



2016-17 Case Problem
A civil case of employment discrimination

Riley Winter
v.
TBD, Inc.

BY THE AMTA CIVIL CASE COMMITTEE

JUSTIN BERNSTEIN • MICHAEL J. GELFAND • DANIEL HAUGHEY
TOBY HEYTENS • MACKENZI SIEBERT • ABBE STENSLAND • KYLE WEST

Synopsis

Professional writer Riley Winter, age 50 at the time of termination, has sued an online magazine, TBD, Inc., for wrongful termination on the basis of age discrimination.

Available Witnesses

- Riley Winter, writer
- Austin Perez, editor in chief
- Bobbie Lin, secretary
- Sam Owens, employment expert
- Cary Kramer, psychiatrist
- Sawyer Shaw, chief executive officer
- Skye Martin, human resources manager
- Adrian Edwards, tech magnate
- Kirby Doolittle, intern
- Vic Fogel, journalism expert

We Need Your Help!

Please report any typos, inconsistencies, or other errors to amta.civilcase@collegemocktrial.org. We do not anticipate releasing any additional changes before regionals.

NEW AMTA POLICY – Licensing Fee for Use of Case Materials at Invitational Tournaments

These case materials are the intellectual property of the American Mock Trial Association. By paying the School Registration Fee, a school acquires a license to use this case for internal educational purposes and to compete at AMTA-sanctioned tournaments (that is, regionals, ORCS, and the National Championship Tournament). Under AMTA's Intellectual Property policy, however, this license does not by itself permit use of these case materials to host an invitational tournament. Instead, Schools wishing to use these case materials to host an invitational tournament must obtain a separate license to do so. For 2016-17, this license will require tournament hosts to pay to AMTA an amount equal to 5% of gross fees collected from all participating teams, to provide AMTA with a copy of the tournament tab summary, and to respond promptly to any requests for information from AMTA. Failure to comply with any of these requirements could result in sanctions under the AMTA rules or other consequences, including inability to compete in AMTA-sanctioned tournaments until the school is in compliance. If you have any questions, please contact AMTA.IP@collegemocktrial.org.

Notes and Acknowledgments

This case is a work of fiction, and AMTA owns all rights. Any similarity to real people, companies, locations, trade names, service marks, or copyrighted material is purely coincidental.

The case committee wishes to thank:

- **Alex Bluebond, Brandon Harper, Sue Johnson, Michael Nelson, and Melissa Schuett** for proofreading the case.
- **Sarah Sawtelle** for creating our more technically challenging exhibits and logos.



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Dear AMTA Competitors,

Welcome to the 2016-2017 season. I'm Frank Guliuzza, the new President of the American Mock Trial Association. Mock trial is the most competitive unified forensics activity in the country -- period. It is an activity about which we all can be very proud. It is absolutely my honor to serve as President of this organization.

You're receiving the case problem for the new season. So am I, and I'm looking forward to reading it for the first time! I'm not a member of the Civil Case Committee, so I can't comment on its quality. But, I'm confident that the Committee has given us an excellent product that, with the customary revisions, will take us through the Opening Round of the Championship Series.

We just had our summer meeting of the AMTA Board. The minutes are on the web page. Maybe the most controversial item that we adopted is the new rule that will grant the host of the National Championship Tournament a bid to the Championship Tournament if that school earns a bid to ORCS. A couple of years ago this proposal was defeated soundly. What's changed? Each year, it's been increasingly difficult to find hosts for the National Championship Tournament. Hence, one of the purposes for the rule change is the hope that it will stimulate schools to submit bids to host the Championship Tournament. During the 2015-2016 season, the AMTA Board also voted to charge invitational hosts a small amount for using the case problem. The objective is to raise additional revenue that will be distributed directly to the regional hosts.

As the new President, I've tried to increase the involvement of folks who have never served on AMTA committees -- or on the AMTA Board. I'd like to invite you to be part of this great organization in that capacity if you might wish. I have put together two committees to accomplish a couple of important tasks. The first is an ad hoc committee to look at increasing participation of schools in the Intermountain West. The second is a committee that will consider ways that AMTA might support faculty members who sacrifice the opportunity to do scholarship in order to coach their teams. I'm also asking our Strategic Planning Committee to study ways that AMTA might serve those outside of our own competitive

National Office:

Tammy Doss | Program Coordinator

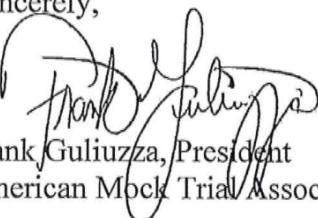
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community. If you're interested in serving on any of these committees, please feel free to drop me a note or give me a call. I'd be delighted to hear from you.

Finally, I am very aware that the primary thing that AMTA does is to sponsor and administer the 30-plus qualifying tournaments that leads to the Championship Tournament -- that leads to our crowning the national champion of intercollegiate mock trial. If we don't do that well, then we're not serving our primary purpose as an organization. So, please let me know if you have criticisms or concerns with the way the organization administers intercollegiate mock trial.

I want to wish you all the best for the upcoming season. I hope that it is a great one for your program; and I look forward to meeting many of you at tournaments all the way up to the national championship tournament this year in Los Angeles.

Sincerely,



Frank Guliuzza
President
American Mock Trial Association

SPECIAL INSTRUCTIONS

Witnesses and Witness Selection

1. **Witness Availability:** Winter, Perez, Lin, Owens, and Kramer may be called only by the plaintiff. Shaw, Martin, Edwards, Doolittle, and Fogel may be called only by the defense. *See Instructions 2(a) and (b) for special rules governing Kramer and Shaw.*
2. **Captains Meeting Procedures.** Damages election and witness selection must proceed sequentially down the Captains Meeting Form. All announcements are final once made.
 - a. **Step 1:** Plaintiff announces whether it is pursuing damages or whether the trial has been bifurcated into separate liability and damages phases.
 - i. *If plaintiff pursues damages:*
 1. Legal Document 5 (Pretrial Order (Liability Only)) does not exist and may not be referenced by either team for any purpose.
 2. Plaintiff must select Kramer as one of its three witnesses.
 - ii. *If plaintiff chooses bifurcation:*
 1. Legal Document 6 (Pretrial Order (Damages)) does not exist and may not be referenced by either team for any purpose.
 2. Plaintiff may not select Kramer as one of its three witnesses.
 - b. **Step 2:** Defense announces if it is calling Shaw.
 - i. *If Shaw is one of the three defense witnesses:*
 1. Exhibit 20(2) (timestamp 2:00 p.m.) does not exist.
 - ii. *If Shaw is not one of the three defense witnesses:*
 1. Exhibit 20(1) (timestamp 1:59 p.m.) does not exist.
 2. Notwithstanding AMTA Rule 4.31(1), the defense team's total allotted time for direct examination will be reduced to 20 minutes.
 - c. **Step 3:** Defense announces its remaining witnesses.
 - d. **Step 4:** Plaintiff announces its three witnesses, subject to the rules stated in Step 1.
3. **Genders of available witnesses:** The plaintiff team determines the genders of all available plaintiff witnesses. The defense team determines the genders of all available defense witnesses.
4. **Party Representatives.** Winter and Shaw are the only permissible party representatives under Rule 615 of the Midlands Rules of Evidence. If Winter or Shaw will be called as witnesses, they must be designated as party representatives by the party calling them.

Other provisions

5. **Reports as “Affidavits.”** The reports of Owens, Kramer, and Fogel are “affidavits” for purposes of AMTA Rules 8.9 (Invention of Fact) and 8.17 (Admission) and thus may not be offered into evidence.
6. **Winter and Shaw Depositions.** Riley Winter and Sawyer Shaw do not have affidavits or reports. The depositions of Winter and Shaw are not “affidavits” for purposes of AMTA Rules 8.9 (Invention of Fact) or 8.17 (Admission). Students playing Winter and Shaw may build their testimony using the depositions and other documents in the case. Winter and Shaw may also invent facts outside of the case documents, but can still be cross examined on those inventions using the deposition, exhibits, or other case materials. All inventions of fact by Winter and Shaw must comply with all AMTA Rules and other special instructions in the case. For example, Shaw may not deny that Shaw gave the answers given in the deposition after having sworn to tell the truth or deny having sent any emails or texts that purport to have been sent by Shaw.

7. **Fifth Amendment.** No witness may refuse to answer any question—and no attorney may instruct a witness not to respond—based on the witness’s Fifth Amendment rights.
8. **Birthday card (Exhibit 8).** Teams may use the birthday card exhibit in two ways. First, teams may use the materials in their provided form (or an enlargement thereof) as an exhibit, subject to the rules of evidence. Second, teams may use the provided materials to approximate an actual birthday card (including by folding the materials, printing them on cardstock, or the like) so long as they do not add content or alter the existing content in any way. (To print the card in double-sided format, select “Flip on short side” or similar before printing). Any team wishing to approximate an actual card must show the card to the other team during the captains meeting so that any concerns may be brought to the attention of the AMTA representatives.
9. **Final Versions (and Revision Dates).** All participants must acknowledge that all case documents are the final and only versions of those documents. AMTA’s case corrections will be indicated by dates (e.g. “8-15-2015”) at the top or bottom of corrected documents. For purposes of the trial, such dates do not indicate anything else about the history of the document. For instance, dates do not indicate that a witness has revised his or her affidavit, report, declaration, etc., or when such a revision occurred.
10. **Witnesses must be able to respond to cross-examination.** Stipulation 7 provides that “[a]ll parties and witnesses are of at least of normal intelligence and none has or ever has had a mental condition that would impact a person’s perception, memory, or ability to respond to questions on cross examination.” It is a violation of that stipulation and of this special instruction to portray Riley Winter—or any other witness—in a manner that renders Winter unable or unwilling to respond to otherwise proper questions on cross examination.

CAPTAINS MEETING FORM

To get ballots, competitors must complete this form and submit it to the AMTA representative (or, at invitational competitions, the tournament host).

Courtroom # ____

The Captains Meeting proceeds in the following order: *All selections are final and binding once announced.*

1. Plaintiff decides whether to bifurcate the trial (liability only) or pursue damages:

BIFURCATE

Legal Document 6 Does Not Exist
Plaintiff May Not Call Kramer

DAMAGES

Legal Document 5 Does Not Exist
Plaintiff Must Call Kramer

2. Defense announces whether it is calling Shaw:

SHAW

Exhibit 20(2) Does Not Exist
Defense Has 25 Minutes For Direct

NO SHAW

Exhibit 20(1) Does Not Exist
Defense Has 20 Minutes For Direct

3. Defense selects its remaining witnesses from Martin, Edwards, Doolittle, and Fogel.

4. Plaintiff selects its remaining witnesses from Winter, Perez, Lin, and Owens.

5. In the table below, circle the three witnesses selected by each party (six total). Each party indicates the gender of each of its available witness, including those not called.

Plaintiff		Defense	
Witness	M/F	Witness	M/F
Riley Winter		Sawyer Shaw	
Austin Perez		Skye Martin	
Bobbie Lin		Adrian Edwards	
Sam Owens		Kirby Doolittle	
Cary Kramer		Vic Fogel	

CASE DOCUMENTS

Legal Documents

1. Complaint
2. Answer
3. Available Law
4. Stipulations
5. Pretrial Order (Liability Only). *See Special Instruction 2(a).*
6. Pretrial Order (Damages). *See Special Instruction 2(a).*

Plaintiff Witness Materials

1. Riley Winter (Deposition)
2. Austin Perez (Affidavit)
3. Bobbie Lin (Affidavit)
4. Sam Owens (Report)
5. Cary Kramer (Report)

Defense Witness Materials

6. Sawyer Shaw (Deposition)
7. Skye Martin (Affidavit)
8. Adrian Edwards (Affidavit)
9. Kirby Doolittle (Affidavit)
10. Vic Fogel (Report)

EXHIBIT LIST

1. Defendant TBD, Inc.'s Responses to Plaintiff's Interrogatories
2. Remarks to TBD, Inc. Staff
3. TBD People Policy
4. Memorandum from Martin to Winter (December 1, 2014)
5. Email from Winter to Perez (January 12, 2015)
6. Email from Shaw to All Staff (April 27, 2015)
7. Email from Shaw to All Staff (August 12, 2015)
8. Birthday card
9. Memorandum from Martin to Winter (December 1, 2015)
10. Riley Winter, *TURNTable's New QRate Is Ruining Music* (December 15, 2015)
11. Email from Winter to Perez and accompanying attachment (Dec. 16, 2015, 8:47 a.m.)
12. Email from Perez to Winter and accompanying attachment (Dec. 16, 2015, 10:08 a.m.)
13. Email from Winter to Perez (Dec. 16, 2015, 11:47 a.m.)
14. "What Kirby Learned"
15. Text messages from Shaw to Edwards (December 23, 2015)
16. Email from Edwards to Shaw (December 23, 2015)
17. Letter from Shaw to Winter (December 23, 2015)
18. Writers Employed by TBD, 2014-2015
19. Press release: "Greene-er Days for TBD's Culture Beat" (Dec. 23, 2015)
20. Email from Perez to Perez (December 23, 2015)
 - (a) Version 20(1) (sent 1:59 p.m.) *See Special Instruction 2(b).*
 - (b) Version 20(2) (sent 2:00 p.m.) *See Special Instruction 2(b).*
21. Email from Shaw to Mayes (December 23, 2015).
22. "Riley Winter Articles, Clicks, and Shares" and accompanying declaration

CIRCUIT COURT OF MIDLANDS

Riley Winter,

Plaintiff,

v.

TBD, Inc.,

Defendant.

Case No. CV 11-715

Action filed: February 29, 2016

Judge Rachel Oliver

Complaint

1. This is an employment discrimination action brought under the Midlands Age Discrimination Act of 1967 (“MADA”).

JURISDICTION, VENUE, & ADMINISTRATIVE PREREQUISITES

2. This court has subject matter jurisdiction, personal jurisdiction, and is a proper venue for this lawsuit.
3. Plaintiff has complied with all administrative requirements to bringing this action, including exhausting administrative remedies.

PARTIES AND RELEVANT INDIVIDUALS

4. Plaintiff Riley Winter (“Winter”) is a citizen of Midlands born on November 20, 1965.
5. Defendant TBD, Inc. (“Defendant”) is a corporation chartered under the laws of Midlands that publishes a magazine called “TBD.”
6. Since January 1, 2014, Sawyer Shaw (“Shaw”) has been sole shareholder and CEO of Defendant. Shaw was born June 20, 1987.
7. From January 2, 2014, through and including March 31, 2016, Austin Perez (“Perez”) was editor in chief of TBD. From January 2, 2014 until the present Skye Martin (“Martin”) has been Director of People Operations for Defendant.

COUNT 1: AGE DISCRIMINATION IN TERMINATION

8. Winter was employed by Defendant from July 14, 1988, to December 23, 2015.
9. On December 23, 2015, Winter’s employment was terminated by Defendant. Winter did not resign, retire, or otherwise voluntarily give up Winter’s position.
10. Winter was 50 years old as of the date that Winter was terminated.
11. Shaw, Perez, and Martin all were aware of Winter’s age as of December 23, 2015.

12. At the time of Winter's termination, Winter's title was senior staff writer.
13. At the time Winter was terminated, Winter was fulfilling all of Defendant's legitimate expectations in terms of conduct and performance.
14. At or about the time Winter's employment was terminated, Defendant hired Landon Greene ("Greene") to replace Winter. As of December 23, 2015, Greene was 26 years old.
15. In violation of MADA, Defendant terminated Winter's employment because of, or on the basis of, Winter's age.

PRAYER FOR RELIEF

THEREFORE, Plaintiff demands judgment against Defendant and compensatory damages for past lost wages, future lost wages, medical bills, and emotional distress in an amount of \$4,000,000.

Respectfully submitted,

K. Villany

Gupta, Piacenti, & Villany
Attorneys for Plaintiff

CIRCUIT COURT OF MIDLANDS

Riley Winter,

Plaintiff,

v.

