. 26(b)(1), 34(c)). The

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Winthrop Resources Corporation,

Case No. 15cv3987 (RHK/KMM)

Plaintiff,

v.

Pennock Hospital and Pennock Healthcare
System

Defendants.

**Local Rule 7.1(c) Word Count Compliance Certificate Regarding
Defendants' Opposition to Plaintiff's Motion for Protective Order**

I, Shawn M. Raiter, certify that Defendants' Opposition to Plaintiff's Motion for Protective Order complies with Local Rule 7.1(c).

I further certify that, in preparation of this Memorandum, I used Microsoft Word 2010, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

I further certify that the above-referenced Memorandum contains 1,170 words.

Dated: July 1, 2016

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Winthrop Resources Corporation v. Apollo Education Group, Inc.
Case No. 0:17-cv-01448 (DWF/SER)

Exhibit H

(Apollo Education Group, Inc.'s Counterclaims)

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W I N T H R O P*Financial Services*

Lease Agreement Number AP122110

Lease Agreement

This Lease Agreement, dated December 21, 2010, by and between WINTHROP RESOURCES CORPORATION (the "Lessor") with an office located at 11100 Wayzata Boulevard, Suite 800, Minnetonka, Minnesota 55305 and APOLLO GROUP, INC. AND ITS AFFILIATES (the "Lessee") with an office located at 4025 South Riverpoint Parkway, Phoenix, Arizona 85040.

Lessor hereby leases and/or grants to the Lessee and/or Lessee's affiliate(s) as may be set forth in applicable Lease Schedule(s) the right to use and Lessee and/or Lessee's affiliate(s) as may be set forth in applicable Lease Schedule(s) hereby rents and accepts the right to use the tangible property and equipment whether or not listed by serial number ("Hardware"), and software (whether such software is embedded and included with the Hardware or not) and related services ("Software") noted on the Lease Schedule(s) attached hereto or incorporated herein by reference from time to time (collectively, the Hardware, Software and all related services are the "Equipment"), subject to the terms and conditions hereof, as supplemented with respect to each item of Equipment by the terms and conditions set forth in the appropriate Lease Schedule. The term "Lease Agreement" shall include this Lease Agreement and the various Lease Schedule(s) identifying each item of Equipment or the appropriate Lease Schedule(s) identifying one or more particular items of Equipment.

1. Term

This Lease Agreement is effective from the date it is executed by both parties. The term of this Lease Agreement, as to all Equipment designated on any particular Lease Schedule, shall commence on the Installation Date for all Equipment on such Lease Schedule and shall continue for an initial period ending that number of months from the Commencement Date as set forth in such Lease Schedule (the "Initial Term") and shall continue for successive periods of four (4) calendar months each (the "Renewal Term") thereafter until terminated. The term of this Lease Agreement as to all Equipment designated on any particular Lease Schedule may be terminated without cause at the end of the Initial Term or any Renewal Term thereafter by either party mailing written notice of its termination to the other party not less than one-hundred twenty (120) days prior to the end of the Initial Term or Renewal Term. Lessee may also exercise a purchase option after the Initial Term or any Renewal Term of any Lease Schedule as set forth in a rider to such Lease Schedule (the "Purchase Option").

2. Commencement Date

The "Installation Date" for each item of Equipment shall be the day said item of Equipment is installed at the Location of Installation (as such term is defined on the Lease Schedule or on the applicable Certificate of Acceptance, and provided that a Lease Schedule may have one or multiple Locations of Installation), ready for use, and accepted in writing by the Lessee. The Commencement Date for any Lease Schedule is the first of the month following installation and Lessee's acceptance of all the Equipment on the Lease Schedule, unless the latest Installation Date for any Equipment on the Lease Schedule falls on the first day of the month, in which case that is the Commencement Date. The Lessee agrees to complete, execute and deliver to Lessor a Certificate of Acceptance listing the specific items of Equipment to be leased upon installation of the Equipment.

3. Lease Charge

The lease charges for the Equipment leased pursuant to this Lease Agreement shall be the aggregate "Monthly Lease Charge(s)" as set forth on each and every Lease Schedule executed pursuant hereto (the aggregate "Monthly Lease Charge(s)" are the "Lease Charges"). Lessee agrees to pay to Lessor the Lease Charges in accordance with the Lease Schedule(s), and the payments shall be made at Lessor's address indicated thereon. The Lease Charges shall be paid by Lessee monthly in advance with the first full month's payment due on the Commencement Date. The Lease Charge for the period from the Installation Date to the Commencement Date (the "Installation Period") shall be an amount equal to the "Monthly Lease Charge" divided by thirty (30) and multiplied by the number of days from and including the Installation Date to the Commencement Date and such amount shall be due and payable thirty (30) days after receipt of an invoice from Lessor. Charges for applicable Taxes made in accordance with Section 4 and charges made under any other provision of this Lease Agreement and payable by Lessee shall be paid to Lessor at Lessor's address specified on the Lease Schedule(s) within five (5) days after the due date specified in invoices delivered to Lessee. If payment, as specified above, is not received by Lessor within five (5) days after the due date, Lessee agrees to and shall pay, to the extent permitted by law, on demand, as a late charge, an amount equal to one and one-half percent (1½%), or the maximum percentage allowed by law if less, of the amount past due ("Late Charges"). The parties agree that Late Charges will accrue until billed by Lessor. Late Charges shall be charged and added to any past due amount(s) on the date such payment is due and every thirty (30) days thereafter until all past due amounts are paid in full to Lessor. With regard to invoiced amounts (other than Lease Charges) that Lessee disputes in good faith hereunder, the parties agree that so long as Lessee has timely and in writing raised such dispute as to an invoiced amount and the parties are in active discussions toward a resolution, then nonpayment of such disputed amounts shall not be deemed an event of default until the dispute is resolved; and if

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the dispute is resolved in favor of Lessee, then no Late Charges shall be assessed to Lessee, and if the dispute is resolved in favor of Lessor, the Late Charges accrued during such period shall be assessed to Lessee.

4. Taxes

In addition to the Lease Charges set forth in Section 3, the Lessee shall reimburse Lessor for all license or registration fees, assessments, sales and use taxes, rental taxes, recycling, administrative or environmental fees, gross receipts taxes, personal property taxes and other taxes or fees now or hereafter imposed by any government, agency, province or otherwise upon the Equipment, the Lease Charges or upon the ownership, leasing, renting, purchase, possession, use, recycling or disposal of the Equipment, whether the same be assessed to Lessor or Lessee (the "Taxes"). Lessee's obligation to remit Taxes and other non-rent related charges shall be due and payable thirty (30) days after receipt of an invoice from Lessor. Such invoices shall be mailed directly to the attention of the Lessee's Tax Department. Lessor shall file all property tax returns and pay all Taxes when due. Lessee, upon notice to Lessor, may, in Lessee's own name, contest or protest any Taxes, and Lessor shall honor any such notice except when in Lessor's sole opinion such contest is futile or will cause a levy or lien to arise on the Equipment or cloud Lessor's title thereto. Lessee shall, in addition, be responsible to Lessor for the payment and discharge of any penalties or interest as a result of Lessee's actions or inactions related to the Taxes. Nothing herein shall be construed to require Lessee to be responsible for any federal or state taxes or payments in lieu thereof, imposed upon or measured by the net income of Lessor, or state franchise taxes of Lessor, or except as provided hereinabove, any penalties or interest resulting from Lessor's failure to timely remit such tax payments.

5. Delivery and Freight Costs

Lessee shall accept delivery of and install the Equipment before such time as the applicable vendor requires payment for such Equipment.

All transportation charges upon the Equipment for delivery to Lessee's designated Location of Installation are to be paid by Lessee. All rigging, drayage charges, structural alterations, rental of heavy equipment and/or other expenses necessary to place the Equipment at the Location of Installation are to be promptly paid by Lessee.

6. Installation

Lessee agrees to pay for the actual installation of the Equipment at Lessee's site. Lessee shall make available and agree to pay for all costs associated with providing a suitable place of installation and necessary electrical power, outlets and air conditioning required for operating the Equipment as defined in the Equipment manufacturer's installation manual or other written instructions. All supplies consumed or required by the Equipment shall be furnished and paid for by Lessee.

7. Return to Lessor

Unless Lessee has purchased the Equipment pursuant to an applicable written Purchase Option, then, on the day following the last day of the lease term associated with a Lease Schedule (the "Return Date"), Lessee shall cause and pay for the Equipment listed on that Lease Schedule to be deinstalled, packed using the manufacturer's standard packing materials and shipped to a location in the 48 continental United States designated in writing by Lessor (the "Return Location"). If the Equipment listed on the applicable Lease Schedule is not at the Return Location within fifteen (15) days of the Return Date, or Lessee fails to deinstall and ship the Equipment on the Return Date, then any written notice of termination delivered by Lessee shall become void, and the Lease Schedule shall continue as a Renewal Term in accordance with this Lease Agreement. Irrespective of any other provision hereof, Lessee will bear the risk

of damage from fire, the elements or otherwise until delivery of the Equipment to the Return Location. At such time as the Equipment is delivered to the Lessor at the Return Location, the Equipment will be at the risk of Lessor. Section 12 herein shall apply with regard to Equipment that is subject to a Loss.

8. Maintenance

Lessee, at its sole expense, shall maintain the Equipment in good working order and condition. Lessee shall enter into, pay for (unless Lessor agrees to finance such agreement pursuant to a Lease Schedule) and maintain in force during the entire term of any Lease Schedule, a maintenance agreement with the manufacturer of the Equipment or a Lessor approved third party that is certified and qualified to maintain such Equipment ("Maintenance Provider") providing for continuous uninterrupted maintenance of the Equipment (the "Maintenance Agreement"). Upon Lessor's request, Lessee shall provide a copy of each such Maintenance Agreement to Lessor. Lessee will cause the manufacturer or Maintenance Provider to keep the Equipment in good working order in accordance with the provisions of the Maintenance Agreement and make all necessary adjustments and repairs to the Equipment. The manufacturer or Maintenance Provider is hereby authorized to accept the directions of Lessee with respect thereto. Lessee agrees to allow the manufacturer or Maintenance Provider full and free access to the Equipment, subject to Lessee's business requirements, security policies and planned downtime windows. All maintenance and service charges, whether under the Maintenance Agreement or otherwise, and all expenses, if any, of the manufacturer's or Maintenance Provider's customer engineers incurred in connection with maintenance and repair services, shall be promptly paid by Lessee. Lessee warrants that all of the Equipment shall be in good working order operating according to manufacturer's written specification and eligible for the manufacturer's standard maintenance agreement upon delivery to and inspection and testing by the Lessor. If the Equipment is not free of physical defect or damage, operating according to manufacturer's written specification, in good working order and/or eligible for the manufacturer's standard maintenance agreement, then Lessee agrees to reimburse Lessor for all reasonable costs, losses, expenses and fees associated with the repair or replacement of such Equipment; provided, however, that such costs shall not exceed the Casualty Loss Value (as defined in Section 12) of such Equipment.

