

13· · · · A· · Yes· I founded a company called

14· · Outmatched.org.

15· · · · Q· · And why weren't you just working at your -- at

16· · a job, an engineering job?

17· · · · A· · Well, for the most part this is **because I got**

18· · a **7-foot tall stack of documents** all mixed up· I've

19· · been working on preparing for this· And also through

20· · this experience, I've recognized how vulnerable most

21· · people are to someone who has immense resources and are

22· · willing to do whatever it takes to destroy someone.

Warren Mosler depo #1 in **2016** pg 69 ln 1 – 8

Mosler - Direct

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1 Q. Where -- when the e-mails were requested, you
2 recall going to your computer and printing out e-mails?

3 A. I don't specifically recall if that's what I did.

4 Q. If you don't specifically recall, how do you know
5 that's what happened?

6 A. Because it happens all the time. I do it all the
7 time. I am a full disclosure person. I don't withhold any
8 information for anybody about anything.

Warren Mosler depo #1 in 2016 pg 70 ln 15 – 21

15 Q. Exhibit No. 6 at page 2 asks you to produce name
16 and contact information of the insurance company that
17 insured the Mosler MT900S that was owned by Alan Richard
18 Simon at the time the Mosler MT900s burned.

19 And then Exhibit 8 at page 3, Response was,
20 "Objection, the request is irrelevant as plaintiff has not
21 stated a cause of action regarding the MT fire."

Warren Mosler depo #1 in 2016 pg 110 ln 3 - 14

3 A. I don't recall.

4 You know, none of this was like the focus of my day or
5 my life. This was ancillary.

6 Q. Okay. So the receipt of \$100,000 wasn't a big
7 thing in your day?

8 MR. REINBLATT: Objection.

9 BY MR. ZAPPOLO:

10 Q. A big deal in your day?

11 A. No.

12 Q. Is that because you work with larger sums of
13 money with your other companies?

14 MR. REINBLATT: Objection.

Warren Mosler depo #1 in **2016** pg 68 ln 17 - 25

17 Q. Do you have the e-mails that you just referred
18 to? Do you have any e-mails that you just referred to?

19 A. I don't -- I don't know.

20 Q. Well, in fact, documents such as that were
21 requested.

22 A. If they were requested, they were all sent.

23 Q. Are you sure that they were sent?

24 A. If they were requested, they were sent. I
25 haven't like withheld any e-mails.

Warren Mosler depo #1 in **2016** pg 130 ln 21 – pg 131 ln 2

21 Q. Okay. Did you exchange e-mails with
22 Mr. Savopoulos in November of 2011 related to this issue?

23 A. I don't have a specific recollection, but, you
24 know, I am not saying I didn't. Probably did.

25 Q. And could you produce such e-mails, if they were
1 requested of you?

2 A. Yeah.

8 Q. Do you remember how much money changed hands?

9 A. I think it was \$500,000.

10 Q. Okay. So someone gave who \$500,000?

11 A. Someone gave me \$500,000.

12 Q. And what did that person or entity who gave or
13 caused to give the 500,000, what did they get in return?

14 A. They got pretty much the contents of the
15 building.

16 Q. And was there paperwork exchanged at the time of
17 that transfer?

18 A. Yes.

19 Q. And who handled the paperwork for you?

20 A. Be Sylvia, Alan, and Barrie.

21 Q. So Sylvia Klaker, Alan Simon, and Barrie, the
22 accountant?

23 A. Yeah.

24 Q. And did you retain copies of those documents?

25 A. Yeah, copies are retained somewhere.

1 Q. And you could produce those copies of -- copies
2 of those documents to me; correct?

3 A. Correct.

14 Q. You wanted him to own the company?

15 A. Yeah. I signed all those documents and helped
16 him out, worked with him on the cars.

17 Q. What documents are you referring to that you say
18 you signed?

19 A. The exclusive right to broker, that was for him
20 to own it. He was just finding someone who would back him.
21 He was looking for someone to back him.