TBD, Inc.,

Defendant.

Case No. CV 11-715

Action filed: February 29, 2016

Judge Rachel Oliver

Answer

1. This is an employment discrimination action brought under the Midlands Age Discrimination Act of 1967 (“MADA”).

a. *Defendant’s response:* Admitted.

JURISDICTION, VENUE, & ADMINISTRATIVE PREREQUISITES

2. This court has subject matter jurisdiction, personal jurisdiction, and is a proper venue for this lawsuit.

a. *Defendant’s response:* Admitted.

3. Plaintiff has complied with all administrative requirements to bringing this action, including exhausting administrative remedies.

a. *Defendant’s response:* Admitted.

PARTIES AND RELEVANT INDIVIDUALS

4. Plaintiff Riley Winter (“Winter”) is a citizen of Midlands born on November 20, 1965.

a. *Defendant’s response:* Admitted.

5. Defendant TBD, Inc. (“Defendant”) is a corporation chartered under the laws Midlands that publishes a magazine called “TBD.”

a. *Defendant’s response:* Admitted.

6. Since January 1, 2014, Sawyer Shaw (“Shaw”) has been sole shareholder and CEO of Defendant. Shaw was born June 20, 1987.

a. *Defendant’s response:* Admitted.

7. From January 2, 2014, through and including March 31, 2016, Austin Perez (“Perez”) was editor in chief of TBD. From January 2, 2014 until the present Skye Martin (“Martin”) has been Director of People Operations for Defendant.

- a. ***Defendant's response:*** Admitted.

COUNT 1: AGE DISCRIMINATION IN TERMINATION

8. Winter was employed by Defendant from July 14, 1988, to December 23, 2015.
 - a. ***Defendant's response:*** Admitted.
9. On December 23, 2015, Winter’s employment was terminated by Defendant. Winter did not resign, retire, or otherwise voluntarily give up Winter’s position.
 - a. ***Defendant's response:*** Admitted.
10. Winter was 50 years old as of the date that Winter was terminated.
 - a. ***Defendant's response:*** Admitted.
11. Shaw, Perez, and Martin all were aware of Winter’s age as of December 23, 2015.
 - a. ***Defendant's response:*** Admitted.
12. At the time of Winter’s termination, Winter’s title was senior staff writer.
 - a. ***Defendant's response:*** Admitted.
13. At the time Winter was terminated, Winter was fulfilling all of Defendant’s legitimate expectations in terms of conduct and performance.
 - a. ***Defendant's response:*** Denied.
14. At or about the time Winter’s employment was terminated, Defendant hired Landon Greene (“Greene”) to replace Winter. As of December 23, 2015, Greene was 26 years old.
 - a. ***Defendant's response:*** Defendant admits that it hired Greene as a writer in December 2015 and that Greene was 26 years old. Defendant denies that Greene was hired to “replace” Winter or in fact “replaced” Winter.
15. In violation of MADA, Defendant terminated Winter’s employment because of, or on the basis of, Winter’s age.
 - a. ***Defendant's response:*** Denied.

Respectfully submitted,

R. Zhu

Zhu, Cohen, & Stern
Attorneys for Defendant

AVAILABLE LAW

The statute and cases listed below are the only legal authorities that may be cited in trial.

Statutes

NOTE: All statutes are from Title 29 of the Midlands Code (M.C.)

Chapter 14 -- Midlands Age Discrimination Act

29 M.C. § 623 - Prohibition of age discrimination

It shall be unlawful for an employer--

- (a) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's age . . .

29 M.C. § 631 - Age limit

The prohibitions in this chapter shall be limited to individuals who are at least 40 years of age.

29 M.C. § 972 - Remedies

A plaintiff who prevails in an action under Section 623 may recover compensatory damages.

Relevant Cases

(All cases are from the Supreme Court of Midlands)

MIDLANDS AGE DISCRIMINATION ACT

Elements and Nature of Proof

O'Keefe v. Tunceli (1990)

To establish liability under the Midlands Age Discrimination Act (MADA), a plaintiff must prove three elements: (1) the plaintiff was a member of the protected class; (2) the defendant took an adverse employment action against the plaintiff; and (3) the defendant took the adverse employment action because of the plaintiff's age. To obtain damages, a plaintiff also must establish a fourth element: (4) legally cognizable harm.

Mendoza v. Jovic (2015)

The well-known burden-shifting framework associated with *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), has no application in a MADA trial. Even in federal court, that standard applies at the summary judgment stage, not at trial. In addition, under MADA, the burden never shifts to the employer to show it would have taken the same action regardless of age. See *Villany v. Vincent* (2014). Instead, the parties' obligations are governed solely by O'Keefe and its progeny.

Element 1: Protected class

Liaolo v. Ahmed (1985)

A plaintiff is a member of the protected class so long as she was at least 40 years old at the time of the challenged employment decision.

Element 2: Adverse employment action

Mourrain v. Thompson (1992)

Termination of employment is, by definition, an "adverse employment action."

Element 3: Discriminatory intent and causation

***Hobbs v. Xiao* (1999)**

The plaintiff must prove age was the “but-for” cause of the challenged employment decision. Put another way, the plaintiff must show that her age actually motivated and was a necessary precondition for the employer’s action.

***Villany v. Vincent* (2014)**

Under MADA, the burden of persuasion never shifts to the defendant to prove that it would have taken the same action regardless of the plaintiff’s age. Instead, the plaintiff always must prove that the defendant would not have taken the same action if not for the plaintiff’s age.

***Chan v. Ingram* (1992)**

The only relevant consideration under the third element of *O’Keefe* is the defendant’s actual reason(s) for terminating the plaintiff’s employment. For example, a defendant who fires an employee because of gender cannot escape liability merely because the defendant happened to have other reasons that could have motivated, but did not actually motivate, the termination.

***Laughlin v. Bitterly* (2015)**

A plaintiff may establish that age was the “but for” cause of the adverse employment action through direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence.

***Dworkin v. Devanathan* (2000)**

Saying age must have been a “but for” cause is not the same as saying that age must have been the only factor with respect to the challenged decision. For example, if half of a company’s employees consistently arrive late to work but the employer only disciplines employees who have blue eyes, eye color was a “but for” cause of the discipline even though the employees also would not have been disciplined had they shown up for work on time.

***Zapata v. Doolittle* (1988)**

In Midlands, employees are presumed to be “at will,” meaning they can be terminated for no reason or any reason not prohibited by law. MADA does not create a “for-cause” requirement for firing older workers, meaning that an employee over 40 is still an at-will employee and can be fired even if the employee did not engage in misconduct or violate one of the employer’s policies. MADA does not authorize courts or juries to impose liability for termination decisions deemed unwise, foolish, or even cruel. The question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason was age discrimination.

***Stebbins v. Rahimzada* (1988)**

A jury does not need to take an employer’s stated reason for an employment decision at face value. Evidence that an employer gave reasons for a decision that were false or otherwise pretextual can provide circumstantial evidence that the true reason was an unlawful one.

***Kriegel v. Mina* (1996)**

The fact that younger employees were not disciplined for engaging in the same type of conduct cited to justify an older worker’s termination is one type of evidence that can support a plaintiff’s claim that reasons given by employer were pretextual.

***Lucas v. Karabatakis* (1994)**

Comments by decisionmakers that reflect stereotypical attitudes, biases, or prejudice based on age can provide circumstantial evidence of discrimination. In contrast, stray remarks by non-

decisionmakers are entitled to little weight, particularly if they are remote in time from the date of the challenged employment action or if there is no evidence that they were made in the presence of (or communicated to) decisionmakers.

***Berman v. Ortiz* (1993)**

A defendant's failure to follow its own previously announced policies for hiring, terminating, or disciplining employees is not enough, by itself, to prove that discrimination was the real reason for a challenged action. At the same time, such evidence may be considered by the trier of fact in deciding whether the plaintiff has met her burden of showing illegal discrimination.

***Crespo v. DeRosa* (2014)**

An employer's general practices (including the employer's: (i) failure to adopt or enforce a sufficient non-discrimination policy; (ii) failure to sufficiently train its employees on the policy the employer has; and/or (iii) use of subjective factors for hiring and firing decisions) are not by themselves enough to prove that intentional discrimination was the real reason for a challenged action.

However, courts recognize that these types of failures and practices contribute to an environment in which intentional discrimination is more likely to occur. As such, evidence of these or similar failures and practices by an employer may be considered by the trier of fact in deciding whether the plaintiff has met her burden of showing illegal discrimination.

***Fineman v. Hungar* (2016)**

Appeal in failure-to-promote case where trial court had excluded evidence that promotion had gone to 38-year-old co-worker instead of 65-year-old plaintiff. Judgment reversed. Evidence that promotion went to person outside the protected class is relevant circumstantial evidence of age discrimination.

***Smith v. Eldridge Co.* (2015)**

Sex discrimination case involving a single plaintiff. The trial court excluded all evidence that women other than the plaintiff had been fired, not hired, or disciplined by the defendant, reasoning that such evidence was barred by Midlands Rules of Evidence 404(a)(1) and 404(b)(1). Judgment reversed. Rules 404(a)(1) and (b)(1) bar such evidence if it is being offered to demonstrate propensity, that is, "to show that on a particular occasion the person acted in accordance with" a trait of character or prior actions. But, as Rule 404(b)(2) explains, such "prior act" evidence may be offered for other purposes, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Here, for example, the plaintiff argued that the evidence was admissible to show that the plaintiff's manager intended to create an all-male department and that the plaintiff's firing was part of a single plan to achieve that end. Those are permissible purposes under Rule 404(b)(2).

Element 4: Damages

***Mebrabyan v. Bruce* (2003)**

A plaintiff may recover compensatory damages under MADA. The purpose of compensatory damages is to make the plaintiff whole by restoring her (through money damages, rather than reinstatement) to the position she would have occupied if not for the defendant's unlawful conduct.

***Baratta v. Stein* (2005)**

Under MADA, compensatory damages may include recovery for past lost wages, future lost wages, medical bills, and emotional distress suffered as a result of the defendant's conduct.

***Zurawski v. Wallace* (2002)**

All damages must be established with reasonable certainty. Damages that are remote, speculative, contingent, or merely possible cannot form the basis for recovery. At the same time, there is no rigid time limit beyond which damages may not extend. The question in every case is simply whether a given harm to the plaintiff was the result of the defendant's wrongful conduct.

***Erickson v. Oliver* (2012)**

Compensatory damages may not be calculated based on the abstract value of the rights in question or a desire to punish the defendant. In every case, the focus must be on the tangible harm suffered by the plaintiff.

***O'Neill v. Sommers* (2011)**

A plaintiff who does not expressly seek punitive damages in her complaint is categorically barred from seeking them at trial. *See Thomas v. Davis* (2001).

***Rayburn v. O'Bannon* (1991)**

Under MADA, a plaintiff has a duty to mitigate damages—that is, exercise the diligence a hypothetical reasonable person would in seeking a new job. Failure to do so may reduce or even eliminate damages for lost wages. The defendant bears the burden of proving a plaintiff's failure to mitigate by a preponderance of the evidence. If a defendant does not prove the plaintiff's failure to mitigate, the jury may not reduce plaintiff's damages on that basis.

***Gallagher v. Hogan Salons, LLC* (2014)**

Although "reasonable diligence" usually does not vary from plaintiff to plaintiff, juries should consider what effects diagnosable physical or psychological conditions would have on otherwise reasonable people. For example, in *Gallagher*, the jury should have considered what a reasonably diligent person with the plaintiff's diagnosed anxiety disorder would have done to obtain employment.

Identity of the defendant

***Li v. Brodkin* (1996)**

The defendant in an employment discrimination action is the plaintiff's employer itself rather than the plaintiff's supervisor, boss, or other individual working for or on behalf of the employer. This remains true even if the employer is a corporation with a single shareholder.

No disparate impact liability

***Stern v. Durkin* (1994)**

"Disparate impact" is not a valid theory of liability under MADA. That is, it is not enough for a plaintiff to show *simply* that the defendant had policies that were not motivated by age but nonetheless had an incidental (and disproportionate) impact on older workers. Rather, in every case, the plaintiff must show that the defendant intentionally discriminated *because of* the plaintiff's age. At the same time, however, the fact that the defendant's policies had an disproportionate impact on older workers may serve as one form of *evidence* of the required discriminatory intent.

OTHER PROVISIONS

Preliminary questions

***Runde v. Grandhi* (1988)**

Pursuant to Midlands Rule of Evidence 104(a), courts may consider custodial documents, such as clerks' certifications or affidavits of records keepers, when determining the admissibility of other evidence without regard for the admissibility of the custodial document itself. The custodial document typically only addresses preliminary matters of admissibility and is not entered into

evidence, and thus the court is not bound by the rules of evidence when considering it. However, if a party wishes to enter the custodial document itself into evidence, the proper foundation must be laid to establish its admissibility.

Authentication

***Filteau v. Wanek* (1992)**

The application of various rules of evidence sometimes turns on who made a particular statement. As long as the proponent of the statement produces evidence that would permit a reasonable jury to find, by a preponderance of the evidence, that a given person made a particular statement, the court must assume for purposes of assessing its admissibility that the statement was made by that person.

***Ginger v. Heisman* (2015)**

Emails or text messages are properly authenticated when the proponent has produced evidence, either direct or circumstantial, that would allow a reasonable jury to determine the author of the message. The fact that an email, text message, or other electronic communication is listed as coming from an address or number that is either known or purports to belong to a particular person is sufficient to lay foundation that the communication was sent by the person in order to determine its admissibility, at least absent particularized reason to believe that the communication may have been sent by someone else.

Attorney-Client Privilege

***Hobbs v. Schmidt* (1984)**

Midlands recognizes the attorney-client privilege, which protects from disclosure all (1) communications (2) between a lawyer and (3) his or her client, (4) made with the expectation of confidentiality, (5) for the purpose of obtaining or conveying legal advice (6) not in furtherance of ongoing fraud or a future crime.

***Swift v. Schlichting* (2003)**

No attorney-client privilege exists until an attorney-client relationship has been formed. Thus, before ruling on whether a particular communication is protected by the attorney-client privilege, the court first must determine, by a preponderance of the evidence, whether an attorney-client relationship existed at the time the communication was made.

Burdens of proof

***Piacenti v. Pruitt & Constine LLP* (1974)**

A plaintiff in a civil case must establish all of the elements of its claim by a preponderance of the evidence (*i.e.*, it must establish that all elements are *more likely than not* true).

Experts

***Davis v. Adams* (1993)**

Trial judges must ensure that any scientific testimony or evidence admitted is not only relevant but reliable. In determining reliability, judges should consider only the methods employed and the data relied upon, not the conclusions themselves. The proponent of the evidence has the burden of proving each section of Rule 702 by a preponderance of the evidence.

***Tarot Readers Association of Midlands v. Merrell Dow* (1994)**

In assessing reliability under Rule 702(c), judges should consider whether the theory or technique has been or can be tested, whether it has been subjected to peer review and publication, whether it has a known error rate, and whether it has gained widespread acceptance within the field. These fac-

tors, while relevant, are not necessarily dispositive. For example, lack of publication does not automatically foreclose admission; sometimes well-grounded but innovative theories will not have been published. There is no definitive checklist. Judges must make such assessments based on the totality of the circumstances.

***Richards v. Mississippi BBQ* (1997)**

Midlands Rule of Evidence 703 does not permit experts to testify or present a chart in a manner that simply summarizes inadmissible hearsay without first relating that hearsay to some specialized knowledge on the expert's part. The court must distinguish experts relying on otherwise inadmissible hearsay to form scientific conclusions from conduits who merely repeat what they are told. The testimony of the former is admissible; that of the latter is not. At the same time, statements that would otherwise be admissible are not inadmissible simply because they are offered by or through an expert witness.

