

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:08-cv-02050 (SAF)
)	
MARK CUBAN,)	
)	
Defendant.)	
_____)	

**APPENDIX
TO DEFENDANT MARK CUBAN’S MOTION FOR
JUDGMENT AS A MATTER OF LAW**

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APPENDIX**

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
MARK CUBAN,)
)
Defendant.)
_____)

Civil Action No. 3:08-cv-02050 (SAF)

**DECLARATION OF LYLE ROBERTS IN SUPPORT OF
DEFENDANT MARK CUBAN’S MOTION FOR JUDGMENT AS A
MATTER OF LAW**

Lyle Roberts makes the following declaration under 28 U.S.C. § 1746:

1. My name is Lyle Roberts and I am a partner with the law firm of Cooley LLP. I am a member in good standing of the bars of Virginia, Maryland, and the District of Columbia. I am admitted *pro hac vice* to practice before this Court in this matter.
2. I submit this Declaration in Support of Defendant Mark Cuban’s Motion for Judgment as a Matter of Law.
3. I have personal knowledge of the documents attached to this Declaration and I declare that the attached copies are true and correct copies of the documents purported to be.
4. Attached as **Exhibit A** to this Declaration is a true and correct copy of excerpts from Volume 2 of the trial transcript in this matter, dated October 1, 2013.
5. Attached as **Exhibit B** to this Declaration is a true and correct copy of excerpts from Volume 3 of the trial transcript in this matter, dated October 2, 2013.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 7, 2013
Dallas, Texas

By: s/ Lyle Roberts
Lyle Roberts

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHRISTOPHER J. CLARK
Latham and watkins LLP
885 Third Ave
New York, NY 10022
212-906-1200
Email: christopher.clark2@lw.com

SECURITIES AND EXCHANGE COMMISSION
Plaintiff,
VERSUS
MARK CUBAN
Defendant.

CIVIL ACTION NUMBER
3:08-cv-2050-D
OCTOBER 1, 2013

TRANSCRIPT OF TRIAL - VOLUME 2
BEFORE THE HONORABLE SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE, and a jury

A P P E A R A N C E S:

FOR THE PLAINTIFF:
KEVIN P. O'ROURKE
US Securities and Exchange Commission
100 F St
Washington, DC 20549
202.552.4442
orourkek@sec.gov

ADAM S. ADERTON
US Securities and Exchange Commission
100 F St NE
Washington, DC 20549
202/551-4442
aderton@sec.gov

COURT REPORTER:
PAMELA J. WILSON, RMR, CRR
1100 Commerce Street, Room 1525
Dallas, Texas 75242
214.662.1557
pam_wilson@txnd.uscourts.gov

Proceedings reported by mechanical stenography,
transcript produced by computer.

CHRISTIAN D. H. SCHULTZ
US Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
202/551-4740

DUANE THOMPSON
US Securities and Exchange Commission
100 F St NE
Washington, DC 20549
202/551-7159
thompsond@sec.gov

JAN M. FOLENA
US Securities & Exchange Commission
100 F Street NE
Washington, DC 20549
202/551-4738
Email: folenaj@sec.gov

JENNIFER D. BRANDT
Securities and Exchange Commission
Burnett Plaza
801 Cherry Street Suite 1900
Fort Worth, TX 76102-6882
817/978-6442
Email: brandtj@sec.gov

FOR THE DEFENDANT:
STEPHEN A. BEST
Bromstein Hyatt Farber Schreck LLP
1350 I St NW
Suite 510
Washington, DC 20005-3355
202/296-7353
sbest@bhfs.com

THOMAS M. MELSHEIMER
Fish & Richardson
1717 Main St
Suite 5000
Dallas, TX 75201
214/747-5070
melsheimer@fr.com

