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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, : Civil Action
 : No. 1:11-cv-00948
Plaintiff, :
 : September 15, 2011
v. : Afternoon Session
 :
H&R BLOCK, INC., et al., : Washington, D.C.
 :
Defendants. :
..... :

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING - DAY 7
BEFORE THE HONORABLE BERYL A. HOWELL
UNITED STATES DISTRICT COURT JUDGE

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25 Proceedings reported by machine shorthand, transcript
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P R O C E E D I N G S

THE COURT: Good afternoon.

MR. WAYLAND: Good afternoon, your Honor.

THE COURT: Mr. Wayland, do you have recross or do you have --

MR. ROBERTSON: Just one -- my staff told me I misspoke, which I do from time to time, and I apologize.

I had said that Mr. Houseworth was testifying. It's Mr. Bowen who is testifying. Houseworth has testified by deposition. And I didn't hear myself saying that, but somebody else heard me and corrected it.

THE COURT: I was expecting Mr. Bowen.

MR. ROBERTSON: Thank you, your Honor.

RE CROSS EXAMINATION

BY MR. WAYLAND:

Q Just a few questions. We're going to put up the pricing simulator that counsel showed you, the one that actually you can touch and make things happen.

MR. WAYLAND: Okay. Can we put that up, please.

BY MR. WAYLAND:

Q All right, Dr. Meyer. This actually is an Excel spreadsheet, right? This is how it works.

It changes numbers and you get results to change, correct?

A I believe this is an Excel, yes.

Q Okay. And you said you can test the effect of a price

1 change by clicking on a number and changing based on the
2 parameters that were given to the respondents, right?

3 A Correct.

4 Q Okay. So if we clicked, for example, on I think the one
5 Mr. Robertson used, if we click on "Basic E-file" and we see a
6 price of -- let's click on 14.95. You see there were some
7 changes in the numbers? Clicked on 14.95 and the thing changed
8 a little bit.

9 I'm not going to point you to any specific numbers yet, but
10 you see what happens?

11 A Okay.

12 Q So before we do that, let's look up at the -- that nice
13 drawing that Mr. Robertson did for us.

14 As I understand it, Trial Exhibit 5 shows HRB digital on the
15 left, and then I think what Mr. Robertson drew is what I think
16 you described as the closest competitor, sort of the circle of
17 competitors, and the closest you are to HRBD, in your view, the
18 closer you are to their closest competitors, right?

19 A Correct.

20 Q So if we change the price of a TaxCut product, you'd expect
21 to see a little bit of share change in TurboTax, right?

22 A Again, the analysis that the table was based on, and the
23 table was what I was reading off in order to determine closeness
24 of competition, and that table was based on analysis of all of
25 the data is going to show what I indicated in the table.

1 Whether or not that is for any particular item, we'd have to
2 see. But that's not -- the right way to do this is to look at
3 the totality of the data.

4 Q Well, let's see what happens when we look at this.

5 THE COURT: But, Mr. Wayland, could you answer the
6 question, if you can.

7 So if you change the price of a TaxCut product, you'd
8 expect to see a little bit of share change in TurboTax, right?
9 Can you say yes or no or can you just say maybe?

10 THE WITNESS: Maybe.

11 THE COURT: Okay.

12 BY MR. WAYLAND:

13 Q All right. Well, you see that the lowest price in the
14 choices under "TaxCut Online Basic" and "E-file" is 14.95.

15 Do you see that?

16 A Yes.

17 MR. WAYLAND: And could we see, Mr. Gately, what the
18 range of choices is. It runs from 14.95 to 29.95.

19 BY MR. WAYLAND:

20 Q Let's leave it at 14.95 and look around. And we see, for
21 example, the equivalent TurboTax product a .28 share.

22 Do you see that? The next column over.

23 A Yes.

24 Q Let's see what happens when we go down to the highest price,
25 29.95. No change.

1 That surprise you?

2 A Not really. I mean, like I said, there are -- underlying
3 the simulator and this sheet are interactions between all of
4 these various products that come from the underlying survey.

5 What I showed in the analysis that then, you know, led to
6 the depiction on the chart, has to do with when you look at all
7 of the data. It's not surprising that one particular data point
8 may or may not have an effect in the way that you would expect.
9 That's why you look at, you know, all of the data together when
10 coming to conclusions.

11 Q Now, when we change the numbers, the inputs, the 14.95 and
12 the 29.95, we're not changing the questions that were asked, are
13 we, to the respondents?

14 A No.

15 Q Okay. So when you change the numbers, this all runs on the
16 results of the respondents to that survey that we talked about
17 at length yesterday, correct, or Tuesday, right?

18 A Yes.

19 Q And so it's all based on the answers to the question in
20 which the respondents were not presented with prices for a
21 number of the choices, correct?

22 A This is all comes from the same survey.

23 Q Okay. Now, you were shown by Mr. Robertson Defendants'
24 Exhibit 35. And I think you said this was support for your
25 conclusion that there would be 33 or so -- 35 percent share of

1 CPAs at a certain run.

2 MR. WAYLAND: And can we pull that up.

3 BY MR. WAYLAND:

4 Q Okay. Page 8 of Defendants' Exhibit 35.

5 Dr. Meyer, as I understand this chart, it's simply a
6 breakdown of the current share of various tax preparation
7 methods in any particular year, correct?

8 A I believe that's what it is, yes.

9 Q Yeah. And for "Assisted," for example, it says in tax year
10 2010, the assisted has about a 60 percent share and within that
11 category, about 39 percent use accounting and CPA firms.

12 Do you see that?

13 A It's a little blurry, but I think that that's what the
14 numbers say.

15 Q Well, this is a chart that Mr. Robertson had you compare
16 with your results from the simulator. All this is is just a
17 breakdown based on IRS data of the current distribution of tax
18 preparation methods, right?

19 A Correct.

20 Q It's got nothing to do with response to a change in price.
21 Just market share data, right?

22 A It is just market share data, but the point that I got out
23 of this, as compared with the simulator, is -- comes back to the
24 question that the Court asked; and that is, if there's no price
25 associated with the CPA option, is it likely that respondents

1 are going to then overstate -- that's the way I would put it in
2 statistical terms -- their choice of that option because there's
3 no price there? So in other words, because they don't have to
4 pay a price, they don't have to think about the price, are they
5 then more likely to say, "Sure, I'll just pick the CPA option
6 because, you know, I don't have to face the real price?"

7 That was the concern, I believe, that the Court expressed.
8 And if you then see in the simulator a share within the
9 simulator -- predicted share -- that's relatively close --
10 certainly doesn't have to be exact -- but if it's relatively
11 close to what we see in the real world, then that gives me some
12 confidence that that potential concern is not actually borne out
13 in the simulator.

14 Q I mean, you're not seriously trying to tell us that this
15 data supports the results that you got out of the simulator.
16 It's got nothing to do with change, Dr. Meyer, come on.

17 You agree with that, right?

18 A This doesn't have to anything to do with change, I agree,
19 but that's not what I was using when I answered the question
20 that this supports my understanding of the simulator. That's
21 not what I was using it for.

22 Q All right, Dr. Meyer. Just a couple more questions.

23 Remember we looked at your report at I think it's
24 Paragraph 76 where you said that HRB does not want to compete
25 primarily on price? Remember we looked at that this morning?

1 A Yes.

2 Q I just want to confirm --

3 MR. ROBERTSON: Objection; beyond the scope. He asked
4 a question about this document in his examination. I didn't go
5 back to this issue at all.

6 MR. WAYLAND: I'm about to clear it up, your Honor.

7 THE COURT: Overruled.

8 BY MR. WAYLAND:

9 Q I just want to confirm, Dr. Meyer, that the opinion that you
10 expressed on Mr. Robertson's redirect, you're going to stand by
11 it, okay? This was this morning, line 56 -- line 12, page 56.

12 "When you look at all of these other online competitors that
13 we're talking about, does the price that TaxACT has been
14 maintaining over the last 11 years, the low prices that you
15 testified about, in your view, does that have any impact or
16 constraint on other competitors?" And your answer is, "Yes."

17 And you're sticking by that, right, Dr. Meyer?

18 A Yes. This referred to the -- when I was talking this, this
19 referred to the group of other online competitors that includes
20 a lot of the low-priced competitors that we've been talking
21 about.