Framing the Issues for Trial

***Thomas v. Davis* (2001)**

The purpose of the pleadings is to frame the issues for trial and permit the parties to frame their presentations accordingly. This latter function is especially important because Midlands, unlike most jurisdictions, does not permit the plaintiff to call rebuttal witnesses or the defendant to alter its decision about which witnesses to call after hearing the plaintiff's evidence. Accordingly, it is highly inappropriate for a party that has alleged or denied something in its complaint or answer to seek to prevent its adversary from presenting otherwise admissible evidence that relates to that thing by asserting that it is no longer interested in alleging or contesting that particular thing. Parties may, of course, choose which evidence they wish to present and which arguments they wish to emphasize, but the time for amending one's pleadings is well before the court convenes for purposes of trial.

***CJ v. Nathan* (2005)**

Plaintiff did not violate the rule of *Thomas v. Davis* (2011) by asking that the jury award less than the full amount of damages demanded in the complaint. We emphasize, however, that this ruling does not permit a plaintiff to ask the jury to award a greater figure.

Hearsay

***Dolly v. Ringo* (2010)**

Unlike most other evidentiary rules, Rule 801(d)(2) may be invoked in only one direction. Under that rule, the plaintiff may offer statements by the defendant and the defendant may offer statements by the plaintiff. But Rule 801(d)(2) does not permit the plaintiff to offer statements by the plaintiff or the defendant to offer statements by the defendant, even if the opposing party has already elicited out-of-court statements by the party during a preceding examination, subject to Rule 106.

***America's Best Cookie v. International House of Waffles* (2009)**

The Court recognizes that practices differ in other jurisdictions. But, in Midlands, the definition of "hearsay" includes out-of-court statements by a witness who is on the stand or by another person who has or will be testifying in a particular trial.

Depositions and Interrogatory Responses

***Katelyn v. Reynolds* (2014)**

Interrogatories are written questions and answers exchanged by the parties during the discovery stage of a civil case. One party sends a list of questions, and the other party answers them and executes a verification attesting that the answers are true. Because such verified interrogatory responses

are statements that “the party manifested that it adopted or believed to be true” (MRE 801(d)(2)(B)), those answers are not hearsay if offered by the opposing party, though other evidentiary objections may still apply.

Isaac v. Kylie (2016)

Because interrogatory responses are created and exchanged during discovery, they are not automatically part of the trial record. Instead, as with a substantive stipulation, a party wishing to make an interrogatory answer part of the trial record must seek the court's leave to read that interrogatory question and response (or part of question and response) onto the record.

Wolkin v. Christie (2013)

In Midlands, substantive objections are not appropriate during a deposition. As a result, failure to object to a question during a deposition does not preclude a party from objecting to the deposition (or an excerpt) being offered at trial.

Witnesses Must Be Able to Respond to Cross Examination

Miller v. Liu (2014)

Civil case arising from alleged assault. The plaintiff was called as a witness and testified fully on direct examination. On cross examination, however, the plaintiff failed to respond to some questions, purportedly because of a condition arising from the assault. *Held:* The judgment for the plaintiff must be reversed. The reason why the witness failed to respond to questions on cross examination is immaterial. If a witness becomes unable or unwilling to respond to otherwise proper questions on cross examination, the trial court must strike the witness's testimony in its entirety.

CIRCUIT COURT OF MIDLANDS

Riley Winter,

Plaintiff,

v.

TBD, Inc.,

Defendant.

Case No. CV 11-715

Judge Rachel Oliver

Stipulations

1. For the convenience of the parties, witnesses, court, and jury, all potential exhibits have been pre-labeled and pre-numbered. Those numbers will be used for all purposes at trial, regardless of which party first offers the exhibit or the order in which the exhibits are offered.
2. The parties, having engaged in discovery, agree that no documents other than Exhibits 1-22 are relevant. This stipulation does not bar relevance objections to Exhibits 1-22. This stipulation also does not address demonstrative aids that may be used during trial and will not be admitted into evidence.
3. Plaintiff's sole theory of recovery is intentional discrimination (also known as disparate treatment) in termination based on age. There is no disparate impact claim; no retaliation claim; no claim for discrimination on any grounds other than age; no freestanding claim with respect to hiring, failure to promote, harassment, or workplace discipline; and no claim based on any statute or doctrine other than the Midlands Age Discrimination Act. All such claims were dismissed and may not be renewed at trial.
4. The parties agree that, since December 23, 2015, Defendant has taken no employment actions that are relevant to this proceeding.
5. Between January 2, 2014 and March 31, 2016, inclusive, Sawyer Shaw, Bobbie Lin, Skye Martin, and Austin Perez were agents and employees of Defendant TBD, Inc. Shaw, Lin, and Martin are still agents and employees of TBD.
6. Plaintiff was an "at will" employee at all times during Plaintiff's employment with Defendant.
7. All parties and witnesses are of at least of normal intelligence and none has or ever has had a mental condition that would impact a person's perception, memory, or ability to respond to questions on cross examination.
8. With respect to all protected classes (including gender, sexual orientation, ethnicity, national origin, religion, age, and disability status), Landon Greene and Riley Winter differ only with respect to age.
9. At the depositions of Riley Winter and Sawyer Shaw, all deponents and parties to this action were represented by counsel. All signatures on the depositions are authentic and of the people they purport to be.
10. As of December 23, 2015, Plaintiff's salary was \$200,000 per year.
11. At Plaintiff's salary as of the date of termination, the net present value of 5 years of additional employment would have been \$842,427.76, the net present value of 10 years of additional employment would have been \$1,472,017.41, and the net present value of 15 years of additional employment would have been \$1,942,449.80.
12. Since December 23, 2015, Plaintiff has incurred \$11,000 in total medical expenses, including psychological treatment, none of which has been reimbursed by insurance.
13. All notice requirements of Midlands Rule of Evidence 902(11) and 902(12) have been satisfied.

CIRCUIT COURT OF MIDLANDS

Riley Winter,

Plaintiff,

v.

TBD, Inc.,

Defendant.

Case No. CV 11-715

Judge Rachel Oliver

Pretrial Order (Liability Only)

Order filed: August 15, 2016

1. **Bifurcation of trial.** Defendant has moved to bifurcate the trial into separate proceedings on liability and damages. That motion is GRANTED. In the first phase, the question will be whether Defendant violated MADA by terminating Plaintiff. If Plaintiff prevails on liability, the jury will hear evidence on the question of damages in a separate proceeding. Any evidence relating solely to damages will be inadmissible at the liability stage. Plaintiff may still introduce evidence involving the facts and circumstances of Plaintiff's termination as necessary to establish liability.

2. **Exclusion of Exhibit 21 (email from Shaw to Mayes).** Defendant has moved to exclude Exhibit 21 on grounds of attorney-client privilege. That motion is GRANTED. Pursuant to *Swift v. Schlichting* (2003), the court finds that there was an attorney-client relationship between the parties to that email at the time it was sent and that the exhibit is thus privileged. The court specifically rejects the argument that disclosure of Exhibit 21 to various witnesses in this case and references to Exhibit 21 in various affidavits, reports, and depositions have themselves waived further application of the privilege. Any reference to Exhibit 21 by either party during the trial is strictly forbidden and will be grounds for a mistrial and sanctions against any attorney who mentions, alludes to, or asks any witness about Exhibit 21 or conducts the direct examination of any witness who mentions Exhibit 21 during either direct or cross examination.

CIRCUIT COURT OF MIDLANDS

Riley Winter,

Plaintiff,

v.

TBD, Inc.,

Defendant.

Case No. CV 11-715

Judge Rachel Oliver

Pretrial Order (Damages)

Order filed: August 15, 2016

1. **Single trial on liability and damages.** Defendant has moved to bifurcate the trial. That motion is DENIED. The trial in this case will have a single phase, involving both liability and damages.

2. **Admissibility of Exhibit 21 (email from Shaw to Mayes).** Defendant has moved to exclude Exhibit 21 on grounds of attorney-client privilege and various other bases. That motion is DENIED. Pursuant to *Swift v. Schlichting* (2003), the court finds that there was no existing attorney-client relationship between parties to that email at the time it was sent and that the exhibit is thus unprivileged. The court also hereby OVERRULES any and all objections to Exhibit 21 based on hearsay, relevance, MRE 403, MRE 404, lack of foundation, and other grounds. All of defendant's objections to the admissibility of Exhibit 21 are deemed preserved for any potential appeal and may not be renewed at trial.

CIRCUIT COURT OF MIDLANDS

Riley Winter,

Plaintiff,

v.

TBD, Inc.,

Defendant.

Case No. CV 11-715

Judge Rachel Oliver

Deposition of Riley Winter

Taken: August 4, 2016

1 Examination by Kim McGill, for Defendant. Witness represented by Saul Bestman.

2 The deponent herein, after having been first duly sworn, testified as follows:

3 Q. Please state your name.

4 A. Riley Winter.

5 Q. Are you currently taking any medication?

6 A. No.

7 Q. Is there any reason you can't give accurate testimony today?

8 A. No.

9 Q. What is your birthday?

10 A. November 20, 1965.

11 Q. Are you married?

12 A. No, I am not. I've never been married.

13 Q. Where do you live?

14 A. 23 Maple Street in Fairview, Midlands.

15 Q. Do you have any children?

16 Bestman: Objection, relevance. Please tell me why that matters.

17 Q. Please answer the question.

18 A. No. I've never been a parent.

19 Q. Please describe your education, starting with after high school.

20 A. I attended Northwestern University. I graduated in 1988 with a degree in journalism.

21 Q. Please describe your employment history.

22 A. I started work at TBD July 14, 1988 as a junior copy editor. I was promoted to copy
23 editor in December 1988, to staff writer in 1990, and senior staff writer in 1997. On De-
24 cember 23, 2015, I was fired.

25 Q. What is the difference between staff writer and senior staff writer?

26 A. Senior writer gets paid more, gets a longer leash with word counts, gets the best as-
27 signments and topics, gets a bigger budget when researching a story.

28 Q. Please list all of the awards or professional honors you've received.

29 A. AAJ, the American Association of Journalists, named me culture writer of the year
30 three times, in 1998, 1999, and 2006. The Thoughtful Young Leaders Assembly, TYLA,
31 included me in their Who's Who every year between 2000 and 2010. I was nominated
32 for a Pulitzer Prize in 2008 for my long form article "Aaron and Barack," which explored
33 how people are often defined by how they compare to their predecessors. I've received
34 other honors, but those are the most notable.

35 Q. Did you ever have a written employment agreement or contract with TBD?

36 A. No, never.

37 Q. I am showing you Exhibit 3. Is this a fair and accurate copy of TBD's People Policy,
38 dated January 16, 2014?

39 A. Yes. And that's my signature on the last page. I signed January 16, 2014. As far as I
40 know, this is the most recent HR policy, the human resources policy.

41 Q. Paragraph 3 of Exhibit 3 says every employee is at-will. Were you an at-will employee
42 at TBD?

43 A. Yes.

44 Q. What do you understand that to mean?

45 Bestman: Objection, relevance. It means what it means.

46 Q. You can answer.

47 A. It means I could quit at any time.

48 Q. It also means TBD could terminate your employment at any time, right?

49 Bestman: Objection, speculation, calls for legal conclusion. You can answer if you know.

50 A. TBD could fire me as long as it didn't break the law.

51 Q. Did any terms of your employment change over time?

52 Bestman: Objection, calls for legal conclusion. You can answer.

53 A. Just the salary. It went up. Oh, and obviously my job title has changed, as I said.

54 Q. What was your salary when your employment was terminated in 2015?

55 A. Two hundred thousand dollars per year.

56 Q. How did that compare to other writers at TBD?

57 A. Management told me that I was the highest paid employee other than Shaw.

58 Q. How did that compare to writers at other magazines or newspapers?

59 A. I don't know exactly, but I was certainly paid more than the average writer.

60 Q. Much more, right? You know most magazine writers, online or otherwise, make less

61 than a hundred thousand dollars?

62 A. That's true. Writers have always been underpaid.

63 Q. I'm showing you Exhibit 17. Is this a fair and accurate copy of the letter you received

64 December 23, 2015 from TBD's editor in chief, Austin Perez?

65 A. Yes. This is the letter I received after Austin told me I was fired.

66 Q. How did Austin Perez communicate that decision to you?

67 A. On December 23, 2015, Austin Perez asked me to come into Austin's office. This was

68 about 11:45 am, about 15 minutes before the holiday party. I thought I was about to get

69 my bonus. Austin closed the door. Austin said, "I'm sorry, TBD is moving in another di-

70 rection. Today is your last day."

71 Austin handed me Exhibit 17 and a final paycheck. I told Austin, "I don't believe this. I'm

72 a senior writer." Austin said, "that's part of the problem." I said, "what does that mean?"

73 Austin looked embarrassed, like that was the wrong thing to say. Austin said, "Riley,

74 you're an incredible writer. The best I've ever worked with. But this decision comes from

75 on high." I asked, "so why am I being fired?" Austin said, "the company is going in an-

76 other direction, that's all I can say."

77 Q. Do you recall anything else about that conversation?

78 A. No. It's a miracle I remember that much. I was so upset my hands were shaking.

79 Q. Apart from the conversation, did you ever have any other conversations with TBD

80 management or ownership concerning your termination?

81 A. No.

82 Q. Have you been employed at all since TBD terminated your employment?

83 A. No.

84 Q. Why not?

85 A. Combination of things. The industry has changed a lot. Shaw's comments paint me as

86 old and out of touch. And, frankly, I've been too depressed to seriously look for work.

87 Q. Have you done any freelance writing since TBD terminated your employment?

88 A. No. Same reasons.

89 Q. Let's break down the alleged reasons you haven't worked since the termination. You
90 said the industry has changed a lot. What do you mean?

91 A. The journalism industry. A lot of newspapers and magazines have folded. A lot have
92 moved from paper to digital, sometimes exclusively digital. Many have reduced staff.
93 There's so much free content online now, it's hard to make any money in journalism.

94 Q. I'm showing you Exhibit 19. Is this a fair and accurate copy of Shaw's comments that
95 you were referring to, the ones that allegedly paint you as old and out of touch?

96 A. Yes. TBD published this on December 23, 2015. I printed a copy off the website.

97 Q. You said you've been too depressed to look for work. Have you been diagnosed with
98 depression?

99 A. Post-traumatic stress disorder specifically. I've been seeing psychiatrist Cary Kramer.
100 I haven't read Dr. Kramer's report, but Dr. Kramer told me I have post-traumatic stress
101 disorder from being fired.

102 Q. Other than this alleged diagnosis, do you believe you've been depressed since your
103 employment was terminated?

104 A. Yes. It's affected my eating, my sleeping, everything. I have no energy, no passion for
105 anything, even things I used to love.

106 Q. What efforts have you made to seek work since your employment was terminated?

107 A. I've looked around. Talked to some people.

108 Q. Talked to who?

109 A. I don't remember. I've gotten a few calls. I told them I wasn't ready.

110 Q. Calls from who?

111 A. I don't know. I wasn't ready.

112 Q. Do you have a resume?

113 A. Not yet. I'm going to do that.

114 Q. Are you on LinkedIn?

115 A. No. I never needed to be.

116 Q. Do you have a website?

117 A. Me personally? No.

118 Q. Let's talk about your employment with TBD. What type of articles did you write?

119 A. I was a culture writer.

120 Q. What does that mean?

121 A. I wrote about current events, technology, music, TV, movies, sports, celebrities, poli-
122 tics.

123 Q. That's a lot to keep up with.

124 A. It was.

125 Q. How did you do that?

126 A. I read a lot. I took an interest in what was happening in the world. I thought about it. I
127 wrote about it.

128 Q. Who was your audience?

129 A. Whoever read TBD.

130 Q. No, I mean, who was your audience? Who was Riley Winter's audience?

131 A. I didn't have a particular demographic. I wasn't, say, targeting moms over 40 or col-
132 lege students who wanted to speak truth to power. I was just writing honestly.

133 Q. But who were you writing for? Who did you imagine reading your work?

134 A. I wrote about what interested me. My goal was the same ever since I started back in
135 1988. Write the type of article I would want to read.