9. Location, Ownership and Use

The Equipment shall, at all times, be the sole and exclusive property of Lessor. Lessee shall have no right or property interest therein, except for the right to use the Equipment in the normal operation of its business at the Location of Installation, or as otherwise provided herein. If a court of competent jurisdiction determines that any Lease Schedule hereto is not a true lease (or a "finance lease") for purposes of the Uniform Commercial Code, but rather a secured financing, then Lessee shall be deemed to have granted, and hereby grants to Lessor, a first priority security interest in the Equipment leased thereunder together with all substitutions and replacements therefore and all attachments and accessories thereto and all proceeds (including insurance proceeds) thereof. The Equipment is and shall remain personal property even if installed in or attached to real property. Lessor shall be permitted to display notice of its ownership on the Equipment by means of a suitable stencil, label or plaque affixed thereto.

Lessee shall keep the Equipment at all times free and clear from all claims, levies, encumbrances and process. Lessee shall give Lessor immediate notice if Lessee becomes aware of any such attachment or other judicial process affecting any of the Equipment. Without Lessor's written permission, Lessee shall not attempt to or actually: (i) pledge, lend, create a security interest in, sublet, exchange, trade, assign, swap, use for an allowance or credit or otherwise; (ii) allow another to use; (iii) part with

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possession; (iv) dispose of; or (v) remove from the Location of Installation, any Item of Equipment; provided, however, that Lessee may remove any Item of Equipment from its Location of Installation and utilize such Item of Equipment in another of Lessee's business locations or a location of one of Lessee's Affiliated Entities, and Lessee agrees to give Lessor notice within sixty (60) days of any such removal and relocation. "Affiliated Entity" shall mean any entity that controls, is controlled by, or is under common control of Lessee, where control means ownership of 50% or more of such entity. If any Item of Equipment is exchanged, assigned, traded, swapped, used for an allowance or credit or otherwise to acquire new or different equipment (the "New Equipment") without Lessor's prior written consent, then all of the New Equipment shall become Equipment owned by Lessor subject to this Lease Agreement and the applicable Lease Schedule.

Any feature(s) installed on the Equipment at the time of delivery which are not specified on the Lease Schedule(s) are and shall remain the sole property of the Lessor.

Lessee shall cause the Equipment to be operated in accordance with the applicable vendor's or manufacturer's manual of instructions by competent and qualified personnel.

10. Financing Statement

Lessor is hereby authorized by Lessee to cause this Lease Agreement or other instruments, including Uniform Commercial Code Financing Statements, to be filed or recorded for the purposes of showing Lessor's interest in the Equipment. Lessee agrees to execute any such Instruments as Lessor may reasonably request from time to time.

11. Alterations and Attachments

Upon prior written notice to Lessor, Lessee may, at its own expense, make minor alterations in or add attachments to the Equipment, provided such alterations and attachments shall not interfere with the normal operation of the Equipment and do not otherwise involve the pledge, assignment, exchange, trade or substitution of the Equipment or any component or part thereof. All such alterations and attachments to the Equipment that are easily removable without damaging the Equipment and that are removed at Lessee's expense prior to return of the Equipment to Lessor shall become part of the Equipment leased to Lessee and owned by Lessor. If any additional items of equipment (e.g., items of equipment that are not listed on a Lease Schedule or that are not Permitted Substitutes) are included in the return of Equipment to Lessor, Lessor shall make reasonable efforts to notify Lessee and provide Lessee the option to retrieve such additional items of equipment. If, in Lessor's sole determination, the alteration or attachment reduces the value of the Equipment or interferes with the normal and satisfactory operation or maintenance of any of the Equipment, or creates a safety hazard, Lessee shall, upon notice from Lessor to that effect, promptly remove the alteration or attachment at Lessee's expense and restore the Equipment to the condition the Equipment was in just prior to the alteration or attachment.

12. Loss and Damage

Lessee shall assume and bear the risk of loss, theft and damage (including any governmental requisition, condemnation or confiscation) to the Equipment and all component parts thereof from any and every cause whatsoever, whether or not covered by insurance. No loss or damage to the Equipment or any component part thereof shall impair any obligation of Lessee under this Lease Agreement, which shall continue in full force and effect except as hereinafter expressly provided. Lessee shall repair or cause to be repaired all damage to the Equipment. In the event that all or part of the Equipment shall, as a result of any cause whatsoever, become lost, stolen, destroyed or otherwise rendered irreparably unusable or damaged (collectively, the "Loss") then Lessee shall, within ten (10) days after the Loss, fully inform Lessor in writing of such a Loss and shall pay to Lessor the

following amounts: (i) the Monthly Lease Charges (and other amounts) due and owing under this Lease Agreement at the time of the Loss (or Event of Default, as defined hereinafter), plus (ii) the Original Cost of the Equipment subject to the Loss (or Event of Default, as defined hereinafter) multiplied by the "Percent of Original Cost." The Original Cost of a particular item of Equipment shall be Lessee's original purchase price of such item at the time of its purchase or payment to the applicable vendor by Lessor, plus additional or related charges such as taxes, delivery and freight, installation, maintenance, etc. The Percent of Original Cost shall be the Per Payment Factor multiplied by the number of lease payments Lessor has received from Lessee during the Initial Term subtracted from 112 and then divided by 100. The Per Payment Factor is the sum of 112 multiplied by 0.8 divided by the number of Monthly Lease Charges that are due during the Initial Term (collectively, the sum of (i) plus (ii) shall be the "Casualty Loss Value"). Upon receipt by Lessor of the Casualty Loss Value: (i) the applicable Equipment shall be removed from the Lease Schedule; and (ii) Lessee's obligation to pay Lease Charges associated with the applicable Equipment shall cease. Lessor may request, and Lessee shall complete, an affidavit(s) which swears out the facts supporting the Loss of any item of Equipment. Provided an Event of Default has not occurred, in the event of a Loss, Lessee shall, within ten (10) days after the actual Loss, fully inform Lessor in writing in regard thereto (including the serial number of the item subject to the Loss) and, at its option, shall either pay to Lessor the Casualty Loss Value of such item together with all other amounts related to such item then due under the Lease Agreement then due or shall replace the item of Equipment subject to the Loss on the following terms (each, a "Permitted Substitute"): the item subject to the Loss shall be replaced with new (as opposed to used) Equipment that is in the same brand, same or next best series, is the same or better model and configuration, and contains the same or more memory, disk and/or tape storage, and has the same or better features. Any Permitted Substitute shall become a part of, and subject to, this Lease.

13. Insurance

Until the Equipment is returned to Lessor or as otherwise herein provided, whether or not this Lease Agreement has terminated as to the Equipment, Lessee, at its expense, shall maintain: (i) property and casualty insurance insuring the Equipment for its Casualty Loss Value naming Lessor or its assigns as additional loss payee; and (ii) comprehensive public liability and third-party property insurance naming Lessor and its assigns as additional insureds. The insurance shall cover the interest of both the Lessor and Lessee in the Equipment, or as the case may be, shall protect both the Lessor and Lessee in respect to all risks arising out of the condition, delivery, installation, maintenance, use or operation of the Equipment. All such insurance shall provide for thirty (30) days prior written notice to Lessor of cancellation, restriction, or reduction of coverage and shall have a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirements hereof. Prior to installation of the Equipment, all policies or certificates of insurance shall be delivered to Lessor by Lessee. Lessee agrees to keep the Equipment insured with an insurance company which is at least "A" rated by A.M. Best and in such form, including a maximum deductible, as may be satisfactory to Lessor. The proceeds of any loss or damage insurance shall be payable to Lessor, but Lessor shall remit all such insurance proceeds to Lessee at such time as Lessee either (i) provides Lessor satisfactory proof that the damage has been repaired and the Equipment has been restored to good working order and condition, (ii) replaces the affected Equipment as set forth in Section 12 of this Lease Agreement, or (iii) pays to Lessor the Casualty Loss Value. It is understood and agreed that any payments made by Lessee or its insurance carrier

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for loss or damage of any kind whatsoever to the Equipment are not made as accelerated rental payments or adjustments of rental, but are made solely as indemnity to Lessor for loss or damage of its Equipment.

14. Enforcement of Warranties

Lessor hereby grants to Lessee the right to enforce, in its own name, so long as this Lease Agreement is in force, any manufacturer's Equipment warranty.

15. Warranties, Disclaimers and Indemnity

Lessor warrants that at the time the Equipment is delivered to Lessee and throughout the term of the applicable Lease Schedule, Lessor will have full right, power and authority to lease the Equipment and/or grant the right to use the Software to Lessee. EXCEPT FOR THE WARRANTY IN THE SENTENCE DIRECTLY PRECEDING THIS ONE, THE LESSOR DOES NOT MAKE ANY WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. LESSEE ACKNOWLEDGES THAT IT IS NOT RELYING ON LESSOR'S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE, THAT LESSOR HAS NOT SELECTED, MANUFACTURED, SOLD OR SUPPLIED ANY OF THE EQUIPMENT OR SOFTWARE, AND THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES CONTAINED IN THIS LEASE AGREEMENT. LESSEE REPRESENTS AND WARRANTS THAT IT IS NOT A FOREIGN "FINANCIAL INSTITUTION" OR ACTING ON BEHALF OF A FOREIGN "FINANCIAL INSTITUTION" AS THAT TERM IS DEFINED IN THE BANK SECRECY ACT, 31 U.S.C. 5318, AS AMENDED. LESSEE ACKNOWLEDGES THAT LESSOR, IN COMPLIANCE WITH SECTION 326 OF THE USA PATRIOT ACT, WILL BE VERIFYING CERTAIN INFORMATION ABOUT LESSEE. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT LESSOR AND ITS REPRESENTATIVES AND EMPLOYEES HAVE NOT MADE ANY STATEMENT, REPRESENTATION OR WARRANTY RELATIVE TO THE ACCOUNTING OR TAX ENTRIES, TREATMENT, BENEFIT, USE OR CLASSIFICATION OF THE LEASE AGREEMENT OR ASSOCIATED LEASE SCHEDULES. LESSEE ACKNOWLEDGES THAT IT AND/OR ITS INDEPENDENT ACCOUNTANTS ARE SOLELY RESPONSIBLE FOR (i) ANY AND ALL OF LESSEE'S ACCOUNTING AND TAX ENTRIES ASSOCIATED WITH THE LEASE AGREEMENT AND/OR THE LEASE SCHEDULES AND (ii) LESSEE'S ACCOUNTING AND TAX TREATMENT, BENEFITS, USES AND CLASSIFICATION OF THE LEASE AGREEMENT OR ANY LEASE SCHEDULE. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR ANY INFORMATION, INCLUDING BUT NOT LIMITED TO CONSUMER OR PATIENT INFORMATION, THAT IS AT ANY TIME ENTERED, STORED, TRANSFERRED TO, CONTAINED OR RETAINED ON ANY EQUIPMENT, WHETHER OR NOT SUCH INFORMATION IS SUBJECT TO FEDERAL, STATE OR OTHER LAW, INCLUDING BY WAY OF EXAMPLE ONLY AND NOT OF LIMITATION, THE HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT OF 1996 (HIPAA), FINANCIAL MODERNIZATION ACT (GRAMM-LEACH-BLILEY ACT), ETC. EXCEPT FOR LESSEE'S CLAIMS AND ACTIONS ARISING OR ACCRUING UNDER THIS LEASE AGREEMENT AND/OR AS SPECIFICALLY PROVIDED HEREIN, LESSOR SHALL NOT BE LIABLE HEREUNDER FOR ANY DAMAGES WHATSOEVER, AND NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE RELATIONSHIP BETWEEN THE LESSOR AND LESSEE, THIS LEASE AGREEMENT OR THE PERFORMANCE, POSSESSION, LEASE OR USE OF THE EQUIPMENT. THIS LEASE AGREEMENT IS A "FINANCE LEASE" AS THAT TERM IS DEFINED AND USED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. NO RIGHTS OR

REMEDIES REFERRED TO IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE WILL BE CONFERRED ON LESSEE.

Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall indemnify, defend and hold Lessor harmless with respect to, any claim from a third party for any liability, claim, loss, damage or expense of any kind or nature, whether based upon a theory of strict liability or otherwise (an "Indemnification Claim"), caused, directly or indirectly, by: (i) the inadequacy of any item of Equipment, including Software, for any purpose; (ii) any deficiency or any latent or other defects in any Equipment, including Software, whether or not detectable by Lessee; (iii) the selection, manufacture, rejection, purchase and/or acquisition, financing, possession, maintenance, operation, use or performance of any item of Equipment, including Software; (iv) any interruption or loss of service, use or performance of any item of Equipment, including Software; (v) patent, trademark or copyright infringement related to the Equipment; (vi) any information whatsoever provided to Lessor by Lessee or the loss, release, unauthorized access, transfer, theft, use or misuse thereof, or (vii) any loss of business or other special, incidental or consequential damages whether or not resulting from any of the foregoing. The foregoing shall not apply to any Indemnification Claim related to the Equipment (i) caused to arise by the gross negligence or willful misconduct of Lessor or (ii) relating to events occurring after Lessee's Indemnification Period ("Lessee's Indemnification Period" shall continue until Lessee has returned the Equipment to Lessor in accordance with Section 7). Lessee's duty to defend and indemnify Lessor shall survive the expiration, termination, cancellation or assignment of this Lease Agreement or a Lease Schedule and shall be binding upon Lessee's successors and permitted assigns. Notwithstanding the foregoing, Lessee expressly reserves all claims or other actions it may have against the Lessor that accrue under this Lease Agreement.

16. Event of Default

The occurrence of any of the following events shall constitute an Event of Default under this Lease Agreement and/or any Lease Schedule:

- (1) the nonpayment by Lessee of any Lease Charges when due, or, as to monetary amounts other than Lease Charges, the nonpayment by Lessee of any other sum required hereunder to be paid by Lessee as to which Lessee has not timely raised a dispute pursuant to Section 3 and for which non-payment continues for a period of ten (10) business days from the date of written notice thereof from Lessor;
- (2) the failure of Lessee to perform any other term, covenant or condition of this Lease Agreement, any Lease Schedule or any other document, agreement or instrument executed pursuant hereto or in connection herewith, which is not cured within ten (10) days after written notice thereof from Lessor; provided, however, that if the cure of any such default cannot be reasonably completed within such ten day period and Lessee provides Lessor satisfactory proof that Lessee has commenced cure and continues to use its best efforts to cure the default, then in that event, the cure period shall be extended for an additional thirty (30) days;
- (3) other than as expressly permitted by this Lease Agreement, Lessee attempts to or does remove, transfer, sell, swap, assign, sublease, trade, exchange, encumber, receive an allowance or credit for, or part with possession of, any item of Equipment;
- (4) Lessee ceases doing business as a going concern, is insolvent, makes an assignment for the benefit of creditors, fails to pay its debts as they become due, offers a settlement to creditors or calls a meeting of creditors for any such purpose, files a voluntary

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- petition in bankruptcy, is subject to an involuntary petition in bankruptcy, is adjudicated bankrupt or insolvent, files or has filed against it a petition seeking any reorganization, arrangement or composition, under any present or future statute, law or regulation;
- (5) any of Lessee's representations or warranties made herein or in any oral or written statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be false or misleading in any material respect;
 - (6) Lessee defaults under or otherwise has accelerated any obligation, credit agreement, loan agreement, conditional sales contract, lease, indenture or debenture with an outstanding value alone or in the aggregate greater than \$50,000,000.00; or Lessee defaults under any other agreement now existing or hereafter made with Lessor or any affiliate of Lessor, and such default has an outstanding value alone or in the aggregate greater than \$100,000.00;
 - (7) Lessee, without Lessor's prior written consent, which shall not be unreasonably withheld (as provided herein), shall terminate its existence by merger, consolidation, sale of substantially all of its assets or otherwise; provided, however, that Lessee agrees that Lessor is entitled to withhold its consent to any transaction described in this Section 16(7) if the credit-worthiness of the proposed surviving entity does not meet the credit criteria then utilized by the Lessor or its assigns for nonrecourse funding, or an Event of Default has occurred; or
 - (8) the breach or repudiation by any party thereto of any guaranty, subordination agreement or other agreement running in favor of Lessor obtained in connection with this Lease Agreement.

17. Remedies

Should any Event of Default occur, Lessor may, in order to protect its interests and reasonably expected profits, with or without notice or demand upon Lessee, pursue and enforce, alternatively, successively and/or concurrently, any one or more of the following remedies:

- (1) recover from Lessee all accrued and unpaid Lease Charges and other amounts due and owing on the date of the default;
- (2) recover from Lessee from time to time all Lease Charges and other amounts as and when becoming due hereunder;
- (3) accelerate, cause to become immediately due and recover the present value of all Lease Charges and other amounts due and/or likely to become due hereunder from the date of the default to the end of the lease term using a discount rate of four percent (4%);
- (4) cause to become immediately due and payable and recover from Lessee the Casualty Loss Value of the Equipment which Lessee agrees is not a penalty but rather the fair measure of Lessor's loss in or damage to Lessor's interests in the Equipment and Lease caused by Lessee's default hereunder;
- (5) terminate any or all of the Lessee's rights, but not its obligations, associated with the lease of Equipment under this Lease Agreement;
- (6) peaceably retake (by Lessor, Independent contractor, or by requiring Lessee to assemble and surrender the Equipment in accordance with the provisions of Section 7 hereinabove) possession of the Equipment without terminating the Lease Schedule or the Lease Agreement free from claims by Lessee which claims are hereby expressly waived by Lessee, provided that reasonable advance notice

- is given to Lessee and such action is conducted in accordance with any applicable security procedures of Lessee or of the Location of Installation;
- (7) require Lessee to deliver the Equipment to a location in the 48 continental United States designated by Lessor;
 - (8) upon Lessor's instructions after an Event of Default, Lessee agrees to cease immediately the use of any or all Software, to uninstall and delete all copies of such licensed Software from any computer systems owned or controlled by Lessee or its affiliates or used for Lessee's or Lessee's affiliate's benefit, to destroy any and all written documentation, manuals and materials provided with the Software, and to provide Lessor with a certificate signed by a Lessee officer who is responsible for Lessee's information systems, attesting to such cessation of use, deinstallation, deletion, and/or destruction of the Software;
 - (9) proceed by court action to enforce performance by Lessee of its obligations associated with any Lease Schedule and/or this Lease Agreement; and/or
 - (10) pursue any other remedy Lessor may otherwise have, at law, equity or under any statute, and recover damages and expenses (including attorneys' fees) incurred by Lessor by reason of the Event of Default.

Upon repossession of the Equipment, Lessor shall have the right to lease, sell or otherwise dispose of such Equipment in a commercially reasonable manner, with or without notice, at a public or private sale. Lessor's pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by Lessor of any other remedy. Lessor shall not be obligated to sell or re-lease the Equipment. Any sale or re-lease may be held at such place or places as are selected by Lessor, with or without having the Equipment present. Any such sale or re-lease, may be at wholesale or retail, in bulk or in parcels. Time and exactitude of each of the terms and conditions of this Lease Agreement are hereby declared to be of the essence. Lessor may accept past due payments in any amount without modifying the terms of this Lease Agreement and without waiving any rights of Lessor hereunder.

18. Costs and Attorneys' Fees

In the event of any default, claim, proceeding, including a bankruptcy proceeding, arbitration, mediation, counter-claim, action (whether legal or equitable), appeal or otherwise, whether initiated by Lessor or Lessee (or a debtor-in-possession or bankruptcy trustee), which arises out of, under, or is related in any way to this Lease Agreement, any Lease Schedule, or any other document, agreement or instrument executed pursuant hereto or in connection herewith, or any governmental examination or investigation of Lessee, which requires Lessor's participation (individually and collectively, the "Claim"), Lessee, in addition to all other sums which Lessee may be called upon to pay under the provisions of this Lease Agreement, shall pay to Lessor, on demand, all reasonable costs, expenses and fees paid or payable in connection with the Claim, including, but not limited to, reasonable attorneys' fees. The foregoing obligation shall not apply to the extent Lessee has a Claim against Lessor or its successors and assigns on which Lessee prevails (e.g., is awarded substantially the relief sought) or to the extent a Claim is caused by Lessor's gross negligence or willful misconduct. Further, in the event Lessee has sought relief under the United States Bankruptcy Code, Lessor and its successors and assigns shall be entitled to all costs, expenses and fees paid or payable in connection with any bankruptcy proceeding, hearing, meeting and otherwise, including, but not limited to, Lessor's reasonable attorneys' fees and out-of-pocket costs, including travel and related expenses incurred by Lessor or its attorneys.

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19. Lessor's Performance Option

Should Lessee fail to make any payment or to do any act as provided by this Lease Agreement, and if such failure subjects the Equipment to a substantial risk of forfeiture or other loss of possession, then Lessor shall have the right (but not the obligation), without notice to Lessee of its intention to do so and without releasing Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of Lessor appears to affect the Equipment, and in exercising any such rights, Lessor may incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by Lessor shall be due and payable by Lessee within thirty (30) days after receipt of an invoice from Lessor.

20. Quiet Possession and Inspection

Lessor hereby covenants with Lessee that Lessee shall quietly possess the Equipment subject to and in accordance with the provisions hereof so long as Lessee is not in default hereunder; provided, however, that Lessor or its designated agent may, upon ten (10) business days advance written notice during Lessee's regular business hours, enter Lessee's premises for the purposes of inspecting the Equipment and the manner in which it is being used. Such inspection shall be at Lessor's sole risk and expense and Lessor's personnel shall at all times during such inspection comply with Lessee's security policies and planned downtime windows.