22 Q HRB doesn't want to compete on price. And TaxACT is now
23 restraining other people, right?

24 A Certainly TaxACT, I believe, is competing with the other
25 online providers, yes.

1 MR. WAYLAND: Thank you, your Honor.

2 THE COURT: Any re-redirect, Mr. Robertson?

3 MR. ROBERTSON: May I have one moment?

4 THE COURT: Sure.

5 (Brief pause.)

6 MR. ROBERTSON: I have no questions. We can move on.

7 THE COURT: Okay. Could you -- we're going to take one
8 minute. Dr. Meyer, you're excused.

9 (Witness exits the courtroom.)

10 THE COURT: Mr. Roush.

11 MR. ROUSH: Your Honor, before we call our next
12 witness, we've been working with the Department of Justice to
13 work out a schedule we'd like to propose to you.

14 THE COURT: Excellent.

15 MR. ROUSH: We would propose to provide you with
16 findings of fact and briefs that would include law and argument
17 on September 28th. And then we would propose, if your schedule
18 permitted, to do closing arguments on October 3rd. We're not
19 sure about your schedule. It's unclear so we wanted to raise it
20 with you.

21 THE COURT: Of course, I did not bring my schedule with
22 me.

23 THE COURT: So October 3rd is that Monday, correct?

24 MR. ROUSH: Yes, your Honor.

25 THE COURT: And that's fine.

1 MR. ROUSH: Would you prefer morning or afternoon?

2 THE COURT: I think let's do it first thing in the
3 morning at, let's say, 9:30.

4 MR. ROUSH: Thank you, your Honor. We've also agreed
5 between us on page limits.

6 THE COURT: Hold on just one second. So you're going
7 to both get your briefs in?

8 MR. WAYLAND: Simultaneous.

9 THE COURT: Simultaneous briefs and findings of fact.
10 Okay. Oral argument October 3rd, Monday morning. That's great.

11 MR. ROUSH: I was just going to inform the Court that
12 we actually agreed on some page limits. They are still large,
13 but at least it will be somewhat limited.

14 THE COURT: Fine. What are your page limits? There
15 are rules of court and, you know, the local rules, but what are
16 your page limits?

17 MR. ROUSH: The findings of fact we would propose
18 75 pages each side, and the briefs themselves would just be
19 25 pages each.

20 THE COURT: Okay. That's fine. I think I would also
21 like you to send the findings of fact in Word format to my
22 chambers e-mail address which my courtroom deputy can give you.

23 MR. ROUSH: Thank you, your Honor.

24 THE COURT: And thank you all for working that out. I
25 appreciate it.

1 MR. WAYLAND: Your Honor, I'd like to introduce one of
2 my colleagues, Mary Strimel, who is going to be dealing with the
3 next witness.

4 THE COURT: Okay. Good. I've seen Ms. Strimel's face
5 in the courtroom.

6 MR. WAYLAND: While we're here, let me introduce some
7 of the other people at the table, your Honor.

8 Mr. James Gately has been terrific in making sure that
9 things show up that are supposed to show up. Mr. Joe Pinto is
10 also there, and you know Mr. Buterman.

11 MR. ROUSH: May I proceed?

12 THE COURT: Yes, please do. Defendants call Tony Bowen
13 to the stand.

14 THE COURT: Good afternoon, Mr. Bowen.

15 (WHEREUPON, the witness was sworn.)

16 TONY G. BOWEN,
17 called as a witness herein, having been first duly sworn, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. ROUSH:

21 Q Good afternoon, Mr. Bowen.

22 A Good afternoon.

23 Q Can you please state your full name and current employer for
24 the Court.

25 A It's Tony G. Bowen. I work for H&R Block.

1 Q What is your current position at H&R Block?

2 A Vice president and CFO of digital tax.

3 Q How long have you been in that position?

4 A About two months.

5 Q And what position, if any, did you hold immediately prior to
6 that position?

7 A Assistant vice president of corporate development.

8 Q What were your general duties and responsibilities in that
9 position?

10 A To lead corporate acquisitions and investitures for H&R
11 Block.

12 Q Was the TaxACT transaction one of those corporate
13 acquisitions?

14 A It was.

15 Q Can you describe how you first became aware that H&R Block
16 was considering acquiring TaxACT.

17 A My boss at the time, Becky Shulman, who was the previous
18 CFO, notified me that she had had a conversation along with Russ
19 Smyth, who was our previous CFO, of a meeting that they had, I
20 believe, with Lance Dunn and Todd Crockett of TaxACT.

21 Q And what time frame was that?

22 A That was in July of 2009.

23 Q Can you describe any involvement you had after that in H&R
24 Block's consideration of the TaxACT acquisition in 2009.

25 A Sure. I led a team of various individuals where we looked

1 at the TaxACT opportunity, which included financial modeling,
2 due diligence, negotiation, purchase agreement, et cetera.

3 Q And you mentioned due diligence. What did that involve?

4 A It obviously involved looking at the business, looking at
5 several of their documents. We made two trips to Cedar Rapids,
6 Iowa to do on-site review of TaxACT.

7 MR. ROUSH: May I approach, your Honor?

8 THE COURT: Yes, please.

9 BY MR. ROUSH:

10 Q Can you turn to Tab 1 marked DX 9527, Mr. Bowen.

11 A Okay.

12 Q Can you explain what this document is.

13 A This is a combination of my handwritten notes from the
14 TaxACT acquisition.

15 Q And is this document a series of documents?

16 A It is. I believe it was any document that I had in my
17 possession at the start of this process that included any
18 handwritten notes.

19 Q And they were kept in your files in this order?

20 A Yes, they were.

21 MR. ROUSH: Your Honor, this is somewhat unusual, but
22 this document is actually several documents but it was produced
23 as one, and they are not in chronological order. So we have
24 that there for the Court and for the Department of Justice, but
25 we've broken out certain documents for ease and flow that are

1 behind other tabs and put them in chronological order. So I'll
2 be referencing back to those.

3 BY MR. ROUSH:

4 Q Mr. Bowen, if you could turn to Tab 2, please. And this is
5 a document marked DX 9527-088. And I think this is -- can you
6 explain what this document is.

7 A Sure. This is a document that we put together prior to the
8 trip -- first trip to Cedar Rapids to perform due diligence, I
9 believe, on September 14th of 2009.

10 Q And if you can turn to the fourth page, DX 9527-091.

11 A Okay.

12 Q Is this your handwriting?

13 A It is.

14 Q And at the top, does that say "Benefits of Merger"?

15 A It does.

16 Q Why did you write, "Maintain separate brands as a benefit of
17 merger"?

18 A At the time, I felt like it was appropriate to -- if we did
19 this acquisition, to maintain both the TaxACT brand as well as
20 the H&R Block existing digital product, which I think at the
21 time was called "TaxCut," but it's currently called "H&R Block
22 At Home."

23 Q When you say "at the time," when was this again?

24 A This was in September of 2009.

25 Q And what does the next bullet say?

1 A "Synergies on" -- it's a shorthand for "marketing."

2 Q So what did you mean when you wrote, "Synergies on marketing
3 as a benefit of the merger" in September of 2009?

4 MS. STRIMEL: Your Honor, if I may, I would like to
5 object on hearsay grounds. This is a fact witness and for him
6 to just be reciting "what statements did you make outside of
7 court" in a different setting is just hearsay.

8 MR. ROUSH: I'm asking him what he meant when he wrote
9 the document.

10 THE COURT: Overruled.

11 BY THE WITNESS:

12 A At the time, we were discussing potential synergies that
13 could be created from marketing by coordinating the marketing
14 efforts mainly online between TaxACT and H&R Block At Home.

15 THE COURT: Could you be clear about exactly when these
16 notes were made.

17 BY MR. ROUSH:

18 Q Mr. Bowen, when were these notes made?

19 A These notes were made, I believe, in that September of 2009
20 time frame, during that due diligence visit.

21 THE COURT: So you were sitting at meetings and were
22 making these notes while you're sitting at meetings with
23 representatives from TaxACT?