PROCEEDINGS

1 TRIAL - VOLUME 2 - OCTOBER 1, 2013
2 THE SECURITY OFFICER: All rise.
3 (Jury enters the courtroom.)
4 THE COURT: Be seated, please.
5 Good morning counsel, and litigants and members of the
6 jury.
7 I want to thank you for your attempts to be here on time.
8 I know a couple of you ran late because of the traffic, and I
9 do thank you very much for trying to be here.
10 Once again I apologize for how late we kept you last
11 night, and as I indicated, we'll be on our regular schedule
12 today.
13 Members of the jury, in a moment the attorneys are going
14 to be presenting the opening statements. I anticipate that
15 you'll first hear from counsel for the plaintiff, the SEC, and
16 depending on how much of its time it takes, we may have a
17 short restroom break after that and before you hear from
18 counsel for the defendant, Mr. Cuban.
19 And then once the opening statements are completed, we'll
20 begin with the testimony in the case.
21 I want to remind you of an instruction I gave you
22 yesterday. The statements of counsel are not evidence, and
23 what the attorneys say during opening statements is not
24 evidence. It represents the contentions of the parties or
25

1 A. Not that I can remember.
 2 Q. When you spoke with Mr. Cuban on June 28th, 2004, did you
 3 know whether he had spoken with anyone at Mamma about the
 4 PIPE?
 5 A. No that I can recall.
 6 Q. And before we get to the substance of the call, to the
 7 extent you remember, Mr. Owen, could you just tell the jury
 8 whether you recall where you were when you took the call?
 9 A. I was in my office at Merriman Curhan Ford.
 10 Q. And that was in San Francisco, California --
 11 A. That's in San Francisco, yes.
 12 Q. Did you take any notes of the call?
 13 A. No, I did not.
 14 Q. And did you make any notes about the call afterwards?
 15 A. No, I did not.
 16 Q. Mr. Owen, can you now tell the jury what it is you
 17 remember about the call with Mr. Owen -- I'm sorry. Let me
 18 ask the question again. You're Mr. Owen.
 19 A. Thank you.
 20 Q. Can you please tell the jury what you remember about the
 21 substance of the call with Mr. Cuban on June 28, 2004?
 22 A. This is a very long time ago, and I -- I remember more
 23 the tenure of the call than the specific wording or the
 24 substance of the call.
 25 Q. And what was the tenure of the call?

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1 A. Mr. Cuban seemed upset.
 2 Q. All right. You say Mr. Cuban seemed upset.
 3 Did he -- did he raise his voice during the call?
 4 A. I can't remember specifically.
 5 Q. Did you have a reaction to Mr. Cuban being upset?
 6 A. Yes. I didn't really want to be on the phone very
 7 long.
 8 Q. And why was that?
 9 A. Because -- because it was Mark Cuban.
 10 Q. What do you mean by that, sir?
 11 A. He's -- he's a -- a very famous, very powerful kind of a
 12 person, and I'm anything but that.
 13 Q. You were uncomfortable on the call?
 14 A. Yes, I was.
 15 Q. Now, Mr. -- Mr. Owen, based on your practices at the
 16 time you believe that you told Mr. Cuban about the terms of
 17 the Mamma PIPE during that phone call?
 18 A. I would imagine that based on the -- my practice at the
 19 time, if he had asked me I would have told him the terms.
 20 Q. And certainly if Mr. Cuban wanted to know the terms and
 21 asked you, you would have told him?
 22 A. Yes.
 23 Q. Mr. Owen, I'm going to come back to the call with
 24 Mr. Cuban in just a couple of minutes, but first I want to ask
 25 you to turn to Plaintiff's Exhibit 36 in your binder.

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1 MR. THOMPSON: Which I believe there was no
 2 objection and I would move into evidence at this time.
 3 THE COURT: I show this was part of the group
 4 admitted earlier.
 5 MR. CLARK: I believe it was, Your Honor. We have
 6 no objection.
 7 THE COURT: It was admitted earlier as part of the
 8 group.
 9 MR. THOMPSON: Thank you, Your Honor.
 10 BY MR. THOMPSON:
 11 Q. Mr. Owen, I'm going to give you a moment to -- to read
 12 the document. It's entitled "News Release for Mamma.com."
 13 Do you see that, sir?
 14 A. Yes, I do.
 15 Q. Can you identify what this document is?
 16 A. What the document is?
 17 Q. Yes, sir.
 18 A. It's a press release.
 19 Q. And is this a press release for the Mamma.com PIPE?
 20 A. Yes.
 21 Q. In the normal course, who would prepare a press release
 22 for one of Merriman's clients?
 23 A. Generally, the counsel for the company would prepare the
 24 press release.
 25 Q. Did you see this press release before it was issued?