21. Assignments

This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Lessee, however, shall not assign this Lease Agreement, or sublet any of the Equipment to any entity other than Lessee's Affiliated Entities in existence as of the date hereof, without first obtaining the prior written consent of Lessor and its assigns, if any. Lessee acknowledges that the terms and conditions of this Lease Agreement have been fixed in anticipation of the possible assignment of Lessor's rights under this Lease Agreement and in and to the Equipment as collateral security to a third party ("Assignee" herein) which will rely upon and be entitled to the benefit of all of the provisions of this Lease Agreement, as though Assignee were the originally named Lessor hereunder. Lessee agrees with Lessor and such Assignee to recognize in writing any such assignment within fifteen (15) days after receipt of written notice thereof and to pay thereafter all sums due to Lessor hereunder directly to such Assignee if directed by Lessor, notwithstanding any defense, set-off or counterclaim whatsoever (whether arising from a breach of this Lease Agreement or not) that Lessee may from time to time have against Lessor. Upon such assignment, the Lessor shall remain obligated to perform any obligations it may have under this Lease Agreement, provided that such assignment may not materially change such obligations nor materially increase the burdens or risks imposed on Lessee and the Assignee shall (unless otherwise expressly agreed to in writing by the Assignee) have no obligation to perform such obligations. Any such assignment shall be subject to Lessee's rights to use and possess the Equipment so long as Lessee is not in default hereunder. Notwithstanding the foregoing, Lessee expressly reserves all claims or other actions it may have against the Lessor that accrue under this Lease Agreement.

22. Survival of Obligations

All covenants, agreements, representations, and warranties contained in this Lease Agreement, any Lease Schedule, or in any document attached thereto, shall be for the benefit of Lessor and Lessee and their successors, any assignee or secured party. Further, all covenants, agreements, representations, and warranties contained in this Lease

Agreement, any Lease Schedule, or in any document attached thereto, shall survive the execution and delivery of this Lease Agreement and the expiration or other termination of this Lease Agreement.

23. Corporate Authority

The parties hereto covenant and warrant that the persons executing this Lease Agreement and each Lease Schedule on their behalf have been duly authorized to do so, and this Lease Agreement and any Lease Schedule constitute a valid and binding obligation of the parties hereto. The Lessee will, if requested by Lessor, provide to Lessor, Certificates of Authority naming the officers of the Lessee who have the authority to execute this Lease Agreement and any Lease Schedules attached thereto.

24. Landlords' and Mortgagees' Waiver

If requested, Lessee shall furnish waivers, in form and substance satisfactory to Lessor, from all landlords and mortgagees of any premises upon which any Equipment is located.

25. Miscellaneous

This Lease Agreement, the Lease Schedule(s), attached riders and any documents or instruments issued or executed pursuant hereto will have been made, executed and delivered in, and shall be governed by the internal laws (as opposed to conflicts of law provisions) and decisions of, the State of Minnesota. Lessee and Lessor consent to the exclusive jurisdiction of any local, state or federal court located within Minnesota. Venue must be in Minnesota and Lessor and Lessee hereby waive local venue and any objection relating to Minnesota being an improper venue to conduct any proceeding relating to this Lease Agreement.

This Lease Agreement was jointly drafted by the parties, and the parties hereby agree that neither should be favored in the construction, interpretation or application of any provision or any ambiguity. There are no unwritten or oral agreements between the parties. This Lease Agreement and associated Lease Schedule(s) constitute the entire understanding and agreement between Lessor and Lessee with respect to the lease of the Equipment superseding all prior agreements, understandings, negotiations, discussions, proposals, representations, promises, commitments and offers between the parties, whether oral or written. This Lease Agreement and associated Lease Schedule(s) constitute a single unitary agreement. No provision of this Lease Agreement or any Lease Schedule shall be deemed waived, amended, discharged or modified orally or by custom, usage or course of conduct unless such waiver, amendment or modification is in writing and signed by an officer of each of the parties hereto. If any one or more of the provisions of this Lease Agreement or any Lease Schedule is for any reason held invalid, illegal or unenforceable, the remaining provisions of this Lease Agreement and any such Lease Schedule will be unimpaired, and the invalid, illegal or unenforceable provisions shall be replaced by a mutually acceptable valid, legal and enforceable provision that is closest to the original intention of the parties. Lessee agrees that neither the manufacturer, nor the supplier, nor any of their salespersons, employees or agents are agents of Lessor.

Any notice provided for herein shall be in writing and sent by certified or registered mail to the parties at the addresses stated on page 1 of this Lease Agreement.

The Monthly Lease Charge is intended to be fixed from the Commencement Date to the end of the term. The three year treasury rate is an integral part of the lease rate. The Lessee and Lessor agree that the lease rate shall also be fixed during the Installation Period but should the three year treasury note increase during such Installation Period, the lease rate will be adjusted on the Commencement Date, but shall not adjust thereafter during the term unless expressly stated in a writing between the parties.

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Lessor is entitled to review a complete set of Lessee's publicly available financial statements, including a statement of cash flows, balance sheet and income statement, and any other financial information that Lessor may request; provided, however, that if Lessee ceases to be a public company, then Lessor shall be entitled to review a complete set of Lessee's financial statements, including a statement of cash flows, balance sheet and income statement, and any other financial information that Lessor may request. If during the Installation Period the Lessee's financial condition changes in any material respect (as determined by the Lessor in its sole discretion), then Lessor shall be entitled to stop purchasing equipment to be leased to Lessee and commence the applicable lease schedule(s).

This Lease Agreement shall not become effective until delivered to Lessor at its offices at Minnetonka, Minnesota and executed by Lessor. If this Lease Agreement shall be executed by Lessor prior to being executed by Lessee, it shall become void at Lessor's option five (5) days after the date of Lessor's execution hereof, unless Lessor shall have received by such date a copy hereof executed by a duly authorized representative of Lessee.

This Lease Agreement is made subject to the terms and conditions included herein and Lessee's acceptance is effective only to the extent that such terms and conditions are consistent with the terms and conditions herein. Any acceptance which contains terms and conditions which are in addition to or inconsistent with the terms and conditions herein will be a counter-offer and will not be binding unless agreed to in writing by Lessor.

The terms used in this Lease Agreement, unless otherwise defined, shall have the meanings ascribed to them in the Lease Schedule(s).

26. REPOSESSION

LESSEE ACKNOWLEDGES THAT, PURSUANT TO SECTION 17 HEREOF, LESSOR HAS BEEN GIVEN THE RIGHT TO REPOSSESS THE EQUIPMENT SHOULD LESSEE BECOME IN DEFAULT OF ITS OBLIGATIONS HEREUNDER. LESSEE HEREBY WAIVES THE RIGHT, IF ANY, TO REQUIRE LESSOR TO GIVE LESSEE NOTICE AND A JUDICIAL HEARING PRIOR TO EXERCISING SUCH RIGHT OF REPOSESSION.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed by their respective duly authorized representative.

Every Term is Agreed to and Accepted:

WINTHROP RESOURCES CORPORATION

By: *Richard J. Pieper*

Print Name: Richard J. Pieper
Executive Vice President

Title: _____

Date: 2-21-11

27. Net Lease

This Lease Agreement is a net lease and Lessee's obligations to pay all Lease Charges and other amounts payable hereunder shall be absolute and unconditional and, except as expressly provided herein, shall not be subject to any: (i) delay, abatement, reduction, defense, counterclaim, set-off, or recoupment; (ii) discontinuance or termination of any license; (iii) Equipment failure, defect or deficiency; (iv) damage to or destruction of the Equipment; or (v) dissatisfaction with the Equipment or otherwise, including any present or future claim against Lessor or the manufacturer, supplier, reseller or vendor of the Equipment. To the extent that the Equipment includes Intangible (or Intellectual) property, Lessee understands and agrees that: (i) Lessor is not a party to and does not have any responsibility under any Software license and/or other agreement with respect to any Software; and (ii) Lessee will be responsible to pay all of the Lease Charges and perform all its other obligations under this Lease Agreement despite any defect, deficiency, failure, termination, dissatisfaction, damage or destruction of any Software or Software license. Further, Lessee agrees that it has an unconditional, irrevocable and absolute obligation to pay all Lease Charges and other amounts payable hereunder to the Lessor although (i) the Lessor does not hold title to any Software (or Intellectual or intangible property), (ii) Lessor is not a party to any Software license (or Intellectual or intangible property license) that is listed among the Equipment on any Lease Schedule and (iii) any license to Software is exclusively between the licensor of the Software ("Licensor") and the Lessee. Except as expressly provided herein, this Lease Agreement shall not terminate for any reason, including any defect in the Equipment or Lessor's title thereto or any destruction or loss of use of any item of Equipment.

28. Headings

Section headings herein are used for convenience only and shall not otherwise affect the provisions of this Lease Agreement.

Every Term is Agreed to and Accepted:

APOLLO GROUP, INC. AND ITS AFFILIATES

By: *Ken Res*

Print Name: Ken Res
Director, Strategic Sourcing

Title: _____

Date: 2/11/11

Winthrop Resources Corporation v. Apollo Education Group, Inc.
Case No. 0:17-cv-01448 (DWF/SER)

Exhibit I

(Apollo Education Group, Inc.'s Counterclaims)

Rider Number: 001
Lease Agreement Number: AP122110
Master Schedule Number: B
Lessee Name: Apollo Group, Inc. and its affiliates
Lease Dated: December 21, 2010

Lessor and Lessee agree that the following provisions shall be added to and become part of Lease Agreement Number AP122110:


1. Title IV Compliance. (a) Lessor represents that it has never participated as an institution or third-party servicer in any federal student aid program authorized under the Higher Education Act of 1965, as amended; (b) Lessor upon its knowledge and belief represents that neither it, nor any of its employees, directors, officers or subcontractors has been: (i) convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or (ii) administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; (c) Lessor agrees to promptly notify Lessee in writing if there is any change in its representations in (i) and (ii) in the immediately preceding paragraph and to promptly reaffirm these representations to Lessee upon request.

2. Non-Discrimination. Each party agrees not to discriminate against any employee or applicant for employment on the basis of any category or characteristic protected by applicable federal, state, or local law. In addition, the provisions of 41 C.F.R. Section 60-1.4(a), 41 C.F.R. Section 60-300.5(a), 41 C.F.R. Section 60-741.5(a), and 29 C.F.R. Part 471, Appendix A to Subpart A are, if applicable, incorporated by reference.

3. Certain Federal Law. Neither Lessor nor any of its employees, officers, directors, agents, partners or investors will take any action that would violate the U.S. Foreign Corrupt Practices Act, as amended (the "FCPA"), or which would violate the FCPA were such person subject thereto, or take any actions which would cause Lessee or Lessor to be in violation of the FCPA. Lessor will promptly report to Lessee any activity by Lessor or any of its employees, officers, directors, agents, partners or investors that may violate the FCPA. Lessor shall ensure that all of its books and accounting records will be maintained in a complete and accurate manner that is consistent with the requirements of the FCPA. Further, Lessor will not export or transfer any products or services directly or indirectly to any country that is subject to a U.S. trade embargo or is otherwise subject to U.S. international trade sanctions, or to any person who is listed by an agency of the U.S. government as a specially designated national, blocked, denied, or debarred person, or a person having similar status.

With regard to any of the provisions in this Rider, Lessor shall promptly notify Lessee in the event that Lessor is no longer able to make such representations. In event of such notification, Lessee may suspend all payments to Lessor until such time as Lessor is able to resume the certification, provided that Lessee will place the suspended payment amounts in reserve until such time as Lessor furnishes a certification of compliance ("Reserve Payment"). Lessor shall have no less than 30 days to cure such non-compliance. If Lessor cannot cure within 30 days but is using its good faith commercially reasonable efforts to cure, Lessor shall be entitled to another 30 day period of time to cure. Lessee will forward the Reserve Payment to Lessor within five days of receipt of the certification of compliance.