24 THE WITNESS: Yes, I was.

25 BY MR. ROUSH:

1 Q And what does the next bullet say?

2 A "Keep TaxACT as a premier free brand."

3 Q What did you mean by that?

4 A TaxACT, in our opinion, is kind of the preeminent name in
5 free. And at the time, my initial notes were to maintain that
6 brand as it currently existed.

7 THE COURT: And were these notes that you were taking
8 because somebody else was speaking and, if so, who else was
9 speaking?

10 THE WITNESS: It would have been several individuals
11 from the TaxACT management team, Lance Dunn and his kind of core
12 management team. Would have been a combination of things that
13 they either said during that meeting or just things that I
14 thought of during that meeting.

15 THE COURT: Okay.

16 BY MR. ROUSH:

17 Q Next two bullets say, "Emerald Card and 2nd Look."

18 What are those?

19 A Emerald Card is the prepaid debit card offered by H&R
20 Block's bank. And 2nd Look is a product offered by H&R Block's
21 retail business where clients can come in and get a manual
22 review of a tax return that they had prepared using another
23 method; either another provider or using it themselves --
24 preparing it themselves.

25 Q And why are they listed as bullets as, "Benefits of Merger"

1 in September of 2009?

2 A I believe they were similar to the marketing potential
3 synergy opportunities of products that we could offer to the
4 TaxACT client base.

5 Q In September 2009, which of any of these benefits involved
6 potential synergies?

7 A I believe the synergies from marketing that I discussed, the
8 Emerald Card, which is the prepaid debit card and then 2nd
9 Look.

10 Q And after this meeting, did you present your findings to the
11 management team?

12 A I did. The core team that went on the due diligence trip,
13 we put a document together and reviewed those materials with the
14 executive management team at H&R Block.

15 Q Can you turn to Tab 3, DX 0244. Can you describe what this
16 document is for the Court.

17 A Yes. This is a document that, again, we reviewed again on
18 October 9th of 2009 with the core executive team at H&R Block at
19 the time.

20 Q So this is the presentation you were just referring to?

21 A Yes, it is.

22 Q If you can turn to the seventh page which is DX 0244-007.

23 A Okay.

24 Q You see the title of the slide is "Outcomes Reviewed."

25 Did you review these outcomes with the management team at

1 that meeting?

2 A We did.

3 Q And can you walk through what outcomes you reviewed with the
4 management team that day.

5 A Sure. You just want me to discuss them briefly?

6 Q Please.

7 A So the first one we discussed was acquire and continue to
8 operate TaxACT as a separate business, and that would be really
9 keeping TaxACT independent from H&R Block operating as it
10 currently operated. Continuing to offer both the TaxCut product
11 in the market as well as TaxACT.

12 The second option that we reviewed was acquire and integrate
13 the technology, which would be to run TaxCut, which is H&R
14 Block's technology -- or clients on the TaxACT platform. The
15 second column next to that says, "Continuing to offer both
16 TaxACT and TaxCut in the marketplace."

17 The third option was acquire and integrate the technology,
18 which would be to run TaxACT clients on H&R Block's technology
19 platform, but continuing to offer both brands in the
20 marketplace.

21 The fourth item was acquire and fully integrate, which would
22 be to move the TaxACT clients to H&R Block's platform and only
23 offer one brand, which would be TaxCut going forward.

24 And then the last item was don't purchase TaxACT, not move
25 forward with the acquisition.

1 Q So the first three involve maintaining separate brands?

2 A Yes, they do.

3 Q Okay. If we can blow this up. I think it's pretty blurry.

4 Why is there a "V" next to the first outcome?

5 A "V" was our recommendation at the time. I think it stood

6 for "Victory." It was something that our investment bankers

7 recommended, but it was basically the recommended approach.

8 Q And we're trying to make this a little clearer, but the

9 second -- the numbers in the column that I think is "Benefits,"

10 the fifth column over.

11 A Yes.

12 Q The number two thing listed there is, "Protect brand loyalty

13 to TaxACT and premium nature of HRB."

14 What did that mean?

15 A That meant by continuing to offer the TaxACT brand,

16 customers that are loyal to that brand and use that product

17 today would continue to get the benefit of that product. And

18 again, we would continue to offer H&R Block's product and in the

19 premium features of that product as it existed in the

20 marketplace at that time as well.

21 Q At that time, being October 2009?

22 A Correct.

23 Q The next one down says, "Act as defensive play."

24 What did you mean by that?

25 A Defensive play, again -- and I think I wrote most of

1 these -- might have been a bad choice of words, but what I was
2 trying to show and we discussed at these various meetings was
3 whether H&R Block's digital business continues to grow or
4 TaxACT's more value low cost business grows at a faster pace, by
5 owning both of those brands we are somewhat acting as a hedge
6 regardless of how clients migrate over time.

7 So if more clients migrate from pencil and paper to TaxACT
8 or they migrate from pencil and paper to H&R Block, H&R Block
9 family would benefit either way.

10 Q If you can turn to the next page.

11 Was this the recommendation that you made to the management
12 team in October of 2009?

13 A Yes, it was.

14 Q And can you read the second bullet on the page.

15 A It says, "Continue to run TaxACT as a separate brand focused
16 on the low cost segment and continue to utilize their efficient
17 IT platform with no TaxCut integration," which again is H&R
18 Block.

19 Q Does this refer back to the "V" plan on the previous page?

20 A Yes, it does.

21 Q And under "Strategic Benefits," are any of those strategic
22 benefits synergies?

23 A The last two would be some of the synergies that I discussed
24 during my handwritten notes. Marketing synergies by HRB -- by
25 using HRB's buying power and by coordinating the online

1 marketing spend. And then the last one talks about other
2 up-sell opportunities by selling the TaxACT clients assistance
3 if they need it through either a Best of Both product or other
4 paid preparation methods as well as the Emerald Card, which is a
5 prepaid debit card that we had discussed.

6 Q Under that, there is a sub-bullet. It says, "Must be done
7 carefully to maintain the TaxACT brand."

8 Why did you include that?

9 A I thought it was important to say that while there is maybe
10 an opportunity to sell these clients some of the H&R Block
11 products, it needs to be done very delicately such that these
12 clients still feel that they are using a TaxACT product.

13 Q The next slide, "Keys to Success."

14 Why did you view these things as keys to success?

15 A Again, at the time, continuing to offer both brands in the
16 marketplace seemed like the best strategy, and it was one of the
17 keys to moving forward, in my opinion, with the transaction.

18 Q And were you asked to do any follow-up after this meeting?

19 A I did -- or I was. There was various individuals that
20 participated in this meeting that were assigned follow-up items
21 that were really open questions that came out of this
22 discussion.

23 Q You can turn to the next tab.

24 THE COURT: Before you leave that tab, what did you
25 mean by "smooth transition as current management exits"? Which

1 current management were you talking about? TaxACT or --

2 THE WITNESS: That would have been TaxACT's management.
3 So thinking about long-term exit strategies in bringing in other
4 individuals to make for a smooth transition.

5 BY MR. ROUSH:

6 Q You can turn to Tab 4, DX 9527-070.

7 A Okay.

8 Q Does this reflect management's instructions on follow-up
9 after your presentation?

10 A It is. These are notes that I typed up after that meeting
11 which the seven items at the top focused on the key follow-up
12 items and who was assigned to each of those follow-up items.

13 Q First one says, "Determine IT synergies for various
14 scenarios."

15 It appears you were not assigned that one; is that
16 correct?

17 A No. That was assigned to Rich Agar and Jason Houseworth.

18 Q Were you given the -- does the second bullet reflect a job
19 that you were assigned?

20 A Yes. It was thinking about how TaxACT would report in to
21 H&R Block if an acquisition were to occur.

22 Q And what did you mean when you wrote, "Summarize the
23 mistakes made at RedGear?"

24 A RedGear also known as TaxWorks, is a company that H&R Block
25 acquired I believe in 2006. I wasn't involved in that

1 acquisition, but it's my understanding that there were several
2 mistakes made and that was an unsuccessful acquisition for H&R
3 Block. So Russ Smyth, our CEO at the time, asked that myself
4 and a lady who was close to that acquisition take a look at what
5 we originally wanted that acquisition to do, come back and
6 summarize that for the team so that we don't make those mistakes
7 again was really the purpose.