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1 A. You're -- you're asking about this specific one?
 2 Q. Yes, sir.
 3 A. I don't recall.
 4 Q. In the normal course would you have seen the press
 5 release before its issuance?
 6 A. Yes.
 7 Q. Sir, can you look at the top of the press release and --
 8 and see whether you can tell what the time is indicated there?
 9 A. The time is indicated -- I have to convert it from
 10 military. 6:00 o'clock Eastern Time.
 11 Q. Would that be the time of the issuance of the press
 12 release?
 13 A. That's what the document says.
 14 Q. Now, let's turn to the subject of your -- your call with
 15 Mr. Cuban.
 16 Mr. Owen, as you sit here today, do you have a specific
 17 recollection of whether on the phone call that you had with
 18 Mr. Cuban on June 28, 2004, you told him that the PIPE would
 19 be announced the following day?
 20 A. I told him that -- you're asking me -- I don't remember
 21 my wording, but I do know this was supposed to be released the
 22 following morning at 6:00 a.m. Eastern Time, as opposed to
 23 6:00 p.m. Eastern Time.
 24 Q. Yes, sir. What I'm asking is whether you recall telling
 25 Mr. Cuban that there was going to be a press release issued

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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

SECURITIES AND EXCHANGE	(CIVIL ACTION NUMBER
COMMISSION	(
	(
Plaintiff,	(
	(
VERSUS	(3:08-CV-2050-D
	(
MARK CUBAN	(
	(
Defendant.	(OCTOBER 2, 2013

TRANSCRIPT OF TRIAL - VOLUME 3

BEFORE THE HONORABLE SIDNEY A. FITZWATER

UNITED STATES DISTRICT JUDGE, and a jury

A P P E A R A N C E S:

FOR THE PLAINTIFF:	KEVIN P. O'ROURKE US Securities and Exchange Commission 100 F St Washington, DC 20549 202.552.4442 orourkek@sec.gov
--------------------	---

ADAM S. ADERTON US Securities and Exchange Commission 100 F St NE Washington, DC 20549 202/551-4442 adertona@sec.gov
--

1 Q. Mr. Owen, you're not on this email; is that correct?

2 A. That's correct.

3 Q. But you're discussed in it; is that right?

4 A. Yes, I am.

5 Q. And it says to Mr. Cuban -- Mr. Cuban from Mr. Faure, "If
6 you want more details about the private placement, please
7 contact (I guess you or your financial advisors) Arnie Owen,"
8 and it gives your phone number. Is that correct?

9 A. That's correct.

10 Q. Does this document anywhere relate to a confidentiality
11 agreement that would govern a call between Mr. Cuban and you?

12 MR. THOMPSON: Objection, Your Honor, calls for
13 speculation, lack of foundation.

14 THE COURT: Overruled as to "relate to."

15 THE WITNESS: Could you repeat the question, please?

16 BY MR. CLARK:

17 Q. Does this document relate to a confidentiality agreement
18 that would govern a call between Mr. Cuban and you?

19 A. No.

20 Q. Did you understand that there was any agreement of
21 confidentiality between Mr. Faure and Mr. Cuban relating to a
22 call between Mr. Cuban and you?

23 A. No.

24 Q. Did you understand that there was any agreement
25 whatsoever between Mr. Faure and Mr. Cuban relating to a call

1 between Mr. Cuban and you?