22 Q. But in the second to last line of Exhibit No. 12,
23 Mr. Wagner wrote to you, "On top of all of that, I have
24 \$100,000 deposit."

25 Did you ever respond to Exhibit No. 12?

1 A. I don't remember. That must have been for his
2 car or something.

3 Q. If you had responded, would you be able to
4 produce the documents that responds to this?

5 A. If it's an e-mail, yeah.

Warren Mosler depo #1 in 2016 pg 127 ln 5 - 13

5 Q. Okay. Well, do you have any documentation that
6 reflects the termination of any distributor rights?

7 A. Only what I've already submitted. What's already
8 been submitted.

9 Q. What do you -- I can tell you something, I've
10 seen four documents submitted by yourself thus far in this
11 case, okay, maybe six. And I am not kidding. I am just
12 saying.

13 A. I --

Warren Mosler depo #1 in 2016 pg 127 ln 20 - 23

20 Q. -- something was due before today.

21 A. My instructions was to give them whatever they
22 want. We are required to do it. There is nothing secret
23 about our stuff.

1 Q. Now, what do you recall doing to try and locate
2 the items that were requested?

3 A. Again, turning it over to the people who --
4 Sylvia and Alan, and I don't think there was anybody else
5 there at the time.

6 Q. So you had Sylvia and Alan look for these
7 documents for you?

8 A. Yeah.

9 Q. Why did you do that?

10 A. Because I didn't have them.

Spoliation Hearing, MACC-VP Jill Wagner testifying in 2018 pg 12 ln 21 – 25

21 Q But for the last five years -- so from roughly
22 2008 until 2012, when you left, what was your job title
23 again?

24 A Well, I had two of them. General manager and
25 VP of global operations. So I really came in and I

- The **excellent memory** of the VP of Global Operations, who was also the sole other Officer of MACC alongside Warren B. Mosler is noteworthy (*see following answer from Judge Hafele's question about background of MACC*).

6 THE COURT: These guys have been before me in
7 the past, but we have in excess of 1500 files,
8 it's hard to keep track of every file. So tell me
9 what the business was.

10 THE WITNESS: It was a manufacturing facility
11 for the Mosler MT900S, which was a 2,500-pound
12 carbon fiber zero to 60 in 2.9 super car. And
13 they were handmade. They weren't mass produced.
14 You think automotive, you think engineering
15 plants, this was really handmade. There were -- I
16 want to say five or six manufacturing cells, four
17 or five guys in each one and they would learn that
18 part of the car. And so, they would move it to
19 the next stage. And so, it took about a year to
20 make the first one. And I know in total they made
21 65 -- some of that was over in Europe before we
22 came on board -- before I came on board.

Spoliation Hearing, MACC-VP Jill Wagner testifying in 2018 pg 20 ln 21 – 25

3 Q Right. And did you exchange e-mails with
4 Mr. Simon about his car catching on fire? Insurance
5 claims, et cetera, things like that?

6 A No, I didn't handle any of that. That I can
7 recall. I mean, I knew of it. I was told of it. I'm
8 sure we spoke about it. I don't know if there were
9 e-mails about it. We did a lot on the phone, Alan and
10 I, because I've always been a phone person. I don't
11 know. I don't know if there were e-mails about it. I
12 just don't recall.

Spoliation Hearing, MACC-VP Jill Wagner testifying in 2018 pg 19 ln 17 - 22

3 Q Okay. And so, based upon your recollection,
4 about how many e-mails would you have to send in a week?

5 A To who?

6 Q To anyone, related to work?

7 A Maybe -- I just -- I'm sorry, I just don't
8 know. Since it's been so long since I worked there and
9 I've had other jobs -- if by comparison, I just don't
10 know to --

Spoliation Hearing, MACC-VP Jill Wagner testifying in 2018 pg 19 ln 17 - 22

17 Q All right. And there were no problems with
18 changes of parts or parts unavailability, or anything
19 like that?

20 A Oh, I would call suppliers. I'm very
21 proactive on the phone. I do better on the phone than
22 e-mail, even to this day, to me.