8 Q Now, what, if any, follow-up did you do after receiving
9 these instructions?

10 A I believe the various individuals that were assigned these
11 tasks kind of went away and tracked each of these down, and I
12 think we put together a presentation and met with the management
13 team again.

14 Q You can turn to the next tab, DX 9527-034.

15 Can you explain what this document is.

16 A Sure. I believe this is the follow-up presentation that we
17 gave to the management team as a result of those open items, as
18 well as an additional due diligence trip that I believe we made
19 in early October to Cedar Rapids.

20 Q If you can turn to page 2, which is DX 9527-035.

21 Again, are these your handwritten notes?

22 A Yes, they are.

23 MR. ROUSH: If we can blow up the "Findings" portion.

24 BY MR. ROUSH:

25 Q Now, in the right-hand corner -- we'll blow it up here -- it

1 says "Findings."

2 What are these findings from.

3 A These were notes that I had taken during the TaxACT meeting
4 that I believe I wrote on this presentation as talking points to
5 the management team. And these were findings from that due
6 diligence trip.

7 Q Can you walk through these findings. It's a little hard to
8 make out your handwriting.

9 A Sure. The first one says, "No red flags." That's basically
10 we didn't find anything at TaxACT that caused us any alarm.

11 The second one was, "TaxACT software is fairly robust."

12 The next one says, "Founders don't have a desire to work
13 long term."

14 And the next bullet is, relating to that, my note says,
15 "Next couple of tax seasons." And then the last bullet says,
16 "They're already wealthy," which I think we're referring to the
17 founders.

18 MR. ROUSH: If you can take that down and blow up the
19 questions.

20 BY MR. ROUSH:

21 Q Why did you list these questions to be answered in this
22 presentation in October of 2009?

23 A These were kind of the three key questions that I felt like
24 were still open and that needed to be decided by the management
25 team prior to moving forward.

1 Q If you can turn to the page 4 of the deck, which is Bates
2 number ending in 037.

3 THE COURT: Can I just stop on this page on these
4 handwritten notes?

5 MR. ROUSH: Yes, your Honor.

6 THE COURT: Once again, are these notes that you were
7 taking of what other people were saying at this meeting or notes
8 of your own thoughts?

9 THE WITNESS: These are notes that I wrote on this
10 presentation after making the due diligence trip to Cedar
11 Rapids. As we walked through this presentation with the
12 management team, I wanted to discuss some of the key findings
13 from the due diligence visit, and so these were things that I
14 either my own thoughts or things that we learned during that due
15 diligence trip. Most of them were things that we learned about
16 the technology and the founders.

17 THE COURT: And did you personally have conversations
18 with the founders of TaxACT on which you based your notes that
19 they don't have a desire to work long term, something --

20 THE WITNESS: Next couple of tax seasons? Yes, I
21 did.

22 BY MR. ROUSH:

23 Q Just for clarity sake, are these notes that you talked from
24 when you gave this presentation?

25 A Yes, they are.

1 Q If you can turn to, again, page 4.

2 Was this slide in response to the follow-up instructions we
3 saw in the last document?

4 A Yes, it was.

5 Q Can you please describe your summary findings to us as you
6 did to the management team in October 2009.

7 A Sure.

8 THE WITNESS: And again, your Honor, these are notes
9 that I had written on this presentation as talking points as I
10 walked the management team through it. But to summarize the
11 RedRedGear findings, which was looking at that acquisition and
12 what mistakes we had made, there were three points that I
13 summarized. The acquisition model or the financial model used
14 to value the transgression was too aggressive. There was no
15 clear strategy what we were going to do with the business after
16 we acquired them.

17 And then the third item was we overpaid with the purchase
18 price at 30 times EBITDA.

19 BY MR. ROUSH:

20 Q If you could turn to page 13 of the deck. This is Bates
21 number ending in 046.

22 Did you outline some risks and opportunities to the
23 management team when you presented this deck?

24 A Yes, I did. It's presented on page 13.

25 Q And rather than go through all of them, I just want to ask

1 you a couple of questions.

2 In the second-to-last bullet under "Risks," you wrote, "Low
3 barriers to entry for online providers make digital space highly
4 competitive."

5 What did you mean when you wrote that and presented it to
6 the management team?

7 A Again, in my opinion, any time you're delivering a product
8 via the Internet and through online, the barriers to entry are
9 fairly low. There's not a lot of capital investment that's
10 required. Additionally, a lot of companies enter the market via
11 the FFA, and they've got a natural jumping ground to start from
12 using the IRS as a sponsored Web site.

13 So in my opinion, the barriers to entry in this business are
14 relatively low.

15 Q And the next one you wrote, "Negative reaction from
16 franchisees."

17 Why was this a risk of this transaction?

18 A Historically, at H&R Block, any time we made significant
19 moves in our digital business, franchisees typically reacted
20 negatively. They felt like we were making more investment in
21 our digital business. And I think some of them have a fear that
22 we are moving clients from our retail business to our digital
23 business.

24 Q Turn to the next tab. This is a document Bates-numbered
25 DX 0002.

1 Can you describe for the Court what this document is.

2 A This is an e-mail that I sent to Russ Smyth, who was the
3 chief executive officer at H&R Block, and carbon copied Becky
4 Shulman where I was summarizing the previous day's meeting -- I
5 believe the previous meeting was on the 31st -- October 31st,
6 2009, and this e-mail is on November 1st, 2009 -- where I wanted
7 to make sure that he agreed with where we ended the meeting on
8 the three open points that was the main focus of that
9 discussion.

10 Q And turn to page 2 of that document.

11 MR. ROUSH: And blow up the 1, 2, 3, please.

12 BY MR. ROUSH:

13 Q Are these the three questions that were outlined in the
14 presentation that you gave the day before?

15 A I believe they were, yes.

16 Q And this is a bit confusing here. Can you explain what the
17 all caps are and what some of words after are.

18 A Sure. So when I sent this e-mail to Russ, he had
19 responded --

20 Q That's Mr. Smyth?

21 A Mr. Smyth, excuse me. And he had responded. On the
22 previous page, you can see it says, "See below." He had added
23 his comments to the end of my questions and my comments.

24 It may make sense for me to just walk through those
25 briefly.

1 Q Please.

2 A The first question was, "Do we want to buy this business?"
3 I took away, "Yes, at the right price." He wrote, "Agree."

4 The second question was, "Will we continue to operate as a
5 separate brand from HRB?" I wrote, "Unclear." The rest of that
6 sentence or sentences are his response.

7 Third question was, "Will we continue to operate as a
8 separate IT platform from HRB?" I wrote, "I think we ended up
9 on yes, but I wanted to confirm." And he responded, Yes for now
10 but suspect we should get learnings from how they run their IT
11 shop." And he was pointing that Rich Agar, who is our chief
12 information officer, should own that piece of answering that
13 question.

14 Q Turning you back to the first page, you wrote another e-mail
15 the next day on November 2nd. Can you explain why you sent this
16 e-mail.

17 A Yeah. This was, I think, ongoing debate between Mr. Smyth
18 and myself on the brand question of whether or not we would keep
19 H&R Block -- or excuse me, TaxACT branded completely separate
20 from H&R Block, or if we would have some connectivity between
21 those two brands.

22 And Russ was discussing it as maybe it could be a product
23 offering within the H&R Block family. And I think that's
24 something that he discussed in his response on page 2. And this
25 was a response that I sent to him kind of clarifying my view on

1 the branding issue.

2 Q Can you explain what you were referencing under 1, 2 and 3.

3 A Yes. So these are just reasons that I was arguing why
4 keeping TaxACT completely separate from H&R Block, I felt like,
5 was the best decision.

6 You want me to just briefly walk through these?

7 Q I just want to make sure we're clear on this document.

8 Are these your interpretations of what would happen if
9 TaxACT was to remain separate or if TaxACT was no longer to be a
10 separate brand?

11 A This is what I think would happen if TaxACT was part of the
12 H&R Block brand.

13 Q Okay. So if you could quickly run through those, that would
14 be helpful.

15 A Sure. The first point was I thought it would create
16 confusion among the TaxACT and H&R Block clients as to the
17 difference in product offerings and pricing. And again, this is
18 thinking about having H&R Block's Web site and having At Home
19 and TaxACT all on that Web site as different product lines.