136 Q. And what type of articles did you want to read?

137 A. Depends on when. I wanted to read something current. Something candid.

138 Q. How many articles did you write? Approximately.

139 A. It changed over time. When I started out, TBD was a weekly magazine. I wrote one
140 article a week. That's 50 pieces a year from 1987 to 2013. That's what, 1200 articles? I
141 wrote probably 40, 50 more that were just published on the TBD website. In 2013, Shaw
142 bought TBD and we went fully digital, no more print distribution. I had to write a lot more.
143 Probably three articles a week.

144 Q. Why?

145 A. Because we went from weekly distribution to constant, 24-7 distribution.

146 Q. Did anyone tell you that you needed to write articles more frequently?

147 A. Of course. It felt like our editor, Austin Perez, was pushing me for content almost eve-
148 ry day.

149 Q. Was that hard?

150 A. It was. It wasn't hard to summon the energy. I loved writing. It was hard to find that
151 many new topics each week. I didn't want to repeat myself. I didn't want to write what
152 everyone else was writing.

153 Q. So as you got older, the job became harder?

154 A. That's not what I said.

155 Q. Other than the frequency with which you would complete articles, were there any oth-
156 er changes once TBD switched to online only in 2014?

157 A. The quality went down. Everything we'd worked so hard to build turned into drivel.

158 Q. Let me ask the question a little differently. What operational changes did you see at
159 TBD once it switched to online only?

160 A. First, there was a reduction in staff. When Shaw bought TBD in January 2014, the first
161 thing Shaw did was fire more than 40% of our writers—in one day, we went from 31 writ-
162 ers to 19. Then Shaw told everyone they were welcome to work from home. Shaw said
163 this was a privilege, we could be more comfortable. Shaw also said this would allow TBD
164 to recruit more writers across the country, not just those who wanted to live in Midlands.
165 Obviously Shaw just wanted to reduce office space and overhead.

166 Q. Did you start working from home?

167 A. No. I'd worked in an office my whole career. I relied on staff for research. I also ap-
168 preciated the camaraderie. I could pop into an editor's office, run some ideas by him or
169 her, show drafts to my colleagues. Bloggers work from home. Real writers work in an of-
170 fice, at a desk.

171 Q. Did TBD's content change when it went online only?

172 A. Absolutely. Absolutely. Our content became sillier, more sophomoric.

173 Q. But isn't there something inherently light about pop culture? You're not writing about
174 economic theory, right?

175 A. Sure. But culture writing can be intelligent. You can write a fluff piece about who Tay-
176 lor Swift is dating. Or you can write a thoughtful piece about how Taylor Swift controls
177 her own narrative by being less private. Or evaluating whether her fans will change as
178 she gets older and her lyrics inevitably become more adult.

179 Q. I'm showing you Exhibit 2. Is this a fair and accurate copy of Shaw's speech from
180 January 2, 2014?

181 A. Yes. We knew around Christmas 2013 that Shaw was trying to purchase TBD. The
182 deal closed on New Year's Eve and on January 2, 2014, Shaw showed up at the office.
183 Shaw gave a speech to all of the employees. Exhibit 2 is that speech. I know that be-
184 cause after the meeting, Shaw emailed us the text of the speech.

185 Q. What else do you remember about January 2, 2014?

186 A. After the meeting ended, Shaw started firing TBD employees, mostly the older em-
187 ployees, but a few younger ones, too. By lunch more than a third of our staff was gone.

188 Q. Exhibit 2 states a goal of TBD was moving toward fresher content. Did anyone at TBD
189 tell you to change your content?

190 A. All the time. Austin told me. Shaw told all of the writers. They said an online audience
191 is always younger than a print audience. They said we needed to work extra hard to
192 court younger readers because we needed to shed our image as a stiff print magazine.

193 Q. Did you agree with that?

194 A. No. Good writing is good writing.

195 Q. Why did Austin Perez and Sawyer Shaw need to tell you all the time that your content
196 needed to be changed? Why wasn't once enough?

197 A. When you're used to using your brain, it's hard to turn it off.

198 Q. I'm showing you Exhibit 4. Is this a fair and accurate copy of the performance evalua-
199 tion you received from TBD on December 1, 2014?

200 A. Yes. That's my signature.

201 Q. Please identify everything in this performance evaluation with which you disagree.

202 A. I disagree with the implicit notion that our readers are shallow. I disagree with the un-
203 stated job requirement that I need to attend company events clearly geared toward
204 younger employees. Everything about this evaluation is ageist.

205 Q. How, if at all, did you attempt to change your performance in response to Exhibit 4?

206 A. I tried to write about even more contemporary topics. I asked for authorization to at-
207 tend a social media training program. Shaw had made it clear that TBD wanted to aim
208 younger, and even if I didn't agree with the philosophy, I was willing to play along.

209 Q. I'm showing you Exhibit 5. Is this a fair and accurate copy of your request to partici-
210 pate in a social media training program?

211 A. Yes.

212 Q. How, if at all, did TBD respond?

213 A. Austin Perez stopped by my office a few minutes later and told me to sign up for the
214 seminar and that TBD would reimburse me. Austin said, "Thanks for taking the initiative.
215 I appreciate the positive attitude." But at our next staff happy hour, later that week, Aus-
216 tin teased me about the social media training in front of the staff. Something like, "Hey,
217 everyone, Riley is gonna join The Facebook." Sawyer Shaw wasn't there, but it seemed
218 like everyone else from TBD was.

219 Q. Did you ever complain, formally or otherwise, about Austin Perez's alleged state-
220 ments at the happy hour?

221 A. No. I didn't want to seem like a whiner. My generation was taught to have thick skin.

222 Q. What generation is that?

223 Bestman: Objection. My client is not answering that. Next question.

224 Q. It was a perfectly fair question. Just trying to understand the witness's turn of phrase.

225 Bestman: Next question, counsel.

226 Q. Did you attend the social media training described in Exhibit 5?

227 A. Yes. It was a waste. I knew all of it already.

228 Q. I am showing you Exhibit 6. Is this a fair and accurate email from Sawyer Shaw to all
229 TBD staff, including you, on April 27, 2015?

230 A. Yes. TBD was a few days from its 50th birthday. The business team had organized a
231 huge party at Miller Tower. We'd invited top advertisers, some celebrities, it was going to
232 be big. But Shaw put a stop to that.

233 Q. Do you contend that Exhibit 6 supports your claim in this case?

234 A. Of course it does. As soon as I read it, it was another reminder that Shaw and TBD
235 wanted to get rid of anything that reminded people we were established and experi-
236 enced. Look at the words Shaw uses. This made me worry for my job.

237 Q. To whom did you complain or otherwise discuss Exhibit 6 before you filed this suit?

238 A. No one.

239 Q. I'm showing you Exhibit 7. Is this a fair and accurate copy of an email Sawyer Shaw
240 sent to all staff on August 12, 2015?

241 A. Yes. This is blatant age discrimination.

242 Q. Isn't this just lighthearted teasing? Showing you're just part of the team?

243 A. No. This is blatant age discrimination. I was extremely hurt by this.

244 Q. Did you ever complain, formally or otherwise, about Exhibit 7?

245 A. No. I didn't want Shaw to think I couldn't take a joke.

246 Q. So you consider it a joke?

247 A. Of course it's a joke. Doesn't mean it's funny.

248 Q. I'm showing you Exhibit 8. Is this a fair and accurate copy of a birthday card you re-
249 ceived November 20, 2015?

250 A. Yes. On my 50th birthday. More blatantly ageist comments.

251 Q. Did you ever complain, formally or otherwise, about Exhibit 8?

252 A. No.

253 Q. I'm showing you Exhibit 9. Is that a fair and accurate copy of a performance evalua-
254 tion you received from TBD on December 1, 2015?

255 A. Yes. This is the second and final performance evaluation I received from TBD.

256 Q. Please state everything in Exhibit 9 that you characterize as inaccurate?

257 A. I don't believe that TBD truly recognized my improvements and efforts to follow their
258 mandates. I don't agree that everyone enjoyed getting to know me because Skye Martin
259 and Sawyer Shaw never made an effort to get to know me. I don't believe that TBD
260 management had any interest in diversity, at least not with respect to age. And I don't
261 agree with the assessment that my work needed a fresher approach or that there is
262 something problematic about referencing Bob Dylan while discussing a contemporary
263 musician. TBD cannot really be taking the position that art can be discussed thoughtfully
264 without any historical references. That's absurd and shows you the mindset of the peo-
265 ple running TBD.

266 Q. I am handing you Exhibit 10. Is this a fair and accurate copy of your final article for
267 TBD?

268 A. Yes. This is the last article of mine that TBD published. It's about a music company
269 called TURNTABLE. They offer online, on-demand music with a huge library. It learns
270 what you like and recommends new music. In 2015, I pitched and wrote (and Austin Pe-
271 rez approved) an article criticizing TURNTABLE because music appreciation shouldn't
272 come from an algorithm. It should come organically, from friends, from the radio, from
273 new experiences.

274 Q. Are you aware that after you wrote this article, TURNTABLE threatened to stop adver-
275 tising with TBD?

276 A. I know that's what TBD claims. TURNTABLE is owned and run by Adrian Edwards. I'm
277 sure Edwards didn't like the article. But lots of people write articles criticizing companies.
278 Not every CEO tries to get the writer fired. I'm certain Edwards is just saying that now to
279 justify Shaw's decision to fire me. Shaw and Edwards are good friends, everyone knows
280 that. Besides, why didn't TURNTABLE call for Austin Perez's head? I wasn't the editor
281 who approved the article.

282 Q. I'm showing you a two-page document, Exhibit 11. Is this a fair and accurate copy of
283 an email you sent to Austin Perez on December 16, 2015, as well as the draft article you
284 attached to that email?

285 A. Yes. This is the last piece I wrote. It was never published.

286 Q. Why not?

287 A. Austin and I were still hammering out the details at the time Shaw decided to fire me.

288 Q. I'm showing you a two-page document, Exhibit 12. Is this a fair and accurate copy of
289 an email you received from Austin Perez on December 16, 2015, as well as an attach-
290 ment showing Austin Perez's edits to the same article in Exhibit 11?

291 A. Yes. Austin gave me these suggestions on December 16, 2015. Like I said, we were
292 still hammering out the details.

293 Q. I'm showing you Exhibit 13. Is this a fair and accurate copy of an email you sent to
294 Austin Perez on December 16, 2015?

295 A. Yes. Collaboration between editor and writer is important.

296 Q. What do you think of Austin Perez as an editor?

297 A. Austin is good. A little young, but good. Solid judgment.

298 Q. I am showing you Exhibit 18. Is this a fair and accurate list of all writers at TBD from
299 January 1, 2014 to December 23, 2015, including their dates of birth, dates of hire, and
300 dates of departure?

301 A. I've never seen this document before, but let me read it. Yes, these are all the writers
302 employed by TBD during that time period. Yes, all the birthdays, hire dates, and depa-
303 ture dates look right. Though I can't verify anything about the Landon Greene infor-
304 mation. But everything else looks correct.

305 Q. I am showing you Exhibit 22. Is this an accurate record of the web traffic and social
306 media data associated with your articles in 2015?

307 A. I've never seen this document before. But TBD did give writers weekly updates on the
308 web performance of their articles. Everything in Exhibit 22 looks accurate with respect to
309 my articles. I can't say whether the data regarding other writers' articles is accurate be-
310 cause I was never shown that data. But people talk, and the numbers are at least rough-
311 ly consistent with what I heard from my colleagues. I was publishing about as often as
312 the other writers, and my articles generated average retweets and above average clicks.

313 Q. Why do you believe your employment with TBD was terminated?

314 A. You have our complaint.

315 Q. I want to hear it in your words.

316 A. They fired me because I was 50. They wanted someone younger. They replaced me
317 with a teenager.

318 Q. Who do you believe TBD replaced you with?

319 A. Landon Greene.

320 Q. On what do you base the opinion that TBD replaced you with Landon Greene?

321 A. TBD hired Greene the same day they fired me. Greene does the same work I did.

322 Q. What is your professional opinion of Landon Greene, the employee you allege re-
323 placed you?

324 A. Before Landon Greene replaced me, I'd never even heard of Landon Greene.

325 Q. Tell me all of the reasons that lead you to conclude that TBD's decision to terminate
326 your employment was based on your age?

327 A. Shaw wanted TBD to target a younger audience. Shaw fired all of the other older
328 writers. I was constantly told to write for Millennials. My page views were great. And the
329 comments. From Shaw, from Perez, from Martin, from the younger writers at TBD.

330 Q. Do you have any other reasons to believe age was a factor in your termination?

331 A. No.

332 Q. You mentioned statements from younger writers at TBD. What statements?

333 A. I can't recall any as I sit here today.

334 Q. Do you recall any of these supposed statements being made in front of Sawyer
335 Shaw, Austin Perez, Skye Martin, or anyone else in TBD management?

336 A. No.

337 Q. Do you agree a culture writer has to be up to date on current culture?

338 A. Yes. And I was.

339 Q. In 2015, how were young people frequently using the word "salty"?

340 A. I don't know.

341 Q. What does the phrase "throw shade" mean?

342 A. I think it means, you know, I'm not sure. I could guess, but I'm not sure.

343 Q. Who are the parents of a child named Blue Ivy?

344 A. I do not believe anyone has that name. That has to be a trick question.

345 Q. Who is Harry Hamlin?

346 A. Harry Hamlin is an actor most famous for his role as Michael Kusak on LA Law, a TV
347 legal drama in the 80s. He recently drew attention for his performance on Mad Men.

348 Q. What is the name of the character played by Taraji Henson on the TV show Empire?

349 A. I saw the first few episodes of the show, but I don't recall specific character names.

350 Q. Who's the lead character on Scandal?

351 A. Olivia Pope. Played by Kerry Washington.

352 Q. Who's Drake?

353 A. Drake is one of the most popular musicians in the world.

354 Q. Please name as many of Drake's songs as you can.

355 A. I can't name any. I don't listen to Drake. But that doesn't mean I can't write about him.

356 Q. What music do you listen to?

357 Bestman: Don't answer that. We've put up with more than enough of this trivia game.
358 This is irrelevant and harassing. Do you have any more serious questions?

359 Q. Other than the documents I've shown you in this deposition, are you aware of any
360 documents that support your claim that you were terminated on the basis of age?

361 A. No. Just the documents we've discussed today.

362 Q. Other than the documents I've shown you in this deposition, are you familiar with any
363 other documents on the exhibit list in this case?

364 A. No. Just the documents we've discussed today.

365 Q. Other than the conversations we've discussed in this deposition, are you aware of
366 any conversations involving Sawyer Shaw, Austin Perez, or Skye Martin that support
367 your claim that you were terminated on the basis of age?

368 A. No. Just the conversations we've discussed today.

369 Q. To be clear, I'm defining conversations broadly, including both in-person and elec-
370 tronic conversations. Other than the statements you've recounted in this deposition, to
371 your knowledge, did Sawyer Shaw, Austin Perez, Skye Martin, or anyone else at TBD
372 ever make any statements that support your claim that you were terminated on the basis
373 of age?

374 A. No. Just the statements we've discussed today. I can't think of anything that supports
375 my claim for age discrimination other than what I've mentioned today. But I feel strongly
376 that what I've said today clearly shows that TBD fired me because of my age, and only
377 because of my age.

378 Q. No more questions.

379 (The deposition was adjourned.)

380 I declare under penalty of perjury that the foregoing is a true and correct transcription.

381 Jean Taylor August 4, 2016
382 Jean Taylor Date
383

384 I certify I have read the foregoing transcript of my deposition and I swear it is a true, cor-
385 rect and complete transcript of my deposition. I have no changes or amendments.

386 Riley Winter August 4, 2016
387 Riley Winter Date

Affidavit of Austin Perez

1 I am over 18 and competent to make this affidavit. I am testifying in the *Winter v. TBD*
2 trial because Riley Winter's lawyers subpoenaed me.