Spoliation Hearing, MACC-VP Jill Wagner cross-examination 2018 pg 20 ln 6 - 12

6 A No, I didn't handle any of that. That I can
7 recall. I mean, I knew of it. I was told of it. I'm
8 sure we spoke about it. I don't know if there were
9 e-mails about it. We did a lot on the phone, Alan and
10 I, because I've always been a phone person. I don't
11 know. I don't know if there were e-mails about it. I
12 just don't recall.

Spoliation Hearing, MACC-VP Jill Wagner cross-examination 2018 pg 32 ln 16 - 20

16 BY MR. REINBLATT

17 Q Is it possible Mr. Mosler and Mr. Savopoulos
18 spoke mostly via telephone to negotiate any potential
19 purchase?

20 A Absolutely. Warren is very big on the phone.

Spoliation Hearing, MOSLER's atty arguing in **2018** pg 142 ln 2 - 11

2 There's also a line of case law that talks
3 about the fact that a party can't produce what
4 never existed. Plaintiff is saying, hey, these
5 e-mails existed. There is no additional proof
6 though, that they ever existed. After it's
7 been made to look -- attempted in good faith to
8 locate anything responsive. If they don't
9 exist, they don't exist. You can't just come
10 in and say, hey, by the way, these issues
11 exist.

-- attempted in good faith

- Two years later: after Warren B. Mosler disgorged 18,500+ responsive email documents from his warren.mosler@gmail.com account, MOSLER sat for a court-ordered 2nd deposition.

Warren Mosler depo #2 in 2020 pg 193 ln 12 - 16

12· · · Q· · Okay· Well, would there be -- did you -- when
13· · you were running Mosler Auto Care Center, **did you a lot**
14· · **by phone or was it by e-mails?**
15· · · A· · I think it was just **largely by e-mail**. I
16· · don't remember doing a lot of talking.

Alan Simon, MOSLER's personal atty depo in **2019** pg 46 ln

11 · · · A · · Could be 50, could be a hundred.

12 · · · Q · · Okay.

13 · · · A · · It's a significant amount.

14 · · · Q · · Okay. As you sit here today, do you know

15 whether the St. Dennis law firm turned ***any of those***

16 ***emails over to us?***

17 · · · **A · · I have no idea.** I don't know if anything

18 was appropriate or responsive to your request.

19 · · · Q · · Did you make any determinations as to

20 whether the -- any of the documents that you had

21 previously turned over to the St. Dennis law firm --

22 · · · · · How long ago did you turn those over?

23 · · · **A · · Years ago.**

Warren Mosler depo #2 in **2020** pg 36 ln 5 - 8

5 Q. May of 2019, that was also the time frame
6 where Alan Simon gave a deposition in this case and
7 testified that he had turned over records, correct?

8 A. Yes.

Warren Mosler depo #2 in 2020 pg 94 ln 2 - 12

2 Q. All right. You recall though don't you that
3 Mr. Wagner requested your phone records for the relevant
4 time periods so that we could ascertain when you in fact
5 spoke with Mr. Lee, correct?
6 A. Yeah, I'd forgotten about that. Yeah.
7 Q. Okay. Did you produce such records?
8 A. I don't recall.
9 Q. You had access to your phone records, didn't
10 you?
11 A. I -- I wouldn't know how to access phone
12 records.