20 The second point was that if we did that and had all of
21 those products on the same Web site, that the organization may
22 attempt to position TaxACT as a lower product and position H&R
23 Block At Home as a higher product, take some of the
24 functionality away from TaxACT.

25 The third point was I think there's value in TaxACT as a

1 stand-alone brand because they have a lot of customers who are
2 loyal to that brand. Maybe customers that used an H&R Block
3 assisted product at some point in the past. Maybe they are
4 unhappy with H&R Block, they like TaxACT, and I think that brand
5 had value and another reason why we should keep it separate from
6 H&R Block.

7 Q You use the term here "Fighter Brand." What did you mean by
8 that?

9 A "Fighter Brand" in its language that we use inside of H&R
10 Block a lot, it's just really offering an alternative brand to
11 clients as another option. And it's similar, I say here, to
12 what Procter & Gamble does by offering different lines of
13 laundry detergent.

14 Q What ultimately happened after these initial discussions
15 between H&R Block and TaxACT?

16 A We went back and forth on negotiations, and I believe those
17 negotiations fell apart in the December 2009 time frame.

18 Q And can you describe the circumstances under which H&R Block
19 again starting looking at acquiring TaxACT.

20 If you want to get a glass of water.

21 A I don't know if there's anything in here.

22 Q May I approach with some water?

23 A Yeah, that would be great.

24 MR. ROUSH: May I approach, your Honor?

25 THE COURT: Yes.

1 THE WITNESS: Thank you.

2 BY MR. ROUSH:

3 Q So I was asking if you could describe the circumstances
4 under which H&R Block again started considering a TaxACT
5 acquisition.

6 A I believe the discussions continued sporadically between
7 Mr. Smyth and Lance Dunn during the spring of 2010. And as a
8 result of some of those discussions, Russ Smyth had asked
9 various individuals to kind of start the process of looking at
10 TaxACT again in various ways.

11 Q And why was H&R Block considering this deal the second time
12 around?

13 A Well, I think there was obviously the same interest that we
14 had the first time in acquiring kind of a brand in the low-end
15 segment of the tax space. I think one of the other key drivers
16 at this time in the fall of 2009, H&R Block was building or
17 attempting to build kind of a state-of-art technology platform
18 using a new Microsoft language called "Silverlight."

19 And I don't know the exact date, but late 2010, early -- or
20 excuse me, late 2009, early 2010, that project was abandoned
21 because, for whatever reason, we were unsuccessful in completing
22 that development of that new technology.

23 So I think once we did that, the idea of utilizing the
24 TaxACT technology in a much bigger way and potentially moving
25 H&R Block's clients to that technology had a lot more merit once

1 that project was abandoned.

2 Q And what, if anything, was your involvement in pursuing the
3 deal the second time around?

4 A I had limited involvement -- there wasn't any full-blown
5 effort occurring in the spring of 2010 time period. There was,
6 like I said, some brief discussions occurring between Lance,
7 Mr. Dunn, and Mr. Smyth. And I was asked to, you know, work on
8 some smaller pieces of it, and then I was also asked to
9 participate in a due diligence visit that occurred in, I
10 believe, April of 2010.

11 Q If you can turn to Tab 7, DX 9530.

12 Can you explain what this document is.

13 A Sure. This is an e-mail that I had sent to Jason Houseworth
14 and Rich Agar, who I believe Russ had asked to take a closer
15 look at potential integration opportunities of the technology by
16 utilizing TaxACT's technology for H&R Block's digital business.
17 And I had sent them a strategy discussion document which is
18 basically the "Outcomes Reviewed" portion of the presentation
19 that we were reviewing earlier.

20 And I, you know, summarized some of my thoughts at that
21 time.

22 Q In the third sentence of the first paragraph, you note, "I
23 appreciate the desire to move to a single platform."

24 Was that the goal you were just discussing?

25 A Yes. That would be to utilize TaxACT's technology.

1 Q You go on to say, "But given the efficiency of TaxACT, I am
2 still concerned about moving our clients to their platform."

3 Why in March of 2010 were you concerned about moving clients
4 to the TaxACT platform?

5 A I felt like TaxACT's business was very well ran. It was
6 fairly straight forward. And I felt like there was some amount
7 of concern that I had at the time of complicating that business
8 by basically adding the H&R Block portfolio to their technology
9 platform.

10 Q Looking at the second paragraph, again, the third sentence
11 in this paragraph, "We would view this acquisition as a
12 stand-alone investment in a piece of the market which we
13 currently don't compete today."

14 What did you mean when you said "in a piece of the market
15 which we currently don't compete today"?

16 A I was referencing that, in my opinion, TaxACT competes in
17 the kind of low-end value space, which H&R Block didn't compete
18 in at that time.

19 Q I think you mentioned that you recalled attending a due
20 diligence meeting in April of 2010; is that correct?

21 A Yes.

22 Q And can you turn to Tab 8, DX 9527-053.

23 A Okay.

24 Q Can you explain to the Court what this document is.

25 A This is, basically, an agenda that I believe Mr. Smyth had

1 typed up prior to making the trip to Cedar Rapids where myself,
2 Mr. Smyth, Brian Woram, who was our general counsel at the time,
3 and I believe Rich Agar attended. And these would be kind of
4 things that he wanted to cover during that meeting.

5 Q And do you recall if the team that traveled to Cedar Rapids
6 got an update on TaxACT's performance this year?

7 A We did.

8 Q And do you also recall whether the team discussed how we
9 could share to run the business post-acquisition with TaxACT?

10 A We did. We, I think, discussed at a high level how we could
11 integrate the technologies, how we would go to market with, you
12 know, two different brands and, you know, potential synergy
13 opportunities that would exist as a result of combining the
14 platforms.

15 Q And what, if any, of these under 2 are synergies?

16 A I think under 2 would be C and D, which is really kind of
17 one and the same which is platform consolidation which would be
18 utilizing TaxACT's technology. And then D which is, you know,
19 cost reduction opportunities that would result as a result of
20 consolidating those technologies.

21 Q How, if at all, did this meeting assuage your previously
22 discussed concerns about bringing the platforms together?

23 A It was really, in my recollection, the first time that we
24 heard from TaxACT directly their view on utilizing their
25 technology to run H&R Block's digital business. I think I

1 started to feel more comfortable that Lance Dunn and his team of
2 technology experts could do it with what I would call minimal
3 interruption to their existing business.

4 MR. ROUSH: You know what, your Honor, I've been
5 watching the clock. Do you have a meeting at 3:00?

6 THE COURT: I do. If you're finished with this tab,
7 before you move to the next tab, I thought we could break now.
8 I was going to let you finish with this tab.

9 MR. ROUSH: That's why I finished it.

10 THE COURT: Thank you. We'll break probably until
11 3:15.

12 (Recess was taken.)

13 THE COURT: Sorry for the interruption.

14 Mr. Bowen, please resume the stand.

15 MR. ROUSH: May I proceed, your Honor?

16 THE COURT: Yes, please.

17 BY MR. ROUSH:

18 Q I think we had left off where you had just described that
19 the 2009 proposed acquisition of TaxACT did not move forward.
20 Or actually, we were beyond that.

21 Did there come a time when you became more involved in the
22 transaction than you were in the spring of 2010?

23 A Yes. A couple things happened in June of 2010.

24 Russ Smyth, our chief executive officer at the time, was
25 leaving the firm and Alan Bennett, who was currently on the

1 board, was coming in as chief executive officer. So I had a
2 meeting with Alan in the early part of July, and he made it
3 clear that he wanted me to lead the project from that point
4 forward and start kind of reenergizing the team to look at
5 TaxACT more seriously.

6 Q Can you turn to Tab 9, DX 1003.

7 Can you describe that document for the Court.

8 A This is an e-mail that I had drafted to potentially send to
9 Alan to kind of bring him up to speed on the acquisition of
10 TaxACT and kind of the -- what had transpired over the last
11 12 months.

12 As you can see, I actually sent to a colleague of mine at
13 H&R Block, George Guastello, who works in finance, to ask his
14 thoughts on me sending this to Alan or just walking Alan through
15 these points verbally.