If Lessor is not able to cure its non-compliance, then Lessee agrees to and shall purchase all of the Equipment hereunder for an amount equal to the Casualty Loss Value of the Equipment as set forth in Section 12 together with all amounts then due and outstanding, and Lessor agrees to and shall convey all of its right, title and interest in the Equipment to Lessee on an "as-is, where-is" basis, WITHOUT WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR ANY PARTICULAR PURPOSE.

Agreed to and Accepted:
WINTHROP RESOURCES CORPORATION
"LESSOR"
By: 
Print Name: Richard J. Pieper
Title: Executive Vice President
Date: 2-21-11

Agreed to and Accepted:
APOLLO GROUP, INC. AND ITS AFFILIATES
"LESSEE"
By: 
Print Name: Ken Rae
Title: Director, Strategic Sourcing
Date: 2/25/11

FEB 17 2011

Rider Number: 003
Lease Agreement Number: AP122110
Master Schedule Number: B
Lessee Name: Apollo Group, Inc. and its affiliates
Lease Dated: December 21, 2010


Lessee shall have the option to purchase the Equipment or extend this Lease Schedule at the end of the Initial Term or any Renewal Term, in whole and not in part (as provided hereinafter), on an as-is, where-is basis, for the then determined mutually-agreed "Fair Market Value" purchase price or rental value, as the case may be, provided that (i) an Event of Default has not occurred, (ii) Lessor has received all of the Lease Charges due under the Lease Schedule prior to Lessee exercising this option to purchase or extend, and (iii) Lessor has received written notice of Lessee's election to exercise this option to purchase or extend not less than one-hundred twenty (120) days prior to the end of the Initial Term or any Renewal Term of this Lease Schedule. For purposes of this option to purchase or extend, "Fair Market Value" shall mean the price for items of equipment that are now installed and being used by the Lessee, are eligible for manufacturer's maintenance and in the condition required for maintenance and return under the Lease Agreement, and shall include the cost of take-out, installation and transportation, and shall mean the price that a willing buyer (or lessee) would pay to purchase (or lease) the Equipment in an arm's-length transaction with a willing seller (or lessor) under no compulsion to sell (or lease).

If the parties cannot agree on Fair Market Value, each party shall obtain a bonafide offer from a third party that has the actual and unconditional ability to deliver and install all of the items of Equipment as of the date of the purchase or lease extension. The bonafide offer must be for equipment that (i) is eligible for manufacturer's maintenance, (ii) is available and (iii) can be installed and put to use by the Lessee at the end of the Initial Term or the applicable Renewal Term. The bonafide offer must also include all costs associated with take-out, installation and transportation. If the two bonafide offers are within 20% of each other, Fair Market Value shall be the average of the two for the purposes of this option. If not within 20% of each other, Lessor will obtain a third bonafide offer which will be averaged with the closest of the two earlier offers. The average shall then be Fair Market Value for purposes of this option to purchase or extend.

Should the Lessee elect to purchase or extend this Lease Schedule, the Lessor will provide the Lessee with a written proposal that will provide the purchase price, if purchase is elected, or the Monthly Lease Charge to extend the Lease Schedule, if Lessee is interested in extending the Lease Schedule. Should the Lessee elect to extend the Lease Schedule, the Lessor will base the Monthly Lease Charge on the Fair Market Value, the requested term of the extension and the prevailing interest rates at the time, provided that such Monthly Lease Charge shall not exceed the then-current Monthly Lease Charge. The Lessee may accept, negotiate or reject any such proposal. Lessee shall both (i) accept in writing Lessor's proposal, and (ii) sign and deliver all documents necessary for the extension of this Lease Schedule or the sale of the Equipment no later than the last day of the Initial Term or the applicable Renewal Term or this option shall become void.

Lessee's option to purchase or extend this Lease Schedule shall be in whole and not in part as to each (or all) of the three subsets of Equipment leased under this Lease Schedule: (1) Equipment listed under the heading "Personal and Laptop Computer Equipment," (2) Equipment listed under the heading "Network Equipment," and (3) Equipment listed under the heading "Server Equipment" (these headings shall be revised to reflect the actual Equipment accepted for lease by Lessee). Lessee may return the Equipment or exercise its option to purchase or extend hereunder as to one or all of such categories independently. Also, Lessee may, upon mutual written agreement with Lessor, purchase, extend, or return subsets of Equipment defined differently than those categories listed herein.

Upon full payment to it of the Fair Market Value for the selected Equipment, Lessor shall transfer its right, title and interest in and to such Equipment to Lessee without recourse or warranty, except that Lessor shall warrant that such Equipment is free and clear of any lien or encumbrance arising by or through Lessor.


Agreed to and Accepted:
WINTHROP RESOURCES CORPORATION
"LESSOR"
 By: 
 Print Name: Richard J. Pieper
 Title: Executive Vice President
 Date: 2-21-11

Agreed to and Accepted:
APOLLO GROUP, INC. AND ITS AFFILIATES
"LESSEE"
 By: 
 Print Name: Ken Rae
 Title: Director, Strategic Sourcing
 Date: 2/15/11


Rider Number: 004
Lease Agreement Number: AP122110
Master Schedule Number: B
Lessee Name: Apollo Group, Inc. and its affiliates
Lease Dated: December 21, 2010

At the end of the Initial Term of this Lease Schedule, Lessee shall have the following options: (i) Lessee may elect to purchase the Equipment or extend the Lease Schedule pursuant to the terms of an applicable option to purchase or extend; or, pursuant to the provisions of Lease Agreement Number AP122110 including but not limited to Sections 1 and 7 herein, (ii) Lessee may provide notice and return the Equipment to Lessor in compliance with the terms of Lease Agreement Number AP122110, in which case Lessee shall have an additional three (3) month period (the "Transition Period") to return the Equipment listed on this Lease Schedule, and the parties agree that, during the Transition Period, Lessee shall pay Lease Charges on the Returning Equipment; or (iii) Lessee may continue to lease the Equipment under this Lease Schedule as provided under the Lease Agreement.

Agreed to and Accepted:
WINTHROP RESOURCES CORPORATION
"LESSOR"

By: 
Print Name: Richard J. Pieper
Title: Executive Vice President
Date: 2-21-11

Agreed to and Accepted:
APOLLO GROUP, INC. AND ITS AFFILIATES
"LESSEE"

By: 
Print Name: Ken Rae
Title: Director, Strategic Sourcing
Date: 2/15/11

Winthrop Resources Corporation v. Apollo Education Group, Inc.
Case No. 0:17-cv-01448 (DWF/SER)

Exhibit J

(Apollo Education Group, Inc.'s Counterclaims)

FEB 17 2011

MASTER LEASE SCHEDULE B

This Lease Schedule is issued pursuant to the Lease Agreement Number API22110 dated December 21, 2010. The terms of the Lease Agreement and the terms and conditions of Certificates of Acceptance executed pursuant to Lease Schedule B, including Installation Dates and descriptions and serial numbers of Equipment contained therein, are a part hereof and are incorporated by reference herein.

LESSOR
 Winthrop Resources Corporation
 11100 Wayzata Boulevard
 Suite 800
 Minnetonka, MN 55305

LESSEE
 Apollo Group, Inc. and its affiliates
 4025 South Riverpoint Parkway
 Phoenix, AZ 85040

SUPPLIER OF EQUIPMENT
 Various

LOCATION OF INSTALLATION
 Various

Term of Lease from Commencement Date: 60 months

Monthly Lease Charge: \$180,840.00

Anticipated Delivery and Installation: February - December 2011

Security Deposit: Upon Lessee's execution of this Lease Schedule, Lessee shall deliver a security deposit in the amount of \$180,840.00. If there is no event of default, this security deposit may be applied toward the total amounts due pursuant to this Lease Schedule.

EQUIPMENT


<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (including features)</u>
			HP VL 480 Servers and Related Equipment

Lessee understands that Lessor's commitment to lease equipment under this Master Lease Schedule B is contingent upon formal credit approval by Lessor's credit committee. Lessee acknowledges that Lessor is relying on Bank of America, N.A. (and or its affiliates and assigns) to purchase the lease stream from the Lessor associated with the Lease Schedule(s) ("Non-Recourse Financing"). In the event Lessor is not able to secure Non-Recourse Financing for any Lease Schedule hereunder, Lessee agrees that it shall, upon an invoice from the Lessor, purchase from Lessor all Equipment that Lessor has purchased for lease to Lessee that is associated with a Lease Schedule for which a binding and final agreement for Non-Recourse Financing has not been executed, at the original acquisition cost for such Equipment, and the parties shall terminate such Lease Schedule after Lessee pays to Lessor all amounts then due thereunder. The Monthly Lease Charge is based on Lessee leasing \$10,000,000.00 of hardware equipment at a lease rate factor of 0.018084. If software and/or soft costs are accepted on this Lease Schedule, the lease rate factor will be adjusted.

Lease Schedules sequentially numbered beginning B01 will be prepared every quarter (3 months) by the Lessor to memorialize the actual equipment accepted for lease by the Lessee during the installation period and the associated Monthly Lease Charge. The Monthly Lease Charge will be prorated and charged as interim rent between the date an item of equipment is accepted and the Commencement Date.

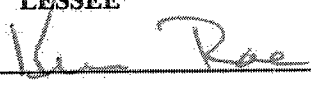
Agreed to and Accepted:

WINTHROP RESOURCES CORPORATION
 "LESSOR"

By: 
 Print Name: Richard J. Pieper
 Title: Executive Vice President
 Date: 2-21-11

Agreed to and Accepted:

APOLLO GROUP, INC. AND ITS AFFILIATES
 "LESSEE"

By: 
 Print Name: Ken Rao
 Title: Director, Strategic Sourcing
 Date: 2/15/11

LEASE SCHEDULE NO. B01

This Lease Schedule is issued pursuant to the Lease Agreement Number API22110 dated December 21, 2010. The terms of the Lease Agreement and the terms and conditions of Certificates of Acceptance executed pursuant to Lease Schedule B01, including Installation Dates and descriptions and serial numbers of Equipment contained therein, are a part hereof and are incorporated by reference herein.

LESSOR
 Winthrop Resources Corporation
 11100 Wayzata Boulevard
 Suite 800
 Minnetonka, MN 55305

LESSEE
 Apollo Group, Inc. and its affiliates
 4025 South Riverpoint Parkway
 Phoenix, AZ 85040

SUPPLIER OF EQUIPMENT
 Various

LOCATION OF INSTALLATION
 Various

Term of Lease from Commencement Date: 60 months

Monthly Lease Charge: \$99,282.00

Anticipated Delivery and Installation: February - March 2011

Security Deposit: Upon Lessee's execution of this Lease Schedule, Lessee shall deliver a security deposit in the amount of \$99,282.00. If there is no event of default, this security deposit may be applied toward the total amounts due pursuant to this Lease Schedule.