2 A. I would have no knowledge of that.

3 Q. The email notes that "I guess you" meaning Mr. Cuban, "or
4 your financial advisors could call."

5 Do you know whether Mr. Faure had ever had a call or an
6 agreement with Mr. Cuban's financial advisors?

7 A. I have no idea.

8 Q. If Mr. Cuban's financial advisors had called you wanting
9 information about the PIPE, would you have discussed it with
10 them?

11 MR. THOMPSON: Speculation, Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: Yes, I would have.

14 BY MR. CLARK:

15 Q. Would you have asked them for a confidentiality
16 agreement?

17 A. No.

18 Q. Would you have asked them for an agreement to restrict
19 trading?

20 A. No.

21 Q. So I'd like to now move on to your discussion with
22 Mr. Cuban, the call.

23 A. Can I get some water?

24 Q. Absolutely, Mr. Owen.

25 A. Do I need this book anymore?

1 Q. You may, but if you want to move it aside to be more
2 comfortable.

3 A. Thanks.

4 Q. You're much better with that pitcher than I am, Mr. Owen?

5 A. No, I dripped.

6 Q. Well, there you go. That's what I did.

7 Are you ready?

8 A. Oh, yeah.

9 Q. Okay. Do you remember having a telephone call with
10 Mr. Cuban --

11 A. Yes, I do.

12 Q. And did that call take place as best as you recall on
13 June 28th, 2004?

14 A. Yes.

15 Q. Do you recall why you spoke to Mr. Cuban that day?

16 A. It was in regards to the Mamma PIPE.

17 Q. And do you remember whether it was your idea or someone
18 else's idea or Mr. Cuban called you out of the blue?

19 A. I think the way I remembered it was David Goldman had
20 asked me to speak to Mark Cuban regarding the -- the PIPE.

21 Q. And in connection with Mr. Goldman asking you to speak to
22 Mr. Cuban, did he say to you, "Arnie, we have a
23 confidentiality agreement with Mark Cuban concerning your
24 call"?

25 A. No, he did not.

1 Q. Did he say to you, "Arnie, we have an agreement that Mark
2 Cuban won't trade his stock concerning your call"?

3 A. No, he did not.

4 Q. Did he tell you any agreement whatsoever that governed
5 your call with Mr. Cuban?

6 A. No, he did not.

7 Q. Now, when you spoke to Mr. Cuban, you weren't speaking to
8 him on behalf of -- of Merriman, right?

9 A. I don't understand the question.

10 Q. Sorry.

11 At the time that you spoke to Mr. Cuban you were
12 Mamma.com's agent; is that fair to say?

13 A. That's fair to say.

14 Q. And so you weren't having a call about Merriman business,
15 except insofar as they were Mamma's agent for the PIPE; is
16 that right?

17 A. That's correct.

18 Q. And at that time you were Mamma's representative on the
19 call.

20 A. Yes.

21 Q. You were authorized to provide and receive -- receive
22 information on behalf of Mamma.com?

23 A. That's correct.

24 Q. Now, the call with Mr. Cuban took place after trading
25 closed on June 28th, 2004, as -- as best you recall; is that

1 right?

2 A. That's correct.

3 Q. And you believed that the Mamma PIPE deal was going to
4 call on June 28th, 2004; is that your recollection?

5 A. Close and be announced the next morning.

6 Q. When you got on the phone with Mr. Cuban you didn't
7 believe the purpose of the call was to convey confidential
8 information with him -- to him, did you?

9 A. No.

10 Q. You understood your call with Mr. Cuban to just be a
11 courtesy call; is that correct?

12 A. That's correct.

13 Q. And what do you mean when you say a courtesy call?

14 A. Courtesy is a practice that I had when -- because I had
15 been yelled at so much by people when I would put a
16 transaction up and not contact them or if it was a -- a fund
17 like a Fidelity and we were doing a transaction and one of the
18 names -- we never contacted them because they weren't on our
19 contact list, just to give them the heads up the next morning
20 that there was going to be an announcement of a transaction,
21 and I would rather have it come from me the night before than
22 have them find out and call me up and yell.

23 Q. You said that you've been yelled at a number of times
24 because of that?

25 A. Sure.

1 information?