16 So I did not end up actually sending this document, but it
17 was created for that potential purpose.

18 Q And did you end up walking Mr. Bennett through some of these
19 points?

20 A I did. I don't think I walked -- you know, sat down and
21 walked through every point, but we did discuss a lot of these
22 points in various meetings.

23 Q In the first paragraph, there's a notation to "prior to our
24 trip next week."

25 To what does that refer?

1 A We had another trip planned to go to Cedar Rapids with
2 Mr. Smyth, Mr. Bennett, Mr. Agar, and myself. The purpose of
3 that trip was to introduce Mr. Bennett to the TaxACT team, and
4 we were also going to further discuss how we would integrate the
5 two companies going forward.

6 Q In the third paragraph or the second paragraph after your
7 name, there's an underlined phrase there, "as a stand-alone
8 fighter brand."

9 Why is that underlined?

10 A I was just making it clear to -- would have been making it
11 clear to Alan that the recommendation at the time when we looked
12 at TaxACT previously, and I think even at this time, was to keep
13 TaxACT stand-alone from H&R Block, keep the TaxACT brand
14 operating as it did in the marketplace, focus on the low-end
15 space.

16 Q Turning to the paragraph after the recommendation, the five
17 numbered things, so the paragraph after that.

18 A Yes.

19 Q You note that, "Since that time, we have suspended work on
20 the Silverlight platform for HRB At Home." I think you
21 referenced that earlier. Can you explain for us your
22 understanding of what happened with the Silverlight platform.

23 A Sure. As I said, in the fall of 2009 into the early part of
24 2010, our technology team had been working on building a new
25 kind of state-of-the-art platform. And that's one of the

1 reasons why when we made the original recommendation in the fall
2 of 2009, it was to not integrate the technology in any way
3 because the thought was there wouldn't -- we wouldn't want to
4 move H&R Block's clients on to the TaxACT platform because we
5 were going to be building the state-of-the-art platform that
6 could potentially leapfrog TurboTax.

7 We wouldn't want to move TaxACT's clients to H&R Block's
8 platform because TaxACT only spends about \$4 million building
9 their technology.

10 Q Let's be careful about numbers in open court.

11 A I apologize.

12 They spend a limited amount of money building their
13 technology, so there wasn't a large synergy opportunity by going
14 that way. And that's why which ended with the recommendation in
15 the fall of '09 of keeping the technology separate with limited
16 integration.

17 At the point that the Silverlight project was abandoned and
18 then you took a fresh look at H&R Block's technology relative to
19 TaxACT, those two technologies are very close to each other,
20 some aspects I believe TaxACT is actually better. And that's
21 why taking a fresh look at integrating those two platforms made
22 a lot more sense at that time versus in 2009.

23 Q And I note later on in the document, you say, "Here are my
24 questions/concerns."

25 Did you continue to have concerns in mid-July 2010?

1 A I did. I mean, at this point, we had had the high-level
2 discussion with the TaxACT management team in April of 2010, but
3 we really didn't get into the details of how they would
4 integrate the technologies and kind of spend a lot of time
5 discussing it.

6 Q And what, if anything, did you do about those concerns?

7 A Well, that was one of the main points of the trip that I
8 referenced the following week, so that was one of the main
9 focuses of that discussion when we went to Cedar Rapids.

10 Q And what, if anything, did H&R Block present to TaxACT at
11 that meeting?

12 A Well, we felt it was important that TaxACT start to
13 understand our technology and our business in a much more
14 detailed way. We hadn't really spent any time walking through
15 our business -- our digital business. We spent all of the
16 previous trips focused on TaxACT's business.

17 So we put a deck together to walk the TaxACT management team
18 through our business and, like I said, Rich Agar, who is our
19 chief information officer, went along as well on that trip to
20 discuss with the TaxACT technology team some of the details
21 about how our technology is actually built.

22 Q If you can turn to Tab 10, DX 6118.

23 Is this the presentation you just referenced?

24 A Yes, it is.

25 Q And did you put this together?

1 A I did.

2 Q If you can turn to DX 6118-007.

3 Why did H&R Block present to TaxACT about the H&R Block
4 brand at this meeting?

5 A Again, we were thinking about how the business would be
6 operated going forward, what brands would be utilized in the
7 marketplace and then, as I said, a focus on technology.

8 And we wanted to discuss with Lance Dunn and his management
9 team some of the strengths that H&R Block had or has, and that's
10 obviously our brand name and brand awareness in the tax
11 preparation market.

12 Q The first bullet says, "In today's marketplace, no other tax
13 company gives clients the flexibility to choose how they want to
14 receive tax assistance; online do-it-yourself, virtual with the
15 help of a tax pro, or assisted face-to-face."

16 Why was this important to convey to TaxACT at this
17 meeting?

18 A Again, I think it was just trying to show the strengths that
19 we feel like H&R Block has, which I believe we're one of the
20 only companies that allows clients to do taxes themselves using
21 our online solution, use a hybrid solution with the assistance
22 of a tax pro or, you know, go into an office for a face-to-face
23 meeting.

24 Q If you can turn to the next page, page 8.

25 Can you please explain what these two pie charts are.

1 A Sure. This is showing for these particular age brackets,
2 and I believe this was based on a survey that H&R Block had done
3 sometime prior to this date, the method that these various age
4 brackets use to complete their taxes. For example, in 18 to 24
5 year olds, 60 percent use a face-to-face or an assisted method.
6 30 percent use some type of a digital method. And 10 percent
7 would have used, I think, the pencil-and-paper method.

8 Q Turn to page 10 and 11.

9 Can you please explain what -- focusing on page 10, can you
10 please explain what this slide conveys.

11 A Sure. This was -- and again, I believe Russ Smyth had
12 walked the TaxACT team through these various pages. But what we
13 were conveying on this slide is showing the brand strengths of
14 the various options in the tax preparation space and showing
15 how, you know -- and specific to this age bracket of younger
16 generation, that even in younger generations, H&R Block's brand
17 is fairly relevant with brand awareness of 87 percent, and
18 13 percent of those clients would show first choice.

19 We also included kind of the two other kind of largest
20 brands, if you will -- one being TurboTax, the other being
21 CPAs -- and then we included TaxACT's data that we had also.

22 Q Why do you include CPA on this as a brand?

23 A Again, I think the chart was just trying to show kind of the
24 key large brands in the marketplace for tax preparation. And
25 that's its relevance to this page.

1 Q If you can turn to the next tab.

2 THE COURT: When you say "CPA," you're just meaning
3 independent CPAs?

4 THE WITNESS: Yeah. It would be -- I'm not familiar
5 with the details of the survey, but it's my understanding that
6 it would be just how people view CPAs in general. So it would
7 be independent tax preparation shops who are really marketing
8 themselves as CPAs.

9 BY MR. ROUSH:

10 Q And this is about consumer awareness; is that right?

11 A Yes, it is.

12 Q So consumers are aware of -- this is their awareness of
13 TurboTax, of CPAs, of TaxACT and of H&R Block, the brands?

14 A Right. When it comes to preparing taxes, that's correct.

15 Q If you can turn to the next slide or 10, DX 9527-007.

16 A Okay.

17 Q Can you, without explaining any of the numbers because this
18 is a redacted document, can you explain what these several
19 pages are.

20 A I believe these are backup documents that I had with me
21 during that due diligence trip in July of 2010 where I could
22 answer any potential questions that came up regarding kind of
23 the details of our expenditures of our digital business. And I
24 believe these are handwritten notes that I had taken at that
25 meeting.

1 Q Okay. So if you can turn to page 2. It's 9527-008.

2 MR. ROUSH: Just bring up the notes, please.

3 BY MR. ROUSH:

4 Q So you said these are notes that you took at the meeting.

5 Do these notes reflect your -- what do these notes
6 reflect?

7 A These notes would have been information that the TaxACT team
8 had conveyed to us at this meeting, and the keys would basically
9 be their keys to success. It would have been something that
10 Mr. Dunn and his management team would have walked us through as
11 the historical keys to their business success.

12 Q So these are the notes that you were taking when Mr. Dunn
13 was presenting to you?

14 A Yes, it was.

15 Q And they include your impressions of what he was saying?

16 A Yes. I think most of them are basically, as I remember
17 them, the notes as he said them. I think there was one or two
18 points that was more my impression.