3 I was born in 1978. I graduated from the University of North Dakota in 2000 with a Bach-
4 elor's degree in English. I worked at a few local North Dakota papers during college and for a
5 short time after. In 2005, I got my break, winning a nationwide writing competition. I parlayed
6 that into an editor position at *Born on the Fourth*, an American culture journalism magazine
7 based in Philadelphia. My editor was Francis Leo, a woman whose work needs no introduction.
8 When I started, Francis gave me a paperweight that said, "Good articles require good writers; bad
9 articles require bad editors." I took that message to heart, and I've always subscribed to it.

10 In 2011, Francis took a job as TBD's editor in chief. TBD is one of America's oldest and
11 most respected culture magazines (I heard the name comes from the founder's initials—T.B.D.).
12 When Leo became the editor in chief, she took me with her as an assistant editor. I couldn't be-
13 lieve it. I became the editor for TBD's music division, which meant I would help writers select
14 strong article topics and help them revise their articles once drafted. TBD had one full-time music
15 writer, Rachel Richards, as well as a few writers who would write about music and other topics.
16 (TBD has never accepted freelance pieces.) All of those music articles came to me. I've always
17 loved music, and I've always loved journalism, so serving as music editor for TBD was close to
18 my dream job.

19 In late 2013, we started to hear rumblings that TBD's owner, Diane Michigan, was look-
20 ing to sell the company. It was no secret why. TBD was losing money. Our hard copy sales had
21 been shrinking for years. Our website drew decent traffic, but not enough to generate major ad-
22 vertising money. The business team recommended charging readers for website access, but a brief
23 experiment with a paywall in 2012 flopped.

24 Around Christmas 2013, the staff got together and was told that Sawyer Shaw was buying
25 TBD. I didn't know what to think. Sawyer was obviously extremely famous and successful—
26 TBD had once called Shaw "the next generation's Mark Zuckerberg." Shaw had a reputation for
27 being incredibly bright and for turning companies around fast. On the other hand, Shaw had no
28 experience in journalism (as far as I knew). Still, I was optimistic.

29 Shaw's first day was January 2, 2014. Shaw began the day (and the year) with a speech in
30 the company lobby, with all staff in attendance, except Francis Leo. There were streamers and
31 Shaw stood at a podium I didn't even know TBD had. Exhibit 2 reflects what Sawyer said that
32 morning. I had not spoken with Sawyer before Sawyer gave the speech. That speech was the first

33 time I learned that Francis had been fired and the first I learned I was being promoted. Normally,
34 I would have been overjoyed at such a promotion, but not at the expense of my mentor's job.

35 Immediately after the meeting, I sat down with Skye Martin (our new head of human re-
36 sources) and Shaw. Shaw said we needed to reduce our overhead, which meant "an immediate
37 and massive reduction in employee headcount." Shaw asked me for a brief oral report for each
38 writer that included only the following information: colleges attended and graduation year; work
39 history and years of employment; the word count of each writer in the TBD print magazines for
40 the past 12 months; and the average number of clicks generated by the writer's articles in 2013.
41 Shaw also asked to see a single writing sample for each writer, which Shaw reviewed for about
42 20 or 30 seconds. After each oral report, Shaw would indicate whether the person was being re-
43 tained or fired. The entire discussion for each writer and editor lasted about two minutes. During
44 the meeting on January 2, 2014, Shaw never asked my opinion about the writers and editors and
45 never asked who I thought should be retained or fired. In fairness, maybe Shaw had that conver-
46 sation with the outgoing editor in chief, Francis Leo, but I doubt it. I asked Shaw in what order I
47 should present these brief oral reports, and Shaw said "seniority." I was not present for discussion
48 of employees other than writers and editors.

49 During the January 2, 2014, meeting where Shaw made the decisions about which writers
50 and editors to fire, Shaw never explained Shaw's thought process. But it seemed like the older
51 employees were the ones being fired. The day Shaw took over, we had 10 writers over the age of
52 40. By the end of the day, seven of them had been fired and, besides Winter, the two who had not
53 been fired were 40 and 41. All employees who were not fired, as well as all employees hired after
54 January 2, 2014, had to sign TBD's People Policy. It's TBD's employee handbook, except Skye
55 Martin believed in giving everything a creative name. Exhibit 3 is identical to the one I signed,
56 except it has Winter's name.

57 Immediately upon purchasing TBD, Shaw changed a lot about the company—and not just
58 who works here. Shaw immediately scrapped our print magazine, and TBD became digital-only
59 overnight. We literally never published a paper issue once Shaw bought TBD. Shaw fired a lot of
60 writers and editors and a few business team members and IT folks, and hired almost no one to
61 replace them. Shaw also mandated a shift in content: away from the heady, smart culture writing
62 that had defined TBD and more toward a tabloid version of TBD.

63 Shaw's vision for TBD's content had three components. First, Shaw wanted TBD articles
64 to be shorter. Before 2014, TBD averaged about 2,000 words per article. Shaw wanted articles
65 you could finish fast. Shaw once told me, "Our readers are busy, busy, busy, always on the go.

66 We need articles they can finish in one elevator ride.” Now our articles average 600 words. Se-
67 cond, Shaw wanted more TBD articles. Before 2014, the website just included what was in the
68 print magazine, so it was maybe a dozen articles a week, plus a few shorter items. But once Shaw
69 switched us to online-only, it became important to produce more content so readers would keep
70 returning to the site. This meant that our writers needed to at least triple their content—instead of
71 one article per week, we needed three or more articles per week from each writer. Third, Shaw
72 wanted the articles to be lighter, more gossipy, and trendier. “I want eyeballs, not awards,” Shaw
73 told me more than once. Don’t get me wrong. Shaw didn’t turn TBD into the *National Enquirer*.
74 But we’re definitely no longer thought of in the same breath as *GQ*, *The New Yorker*, *Rolling*
75 *Stone*, and other heavyweights.

76 I will admit that this is not how I would have done business, and frankly I did not agree
77 with most of Shaw’s decisions at the time Shaw made them. But I also have to admit that Shaw
78 has made TBD a lot more profitable. We’re actually making money, instead of losing it. Since
79 Shaw took over, our advertising revenue has almost doubled, while our overhead costs halved.
80 Salaries have increased a lot. My salary increased from \$120,000 to \$200,000 when I became edi-
81 tor in chief, and it’s increased to \$250,000 since then. The staff also gets more perks, such as free
82 lunches, lavish trips every few months, the ability to set our own hours, and the ability to work
83 remotely. The staff generally seems happy and certainly happier now than before Shaw bought
84 TBD. Shaw runs TBD like a tech company. I can’t say I am as proud of the work, but TBD is
85 thriving financially under Shaw’s leadership.

86 Riley Winter strongly disagreed with Shaw’s vision for TBD. Winter was TBD’s “senior
87 writer,” which means Winter was our highest profile writer. Winter had been at TBD for decades.
88 In the eyes of some critics and readers, Winter was TBD. Winter was nominated for a Pulitzer in
89 2008, had won a lot of industry awards, and was seen as a sophisticated journalist. Winter’s best
90 work really made you think. I admired Winter a lot. When Winter interviewed a musician, I
91 would be assigned as the article’s editor. I found that intimidating—editing a legend’s work. But
92 Winter came to trust my feedback, and that gave me confidence to be candid. Winter and I were
93 never friends—we never socialized outside of work, and Winter’s social circle included the older
94 staff, like Francis and the veteran writers. But I like to think there was a mutual respect.

95 From the moment Shaw gave that speech on January 2, 2014, Winter did not like Shaw.
96 For the next two years, Winter was outspoken and critical—not to Shaw directly, but to everyone
97 else—about the mass firings when Shaw bought TBD. The staff members who were fired were
98 disproportionately older, more accomplished, and Winter’s personal friends. Winter also made

99 clear at our weekly meetings—“writer’s circles,” where writers and editors discuss ideas for up-
100 coming articles—that Winter disagreed vehemently with Shaw’s vision for TBD’s content. Win-
101 ter once asked me if Winter should say something to Shaw, but I recommended Winter not do
102 that. Shaw’s mind was made up. I also think Winter didn’t like Shaw’s style. Winter is old
103 school—educated, polite, modest, let-your-work-speak-for-itself. Shaw is not.

104 Winter sometimes struggled to conform to Shaw’s new vision for TBD. Winter did not
105 publish as often as Shaw wanted, or as often as most of the other writers. Winter continued to
106 write thoughtful pieces rather than the gossip-driven material TBD moved towards in 2014 and
107 2015. And Winter had trouble writing shorter pieces. In Winter’s defense, Winter had been writ-
108 ing in the same style—weekly feature-length articles with serious viewpoints—for decades. And
109 Winter had succeeded in that style. Learning a new style would not be easy for anyone.

110 That said, Winter definitely tried to adapt. In 2014 and 2015, Winter wrote more articles
111 and shorter articles than Winter had historically. Winter also wrote more puff pieces and fewer
112 intellectual-sounding articles. The improvements were not exactly what Shaw wanted, but I
113 thought Winter struck the right balance. After all, it’s not like TBD needs every writer to sound
114 the same.

115 Exhibits 4 and 9 are Winter’s annual performance evaluations. TBD never had perfor-
116 mance reviews for its writers until Skye Martin joined TBD. I provided input on both of Winter’s
117 performance evaluations. In December 2014, I told Martin that while Winter still had room for
118 improvement in adjusting to Shaw’s vision for TBD content, I was pleased with Winter’s work
119 and the web traffic generated by Winter’s articles. In December 2015, I said the same to Martin.
120 In that respect Exhibits 4 and 9 overstate my criticisms of Winter’s work and underestimate the
121 praise. In addition, I did not agree with the criticism in the performance evaluations about Winter
122 getting more involved socially. Winter was friendly toward Winter’s colleagues, even those
123 younger and less accomplished. It’s true that Winter never entirely fit in with Shaw’s younger
124 writers, who seemed to have their own clique, but that’s okay. You don’t need to be friends with
125 your colleagues; friendliness suffices.

126 Exhibits 5, 6, 7, 11, 12, and 13 are authentic emails that I either sent or received (the send-
127 ers, recipients, dates, subject lines, etc. all appear accurate and unaltered). Exhibits 11 through 13
128 show an email exchange I had with Winter on December 16, 2015, plus the attachment to the first
129 two emails. I asked Winter to draft an article about the top ten tweets of the year, part of our end-
130 of-year top ten series. I thought Winter’s article (really, a list) failed to understand our audience, a
131 sentiment captured by my email and revisions (in red and italics). Winter had a point that this was

132 not merely a list of the most retweeted tweets, which would mean our list was just a factual re-
133 port. But I still thought Winter needed a greater emphasis on the tweets our readers would re-
134 member and have seen in the first place. But rather than argue with Winter, I just assigned the
135 tweets piece to someone else.

136 Exhibit 8 is a birthday card that TBD staff gave Winter on Winter's 50th birthday, No-
137 vember 20, 2015. I made a crack about Winter's age on the card. I was one of the first to sign the
138 card, but I saw the final version because I presented it to Winter that afternoon. The whole crea-
139 tive team gathered in a conference room to present Winter with a cake with 50 candles and the
140 signed birthday card. Winter laughed when Winter read the card.

141 Exhibit 10 is an article TBD published December 15, 2015. It was the last article by Win-
142 ter that TBD published. I understand that Shaw views the article as out of touch. I disagree. The
143 article addresses a timely product, identifies the reasons for its popularity, and uses vocabulary
144 that sounds current and fresh. That Winter expresses a nostalgic viewpoint is fine with me. Our
145 writers can take unpopular views; they just need to do so regarding trending topics. My issue with
146 the TURNTABLE article is that it undermines a major sponsor. That's my fault. I thought that be-
147 cause we'd had other, complimentary articles about TURNTABLE, Winter's article was fine, and I
148 approved the topic when Winter pitched it to me. In retrospect, though, I should not have green-
149 lighted an article criticizing a major TBD advertiser.

150 Exhibit 17 is the termination letter Winter received December 23, 2015. Shaw came into
151 my office at 11:30 a.m. that day and handed me Exhibit 17. I then gave the letter to Winter at
152 11:45 am. I called Winter into my office, closed the door, and informed Winter that we were let-
153 ting Winter go, effective immediately. I don't remember the words I used or what Winter said. I
154 just remember telling Winter this wasn't my decision, that working with Winter had been an hon-
155 or, and I was sorry to be the bearer of such bad news. Winter got very emotional.

156 After informing Winter that Winter had been fired, I went to the TBD holiday party. Eve-
157 ryone was there except Winter. I was in no mood to celebrate. Sawyer Shaw announced the hiring
158 of Landon Greene, a new writer. I had no involvement in, or even knowledge of, TBD's hiring of
159 Greene until Shaw announced it at the December 23, 2015 staff holiday party. Greene has written
160 the same category of articles that Winter wrote—pop culture with an emphasis on celebrity pro-
161 files and interviews. Greene has been superb and has fully conformed to Shaw's vision for TBD.
162 Greene looks about 25 years old, and Greene's writing has a youthful voice.

163 Exhibit 18 is a list of all writers employed by TBD between January 1, 2014 (the day
164 Shaw bought TBD) and December 23, 2015 (Winter's last day).

Exhibit 19 is a press release published on TBD's website on December 23, 2015. I did not see it before it was published. I did not say the quotes that are attributed to me in Exhibit 19.

Exhibit 20 is an email I wrote and sent myself on December 23, 2015. After Winter's firing and Greene's hiring, I figured I should memorialize what I knew. Everything in it is accurate.

Exhibit 22 is a table that shows the web traffic for all of Winter's articles in 2015. I have firsthand knowledge of the data contained in Exhibit 22 and was asked by TBD's lawyers to help IT compile and create Exhibit 22 in this lawsuit. Everything in Exhibit 22, including the ranking information at the bottom, is accurate.

I am familiar only with the Exhibits specifically listed in this affidavit.

I no longer work at TBD. In March 2016, the month after this suit was filed, my spouse received a job offer that was simply too good for our family to pass up. The job required us to leave Midlands, and my last day at TBD was March 31, 2016. Sawyer Shaw was extremely understanding about the whole thing. In fact, Shaw offered to pay me a pro rata bonus for the first three months of 2016 and to let me stay on TBD's health insurance until I found a new job. When I asked why Shaw was being so generous, Shaw said I had "been a good soldier about the whole Riley Winter thing." Shaw also said: "I hope that you will let me know if you are ever contacted by Winter's lawyers."

I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this statement, I was told it should contain everything I know that may be relevant to my testimony, and I followed those instructions. I also understand that I can and must update this affidavit if anything new occurs to me before opening statements begin in this case.

Austin Perez
Austin Perez

Subscribed and sworn before me on this, this 3rd day of August, 2016.

Andy Breeland

Affidavit of Bobbie Lin

1 I am over 18 and competent to make this affidavit. I was subpoenaed by Riley Winter's law-
2 yers.

3 I live at 6780 Izabella Lane in Midlands City, Midlands. I work for TBD as the secretary to
4 Sawyer Shaw, the company's owner and CEO. I've been Shaw's secretary ever since Shaw bought
5 TBD on January 1, 2014, and in fact, I worked at TBD even before Shaw bought the company. As
6 Shaw's secretary, I am responsible for doing whatever Shaw needs, and I am automatically bcc'ed
7 on all of Shaw's outgoing emails. That usually isn't much because Shaw is rarely at TBD's offices,
8 and, as Shaw often tells me, Shaw spends much more time focused on Shaw's other companies.
9 Shaw has other secretaries and personal assistants at Shaw's other companies, so I do no work for
10 those companies.

11 TBD underwent some major changes in 2014. On January 2, 2014, Shaw came to the TBD
12 office for the first time and had me assemble everyone in the lobby because Shaw wanted to meet
13 the team. What I thought was going to be an informal meet-and-greet ended up being Shaw's per-
14 sonal manifesto. Shaw said TBD needed to make major changes to connect with younger readers.
15 But the biggest shock came right at the beginning when Shaw said that TBD would be an online-
16 only publication, effective immediately. Shaw left very abruptly after the speech and then emailed
17 out a transcript, which is Exhibit 2.