EQUIPMENT

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (Including features)</u>
SEE ATTACHMENT A			

Lessee acknowledges that Lessor is relying on Bank of America, N.A. (and or its affiliates and assigns) to purchase the lease stream from the Lessor associated with the Lease Schedule(s) ("Non-Recourse Financing"). In the event Lessor is not able to secure Non-Recourse Financing for any Lease Schedule hereunder, Lessee agrees that it shall, upon an invoice from the Lessor, purchase from Lessor all Equipment that Lessor has purchased for lease to Lessee that is associated with a Lease Schedule for which a binding and final agreement for Non-Recourse Financing has not been executed, at the original acquisition cost for such Equipment, and the parties shall terminate such Lease Schedule after Lessee pays to Lessor all amounts then due thereunder.

The Monthly Lease Charge will be prorated and charged as interim rent between the date an item of equipment is accepted and the Commencement Date, which shall be April 1, 2011.

The parties agree that they may execute this Lease Schedule by fax or PDF, and that certain actions may be taken in reliance on faxed or PDF signatures. The parties therefore agree that a faxed or PDF signature hereon shall be equally valid and binding as an original signature, and the transmission of a faxed or PDF signature will have the same legal effect as physical delivery of an original signature. Any party transmitting a faxed or PDF signature will deliver the original signature to the other party as soon as practicable.

Agreed to and Accepted:

WINTHROP RESOURCES CORPORATION
 "LESSOR"

By: 

Print Name: Abigail E. Nesbitt

Title: Senior Vice President

Date: 4/15/11

Agreed to and Accepted:

APOLLO GROUP, INC. AND ITS AFFILIATES
 "LESSEE"

By: 

Print Name: Ken Rao

Title: Director, Strategic Sourcing

Date: 3/28/11

Lease Agreement Number: AP122110

Page 1 of 4

Lease Schedule Number: B01

ATTACHMENT A

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (Including features)</u>
<u>Server Equipment</u>			
<u>P.O. #996662</u>			
HP	12	507127-B21	300GB 6G SAS 10K 2.5in DP ENT HDD
<u>P.O. #996710</u>			
HP	34	494329-B21	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), 512MB Flash Backed Write Cache and 750W CS HE Power Supply Kit (Qty. 2)
HP		HA110A5	5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
HP	4	507019-B21	BLc7000 CTO 3 In LCD ROHS Enclosure Including Custom Asset Tag Service, 8/24c BladeSystem Power Pack + SAN Switch (Qty.2), 1/10GB-F VC-Enet Modula (Qty. 6), 10GB SR XFP Opt Kit (Qty. 4), 6X 2400W High Efficiency FIO Power Supply, DDR2 Enclosure Management Option, 1 PH FIO Power Module Opt, 6X Active Cool 200 FIO Fan Opt, B-Series 8/24c Switch Power Pack c-Class (Qty. 2), 0.5m 10-GbE CX4 Cable Opt (Qty. 2) and 1m 10-GbE CX4 Cable Opt
HP		HA110A5	5 Year Support Plus 24 Service and c7000 Enclosure Hardware Support
HP		TC277AAE	Insight Ctl Enc Bdl 16 E-LTU 24x7 Software Support and IC BL 16-Server Software Support
HP	16	507864-B21	BL460c G6 CTO Blade Including X5550 BL460c G6 FIO Kit, X5550 BL460c G6 Kit, 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 12), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), NC364m NIC Adapter Opt Kit, Emulex LPe1205 8Gb FC HBA Opt, 512MB Flash Backed Write Cache, Raid 1 Drive 1 FIO Setting and Custom Asset Tag Service
HP		HA110A5	5 Year Support Plus 24 Service and Server Bld Hardware Support
HP	5	AP714A	MSA60 Dual Domain SAS MDL 12TB Bundle
HP		HA110A5	5 Year Support Plus 24 Service and MSA60 Support
HP	12	407339-B21	External Mini SAS 2m Cable
HP	6	381513-B21	Smart Array P800 Controller
HP		HA110A5	5 Year Support Plus 24 Service
HP	150	507127-B21	300GB 6G SAS 10K 2.5in DP ENT HDD
HP		HA110A5	5 Year Support Plus 24 Service
<u>P.O. #996711</u>			
HP	83	494329-B21	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 18), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), DL380G6/G7 PCI-E 1X8 2X4 Riser Kit, 512MB Flash Backed Write Cache, NC382T PCI-E DP Gigabit Server Adapter (Qty. 2), StorageWorks 81E 8GB SP PCI-E FC HBA (Qty. 2) and 750W CS HE Power Supply Kit (Qty. 2)
HP		HA110A6-7G3	6 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
HP	17	494329-B21	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), 512MB Flash Backed Write Cache and 750W CS HE Power Supply Kit (Qty. 2)
HP		HA110A5	5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
<u>P.O. #996713</u>			
HP	38	494329-B21	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 18), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), DL380G6/G7 PCI-E 1X8 2X4 Riser Kit, 512MB Flash Backed Write Cache, NC382T PCI-E DP Gigabit Server Adapter (Qty. 2), StorageWorks 81E 8GB SP PCI-E FC HBA (Qty. 2) and 750W CS HE Power Supply Kit (Qty. 2)
HP		HA110A5-7G3	5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support

Lease Agreement Number: API22110

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Lease Schedule Number: B01

ATTACHMENT A

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (including features)</u>
HP	15	494329-B21	ProLiant DL380G8 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G8 FIO Kit, X5550 DL380 G8 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 8), 148GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), 512MB Flash Backed Write Cache and 750W CS HE Power Supply Kit (Qty. 2)
HP		HA110A5	5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
HP	1	484184-B21	ProLiant DL380 G8 CTO Chassis Including 750W CS HE Power Supply Kit (Qty. 2), X5550 DL380 G8 FIO Kit, X5550 DL380 G8 Kit, 4GB 2RX4 PC3-10800R-9 Kit (Qty. 8), 148GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), StorageWorks 81E 8Gb SP PCI-e FC HBA (Qty. 2), Custom Asset Tag Service, 512MB Flash Backed Write Cache
HP		452148-B22	ICE Nm 1-Server 24x7 Support and 5 Year 4H 24x7 ProLiant DL38X Hardware Support
HP		UJ127E	5 Year 24x7 IC ML-DL-BL Software Support
<u>P.O. #996714</u>			
HP	10	AJ762A	StorageWorks 81E 8Gb Single Port PCIe Fibre Channel Host Bus Adapter
HP	10	456972-B21	BLC Emulex LPE1205 8GB Fibre Channel Host Bus Adapter Opt
HP	10	447883-B21	BLC NC364M NIC Adapter Opt Kit
HP	4	512327-B21	750W CS HE Power Supply Kit
HP	4	437572-B21	1200W 12V HotPlug AC Power Supply
HP	10	507127-B21	300GB 6G SAS 10K 2.5in DP ENT HDD
<u>P.O. #996817</u>			
HP	12	507864-B21	BL460C G8 CTO Blade Including X5550 BL460C G8 FIO Kit, X5550 BL460C G8 Kit, 4GB 2RX4 PC3-10800R-9 Kit (Qty. 8), 148GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), 512MB Flash Backed Write Cache, RAID 1 DRIVE 1 FIO Settling and Custom Asset Tag Service
HP		HA110A5	5 Year Support Plus 24 Service and Server BLD Hardware Support
HP	12	494329-B21	ProLiant DL380G8 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G8 FIO Kit, X5550 DL380 G8 Kit, 4GB 2RX4 PC3-10800R-9 Kit (Qty. 8), 148GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), 512MB Flash Backed Write Cache and 750W CS HE Power Supply Kit (Qty. 2)
HP		HA110A5	5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
HP	6	494329-B21	ProLiant DL380G8 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G8 FIO Kit, X5550 DL380 G8 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 18), 148GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), DL380G8/G7 PCI-E 1X8 2X4 Riser Kit, 512MB Flash Backed Write Cache
HP		HA110A5-7G3	5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
<u>P.O. #997088</u>			
HP	2	507019-B21	BLc7000 CTO 3 in LCD ROHS Enclosure Including Custom Asset Tag Service, 8/24c BladeSystem Power Pack + SAN Switch (Qty.2), 1/10GB-F VC-Enet Module (Qty. 8), 10GB SR XFP Opt Kit (Qty. 4), 6X 2400W High Efficiency FIO Power Supply, DDR2 Enclosure Management Option, 1 PH FIO Power Module Opt, 6X Active Cool 200 FIO Fan Opt, B-Series 8/24c Switch Power Pack c-Class (Qty. 2), 0.5m 10-GbE CX4 Cable Opt (Qty. 2) and 1m 10-GbE CX4 Cable Opt
HP		HA110A5	5 Year Support Plus 24 Service and c7000 Enclosure Hardware Support
HP		TC277AAE	Insight Ctl Enc Bdl 16 E-LTU 24x7 Software Support and IC BL 16-Server Software Support
HP	24	507864-B21	BL460c G8 CTO Blade Including X5550 BL460c G8 FIO Kit, X5550 BL460c G8 Kit, 8GB 2Rx4 PC3-10800R-9 Kit (Qty. 12), 148GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), NC364m NIC Adapter Opt Kit, Emulex LPe1205 8Gb FC HBA Opt, 512MB Flash Backed Write Cache, Raid 1 Drive 1 FIO Settling and Custom Asset Tag Service
HP		HA110A5	5 Year Support Plus 24 Service and Server Bld Hardware Support
<u>P.O. #997120</u>			
HP	6	274779-001	Battery-Backed Write Cache Battery Pack
<u>P.O. #997252</u>			
HP	12	AJ763A	82E 8GB Dual-Port PCI-e Fibre Channel Host Bus Adapter
HP	16	581201-B21	NC560SFP Dual-Port 10GbE Server Adapter
HP	32	456883-B21	BLc 10GB SR SFP+ Opt

Lease Agreement Number: AP122110

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Lease Schedule Number: B01

ATTACHMENT A

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (Including features)</u>
<u>P.O. #997278</u>			
HP	5	381513-B21	Smart Array P800 Controller
HP		HA110A5	5 Year Support Plus 24 Service
HP	5	AP714A	MSA60 Dual Domain SAS MDL 12TB Bundle
HP		HA110A5	5 Year Support Plus 24 Service and MSA60 Support
HP	10	407339-B21	External Mini SAS 2m Cable
<u>P.O. #997283</u>			
HP	8	512547-B21	146GB 6G SAS 15K 2.5in DP ENT HDD
<u>P.O. #997290</u>			
HP	1	412142-B21	BLc7000 Enclosure Management Rmkt Module
<u>P.O. #997438</u>			
HP	4	AJ822A	8/24c Blade System Power Pack + SAN Switch
HP	10	444689-001	10GB SR XFP BLc Transceiver
<u>P.O. #997437</u>			
HP	24	494329-B21	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 18), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), DL380G6/G7 PCI-E 1X8 2X4 Riser Kit, 512MB Flash Backed Write Cache, NC382T PCI-E DP Glgabit Server Adapter (Qty. 2), StorageWorks 81E 8GB SP PCI-E FC HBA (Qty. 2) and 750W CS HE Power Supply Kit (Qty. 2)
HP		HA110A5-7G3	5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
HP	26	494329-B21	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), 512MB Flash Backed Write Cache and 750W CS HE Power Supply Kit (Qty. 2)
HP		HA110A5	5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
<u>P.O. #997707</u>			
HP	104	494329-B21	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 18), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), DL380G6/G7 PCI-E 1X8 2X4 Riser Kit, 512MB Flash Backed Write Cache, NC382T PCI-E DP Glgabit Server Adapter (Qty. 2), StorageWorks 81E 8GB SP PCI-E FC HBA (Qty. 2), 750W CS HE Power Supply Kit (Qty. 2)
HP		HA110A6-7G3	5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
HP	36	607127-B21	DL380R06 300GB 6G SAS 10K 2.5in DE ENT HDD
HP	4	AP714A	MSA60 Dual Domain SAS MDL 12TB Bundle
HP		HA110A5	5 Year Support Plus 24 Service and MSA60 Support
HP	8	407339-B21	External Mini SAS 2m Cable
HP	4	381513-B21	Smart Array P800 Controller
<u>P.O. #998112</u>			
HP	13	494329-B21	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), 512MB Flash Backed Write Cache and 750W CS HE Power Supply Kit (Qty. 2)
HP		HA110A5	5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
HP	1	494329-B21	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 18), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), DL380G6/G7 PCI-E 1X8 2X4 Riser Kit, 512MB Flash Backed Write Cache, NC382T PCI-E DP Glgabit Server Adapter (Qty. 2), StorageWorks 81E 8GB SP PCI-E FC HBA (Qty. 2) and 750W CS HE Power Supply Kit (Qty. 2)
HP		HA110A6-7G3	5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		TC278AAE	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
HP	10	607127-B21	300GB 6G SAS 10K 2.5in DP ENT