19 Q Again, I think it's helpful with the handwriting if we have
20 you explain what some of these are.

21 MS. STRIMEL: Your Honor, I have to renew my objection
22 to hearsay of witness testifying and just reiterating.

23 THE COURT: He is explaining them. I'm going to allow
24 it. So please continue.

25 BY MR. ROUSH:

1 Q The second bullet there, can you read that for us.

2 A It says, "Direct marketing expertise. Positive return on
3 investment year one."

4 Q And what did that mean?

5 A That meant that they felt like one of their strengths was
6 their background in direct marketing. And whenever they make
7 investments in marketing their products in different ways, they
8 always look for return on investment to equal the amount of --
9 return to equal the amount of the investment in that year.

10 MS. STRIMEL: Your Honor, I think that testimony does
11 call into a different category of now reciting what a second
12 person said and then the notes that were taken. It's double
13 hearsay so I'll renew my objection.

14 BY THE WITNESS:

15 A These would have been notes that I took -- I'm sorry.

16 MR. ROUSH: These notes reflect his presence and
17 impression when he was hearing someone else speak and, as he
18 testified, some of these are actually his reflections that were
19 not reflections of what he heard from Mr. Dunn.

20 THE COURT: Am I understanding correctly that the
21 purpose of Mr. Bowen's testimony is also to explain H&R Block's
22 evaluation of the synergies and its calculations of the
23 synergies that it is anticipating from this proposed merger?

24 MR. ROUSH: That is a portion, yes, your Honor. We're
25 also here to sort of explain the history of the transaction,

1 which I don't think has been presented to the Court, in which
2 direct will he refutes some of the assertions about when the
3 story was made up by the attorneys allegedly in this case.

4 MS. STRIMEL: Mr. Dunn was here, and he testified
5 about all of these meetings and his impressions and his
6 firsthand knowledge, so there's really no reason to cumulatively
7 go into it from another witness.

8 MR. ROUSH: I think respectfully, your Honor, no one
9 else can testify to the handwritten notes that Tony Bowen took
10 at the meeting.

11 MS. STRIMEL: To the extent that he wants to explain
12 notes about his own views, you know, that's probably less
13 objectionable. But certainly to the extent that he's just
14 saying, "Mr. Dunn said this and I'd like to reiterate that,"
15 Mr. Dunn was here, he was cross-examined and that should be
16 left.

17 THE COURT: I understand your hearsay objection. And I
18 am going to -- but I am going to allow this witness to answer
19 these questions; one, to explain notes that underlie some of the
20 calculations that were also ultimately relied on by the
21 defendant's expert about the expected efficiencies and the
22 numbers and to explain the company's perspective on how they're
23 making their evaluation about those efficiencies.

24 So I am going to overrule the objection.

25 BY MR. ROUSH:

1 Q So the next bullet -- if you look on your screen, part of it
2 is redacted so please be careful not to mention the number.

3 What does that one reference?

4 A "Targeted EBITDA margin of a certain percentage."

5 Q And then the following bullet.

6 A The next one says, "They need product differentiation to
7 show the difference from other free offerings."

8 Q And what did you mean when you wrote that?

9 A And again, that was something that the management team at
10 TaxACT had communicated as what they felt like one of their keys
11 to success was showing some differentiation in their products
12 from the other free offerings in the marketplace.

13 Q And the next bullet.

14 A The next one is one of my notes -- I don't believe this was
15 conveyed in any way by the TaxACT team -- but I wrote,
16 "Interesting, didn't mention switch from pen and paper as a
17 cause of historical growth."

18 Q And finally, the last bullet on the page.

19 A "They are the low cost value leader."

20 Q So that references TaxACT?

21 A Yes.

22 Q What, if anything, did you do with your handwritten notes
23 following this meeting?

24 A Following this meeting in further discussions that we had
25 with Lance Dunn and his team, I believe I typed up those notes

1 and shared it with various individuals at H&R Block.

2 Q If you can turn to the next tab, Tab 12, DX 1005.

3 Do these reflect your typed-up notes from that meeting?

4 A Yes, they do.

5 Q And do the key messages at the top of the page generally
6 match up to those we just went through?

7 A Yes, they do.

8 Q Okay. If you'd turn to the portion of the document -- you
9 created this document, correct?

10 A I typed these notes, yes.

11 Q And is this your handwriting?

12 A It is not.

13 Q Okay. So if you'll turn to the portion of the document
14 underneath "Integration Models."

15 Why does it say "Plan T"?

16 A This was the notes that I took from, I believe, Mr. Dunn
17 walking through what his view of what an ideal integration model
18 would be between the two brands. And he had called it "Plan T,"
19 which I believe stood for "TaxACT."

20 Q So coming away from that meeting, this reflects your
21 perception of the proposal that was made?

22 A Yes. These are my notes that I had since typed up based on
23 what Mr. Dunn had walked us through after, you know, various
24 discussions on how we could integrate the businesses. This was
25 his and his team's recommendation on how we would do that.

1 Q And the first one says, "You use two brands."

2 Is that the separate brand model we've been talking about?

3 A Yes, it is.

4 Q Now, the third one says, "Position TaxACT as price leader,
5 HRB as premium product with pricing equal to or above Turbo."

6 What did you mean when you wrote "with pricing equal to or
7 above Turbo"?

8 A Again, I think H&R Block is viewed as a premium product
9 today, and we had some brief discussions about additional
10 functionality that we could potentially put into the product
11 that would possibly justify a price equal to, which I think
12 we're close to today, or even above TurboTax depending on what
13 that functionality is.

14 Q So by adding more functionality?

15 A That's right.

16 Q And have you had any discussions or conversations about
17 raising the price of H&R Block's products as a result of this
18 transaction?

19 A No, we have not.

20 Q And have you had any discussions or conversations about
21 raising the price of TaxACT's products as a result of this
22 transaction?

23 A No, we have not.

24 Q Now, did you present this model to the board?

25 A I created a presentation with the assistance of Mr. Bennett,

1 our chief executive officer at the time, and he presented an
2 update of the TaxACT acquisition to the board of directors.

3 Q Turn to Tab 13, please, DX 1009.

4 This is the presentation that you put together and that
5 Mr. Bennett presented to the board?

6 A Yes, it is.

7 Q If you can turn to DX 10009-003, the third page.

8 How, if at all, does this differ from Plan T that we just
9 looked at?

10 A I think it's basically the same. There's no reference to
11 H&R Block offering, you know, additional features to our
12 existing product. We didn't include it on the page. I recall
13 because we didn't discuss it in detail, and we didn't want the
14 board members asking questions about it.

15 And then I believe there's additional detail under the
16 identified synergies that were not included in my notes based on
17 some additional research that we had done.

18 Q So when this was presented to the board, the piece that we
19 read about increasing price was not presented to the board; is
20 that correct?

21 A No, it was not.

22 Q Okay. And I see "Preferred" after Option A.

23 Why is "Preferred" listed there?

24 A That's what Mr. Bennett had told the board. Based on what
25 he knew at the time, that would be his preferred model and form

1 of integration if we move forward with the acquisition of
2 TaxACT.

3 Q Now, we discussed a couple times your skepticism regarding
4 some of the transaction benefits in the, I guess, fall and
5 winter of 2009 and the spring of 2010.

6 How, if at all, did those concerns change after your meeting
7 with TaxACT in late July 2010?

8 A I think I was much less skeptical. I think the way that the
9 TaxACT management team explained the integration process from
10 their perspective, their confidence in moving our clients onto
11 their technology, I think I felt much more comfortable hearing
12 it directly from the people who would be doing it versus
13 speculating at H&R Block.

14 So my concerns were drastically alleviated after that
15 discussion.

16 Q What, if any, due diligence did you do following this
17 presentation to the board?

18 A We had a series of, I believe, conference calls between the
19 TaxACT team and various individuals at H&R Block where we spent
20 a lot of time trying to narrow in on what those synergy
21 opportunities were.

22 So we provided additional details on our technology and what
23 we're spending on our technology, and then the TaxACT team came
24 back and walked through a proposed timeline for integration, as
25 well as what -- forecasts that they had given us on how much it

1 would cost to integrate the two businesses.