18 Shaw's changes started almost right away. First, Shaw fired a lot of people. I worked with
19 Shaw and the new HR manager, Skye Martin, to prepare a lot of exit packages on January 2, 2014.
20 That same day, I overheard a conversation between Martin and Shaw in Shaw's office. Martin
21 asked if Shaw had seen the web traffic data for each writer's online articles. Shaw said no. Martin
22 asked if Shaw had read everyone's articles. Shaw said, "No, I don't read TBD." Martin asked,
23 "Then how are you deciding who to keep and who to fire?" Shaw said, "Simple. If they look like us,
24 they stay. If they look like our parents, they go." Martin responded, "We can't fire all of the older
25 writers the first day we're here. It would look terrible." At that point, Shaw said "Fair point. We'll
26 keep a couple of them around. For now." That's when Martin looked out at me, made eye contact,
27 and closed the door. I didn't hear the rest of their conversation.

28 Those personnel changes weren't Shaw's only changes. As promised, TBD never shipped
29 another print edition. That first week of January 2014, Shaw had me coordinate a training session
30 for January 9, 2014, on how to maximize readership of TBD's digital content. TBD brought in Ter-
31 ry Chapin, a consultant who specializes in internet marketing and social media. I was in charge of
32 reserving our conference room, ordering food, and making sure all of the editors and writers (who

33 weren't fired) attended the training. I ducked my head in for a few minutes. Chapin was talking
34 about clickbait and something called a listicle. All of TBD's editors and writers were there, includ-
35 ing Riley Winter, who appeared to be taking careful notes.

36 I always found Riley Winter to be very nice and refreshingly humble despite the fact that
37 Winter was a lot more successful and got paid a much higher salary than the other writers (I see the
38 payroll every month). But after most of the older writers were fired in January 2014, Winter didn't
39 exactly fit in around the office. In 2014 and 2015, I'd often see Winter interacting with the other
40 writers and staff in the lunch room. The lunch room at a culture magazine is always a lively, fun
41 place to spend time! From those discussions, it was clear that, compared to the rest of the staff, Ri-
42 ley liked different—usually more serious—television shows, movies, and books. It made sense. Ri-
43 ley was older than all the other writers. Sometimes they teased Riley about Riley's age, but it
44 seemed friendly, and Riley didn't appear to mind. Riley teased the other writers back, joking about
45 their youth and inexperience. Riley often didn't know all the cultural icons and references that the
46 other, younger writers discussed. For example, Riley had never read any of the *Twilight* or *Hunger*
47 *Games* novels or watched any of the movies. Riley didn't know much about the *Serial* podcast be-
48 cause, as Riley said, "I don't do podcasts." On the other hand, I think Riley may have known more
49 about pop culture than Riley sometimes let on. One time, during a break room discussion about
50 Julia Louis-Dreyfuss, Riley appeared unaware that the actress had been on television since her *Sein-*
51 *feld* days. The writers laughed at Riley. But the next day, TBD published Riley's profile on Julia
52 Louis-Dreyfuss, and it focused on her performance on *Veep*. That's when the other writers realized
53 Riley had been pulling their legs.

54 On August 4, 2014, editor in chief Austin Perez called all the editors, artists, and writers—
55 the "content team"—into the conference room for a training session on social media use, again with
56 Terry Chapin. I was there to coordinate the catering. When Perez said the training session would be
57 mandatory, Winter complained in front of the entire content team. Winter said, "This is silly. We're
58 journalists. Our thoughts should exceed 140 characters. The world is more complex than that." Pe-
59 rez said this session was mandated "by company management"—which meant Shaw—and that so-
60 cial media understanding was crucial to TBD's success. Winter said, "I thought good journalism
61 was crucial to our success," threw up Winter's hands, and walked out. No one else moved. From
62 what I saw, every writer attended the three-hour social media seminar on August 4, 2014 except
63 Winter. I don't know whether Sawyer Shaw became aware of Winter's attendance at the January 9
64 seminar or Winter's refusal to participate in the August 4 seminar.

65 Shaw was only in the TBD office about once every couple months. I had access to Shaw's
66 TBD email account. Shaw didn't send a lot of emails—maybe one a week from that account—but
67 Shaw received a lot of emails. Austin Perez, Taylor Erick (head of the business team), and Skye
68 Martin would frequently provide updates to Shaw—weekly web traffic numbers, advertising fig-
69 ures, and requests to hire or fire employees.

70 Shaw was involved in every decision to hire or fire an employee. I know because I would set
71 up the conference calls among Shaw, Martin, Erick, and Perez. No one told me not to listen to the
72 conference calls, and I figured Shaw wanted me to take notes, so I listened to all the calls about em-
73 ployment decisions. I listened to more than a dozen such conference calls in 2014 and 2015. When
74 it came to writers, Shaw asked questions about the writer's "internet presence"—how much web
75 traffic the writer's articles generated, how many Twitter followers the writer had, whether the writer
76 had shown the ability to "go viral." During these conference calls about employment decisions, I
77 never heard Shaw ask about a person's age, refer to a person's age, or state that age was a factor in
78 hiring or firing. Shaw did talk a lot about the person's enthusiasm and "motor" and, in the case of a
79 candidate, Shaw always asked me to email Shaw a photo. Ultimately, though, Shaw generally de-
80 ferred to Martin, Erick, and Perez when deciding whether to hire a new employee or fire a current
81 TBD employee. Exhibit 18 shows all of the writers who worked at TBD between January 1, 2014
82 and December 23, 2015. It's an accurate list of the writers, their birthdays, hire dates, and departure
83 dates. I have personal knowledge of Exhibit 18 through both firsthand knowledge and the files I
84 maintain.

85 A few times, Shaw, Martin, Erick, and Perez discussed whether to fire someone who had vi-
86 olated the People Policy, which is Exhibit 3. In April 2014, one of the advertising people had shown
87 up to work drunk. In September 2014, one of the writers got into some hot water because she had
88 copied some language from another website and included it in a TBD article, and the internet was
89 apparently abuzz about plagiarism. In May 2015, one of the interns reported that an IT manager had
90 sexually harassed him by repeatedly asking him out for drinks. Shaw discussed these issues in con-
91 ference calls with Perez, Martin, and Erick, and in each instance the employee was not fired. The
92 advertising guy had to attend a substance abuse seminar, the writer had to apologize publicly, and
93 the IT manager had to attend sexual harassment and sensitivity sessions. All three of these employ-
94 ees were in their 20s.

95 Shaw received every employee performance evaluation by email, including Exhibits 4 and
96 9, though I have no idea whether Shaw read them. Eventually, I gather that Winter opened a Twitter
97 account and used it frequently. And in January 2015, Winter asked to attend a supplementary social

98 media training on Winter's own time. I know all this because Winter was talking about it in the
99 lunch room. Winter asked the other writers what Twitter and Instagram handles Winter should use.
100 Winter talked about Winter's first tweets and said it was more fun than Winter expected. I never
101 saw Winter's tweets, so I have no idea what Winter wrote or how often.

102 On April 27th, 2015, I came into the office a bit early and ran into Shaw. Because Shaw
103 hadn't been giving me very much work, Perez had placed me in charge of organizing TBD's 50th
104 birthday celebration. I told Shaw that I wanted to get approval for the party budget. Instead of say-
105 ing yes or no, Shaw just asked, "What party?" So I told Shaw that Perez had placed me in charge of
106 planning TBD's 50th birthday celebration. Shaw seemed taken aback by that. Shaw paused for a
107 second and then asked, "Fifty? Perez thinks we should celebrate fifty? I mean thirty would be one
108 thing but fifty just sounds way too old." Then Shaw stormed off in the direction of Perez's office.
109 About five minutes later Shaw sent a company-wide email cancelling TBD's 50th birthday party.
110 Exhibit 6 is the email Shaw sent all TBD staff on April 27, 2015. Cancelling the event was a big
111 deal. The party planning committee I was heading had already invited our advertisers and a few ce-
112 lebrities. I am still angry with Shaw for making me call all of those people to tell them that the event
113 was cancelled.

114 Exhibit 7 is an email Shaw sent to all TBD staff on August 12, 2015.

115 Exhibit 8 is the birthday card that the staff gave Winter on November 20, 2015. That day,
116 our intern, Kirby Doolittle, started circulating a birthday card for Winter (Exhibit 8). Apparently it
117 was Winter's 50th birthday. Kirby brought it by Shaw's office and Shaw said, "I sign last. Save me
118 space. And tell everyone to write in black ink. I will use blue." After everyone had signed, including
119 me, Kirby came back to get Shaw's signature. Shaw signed the card in blue and circled something. I
120 recognize the handwriting besides Shaw's name and initials as Sawyer Shaw's handwriting. Saw-
121 yer's is also the only text in blue ink other than Kirby's and I know the difference between Shaw's
122 and Kirby's handwriting. We gave the card to Winter that afternoon. There was cake in the confer-
123 ence room. Winter seemed happy about the birthday celebration, but had a pained smile while read-
124 ing the card. Getting old is never fun. After signing Exhibit 8, Shaw handed the card back to Doolit-
125 ttle and turned and asked me if TBD's website listed the ages of our writers. Each writer has a little
126 profile on our website that includes his or her education and a quick biography. I told Shaw that the
127 profiles did not list ages, but they did list the year each writer graduated from college. Shaw thought
128 for a second and then said, "Well that's a problem then, isn't it?" The next day, I noticed that all of
129 the graduation years had been removed from the writers' bio pages, including Winter's.

130 Exhibit 10 is an article published on TBD's website on December 15, 2015.

131 On December 20, 2015, Shaw asked me to schedule a call with Landon Greene. Shaw said
 132 that Shaw wanted to hire Greene as the new lead writer for TBD because Shaw had read a great ar-
 133 ticle by Greene while traveling. I found Greene's number and set up the conference call. Greene
 134 seemed very excited. I asked Shaw if I should notify Martin, Erick, and Perez about the call, and
 135 Shaw said, "No, I will be handling this one alone." I didn't listen in on the call because it was after
 136 5 o'clock, which is when I go home.

137 Exhibit 16 is an email Shaw received from Adrian Edwards on December 23, 2015. Shaw
 138 told me Edwards is one of Shaw's friends from Shaw's "university days." Edwards visited the of-
 139 fice once or twice and they seemed like good pals. When I read Exhibit 16, I called one of the other
 140 secretaries at TBD. Advertisers are sacred, and Edwards's company TURNTable has been one of
 141 TBD's three biggest advertisers since 2014.

142 Winter was fired December 23, 2015. TBD had its holiday party on the 23rd, during which
 143 Shaw announced that TBD had hired a new writer, Landon Greene. Exhibit 19 is a press release
 144 posted on the TBD website on December 23, 2015. I thought Greene's hiring was odd because I had
 145 overheard Shaw lecturing Perez just the week before about the need to cut overhead costs, but Lan-
 146 don was pretty young, so I assumed the salary was not all that much. But then I saw Greene's start-
 147 ing salary was \$180,000, which made Greene our second highest paid writer. And minutes later,
 148 Greene became our highest paid writer. After the holiday party, Shaw told me to set Landon up at
 149 Winter's "old" desk. That's when Shaw told me that Winter had been let go because Winter "just
 150 couldn't get with the times." I was surprised. Before that, I had never heard Shaw discuss Winter,
 151 let alone criticize Winter.

152 Exhibit 21 is an email sent by Shaw on December 23, 2015. Ainsley Mayes is one of Shaw's
 153 many personal lawyers.

154 Of the Exhibits in this case, I am familiar only with those specifically mentioned in this affi-
 155 davit. I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this
 156 statement, I was told I should include everything that I know may be relevant to my testimony, and
 157 I followed those instructions. I know that I can and must update this affidavit if anything new oc-
 158 curs to me until the moment before opening statement begin in this case.

159
 160
 161 Subscribed and sworn before me on this, the 3rd day of August, 2016:

Bobbie Lin
 Bobbie Lin

162
 163
 164 Elisa Egonu
 Elisa Egonu
 Notary Public

1 *Winter v. TBD, Inc.*, Civil Case Number CV 11-715
2

3 **Report of Expert Witness Dr. Sam Owens**

4 420 Detsky Road
5 Eli, Midlands 07434
6 SOwens@midlandsstate.edu

7

8 August 12, 2016

9

10 I. Retention and Compensation

11

12 A. I have been retained by plaintiff Riley Winter to investigate Winter's termination by
13 defendant TBD, Inc. (TBD). The matter concerns allegations that TBD terminated Winter
14 because of Winter's age. I understand that, at the time of Winter's termination in Decem-
15 ber 2015, Winter was 50 years old. I emphasize that I am not a lawyer, and I do not ren-
16 der any opinion as to whether the legal elements of liability for age discrimination were
17 established in this case. Rather, I was asked to investigate whether TBD's policies com-
18 ported with accepted practices in the Human Resource industry that are designed to
19 prevent intentional discrimination in employment decisions and whether the hallmarks of
20 age discrimination are present in this case.

21

22 B. I am being compensated at a rate of \$450 per hour by Winter for my investigation
23 of this matter, which is at least \$100 per hour below what experts in my field are usually
24 paid for similar cases. I spent 35 hours investigating this matter. If I am called to testify at
25 trial, I will receive another \$5,000 to compensate me for my preparation and for my trial
26 testimony.

27

28 II. Background and Qualifications

29

30 A. I am 51 years old. I received my B.A. in psychology from SUNY Buffalo in 1986,
31 my M.B.A. from the State University of New York at Binghamton in 1990, and my Ph.D.
32 in management from Harvard University in 1998. I spent years traveling and researching
33 discriminatory practices by employers in Canada, Mexico, and even Syria—my Ph.D.
34 thesis compared the practices by employers in these countries with the most common
35 discriminatory employment practices in the United States.

36

37 I have been a Distinguished Professor in the Management Department at the Alexander
38 Noah School of Business at Midlands State University for over 10 years. Prior to joining
39 Midlands State, I was on the faculty at Iona College for seven years, two of which I
40 served as the Director of the Human Resources degree program.

41

42 For almost 20 years, I have taught undergraduate, masters, and doctoral level courses
43 in Human Resource Management, Organizational Behavior, and Research Design. Em-
44 ployment discrimination—especially age-based discrimination—is frequently covered in
45 both my classes and research. Among other things, I teach a Ph.D. seminar in Human
46 Resources Management that extensively examines the most common indicators of dis-
47 crimination and what management in both small and large companies must do to pre-

48 vent and address it. In addition, I taught a number of continuing legal education semi-
49 nars for attorneys on employment discrimination and proper compliance practices for
50 employers in the 21st century.

51
52 B. I have written more than 35 articles for peer-reviewed journals and conferences,
53 over 20 of which relate directly to age discrimination in employment. I have also au-
54 thored three invited book chapters, two of which addressed age discrimination. The most
55 directly relevant articles I have authored are:

56
57 S. Owens and E. Generico, *Unmasked: Revealing Unconscious Age Bias in Em-*
58 *ployment Decisions*, Sapolsky Journal Of Public Policy (2010).

59
60 S. Owens and S. Corino, *Old School: Why Older Workers Are Unfairly Perceived As*
61 *Being Behind the Times In The Era Of Social Media*, Employment Psychology Today
62 (2012).

63
64 S. Owens and K. Zayn, *Ladder Wars: The New Glass Ceiling For Older Workers*, Full
65 Sail University Journal of Business Management (2016).

66 C. I have previously been retained as an expert in 25 civil cases. Fifteen of those
67 cases went to trial, which required my testimony. My testimony was never excluded by
68 the Court. I have been retained by employers in five cases and by employees or former
69 employees in 20 cases. In all of the cases in which I testified at trial, I was retained by an
70 employee or former employee.