Lease Agreement Number: **API22110**

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Lease Schedule Number: **B01**

ATTACHMENT A

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (including features)</u>
HP	4	512547-B21	146GB 6G SAS 15K 2.5in DP ENT
<u>P.O. #998140</u> HP	47	494329-B21	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 18), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), DL380G6/G7 PCI-E 1X8 2X4 Riser Kit, 512MB Flash Backed Write Cache, NC382T PCI-E DP GIGABIT Server Adapter (Qty. 2), StorageWorks 81E 8GB SP PCI-E FC HBA (Qty. 2) and 750W CS HE Power Supply Kit (Qty. 2) 5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP		HA110A5-7G3	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
HP		TC278AAE	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 8), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), 512MB Flash Backed Write Cache and 750W CS HE Power Supply Kit (Qty. 2) 5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
HP	39	494329-B21	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
HP		HA110A5	300GB 6G SAS 10K 2.5in DP ENT
HP	94	607127-B21	146GB 6G SAS 15K 2.5in DP ENT
HP	12	512547-B21	BL460c G6 CTO Blade Including X5550 BL460c G6 kit (2.66 GHz, 95W), X5550 BL460c G6 FIO Kit, 4GB 4Rx8 PC3-8500R-7 LP Kit (Qty. 6), 146GB 15K 6G 2.5 SAS DP HDD (Qty. 2), and Dual MF NC532I
<u>P.O. #998236</u> HP	2	507864-B21	3 Year 4h 24x7 BL4xxx Server Blade Hardware
HP		UK066E	BL460c G6 CTO Blade Including X5550 BL460c G6 kit (2.66 GHz, 95W), X5550 BL460c G6 FIO Kit, 4GB 4Rx8 PC3-8500R-7 LP Kit (Qty. 6), 146GB 15K 6G 2.5 SAS DP HDD (Qty. 2), Dual MF NC532I and Qlogic QMH2462 4Gb FC HBA for HP c-Class BladeSystem
HP	2	507864-B21	HP 3y 4h 24x7 BL4xxx Svr Bld HW
HP		UK066E	4GB 4Rx8 PC3-8500R-7 LP Kit
HP	4	500660-B21	ProLiant DL380G6 CTO Chassis Including Custom Asset Tag Service, X5550 DL380 G6 FIO Kit, X5550 DL380 G6 Kit, 4GB 2RX4 PC3-10600R-9 Kit (Qty. 18), 146GB 6G SAS 15K 2.5IN DP ENT HDD (Qty. 2), DL380G6/G7 PCI-E 1X8 2X4 Riser Kit, 512MB Flash Backed Write Cache, NC382T PCI-E DP GIGABIT Server Adapter (Qty. 2), StorageWorks 81E 8GB SP PCI-E FC HBA (Qty. 2) and 750W CS HE Power Supply Kit (Qty. 2) 5 Year Support Plus 24 Service and ProLiant Server DL38X Hardware Support
<u>P.O. #998814</u> HP	18	494329-B21	Insight CTL ML/DL BDL E-LTU 24X7 Software Support and IC ML-DL-BL Software Support
HP		HA110A5-7G3	Remarketed HP Hard Drive 2.5 Blank
HP		TC278AAE	
HP	75	378384R-001	

Agreed to and Accepted:

WINTHROP RESOURCES CORPORATION

"LESSOR"

By: Abigail R. Nesbitt

Print Name: Abigail R. Nesbitt

Title: Senior Vice President

Date: 4/15/11

Agreed to and Accepted:

APOLLO GROUP, INC. AND ITS AFFILIATES

"LESSEE"

By: Ken Flae

Print Name: Ken Flae
Director, Strategic Sourcing

Title: Director, Strategic Sourcing

Date: 3/28/11

JUN 3 0 2011

LEASE SCHEDULE NO. B02

This Lease Schedule is issued pursuant to the Lease Agreement Number AP122110 dated December 21, 2010. The terms of the Lease Agreement and the terms and conditions of Certificates of Acceptance executed pursuant to Lease Schedule B02, including Installation Dates and descriptions and serial numbers of Equipment contained therein, are a part hereof and are incorporated by reference herein.

LESSOR

Winthrop Resources Corporation
 11100 Wayzata Boulevard
 Suite 800
 Minnetonka, MN 55305

LESSEE

Apollo Group, Inc. and its affiliates
 4025 South Riverpoint Parkway
 Phoenix, AZ 85040

SUPPLIER OF EQUIPMENT

Various

LOCATION OF INSTALLATION

Various

Term of Lease from Commencement Date: 60 months

Monthly Lease Charge: \$38,383.00

Anticipated Delivery and Installation: April - June 2011

Security Deposit: Upon Lessee's execution of this Lease Schedule, Lessee shall deliver a security deposit in the amount of \$38,383.00. If there is no event of default, this security deposit may be applied toward the total amounts due pursuant to this Lease Schedule.

EQUIPMENT

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (Including features)</u>
SEE ATTACHMENT A			

Lessee acknowledges that Lessor is relying on Bank of America, N.A. (and or its affiliates and assigns) to purchase the lease stream from the Lessor associated with the Lease Schedule(s) ("Non-Recourse Financing"). In the event Lessor is not able to secure Non-Recourse Financing for any Lease Schedule hereunder, Lessee agrees that it shall, upon an invoice from the Lessor, purchase from Lessor all Equipment that Lessor has purchased for lease to Lessee that is associated with a Lease Schedule for which a binding and final agreement for Non-Recourse Financing has not been executed, at the original acquisition cost for such Equipment, and the parties shall terminate such Lease Schedule after Lessee pays to Lessor all amounts then due thereunder.

The Monthly Lease Charge will be prorated and charged as Interim rent between the date an item of equipment is accepted and the Commencement Date, which shall be July 1, 2011.

The parties agree that they may execute this Lease Schedule by fax or PDF, and that certain actions may be taken in reliance on faxed or PDF signatures. The parties therefore agree that a faxed or PDF signature hereon shall be equally valid and binding as an original signature, and the transmission of a faxed or PDF signature will have the same legal effect as physical delivery of an original signature. Any party transmitting a faxed or PDF signature will deliver the original signature to the other party as soon as practicable.

Agreed to and Accepted:

WINTHROP RESOURCES CORPORATION

"LESSOR"

By: 

Print Name: Abigail B. Nashitt

Title: Senior Vice President

Date: 6/30/11

Agreed to and Accepted:

APOLLO GROUP, INC. AND ITS AFFILIATES

"LESSEE"

By: 

Print Name: Ken Rae
 Director, Strategic Sourcing

Title: _____

Date: 6/21/11

JUN 3 0 2011

Lease Agreement Number: AP122110

Page 1 of 2

Lease Schedule Number: B02

ATTACHMENT A

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (including features)</u>
<u>Server Equipment</u> <u>P.O. #1000655</u>			
HP	60	579237-B21	ProLiant DL360G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL360G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), NC365T 4-port Ethernet Server Adapter, 82E 8Gb Dual-port PCI-e FC HBA, 460W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mWW Cable (Qty. 2)
HP		HA110A5	7G2 ProLiant Server DL36x Hardware Support and 5y Support Plus 24 SVC
HP	468	500662-B21	8GB (2x4 GB), DIMM 240-pin, DDR3, 1333 MHz/PC3-10600, CL9
HP	20	274779-001	Battery-Backed Write Cache Battery Pack
HP	14	447883-B21	BLC NC364M NIC Adapter Opt Kit
HP	14	456972-B21	BLC Emulex LPe1205 8Gb Fibre Channel Host Bus Adapter Opt Shipping
<u>IT Partners</u> <u>P.O. #1001172</u>			
HP	46	579237-B21	ProLiant DL360G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL360G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), NC365T 4-port Ethernet Server Adapter, 82E 8Gb Dual-port PCI-e FC HBA, 460W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mWW Cable (Qty. 2)
HP		HA110A5	7G2 ProLiant Server DL36x Hardware Support and 5y Support Plus 24 SVC
HP	10	579237-B21	ProLiant DL360G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL360G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), 460W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mWW Cable (Qty. 2)
HP		HA110A5	7G2 ProLiant Server DL36x Hardware Support and 5y Support Plus 24 SVC
HP	5	603718-B21	ProLiant BL460c G7 CTO Blade Including BL460c G7 X5650 FIO Kit, BL460c G7 X5650 Kit, 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 12), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), Emulex LPe1205 8Gb Fibre Channel Host Bus Adapter, 512MB Flash Backed Write Cache, Raid 1 Drive 1 FIO Settling and Custom Asset Tag Service
HP		HA110A5	7XE BL4XXC Server Hardware Support and 5y Support Plus 24 SVC
HP	20	468332-B21	NC522SFP+ Dual Port 10GbE Server Adapter
<u>P.O. #999992</u>			
HP	68	579237-B21	ProLiant DL360G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL360G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), NC365T 4-port Ethernet Server Adapter, 82E 8Gb Dual-port PCI-e FC HBA, 460W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mWW Cable (Qty. 2)

JUN 3 0 201

Lease Agreement Number: AP122110

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Lease Schedule Number: B02

ATTACHMENT A

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (Including features)</u>
HP		HA110A5	7G2 ProLiant Server DL36x Hardware Support and 5y Support Plus 24 SVC
HP	32	603718-B21	ProLiant BL460c G7 CTO Blade including BL460c G7 X5650 FIO Kit, BL460c G7 X5650 Kit, 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 12), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), 512MB Flash Backed Write Cache, Raid 1 Drive 1 FIO Setting and Custom Asset Tag Service
HP		HA110A5	7XE BL4xxc Server Blade Hardware Support and 5y Support Plus 24 SVC
HP	12	AJ763A	82E 8Gb Dual-Port PCI-e Fibre Channel Host Bus Adapter
HP	24	581201-B21	NC550SFP Dual Port 10GbE Server Adapter
HP	48	455883-B21	BLc 10Gb Short Range SFP+ Option
HP	8	455880-B21	BLc VC Flex-10 Ethernet Module Option

Agreed to and Accepted:

WINTHROP RESOURCES CORPORATION

"LESSOR"

By: 

Print Name: Abigail B. Nesbitt

Title: Senior Vice President

Date: 6/30/11

Agreed to and Accepted:

APOLLO GROUP, INC. AND ITS AFFILIATES

"LESSEE"

By: 

Print Name: Ken Rae

Title: Director, Strategic Sourcing

Date: 6/21/11

SEP 19 2011

LEASE SCHEDULE NO. B03

This Lease Schedule is issued pursuant to the Lease Agreement Number AP122110 dated December 21, 2010. The terms of the Lease Agreement and the terms and conditions of Certificates of Acceptance executed pursuant to Lease Schedule B03, including Installation Dates and descriptions and serial numbers of Equipment contained therein, are a part hereof and are incorporated by reference herein.