2 A. That's correct.

3 Q. At any time from the very beginning of your talking to
4 Mr. Cuban to the end, did you ever ask him to agree to keep
5 the information you were telling him confidential?

6 A. No, I did not.

7 Q. Did he ever volunteer that he would keep it confidential?

8 A. No, he did not.

9 Q. At any time during that call did you ask Mr. Cuban to
10 agree not to trade on the information you were giving him?

11 A. No, I did not.

12 Q. Did he ever volunteer not to trade on the information you
13 gave him?

14 A. No, he did not.

15 Q. Did you ask him to agree to anything on that call?

16 A. No, I did not.

17 Q. I -- I understand that you've testified you don't
18 remember the substance of the words of that call otherwise; is
19 that right?

20 A. That's pretty well right.

21 Q. Other than what you've testified to so far in court.

22 A. Correct.

23 Q. You can't testify that Mr. Cuban didn't say, "I'm going
24 to sell my shares."

25 Is that right?

1 you understand that to be you?

2 A. That's correct.

3 Q. " -- later that afternoon and spoke to him for eight
4 minutes about the PIPE."

5 Do you remember having a call with Mr. Cuban about the
6 PIPE?

7 A. I remember having a call with him, yes.

8 Q. "During that call the salesman provided Cuban with
9 additional confidential details about the PIPE."

10 Do you see that?

11 A. Yes.

12 Q. Is that true?

13 A. They were --

14 MR. THOMPSON: Objection, Your Honor, there's no
15 foundation this witness would know the answer to the SEC's
16 finding or what the SEC's basis was.

17 MR. CLARK: I'll phrase it another way, Your Honor.

18 BY MR. CLARK:

19 Q. Did you on the call with Mr. Cuban provide him with
20 additional confidential details about the PIPE?

21 A. Confidential?

22 Q. Yeah.

23 A. No.

24 Q. Because you didn't provide him any confidential
25 information; is that right?

1 A. That's correct.

2 MR. CLARK: May I have one moment, Your Honor?

3 THE COURT: You may.

4 BY MR. CLARK:

5 Q. I'd like to finish up by simply reviewing with you the
6 investors and stockholders you contacted in connection with
7 the Mamma PIPE.

8 MR. CLARK: And we have a chart we'd like to track
9 the information on, Your Honor.

10 It's a summary. May we publish it to the jury.

11 THE COURT: Has opposing counsel seen it?

12 MR. CLARK: They have, Your Honor.

13 THE COURT: Any objection?

14 MR. CLARK: I'm sorry, Your Honor, I'm not certain
15 what the -- what the exhibit is.

16 THE COURT: There being no objection, you may
17 proceed.

18 MR. CLARK: Thank you, Your Honor.

19 THE WITNESS: what page is that?

20 BY MR. CLARK:

21 Q. We're just going to do it up here.

22 Can you see it, Mr. Owen?

23 A. Yes.

24 Q. And I'll -- I'll walk you through the questions, so --

25 THE COURT: So that the jury understands, is this

1 Q. Did they have any agreement to keep the information
2 confidential?

3 A. No, they did not.

4 Q. And did they have any agreement not to trade?

5 A. No.

6 Q. Now, for Mamma.com shareholders you spoke with Mr. Cuban;
7 is that correct?

8 A. That's correct.

9 Q. Did Mr. Cuban have any agreement to keep the information
10 confidential?

11 A. No, he did not.

12 Q. And did he have any agreement not to trade on the
13 information?

14 A. No, he did not.

15 MR. CLARK: Your Honor, I have no further questions.

16 THE COURT: Redirect?

17 MR. THOMPSON: Your Honor, we would request a short
18 recess.

19 THE COURT: Okay. We are about at the morning break
20 time, so I'll allow the recess.

21 MR. THOMPSON: Thank you, Your Honor.

22 THE COURT: Members of the jury, in a moment we're
23 going to be taking our morning break. We're going to be
24 breaking until 10:40. This is our long break.