71
72 III. Materials Reviewed

73 A. The opinions that I articulate in this report are based on my review of numerous stud-
74 ies published in scientific peer-reviewed journals and in books. I did not conduct any
75 interviews. Instead, I read the affidavits of Austin Perez and Skye Martin, and the
76 transcript of the depositions of Riley Winter and Sawyer Shaw. I read no other wit-
77 ness statements or deposition transcripts. It is standard practice in my field to rely on
78 such materials in cases like this. I did not conduct follow-up interviews with any of
79 these individuals after reading their affidavits and deposition transcripts.

80 B. I also reviewed and relied upon the following documents, which I received from Win-
81 ter's attorneys: (i) The transcript of Sawyer Shaw's January 2, 2014 speech (Exhibit
82 2); (ii) TBD's HR Manual (aka the "People Policy") (Exhibit 3); (iii) Riley Winter's per-
83 formance evaluation dated December 1, 2014 (Exhibit 4); (iv) Winter's January 12,
84 2015 email (Exhibit 5); (v) Shaw's email dated April 27, 2015 (Exhibit 6); (vi) Shaw's
85 email dated August 12, 2015 (Exhibit 7); (vii) the birthday card that was given to Win-
86 ter (Exhibit 8); (viii) Winter's performance evaluation dated December 1, 2015 (Exhib-
87 it 9); (ix) Winter's termination letter (Exhibit 17); (x) the list of all writers employed by
88 TBD from January 1, 2014 through December 23, 2015 (Exhibit 18); (xi) Austin Pe-
89 rez's email dated December 23, 2015 (Exhibit 20); and (xii) the spreadsheet showing
90 web traffic data for Winter's articles for January 2015 through December 2015 (Ex-
91 hibit 22). Review of such materials is also commonly relied on in my field in cases like
92 this.

96 IV. Opinions and Conclusions
9798 A. This report contains all of my conclusions associated with this case. I understand
99 this report will be provided to both parties in preparation for trial, and that I have a duty to
100 update this report if I receive any additional information or make any further observations
101 or conclusions. I understand that I have an obligation to be truthful and complete in this
102 report, and I have complied with that obligation. All of the conclusions listed in this report
103 are professional conclusions drawn to a reasonable level of certainty based on accepted
104 standards within my field.

105

106 B. Employment discrimination against workers over the age of 40 has been illegal
107 throughout the United States since 1967, but it continues to be a serious problem. In
108 2015 alone, the Equal Employment Opportunity Commission received over 20,000 com-
109 plaints of age discrimination in the workplace. Age discrimination is often caused by ste-
110 reotypes about older workers that are outmoded and usually untrue. Research has
111 shown that the most common stereotypes are that: (1) older employees are less moti-
112 vated; (2) older employees are resistant to training, continuing education programs, ca-
113 reer development programs, and learning new technologies; (3) older employees are
114 generally less amenable to change; (4) older employees are less trusting; and (5) older
115 employees are more likely to have health problems and family issues that affect their
116 work.

117

118 Employers also have a general preference for youthful “potential” or “energy” over the
119 “experience” of older workers. Implicit bias can even be reflected in attempts at compli-
120 ments. For example, a supervisor addressing an older worker and a younger worker may
121 attempt to compliment the older worker on his or her “reliability” while telling the younger
122 worker “that you will be one of our top three rainmakers one day.”

123

124 This type of discrimination, in addition to being illegal, is immensely harmful to both the
125 workers and the companies involved. Qualified workers are seeing reductions in pay,
126 hurdles to advancement, or the complete loss of their livelihoods based on nothing but
127 their ages. And companies that discriminate deprive themselves of quality and produc-
128 tive workers and leave themselves vulnerable to costly and lengthy litigation.

129

130 C. Decades of research have shown that there are concrete practices that employers
131 and their human resources (HR) personnel should follow in order to avoid engaging in
132 unlawful age discrimination. These include:

133

134 (i) Implement a clear and strong non-discrimination policy. Train all employ-
135 ees on the contents of the policy and employment discrimination statutes and
136 rules. Educate all managers, supervisors, and employees on the contents of the
137 policy. Most importantly, the company must strictly enforce the policy and must
138 hold all of its managers, supervisors, and employees accountable for any viola-
139 tions.

140

141 (ii) Promote an inclusive culture in the workplace by fostering an environment
142 of professionalism and respect for employees of all ages and backgrounds. Neg-
143 ative comments and jokes related to age should never be a part of the workplace—

144 especially from managers or supervisors. Managers and supervisors should be
145 empathetic to their employees and understand the effect that their words may
146 have.

147
148 (iii) Hiring and firing decisions should be made based on neutral and objective
149 factors. Subjective decision-making lends itself to the influence of personal ste-
150 reotypes and hidden biases.

151
152 The failure to follow these practices has been highly correlated with unlawful employ-
153 ment discrimination. A landmark peer-reviewed joint study in 2014 by Jones, Hankinson,
154 Allegra, and Devitt analyzed three decades worth of state and federal age discrimination
155 cases, including those decided in favor of the plaintiff and those decided in favor of the
156 defendant. Failure to follow at least one of the three practices outlined above was asso-
157 ciated with a verdict in favor of the plaintiff and failure to follow two or more of them was
158 strongly associated with a plaintiff verdict.

159
160 If a company fails to follow these practices, then it creates an environment in which in-
161 tentional and unlawful discrimination is far more likely to occur.

162 D. My findings from my investigation of TBD are as follows:

163
164 (i) From the materials I reviewed, I did not see any evidence that any TBD
165 managers or employees received any training on Midlands' age discrimination statute or
166 its regulations.

167
168 (a) The HR Manual I reviewed from 2014 (that Winter signed) does in-
169 clude a non-discrimination policy and clearly states that TBD will not tolerate any
170 unlawful discrimination. The policy expressly refers to certain specific categories
171 of prohibited discrimination such as race, sex, religion, and sexual orientation. It
172 does not specifically reference age discrimination. Thus, an employee reading
173 and relying on the manual may not be aware that discrimination based on age is
174 illegal. The HR Manual does not reference mandatory or even voluntary training
175 of any kind for employees. I observed no other flaws or relevant omissions from
176 TBD's "People Policy".

177
178 (b) The manual is not the only problem. TBD's HR Department is run by
179 Skye Martin, the "Director of People Operations." Martin has a BA and an MBA
180 but no prior work experience in an HR department. Thus, before coming to TBD,
181 Martin had never implemented and overseen a non-discrimination policy and had
182 no experience educating or training employees with respect to compliance.

183
184 (c) I saw no evidence from the affidavits and materials that I read that
185 TBD's non-discrimination policy was ever enforced—especially with respect to
186 age. Thus, I saw no evidence that TBD employees were trained on how to recog-
187 nize discriminatory conduct, how to properly respond when they witness it, or how
188 to avoid engaging in it.

(ii) In addition, it does not appear that Shaw or Shaw's employees fostered an inclusive environment, especially for older employees and for Winter in particular. Shaw took control of TBD in January 2014 and transformed the magazine into an online-only publication. That was a dramatic change in mission for a magazine that had been in business since 1965.

(a) Shaw made comments both internally and to the public that Shaw's goal was for TBD to "skew young" both in terms of its audience and its staff. This was reflected in Shaw's January 2, 2014 speech and the firings that took place shortly thereafter. By 2015, all of the other writers on staff were at least ten years younger than Winter. That alone was problematic.

(b) The internal emails that I reviewed were also very troubling. Shaw, Austin Perez, and other TBD executives repeatedly joked about older workers and about Winter in particular. One email stated that "age is embarrassment" and Winter was referred to as a "dinosaur" in another. While not apparent on the face of the emails, this latter statement appears to be referring to Shaw's and others' belief that Winter was out of touch and was unable to adapt to new technologies.

(c) The birthday card for Winter that was circulated throughout the office contained a number of apparent "jokes" and other insensitive statements about Winter's age that are simply inappropriate in the workplace. That is reflective of the environment that Shaw and Shaw's subordinates created for older workers and for Winter in particular.

(d) Shaw and Martin emphatically state that Winter was treated no differently than any other employee. But Winter also indicates that Winter was commonly excluded from work social events—which apparently did not occur before Shaw took over TBD in 2014. In January 2015, Winter sent an email requesting to attend a seminar on social media training. Instead of TBD rewarding Winter’s desire to keep up with the times, Winter states that Winter was made fun of for making the request and that the seminar was mostly useless.

(e) I observed in the documents I reviewed repeated reference to what I and others have found to be code words for age discrimination. Sawyer Shaw's reference to desiring energetic and vigorous employees is just one example. In my experience, and as the literature has shown, such language indicates an intent to select and promote younger employees.

(iii) Finally, TBD's employment decisions—particularly TBD's decision to fire Winter and to hire Landon Greene—were not based on clear and objective criteria.

(a) Winter's termination letter (sent right before Christmas in 2015) was very vague about the reasons for Winter's firing.

(b) Shaw and Martin claim that lackluster reviews, decreased web traffic, and advertiser displeasure meant that Winter's salary could no longer be justified.

238 fied. But the performance evaluations for both 2014 and 2015 that I saw did not
239 reflect this.

240

241 (c) Notably, although TBD is an online publication, it has not articulated
242 clear goals for its writers to meet in terms of website views, downloads, shares or
243 mentions on social media, or reader comments.

244

245 (d) The website traffic data that I reviewed seemed to indicate that
246 Winter was doing well—including in 2015. For most weeks during 2015, Winter’s
247 articles were getting reader clicks that met or exceeded the magazine’s averages
248 for that weeks.

249

250 (e) Exhibit 18 shows a pattern of retaining employees younger than 40 and
251 dismissing those older than 40.

252

253 (f) Shaw is inconsistent about TBD’s reasons for terminating Winter’s em-
254 ployment.

255

256 (g) Lastly, the hiring of Landon Greene appears to have been hasty and
257 not based on any objective criteria. Austin Perez, the magazine’s editor, ex-
258 pressed confusion to Shaw as to why Greene (who was only 26 years old at the
259 time of hire) had been hired. Additionally, the documents I reviewed are incon-
260 sistent with Shaw’s and Martin’s claims that Landon Greene did not replace Win-
261 ter, which bolsters the appearance that TBD discriminated based on age.

262

263 (iv) Based on the foregoing, I conclude the most likely explanation for Winter’s
264 termination is that TBD discriminated against Winter on the basis of age.

Expert Report of Dr. Cary Kramer

Cary Kramer, M.D., PLLC
101 Hommel Place
Olson, Midlands 14587
CKramer@kramerpsych.com

January 15, 2017

I. BACKGROUND

Plaintiff Riley Winter was referred to me for a psychological evaluation by Winter's attorneys, who are representing Winter in Winter's lawsuit against TBD. Winter states that Winter had been terminated from TBD on December 23, 2015 after 27 years of employment with that magazine. Winter was 50 years old at the time of Winter's termination.

Winter joined TBD out of college in 1988 and worked at TBD until Winter was terminated in 2015. Winter earned multiple honors and enjoyed substantial success as a pop culture writer. Winter remained at TBD even after the purchase and remake in 2014. Winter approached me for a psychological evaluation on January 15, 2016—shortly after Winter was terminated.

II. EDUCATION, EXPERIENCE AND CREDENTIALS

- A. I am 40 years old and have run a solo medical practice in Midlands for the past 10 years. My practice focuses on mental health issues faced by people over the age of 40—especially issues related to major life changes (such as children moving out, the loss of a parent or other loved one, or the loss of a job after many years). Prior to opening up my practice, I served as an on-call psychiatrist at Carucci General Hospital in New Jersey for six years.
- B. I graduated with a B.A. in psychology from Western Kentucky University in 1994. I received my M.D. from Duke University in 1998 and did my general psychiatry residency at Duke University Medical Center. I am board-certified in both psychiatry and psychology.
- C. I am currently a member of the American Psychiatric Association, the American Psychological Association, and the Midlands Academy of Adult Psychiatry.
- D. I have been retained as an expert witness on behalf of crime victims and plaintiffs in 20 cases. I have never been retained by the government or by the defense in a civil case. Twelve of these cases involved alleged wrongful termination, and five involved alleged age discrimination. I have testified as an expert at three trials.
- E. I have published 25 peer-reviewed articles, 15 of which have dealt with the psychological effects of major changes that adults face in their lives. Ten of my articles have specifically dealt with the psychological effects of job loss, the most relevant of which are:
 - C. Kramer and B. Nero, *Finally Deleted: Getting Past The Trauma of Being Fired After 40*, Hardy Journal of Psychiatry (2016).
 - C. Kramer and S. Benjamin, *Mental Massacre: How Job Loss May Cause Post Traumatic Stress Disorder*, Cameron Journal of Medicine (2014).
 - C. Kramer, and D. Danielson, *The Anguish Of No Longer Being Able To Do The Job You Love*, Aberdeen Journal of Psychology (2013).

36 **III. JOB LOSS AND MENTAL HEALTH**

37 A. The loss of a job—especially a long-term job—can have severe mental health implications.
38 Both a person’s self-worth and financial security may be taken away in an instant.

39 B. Psychologists have emphasized for decades that in order to have healthy personal and emo-
40 tional lives, adults need to believe that they are enriching themselves and contributing to
41 their family and community. Unemployment destroys that belief and leads to anxiety and
42 self-doubt. Unemployment leads people to believe that they have no control over the im-
43 portant events in their lives, which fosters feelings of helplessness and depression. One
44 study called unemployment “psychologically destructive” because it takes away all of the
45 things that our jobs provide that we take for granted, including a structured day, shared ex-
46 periences, and social status.

47 C. A 2014 Gallup poll showed that unemployed Americans are more than twice as likely as
48 those with full-time jobs to say they have or are currently being treated for depression—
49 12.4 percent vs. 5.6 percent, respectively. For those unemployed for more than 27 weeks,
50 the depression rate skyrockets to 18 percent. A 2011 study by the Heidrich Center for
51 Workforce Development at Rutgers University illuminated the profound effects that un-
52 employment can have on people’s lives: the study showed that unemployed people were
53 significantly more likely to say that they had engaged in social interactions for two hours
54 or less the previous day.

55 D. Psychologists generally agree that the mental and emotional response to unemployment
56 tends to progress through stages. The first stage is shock, but the person is still optimistic
57 and hopeful. But over time, that optimism is lost, and the person eventually becomes anx-
58 ious and full of distress—even fatalistic about their situation. As unemployment becomes
59 prolonged, we observe both increased frequency and intensity of anxiety, frustration, dis-
60 appointment, alienation, and depression.

61 **IV. EXAMINATIONS AND MATERIALS REVIEWED AND RELIED UPON**

62 A. Riley Winter was referred to me on January 4, 2016 by Winter’s attorneys. Winter is the
63 fifth patient they have referred to me, and I have testified at trial on behalf of two of those
64 prior clients. Winter came to my office for examinations on four occasions: January 15,
65 2016; February 15, 2016; March 15, 2016; and again on January 6, 2017. I charged Winter
66 \$350 per hour for my time going back through relevant research and preparing this re-
67 port—which took ten hours. Winter will also pay me \$5,000 that will cover my travel,
68 lodging, and my testimony at trial.

69 B. In preparing this report, I relied on my personal examinations of Winter, my experience in
70 the field, and my research. I did not conduct any follow-up interviews of Winter or inter-
71 view any other individuals. Neither Winter nor Winter’s attorneys provided me any docu-
72 ments, and I have not reviewed any of the numbered exhibits in this lawsuit.

73 C. This report contains all of my conclusions associated with this case. I understand this
74 report will be provided to both parties in preparation for trial. I understand that I have a
75 duty to update this report if I receive any additional information or make any further
76 observations or conclusions and that this obligation lasts until the moment my testimony
77 begins. I understand that I have an obligation to be truthful and complete in this report, and
78 I have complied with that obligation. All of the conclusions listed in this report are
79 professional conclusions drawn to a reasonable level of certainty based on accepted
80 standards within my field.