2 Q If you can turn to Tab 14, DX 9524.

3 Now, you're not on the top e-mail, so I'll ask you to focus
4 on the one that you authored.

5 Can you explain this e-mail.

6 A Sure. This was a note that I sent to Alan Bennett copying
7 Jeff Brown, who is our current financial officer, and Jason
8 Houseworth which summarized the call that we had with the TaxACT
9 team where they walked us through their timeline and estimate of
10 cost to build the technology on their platform.

11 Q If you can turn to page 2. So we have this on the screen,
12 but we're not going to pull this up in open court because
13 there's a number that should have been redacted and we don't
14 have that copy regarding the efficiencies.

15 So without mentioning the number in the first sentence of
16 the first full paragraph, you state the last sentence here, "We
17 did point out that we would likely be combining our online and
18 software businesses regardless of a transaction with TaxACT."

19 Who did you point that out to?

20 A I pointed it out to the TaxACT management team.

21 Q And did H&R Block actually have any intentions of combining
22 its online and software businesses at this time?

23 A Not that I knew of.

24 Q Why did you point that out to them then?

25 A It's something that Alan had mentioned to me prior to having

1 these discussions, and we were in the middle of negotiations on
2 price. And he specifically called out, let's make sure that we
3 don't, you know, show the TaxACT team exactly the synergy
4 opportunity that exists. So we need to continue to make them
5 believe that we have other options to achieve significant
6 synergies.

7 Q Did you have other options to achieve significant
8 synergies?

9 A No, we did not.

10 Q Can you turn back to the first page.

11 You note in the first paragraph that "they walked us through
12 their proposed integration timeline and estimated cost to build
13 out their team to support the HRB digital business."

14 When you say "they," to whom are you referring?

15 A "They" would be the TaxACT team.

16 Q And then you go on to say in the next paragraph, "The call
17 went well and overall they are very much in line with our
18 previous discussions regarding the integration. The costs are
19 slightly higher than I would have expected, but Lance" --
20 Mr. Dunn -- "admitted he was being conservative."

21 What costs are you referencing?

22 A That would be the cost estimates that they provided to us of
23 integrating the technology on to their platform building out the
24 call center and all the various integration synergies that we
25 identified.

1 Q And what do you mean by "conservative"?

2 A The numbers were higher than I had expected, and when I
3 asked Mr. Dunn about them on that call, he admitted that there
4 was a fair amount of cushion built in and that he was being
5 conservative.

6 Q And was that cushion ever removed from the synergy
7 numbers?

8 A No, it was not.

9 Q Was the acquisition of TaxACT -- did the acquisition of
10 TaxACT require board approval?

11 A It did.

12 Q What, if anything, did you do in seeking that approval?

13 A We put a presentation together and met with the board via
14 conference call in October of 2010 to receive their approval for
15 the transaction.

16 Q And you were involved in putting that presentation
17 together?

18 A I was. There was two main parts of the materials that the
19 board received. One was kind of a general overview of the
20 TaxACT opportunity that we put together, and that's on H&R Block
21 PowerPoint.

22 And the other document was put together by our advisors
23 Greenhill, which mainly walked through the financial aspects of
24 the transaction.

25 Q Turn to Tab 15, DX 0600.

1 Is this the deck that you put together to present to the
2 board in requesting the approval of the TaxACT transaction?

3 A I believe it is.

4 Q Are these your handwritten notes?

5 A No, they're not.

6 Q Looking at the notes on the page, do you recall whether Alan
7 Bennett attended this meeting?

8 A He did. He presented the material to the board.

9 Q And do you recall if Bill Cobb attended the meeting?

10 A I believe he did via conference call.

11 Q Turning to DX 0600-006, page 3 of the deck.

12 What was the recommended purchase price that was presented
13 to the board?

14 A It was 287.5 million.

15 Q What was the proposed management structure that was proposed
16 to the board?

17 A The combined digital businesses, which would include both
18 TaxACT and H&R Block's digital business, would be managed by the
19 TaxACT team. They had committed to a period of three years.
20 And it would be managed from Cedar Rapids, Iowa.

21 Q And we'll talk about the synergy numbers specifically in the
22 closed session, but were potential synergies part of what was
23 proposed to the board?

24 A Yes, they were.

25 Q Can you turn to page 5, which is DX 0600-008.

1 Can you walk through the TaxACT business model that was
2 proposed to the board, briefly.

3 A Sure. This was just attempting to summarize the way that
4 TaxACT operated their business. There's really three main
5 points. One is how they acquire clients or bring clients into
6 their Web site. And that's mainly marketing the free message
7 online.

8 Once they get them to their Web site, they attempt to
9 convert those clients either that year or over time to paying
10 clients, either through up-selling them to additional
11 features -- or additional products such as a state return, or
12 converting them to a paid federal return. And it says in the
13 third bullet, "Typically, it's a two-year process when most
14 clients migrate to a paid federal product.

15 And then lastly they focus on retaining those clients by
16 offering good customer service and an overall good product.

17 Q And you reference it being a two-year process. What does
18 that mean?

19 A That means that a lot of clients will come in using the free
20 federal product the first year and come back the second year, a
21 lot of those clients will upgrade to the paid federal product.

22 Q Now, was there any discussion at this board meeting -- you
23 were in attendance on the board call?

24 A I was.

25 Q Was there any discussion in the board meeting about changing

1 this model post-acquisition?

2 A No, there wasn't.

3 Q Have you had any discussion since this time about trying to
4 change this business model post-acquisition?

5 A No, we haven't.

6 Q Turn to page 9, which is DX 0600-012.

7 Was this the strategic rationale that was presented to the
8 board of directors in October of 2010 to justify the TaxACT
9 transaction?

10 A Yes, it was.

11 Q I think we've been through all of these in one form or
12 another except for the last one so I want to focus on that one.

13 How does this transaction demonstrate to investors that H&R
14 Block is serious about the digital space?

15 A I think obviously our investors or shareholders know that
16 H&R Block is in the digital business, but we've had success that
17 has been much less than our main competitor in that space, which
18 is TurboTax. And I think this would be a sign to our investors
19 that we're taking steps to try to be more competitive in the
20 digital space.

21 Q Were any other rationales for this deal discussed at this
22 board meeting?

23 A I don't recall any.

24 Q And was there any discussion about raising H&R Block's
25 prices as a result of this deal at the board meeting?

1 A No, there wasn't.

2 Q What about raising TaxACT's prices?

3 A No, there wasn't.

4 Q What about limiting TaxACT's services?

5 A No, there wasn't.

6 Q Or functionality?

7 A No.

8 Q Have you had any discussions since October 2010 about these
9 strategic rationales changing?

10 A No, we haven't.

11 Q And if you can turn to page 10, the next page, DX 0600-013.

12 How, if at all, were these post-acquisition product
13 offerings different from Plan T and Option A that we looked at
14 earlier?

15 A I believe they're basically the exact same so continuing to
16 use both brands in the marketplace, and I think all of the other
17 points on the page are basically the same.

18 Q Before we get to a closed session, I want to ask a couple of
19 questions that I think there's no reason to have sealed, but be
20 careful not to answer with any specific numbers.

21 Beginning several pages later, there's -- at DX 0600-023,
22 there appears to be a new deck called "Board Discussion
23 Materials." You referenced earlier that there were two
24 presentations at this meeting.

25 Was this the second one?

1 A Yes, it was.

2 Q And who presented this?

3 A It would have been various individuals from Greenhill.

4 Q And if you can turn to page 18, but not put it up on the
5 public screen.

6 Greenhill presented this slide?

7 A I believe they did.

8 Q And does this reflect the synergies that were presented to
9 the board?

10 A Yes, it did.

11 MR. ROUSH: Beyond that, your Honor, I think I have to
12 get into the numbers so I'd ask that we close the courtroom.

13 THE COURT: Okay. I'll excuse the spectators from the
14 sealed portion of the proceedings.

15 (The following portions, pages 62-110, were designated as
16 confidential/attorneys' eyes only and sealed under a
17 separate transcript per order of the Court.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Lisa S. Schwam, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

SIGNATURE OF COURT REPORTER

DATE