25 I remind you not to talk about the case during the break.

1 A. That's correct.

2 Q. In this document, Mr. Faure is referring Mr. Cuban to
3 you; is that correct?

4 A. Yes, he is.

5 Q. Is there any agreement referenced on this document at
6 all?

7 A. No.

8 Q. Did you have any understanding that there was an
9 agreement between Mr. Cuban and Mr. Faure that governed the
10 telephone call you had with Mr. Cuban?

11 A. No.

12 Q. Not a confidentiality agreement?

13 A. No.

14 Q. Not an agreement not to sell his shares?

15 A. No.

16 Q. Finally I just want to ask: And at the end of that call
17 did you have any doubt in your mind that Mr. Cuban, if he
18 wanted to, would have been free to sell his shares?

19 A. I had no doubt.

20 MR. CLARK: Thank you, Your Honor.

21 No further questions.

22 THE COURT: Any objection to excusing this witness?

23 MR. THOMPSON: Not from the plaintiff, Your Honor.

24 MR. CLARK: None, Your Honor.

25 THE COURT: All right. Thank you, sir. You're

1 "My recollection, it was a fairly quick call, but the
2 call was actually eight minutes and 35 seconds.

3 "Q. And that 1:00 o'clock time reflected there wasn't -- is
4 that consistent with your recollection of when you did talk to
5 him on that day?

6 "A. Yes.

7 "Q. Mr. Faure, when Mr. Cuban called you in response to your
8 email, the phone call that you received at 1:00 o'clock on
9 June 28th, what did you -- what was said in the phone call?

10 "A. Well, Mr. Cuban called me. I -- I answered the phone,
11 and I said, 'Mark, I've got confidential information.'

12 "He somewhat acknowledged that I had confidential
13 information. Yes. I don't remember any specific words, but
14 he said, 'Um-hum, go ahead,' something to that effect.

15 "And I proceeded to mention to him that we were close to
16 concluding a PIPE transaction, and that the board wanted to
17 invite him to participate in this PIPE transaction.

18 "Q. Okay. Now, when you said that you had confidential
19 information, was that the first thing that you said to him
20 about -- about the PIPE?

21 "A. I believe so, yes.

22 "Q. Was that at the beginning of the call?

23 "A. Yes.

24 "Q. But when you -- Did he acknowledge that, what you said to
25 him?

1 "A. I believe so, yes.

2 "Q. And just so we're clear, how did he acknowledge that?

3 "A. Again, I don't remember the specific words, but it was
4 "Okay, uh-huh, go ahead," which in my -- in my mind certainly
5 said, "Okay, I understand, you've got confidential
6 information. Go ahead."

7 "Q. And was it after that that you proceeded to say something
8 else?

9 "A. Yes.

10 "Q. And what was the something else that you said?

11 "A. "We -- we're concluding a PIPE transaction. The board
12 would like to invite you. Are you -- are you interested in
13 participating in this -- in this PIPE?"

14 "Q. And then what was his response?

15 "A. His response was -- was very negative. He said, "No. No
16 way. I'm against PIPE. It dilutes shareholders -- it dilutes
17 share -- shareholder base. You know, you should be growing
18 organically. You don't need any financing."

19 "And the conversation went back and forth where I said,
20 'well, I think it is the right time for us to do this type of
21 investment. The stock price is well priced right now. It's a
22 good moment to do this type of transaction.'

23 "But he -- he disagreed, and did not want to participate.
24 And then I guess at the end of the call he did mention to me,
25 'well, now I'm --' something like, 'Now I'm screwed. I can't

1 basically informing Mr. Goldman of the gist of the
2 conversation.

3 "Q. Did you have a -- a further communication with Mr. Cuban
4 concerning the PIPE?

5 "A. I recall later on in that day sending Mr. Cuban an email
6 basically telling him that 'If you want more information about
7 the PIPE transaction, contact at MCF,' and I believe I told
8 him Mr. Arnie Owen, and gave him the coordinates.

9 "Q. And why were you providing -- sending him to Mr. Owen for
10 more details?