LESSOR
 Winthrop Resources Corporation
 11100 Wayzata Boulevard
 Suite 800
 Minnetonka, MN 55305

LESSEE
 Apollo Group, Inc. and its affiliates
 4025 South Riverpoint Parkway
 Phoenix, AZ 85040

SUPPLIER OF EQUIPMENT
 Various

LOCATION OF INSTALLATION
 Various

Term of Lease from Commencement Date: 60 months

Monthly Lease Charge: \$39,258.00

Anticipated Delivery and Installation: July - September 2011

Security Deposit: Upon Lessee's execution of this Lease Schedule, Lessee shall deliver a security deposit in the amount of \$39,258.00. If there is no event of default, this security deposit may be applied toward the total amounts due pursuant to this Lease Schedule.

EQUIPMENT

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (Including features)</u>
SEE ATTACHMENT A			

Lessee acknowledges that Lessor is relying on Bank of America, N.A. (and or its affiliates and assigns) to purchase the lease stream from the Lessor associated with the Lease Schedule(s) ("Non-Recourse Financing"). In the event Lessor is not able to secure Non-Recourse Financing for any Lease Schedule hereunder, Lessee agrees that it shall, upon an invoice from the Lessor, purchase from Lessor all Equipment that Lessor has purchased for lease to Lessee that is associated with a Lease Schedule for which a binding and final agreement for Non-Recourse Financing has not been executed, at the original acquisition cost for such Equipment, and the parties shall terminate such Lease Schedule after Lessee pays to Lessor all amounts then due thereunder.

The Monthly Lease Charge will be prorated and charged as Interim rent between the date an item of equipment is accepted and the Commencement Date, which shall be October 1, 2011.

Agreed to and Accepted:

WINTHROP RESOURCES CORPORATION

"LESSOR"

By: 

Print Name: Abigail R. Nashlit
 Title: Senior Vice President

Date: 9/20/11

Agreed to and Accepted:

APOLLO GROUP, INC. AND ITS AFFILIATES

"LESSEE"

By: 

Print Name: Ken Rae
 Title: Director, Strategic Sourcing

Date: 9/14/11

SEP 19 2011

Lease Agreement Number: AP122110

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Lease Schedule Number: B03

ATTACHMENT A

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (Including features)</u>
<u>Server Equipment</u>			
<u>P.O. #1001299</u>			
HP	4	579237-B21	ProLiant DL380G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL380G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), 460W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mVWV Cable (Qty. 2)
HP		HA110A5	7G2 ProLiant Server DL38x Hardware Support and 5y Support Plus 24 SVC
<u>P.O. #1001537</u>			
HP	10	579237-B21	ProLiant DL380G7 CTO Chassis including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL380G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), NC365T 4-port Ethernet Server Adapter, 82E 8Gb Dual-port PCI-e FC HBA, 460W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mVWV Cable (Qty. 2)
HP		HA110A5	7G2 ProLiant Server DL38x Hardware Support and 5y Support Plus 24 SVC
HP	41	579237-B21	ProLiant DL380G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL380G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), 460W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mVWV Cable (Qty. 2)
HP	12	579237-B21	ProLiant DL380G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL380G6/G7 FIO Kit, 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 18), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), NC365T 4-port Ethernet Server Adapter, 82E 8Gb Dual-port PCI-e FC HBA, 460W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mVWV Cable (Qty. 2)
HP		HA110A5	7G2 ProLiant Server DL38x Hardware Support and 5y Support Plus 24 SVC
HP	3	583914-B21	ProLiant DL380G7 SFF CTO Chassis Including Custom Asset Tag Service, X5650 DL380G7 FIO Kit, X5650 DL380G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 8SFF Cage 380G6/G7 Kit, 146GB 6G SAS 10K 2.5in DP ENT HDD (Qty. 2), 1TB 3G SATA 7.2k 2.5in MDL HDD (Qty. 14), 1G Flash Backed Cache, SAS Expander Card, NC382T PCIe Dp Gigabit Server Adapter, 760W CS Gold Hot Plug Power Supply Kit (Qty. 2), Remove Standard Power Cords and IECC13-C14 .7mVWV Cable (Qty. 2)
HP		HA110A5-7G3	5 Year Support Plus 24 Service and ProLiant ServerDL38x Hardware Support
HP		HA110A5-4YD	IC ML-DL-BL Software Support and IC ML/DL/BL Bundle E-LTU 24x7 Software Support
HP	3	593717-B21	NC623SFP 10GB 2-Port Server Adapter
HP	3	AJ763A	82E 8GB Dual-Port PCI-e FC HBA
HP	6	455683-B21	BLc 10GB SR SFP+
<u>P.O. #1001556</u>			
HP	1	EH985A	D2D4324 Backup System
HP		HA110A3	3 Year Support Plus 24 Service and D2D4324 Backup System Hardware Support
HP	3	EH986A	D2D4324 Capacity Upgrade Kit
HP		HA113A1	D2D4324 Capacity Upgrade Kit Support
HP		HA113A1-5KK	D2D Basic Installation Service
HP		HA124A1-55Q	Technical Installation Startup Service and D2D Backup System Service

P.O. #1001656

SEP 19 2011

Lease Agreement Number: AP122110

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Lease Schedule Number: B03

ATTACHMENT A

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (including features)</u>
HP	4	AP714A	StorageWorks MSA60 Dual Domain SAS MDL 12TB Bundle Including 2m Ext Mini-SAS to 4x1 Mini-SAS Cable (Qty. 2) and Smart Array P800 Controller
HP		HA110A5	5 Year Support Plus 24 Service and MSA60/70 Support
<u>P.O. #1001657</u>			
HP	30	512547-B21	146GB 6G SAS 15K 2.5in DP ENT HDD
HP	30	507127-B21	300GB 6G SAS 10K 2.5in DP ENT HDD
<u>P.O. #1001667</u>			
HP	36	579237-B21	ProLiant DL360G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL360G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), NC365T 4-port Ethernet Server Adapter, 82E 8Gb Dual-port PCI-e FC HBA, 480W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mVWV Cable (Qty. 2)
HP		HA110A5	7G2 ProLiant Server DL36x Hardware Support and 5y Support Plus 24 SVC
<u>P.O. #1001675</u>			
HP	18	579237-B21	ProLiant DL360G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL360G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), 460W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mVWV Cable (Qty. 2)
HP		HA110A5	7G2 ProLiant Server DL36x Hardware Support and 5y Support Plus 24 SVC
HP	2	579237-B21	ProLiant DL360G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL360G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), NC365T 4-port Ethernet Server Adapter, 82E 8Gb Dual-port PCI-e FC HBA, 480W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mVWV Cable (Qty. 2)
HP		HA110A5	7X2 ProLiant Server DL36x Hardware Support and 5y Support Plus 24 SVC
HP	96	507127-B21	300GB 6G SAS 10K 2.5in DP ENT
<u>P.O. #1001693</u>			
HP	24	603718-B21	ProLiant BL460c G7 CTO Blade Including BL460c G7 X5650 FIO Kit, BL460c G7 X5650 Kit, 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 12), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), Emulex LPE1206 8GB Fibre Channel Host Bus Adapter, 512MB Flash Backed Write Cache, Raid 1 Drive 1 FIO Setting and Custom Asset Tag Service
HP		HA110A5	7XE BL4xxc Server Blade Hardware Support and 5y Support Plus 24 SVC
<u>P.O. #60000664</u>			
HP	60	579237-B21	ProLiant DL360G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL360G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), NC365T 4-port Ethernet Server Adapter, 82E 8Gb Dual-port PCI-e FC HBA, 480W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mVWV Cable (Qty. 2)
HP		HA110A5	7G2 ProLiant Server DL36x Hardware Support and 5y Support Plus 24 SVC
HP	15	579237-B21	ProLiant DL360G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL360G6/G7 FIO Kit, 4GB 2Rx4 PC3-10600R-9 Kit (Qty. 6), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), 460W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mVWV Cable (Qty. 2)

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ATTACHMENT A

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (Including features)</u>
HP		HA110A5	7G2 Proliant Server DL36x Hardware Support and 5y Support Plus 24 SVC
HP	5	603718-B21	ProLiant BL460c G7 CTO Blade Including BL460c G7 X5650 FIO Kit, BL460c G7 X5650 Kit, 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 12), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), Emulex LPE1205 8GB Fibre Channel Host Bus Adapter, 512MB Flash Backed Write Cache, Raid 1 Drive 1 FIO Setting and Custom Asset Tag Service
HP		HA110A5	7XE BL4xxc Server Blade Hardware Support and 5y Support Plus 24 SVC
HP	8	579237-B21	ProLiant DL380G7 CTO Chassis Including Custom Asset Tag Service, X5650 HPM FIO Perf Pack, X5650 DL360G8/G7 FIO Kit, 8GB 2Rx4 PC3-10600R-9 Kit (Qty. 18), 146GB 6G SAS 15K 2.5in DP ENT HDD (Qty. 2), NC385T 4-port Ethernet Server Adapter, 82E 8Gb Dual-port PCI-e FC HBA, 460W CS Gold Hot Plug Power Supply Kit, Remove Standard Power Cords and IECC13-C14 .7mWW Cable (Qty. 2)
HP,		HA110A5	7G2 Proliant Server DL36x Hardware Support and 5y Support Plus 24 SVC
HP IT Partners P.O. #60000852	30	507127-B21	300GB 6G SAS 10K 2.5in DP ENT HDD Shipping
HP		HA112AC	Critical Service (Software) 7/1/11 - 10/31/11
HP		HA112AC	Critical Service (Hardware) 7/1/11 - 10/31/11

Agreed to and Accepted:

WINTHROP RESOURCES CORPORATION

"LESSOR"

By: 

Print Name: Abigail B. Nesbitt

Title: Senior Vice President

Date: 9/20/11

Agreed to and Accepted:

APOLLO GROUP, INC. AND ITS AFFILIATES

"LESSEE"

By: 

Print Name: Ken Ras
Director, Strategic Sourcing

Title: _____

Date: 9/14/11