Warren Mosler depo #2 in 2020 pg 94 ln 13 - 23

13 Q. You don't know how to get copies of your own
14 old phone bills?
15 A. No. I would direct my staff to do it, but
16 I --
17 Q. Okay.
18 A. -- I wouldn't do it myself.
19 Q. Would you direct your staff to recover your
20 phone records from the time period of June 2011?
21 A. I don't recall. I mean, I might have. I
22 certainly didn't not direct them. I didn't tell them
23 not to do it, so --

- *Defendants in the 2012-LAWSUIT objected to having an adverse inference regarding whether or not MOSLER used the phone to speak to journalists and deliver statements being sued upon. On the eve of trial, Judge Luis Delgado granted Defendants' wish to **not** have an adverse inference for the jury regarding phone calls made by MOSLER.*

16· . . . Q· · Okay· And by the way, you can't confirm or

17· ·deny whether or not you said those -- whether you

18· ·confirmed that to Mr. Farah, correct?

19· . . . **A· · I will deny I said that. I can't confirm -- I**

20· **don't recall the conversation, but I did not say that.**

21· . . . Q· · You don't recall the conversation, but *you*

22· ·*deny that you said that?*

23· . . . A· · Yes.

24· . . . **Q· · And even though Mr. Farah says that you did?**

25· . . . **A· · That's correct.**

17· . . . Q· · All right· Now when you said "claiming he has

18· ·a distributorship agreement," you could have phrased

19· ·that -- well, let me back up.

20· You said those words to Mr. Hardigree during a

21· ·phone call, didn't you?

22· . . . **A· · I don't recall the phone call at all** or saying

23· ·anything to him, so he's attributing those to me.

24· . . . Q· · Okay. You're not denying that you said that

25· ·to this jury, are you?

·1· . . . A· · I can't confirm or deny it. I don't remember

·2· ·the conversation.

Warren Mosler Trial Testimony in **2023** pg 944 ln 11 - 16

11· . . . Q· The quote, in fact, part of the documentation
12· (for the sale of Mosler) is that Todd is not involved,
13· says Mosler.
14· You can't confirm or deny whether you said
15· that or not, correct?
16· . . . A· I can't.

Warren Mosler Trial Testimony in **2023** pg 940 ln 11 - 16

11· . . . Q· Okay. Now ***there's a quote there***: Quote, he
12· goes around claiming he has a distributorship agreement.
13· He's a distributor of nothing because we're not
14· producing a car, ***Warren Mosler tells me in a phone call***
15· on Friday, correct?
16· . . . A· Correct.

Warren Mosler Trial Testimony in **2023** pg 940 ln 17 - 23

17· . . . Q· All right. Now when you said "claiming he has
18· a distributorship agreement," you could have phrased
19· that -- well, let me back up.
20· You said those words to Mr. Hardigree during a
21· phone call, didn't you?
22· . . . **A· I don't recall the phone call at all** or saying
23· anything to him, so he's attributing those to me.

Trial Testimony, Car Journalist Matt Farah in **2023** pg 1096 ln 25 – 1097 ln 4

25. . . . Q. . Okay. So with respect to the November 17th

·1· ·posting, did you contact Mr. Mosler, or did he contact

·2· ·you?

·3· . . . A. . There -- **I got Mr. Mosler's phone number and I**

·4· **called him.**

Trial Testimony, James Todd Wagner testifying in **2023** pg 1181 ln 15 - 18

15 Q Okay.

16 A And I learned over time that lawyers are smart

17 guys. They do the dirty work on the phone because

18 there's no evidence of it.

Trial Testimony, James Todd Wagner in Cross-Examination in **2023** pg 1431 ln 15 - 18

20 Q And you weren't on the phone when any of these
21 authors allegedly spoke to Mr. Mosler, right?

22 A They definitely spoke to him on the phone,

23 it's not alleged.

Warren Mosler Trial Testimony in **2023** pg 2318 ln 21 - 25

21. . . . Q. . You don't recall the conversation, but you

22. ·deny that you said that?

23. . . . A. . Yes.

24. . . . Q. . And even though Mr. Farah says that you did?

25 . . . A . . That's correct.