11 "A. I vaguely recall that after informing Mr. Goldman about
12 my phone conversation, he said, 'why don't you' -- he asked
13 me, you know, 'why don't you at least send him Arnie's
14 coordinates, if he wants more information about the PIPE he
15 can contact I am him directly.'

16 "Q. And by sending him to 'Arnie Owen if he wanted more'
17 additional details, did you understand that Mr. Arnie Owen
18 could provide them to Mr. Cuban?

19 "A. Yes.

20 "Q. Now, Mr. Faure, would you have -- have sent Mr. Cuban to
21 Mr. Arnie Owen as in -- by this email, if he had not made the
22 statements -- or statement he made in your telephone
23 conversation with him that now he was screwed and -- and
24 couldn't sell?

25 "A. I don't know.

1 "Q. Was it only after that that you sent him to Mr. Arnie
2 Owen for more details if he wished them?

3 "A. I believe that this email was sent after my discussion
4 with Mr. Goldman about the conversation with Mr. Cuban. And
5 Mr. Goldman basically just mentioned, 'Look, send him the
6 coordinates at MCF if he wants more information about the PIPE
7 transaction,' --

8 "Q. So you --

9 "A. And then I proceeded to send Mr. Cuban this email saying
10 if -- if you want more information contact Arnie Owen at MCF.

11 "Q. Now, I just want to at the beginning here speak to who
12 certain people were in the context of -- of the Mamma.com, and
13 in the June 2004 period of time, and see if you recognize
14 these people and -- and explore that a little bit.

15 "Let me start with a gentleman named Eldad Gal, G-a-l.

16 "Do you recognize that name?

17 "A. Yes.

18 "Q. And was Mr. Gal a representative of Sage Capital?

19 "A. I'm not certain of that.

20 "Q. Okay. Did he represent the lead investor in the eventual
21 Mamma.com PIPE transaction?

22 "A. I don't know if we can call him a 'lead investor,' but he
23 was one of the investors, or potential investors, yes.

24 "Q. Okay. And do you recall meeting Mr. Gal on or around
25 March 3rd of 2004 in New York City to discuss a potential

1 section, paragraph 5, do you see this where it says 'The
2 company and Mamma.com each acknowledge that they have had the
3 time to review this agreement and that they fully understand
4 its contents and have had the option of obtaining legal advice
5 concerning its interpretation and effect'?

6 "A. Correct.

7 "Q. Did you ever tell Mr. Cuban at the outset of the call
8 that he had the option of consulting with his attorney to
9 understand the implications of receiving this confidential
10 information?

11 "A. I don't believe so, no.

12 "Q. Okay. Why wouldn't you afford Mr. Cuban the same
13 courtesies that you do third parties that you meet with on
14 M & A transactions?

15 "A. Again, this was a phone conversation. It was -- The way
16 we speak verbally is different than the way we write
17 sentences. So it was my understanding that he understood he
18 had confidential information.

19 "Q. Okay. Can you say here today that you informed Mr. Cuban
20 about any of the pricing details of the private placement?

21 "A. No, I can't say I gave him the intricate details of -- of
22 the deal. Just talk about the concept, and that's -- he
23 hasn't given me the opportunity to go that far.

24 "Q. And that's because he had an adverse reaction.

25 "A. Correct."

1 THE COURT: Let's -- could we pause it?

2 MR. BEST: Your Honor, we have about 20 seconds and
3 we're going to stop it at clip 63.

4 THE COURT: Proceed.

5 "Q. Were you able to discuss with Mr. Cuban that the private
6 placement -- prospective private placement had warrants
7 associated with it?

8 "A. No. I didn't get that far, and I would have anyway
9 directed him to, you know, the people that knew about the
10 intricate details of the PIPE.

11 "Q. Did you ever inform Mr. Cuban as to any of the investors
12 in the PIPE transaction?

13 "A. No, I don't believe so.

14 "Q. All right. So you never informed Mr. Cuban that any of
15 the investors -- that the investors were hedge funds?

16 "A. No.

17 "Q. Did you explain -- can you say here sitting here today,
18 that you explained any of the financial details of the
19 prospective private placement opportunity to Mr. Cuban?

20 "A. Not the intricate details of the deal, no."

21 MR. BEST: That's where we'll stop.

22 THE COURT: Okay. Members of the jury, at this time
23 we're going to take our afternoon recess until 3:30.

24 Please remember all of my instructions to you about your
25 conduct during the recess. We'll resume at 3:30.

1 THE SECURITY OFFICER: All rise.

2 (Recess taken at 3:00.)

3 (Proceedings resumed at 3:30.)

4 THE SECURITY OFFICER: All rise.

5 (Jury enters the courtroom.)

6 THE COURT: Be seated, please.

7 You may proceed.

8 MR. BEST: Thank you, Your Honor.

9 (Video playing.)

10 "Q. Mr. Faure, did you consider Mr. Cuban at any point to be
11 management, part of management of Mamma.com?

12 "A. I don't believe so.

13 "Q. Did -- did Mr. Cuban participate in any board meetings
14 prior to June 28th, 2004?

15 "A. Not to my knowledge, no.

16 "Q. Did Mr. Cuban ever ask to speak to any participating
17 investor in the PIPE transaction?

18 "A. I don't recall.

19 "Q. Did Mr. Cuban ask to speak to Mr. Owen?

20 "A. I don't recall.

21 "Q. Okay.

22 "Did Mr. Cuban ask for any more information whatsoever
23 about the prospective private placement opportunity?

24 "A. I don't recall.

25 "Q. You said you sent an email to Mr. Cuban about contact

1 information for Mr. Owen.

2 "Do you recall that testimony with Mr. O'Rourke?

3 "A. Correct. Later on that afternoon, yeah.

4 "Q. Okay. Do you recall what time -- do you recall whether
5 you sent the email to Mr. Cuban prior to talking to
6 Mr. Goldman or did you talk to Mr. Goldman first?

7 "A. No. I'm pretty sure I spoke to Mr. Goldman first, and I
8 believe that it's Mr. Goldman that recommended that I send an
9 email to Mr. Cuban saying if he wants more information about
10 the private placement he should -- here is the contact
11 information.

12 "Q. Let me show you what's going to be marked as Defendant's
13 13.

14 "And I'm going to ask you to look at Defendant's 13 and
15 see if you can recognize this document?

16 "A. Yes, I do.

17 "Q. Okay. Is this the email that you sent to Mr. Cuban with
18 Mr. Owen's contact information?

19 "A. Correct, yes.

20 "Q. Okay. Do you see at the body of this email it says, 'Hi,
21 Mark. If you want more details about the private placement,
22 please contact.'

23 "Do you see that?

24 "A. Yes.

25 "Q. Did you say in this email, 'Pursuant to your

1 "Q. Okay. And so an email went out later on to the board of
2 directors which -- oh, let me ask you this.

3 "There's nothing in that discussion with -- regarding
4 your conversation with Mr. Cuban that spoke about any of the
5 particulars of the equity raise that you discussed with
6 Mr. Cuban, correct?

7 "A. I'm sorry. I'm missing the beginning here.

8 "Q. There's nothing in this paragraph that speaks about what,
9 if anything, you told Mr. Cuban about the particulars of the
10 equity raise?

11 "A. That's correct.

12 "Q. All right. No financial details, correct?

13 "A. Correct.

14 "Q. No -- no particulars about the fact that you informed
15 Mr. Cuban as to who else was going to participate, correct?

16 "A. Correct.

17 "Q. All right. That's because you didn't tell Mr. Cuban who
18 else was going to participate, correct?

19 "A. I -- I probably didn't.

20 "Q. All right. Now, let me turn your attention to SEC 43,
21 which I am just going to show you my copy.

22 "And, now, I'm going to ask if you see the email from
23 David Goldman to the members of the board of directors of
24 Mamma.com?

25 "A. Yes.