81 **V. RESULTS OF EXAMINATIONS AND CONCLUSIONS**

82 A. My examination of Winter included: (i) the Minnesota Multiphasic Personality Inventory
83 (MMPI-2-RF); (ii) Millon Clinical Multiaxial Inventory (MCMI IV); (iii) a Sentence
84 Completion Blank; (iv) a Mental Status Examination; and (v) three clinical interviews. All
85 of these testing techniques are standard and widely accepted in the fields of psychology
86 and psychiatry. As set forth below, my examinations found to a reasonable degree of scientific
87 certainty that Winter is suffering from post-traumatic stress disorder (PTSD) resulting
88 from Winter's termination by TBD—which is severely inhibiting Winter's ability to find
89 new employment. I emphasize that Winter's PTSD will not affect Winter's ability to recall
90 pertinent events in this case or Winter's ability to testify truthfully and coherently at trial.

91 B. According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition
92 (DSM-V), PTSD has four diagnostic “clusters”: re-experiencing, avoidance, negative cogni-
93 tions and mood, and arousal. The DSM-V fact sheet states: “Re-experiencing covers
94 spontaneous memories of the traumatic event, recurrent dreams related to it, flashbacks or
95 other intense or prolonged psychological distress. Avoidance refers to distressing memo-
96 ries, thoughts, feelings, or external reminders of the event. Negative cognitions and mood
97 represents myriad feelings, from a persistent and distorted sense of blame of self or others,
98 to estrangement from others or markedly diminished interest in activities, to an inability to
99 remember key aspects of the event. Finally, arousal is marked by aggressive, reckless, or
100 self-destructive behavior, sleep disturbances, hypervigilance or related problems.”

101 C. When I interviewed Winter on January 15, 2016, and heard Winter's story, my first im-
102 pression was that Winter was suffering from PTSD. I administered the MMPI-2-RF to con-
103 firm this. That first test showed that Winter was in a state of repression and denial and was
104 emotionally numb to Winter's situation.

105 D. I found no indication that Winter's state on January 15 stemmed from anything other than
106 the termination. I first confirmed that Winter had experienced no major life events such as
107 illness or death in the family between December 23, 2015 (the date of the termination) and
108 January 15, 2016 (the date of our first conversation). I reviewed Winter's prior medical
109 history, which contained no indication of depression, PTSD, or other psychological condi-
110 tion before December 23, 2015. I also asked Winter about Winter's life prior to December
111 23, 2015. Like any 50-year-old adult, Winter has gone through some life tragedies (includ-
112 ing the loss of loved ones). But Winter indicated that Winter never felt the need to seek
113 therapy or help to deal with those issues, and I found no indication that Winter had experi-
114 enced anything beyond the normal life events for a person Winter's age.

115 E. When I performed the MMPI-2-RF one month later in February 2016, things became a lit-
116 tle clearer. Winter exhibited somatic symptoms, alienation, resentment, and hostility. Win-
117 ter seemed extremely vulnerable psychologically and was in a state of acute distress.

118 F. When I performed the MMPI-2-RF on Winter for the third time in March 2016, long-term
119 psychological effects really started to show themselves. These residual effects included
120 paranoia, deep distrust, and an overall sense of victimization. I found that Winter had in-
121 tense depression and anxiety and a deep-seated fear of people, yet Winter was feeling very
122 dependent and vulnerable. This all is consistent with my initial clinical impression of
123 PTSD.

124 G. I performed the MMPI-2-RF on Winter for a fourth time again in January 2017. Despite
125 the lapse of time, I found no material change in Winter's condition. This is not unusual for
126 a case like this one.

127 H. My mental status examinations and clinical interviews of Winter lead me to believe that
128 Winter is re-experiencing the trauma of losing Winter's job at TBD. Winter reports having
129 recurring memories of being fired right before Christmas in TBD's 50th year of existence
130 and losing the only full-time job that Winter has ever had.

131 I. Winter also recalled instances of suddenly acting or feeling as if Winter were being fired
132 all over again, especially when there is an association with an environmental or ideational
133 stimulus—even something as simple as coming across a magazine like *Rolling Stone* on a
134 newsstand. An example of this is Winter's statement: "When I want to look for things to
135 read on the train, I always tell myself no I can't—it is over. I won't go to their website or
136 contact any of my former co-workers, even people I thought were my friends. I won't even
137 read a magazine anymore."

138 J. The intrusive effects of the firing also are reflected by Winter's statements like "Immedi-
139 ately after I was let go, people in the industry started approaching me to come work for
140 them. But I don't trust them. Why do they want me? TBD didn't want me anymore! I don't
141 want to have my livelihood ripped away again."

142 K. Other examples of the firing's lasting effects on Winter occur whenever Winter hears
143 about a popular article on TBD that people are talking about. Winter remembers "My arti-
144 cle on that same topic five years ago got twice the buzz and got more important people
145 talking. Nobody at TBD knows how to do it like I did."

146 L. Winter reports: "I'm not trying very hard to get a job. I'm so embarrassed by what hap-
147 pened to me. People in the industry don't know why TBD fired me. Regardless of what
148 they say to my face, they have to be thinking I'm no good anymore. Maybe they will get
149 some good publicity from taking me on for a while before they cut me loose, too. I am not
150 going through that again. There is no motivation. I don't have the confidence in myself that
151 I had before they dumped me."

152 M. Winter also indicated that Winter was becoming numb to the outside world. As a writer for
153 an influential entertainment publication, Winter attended social events on a regular basis,
154 but that all stopped with Winter's firing. Winter told me that Winter is "still depressed,"
155 and "just can't get into things anymore."

156 N. Winter also showed evidence of estrangement and alienation from people. Winter told me
157 that "my job at TBD was my life, the job was me. I lost who I am, I lost my identity, and
158 I'm not interested in any writing job anymore. I'm lost as to what I am going to do. I don't
159 even want to talk to people anymore."

160 O. Finally, Winter stated that Winter had been having trouble sleeping since the firing and re-
161 ported having more frequent heated arguments with family and friends.

162 P. Based on the foregoing, I can conclude to a reasonable degree of scientific certainty that
163 Winter is suffering from PTSD—caused by Winter's firing by TBD. The above-described
164 symptoms clearly fit the DSM-V criteria for this diagnosis. The trauma of being terminated
165 from TBD still has a dramatic effect in Winter's life at the present time. Winter's present
166 psychological and emotional condition prevents Winter from working and from looking for
167 work. Winter's profound lack of trust resulting in not being able to work or look for work,
168 is clearly connected to the PTSD that resulted from Winter's termination by TBD.

CIRCUIT COURT OF MIDLANDS

Riley Winter,

Plaintiff,

v.

TBD, Inc.,

Defendant.

Case No. CV 11-715

Judge Rachel Oliver

Deposition of Sawyer Shaw

Taken: August 8, 2016

1 The deponent herein, after having been first duly sworn, testified as follows:

2 Examination by Veronica Mars, for Plaintiff. Witness and Defendant represented by Cliff
3 McCormack.

4 Q. Please state your name.

5 A. Sawyer Shaw.

6 Q. Are you currently taking any medication?

7 A. No.

8 Q. Is there any reason you can't give accurate testimony today?

9 A. No.

10 Q. How old are you?

11 A. Right now, I'm 29. What you really want to ask me is how old I was when I fired Riley
12 Winter. I was 28.

13 Q. Where do you live?

14 A. Palo Alto, California.

15 Q. Please describe your education, starting with high school.

16 A. I went to high school at Corinthian Prep. I started at Stanford, studying business, but
17 my sophomore year I realized I could make more money elsewhere, so I left school and
18 started my first business in 2006.

19 Q. Do you hold any secondary degrees?

20 A. The George Washington University gave me an honorary degree, but other than that,
21 no. I've never graduated from any school beyond high school. Done all right for myself.

22 Q. Please describe your employment history.

23 A. I've never been an employee.

24 Q. Okay. For what businesses have you held a C-suite position, chief executive officer,
25 chief operating officer, or chief financial officer?

26 A. I was CEO of the first company I started, Jel, Inc., which created and licensed soft-
27 ware to increase the connectivity of various social media platforms. I took Jel public in
28 2012. I used the proceeds from Jel to make a series of investments. I purchased one
29 hundred percent of TBD, Inc., which publishes TBD, in 2014. I am the CEO of TBD, Inc. I
30 purchased HappyLand Toy Company, for which I now serve as CEO. I also started a
31 holding company, Shaw Things, LLC, which I use as an investment vehicle for various
32 assets. I consider myself a serial entrepreneur.

33 Q. Let's focus on TBD. What does TBD stand for?

34 A. Rumor has it that the founders called it "TBD" as a placeholder and then kept the
35 name because they couldn't think of anything better.

36 Q. Can you describe TBD's organizational hierarchy?

37 A. Sure. We have three primary teams. First, the creative team drives content—the arti-
38 cles. That includes our writers, editors, and artists. We try to give our writers room to do
39 their thing. The editors keep them in check, remind them this is still a business. The
40 business team secures advertising opportunities. And IT handles the web aspect.

41 Q. What is the division of responsibilities among the writers, editors, and artists?

42 A. The editors approve the article topics before they're written and revise the article con-
43 tent once drafted. The editors write the headlines, something I didn't know before I
44 bought TBD. The writers pitch ideas for articles to the editors and, of course, write the
45 articles. Generally, the artists provide drawings and photographs that complement the
46 articles. But sometimes the artists obtain photos that drive the articles. For example, if
47 our photographers catch a celebrity couple on the beach before the world knows they're
48 a couple, the article accompanying the photos becomes secondary.

49 Q. And your role?

50 A. The heads of each department report to me. But I'm pretty hands off. I trust my lieu-
51 tenants: I don't have a journalism background, and I have other companies to run.

52 Q. You said you're hands off. But do you know who Riley Winter is?

53 A. Of course.

54 Q. Who is Riley Winter?

55 A. Riley Winter is suing my magazine.

56 Q. And before that?

57 A. Winter was a writer for TBD. Winter was there when I arrived. I decided to give Winter
58 a chance but it didn't work out.

59 Q. When did you acquire TBD?

60 A. January 1, 2014.

61 Q. What, if any, changes did you make to TBD when you acquired the company?

62 A. I made it viable again, and I made it relevant again.

63 Q. What do you mean, you made TBD viable again?

64 A. TBD was losing money. I won't go into details, but the company was in the red. I or-
65 dered a RIF and moved TBD online. It started as a print magazine, and it added a web-
66 site in the 90s, I think. But I made it exclusively a web-based magazine in 2014.

67 Q. Why?

68 A. Print magazines are too expensive. They're terrible for the environment. They are ig-
69 nored by younger audiences, especially high-earning young audiences. And they're un-
70 able to compete in a 24-hour news cycle. When there's a mass shooting, people don't
71 want to wait a week for thoughts to arrive in the mail. They want analysis right away.

72 Q. But TBD is a culture magazine. You're not covering major news events like mass
73 shootings.

74 A. First of all, sure we are. Second of all, yes, most of the content is more light-hearted,
75 but audiences want that content immediately, too. When Twitter says a celebrity couple
76 is breaking up, our audience wants to know that right away.

77 Q. You mentioned a RIF earlier. For the record, what is a RIF?

78 A. Reduction in force. When I bought TBD, I laid off about 40 percent of its full-time em-
79 ployees and 60 percent of its part-time employees. Some might see that as cruel. I saw
80 that as saving the job of everyone else. It was a sinking ship.

81 Q. You also said you made TBD relevant again. What did you mean?

82 A. TBD had gotten stuffy. I'm sure it was trendy back in the 60s. It was even trendy a
83 decade ago. But by 2013, no one cared what TBD had to say.

84 Q. What is your basis for that conclusion?

85 A. Sales numbers. Online pageviews. But more than that, I didn't read TBD. The people
86 I talk to didn't read TBD. TBD articles weren't going viral.

87 Q. So how did you attempt to change? How did you attempt to make TBD more rele-
88 vant?

89 A. The magazine got a remake. I told our editors and writers that we were done publish-
90 ing content that everyone claims to have read but no one actually wants to read.

91 Q. Can you give me an example?

92 A. The old TBD would have done a long article about Caitlyn Jenner and what she
93 means for LBGT rights. The new TBD published ten different photos of Caitlyn and then
94 had wardrobe and PR experts offer their thoughts on which were the most flattering.
95 Huge traffic. Huge.

96 Q. I'm showing you Exhibit 1. Is this a fair and accurate copy of TBD's responses to
97 Plaintiff's interrogatories in this case?

98 A. Yes. I'm not a lawyer. But as I understand it, interrogatories are questions from one
99 party to another in a lawsuit. This document is TBD's answers.

100 Q. You personally verified the accuracy of every answer in Exhibit 1?

101 A. Yes. I read documents before I sign them. Everything in Exhibit 1 is true.

102 Q. I'm showing you Exhibit 2. Is this a fair and accurate copy of your remarks to TBD
103 staff on January 2, 2014?

104 A. Yes. This is what I wrote ahead of time, and this is what I said. I also emailed a copy
105 to all staff afterwards. For inspiration.

106 Q. Who was present for these remarks?

107 A. All writers, including Riley Winter. Obviously Austin Perez. Skye Martin was by my
108 side. A few of my friends outside the company were there, just to enjoy the moment.
109 None of us had ever owned a magazine before. It was a great day for everyone.

110 Q. It wasn't a great day for Francis Leo.

111 A. Ha. I suppose not. Francis was the previous editor in chief. Did some great work. Im-
112 portant work. But if TBD was going to court younger readers, if we were going to create
113 the right culture, Francis had to go.

114 Q. What do you mean, right culture?

115 A. If TBD was going to thrive in 2014 and beyond, we needed a staff with more vigor and
116 energy.

117 Q. How do you know Francis Leo lacked that energy and vigor?

118 A. I've never met Francis Leo. But she'd been in the journalism industry for a long time.
119 Energy fades over time.

120 Q. How old was Francis Leo at the time she was terminated?

121 A. I understand that she was 57.

122 Q. In Exhibit 2, you describe Francis Leo as "rid[ing] off into the retirement sunset." What
123 did you mean by that?

124 A. Francis had a great career. But she was 57 years old and she looked like my mom.
125 Seemed like Francis was ready to move to Florida and take up shuffle board.

126 Q. In Exhibit 2, you reference "a lot of other changes." What were those?

127 A. When I took over, I fired about half the writers. They'd been there a long time. I made
128 sure they received very serious severance packages.

129 Q. I'm showing you Exhibit 3. Is this a fair and accurate copy of TBD's People Policy, the
130 equivalent of the company's human resources policy?

131 A. No idea. I know we have a policy, I've just never seen it. I'm the boss, not an employ-
132 ee.

133 Q. If you've never seen the company's human resources policy, how did you make sure
134 TBD followed its policy?

135 A. That's not my job. I hired Skye Martin to handle HR.

136 Q. Was Riley Winter's termination based in any way on a violation of the policies listed in
137 Exhibit 3?

138 A. No. Winter didn't break any rules. Winter was just bad at the job.

139 Q. I'm showing you Exhibit 4. Is this a fair and accurate copy of Riley Winter's 2014 per-
140 formance evaluation?

141 A. No idea. I've never seen this document.

142 Q. Why not?

143 A. I own multiple companies. I employ thousands of people. I manage billions of dollars
144 in assets. Do I really need to explain why I don't read every performance eval?

145 Q. I'm showing you Exhibit 5. Have you ever seen this email between Austin Perez and
146 Riley Winter?

147 A. No, but I heard about it. When I made the decision to fire Winter, Austin mentioned to
148 me that Winter had asked to attend social media training.

149 Q. Isn't that a sign that Riley was trying to follow your orders about staying current?

150 A. It's a sign Riley Winter was unfit to be a culture writer. It was 2015. Winter should al-
151 ready know what Facebook is.

152 Q. Do you know what topics were covered by the seminar Winter asked to attend?

153 A. No.

154 Q. I'm showing you Exhibit 6. Is this a fair and accurate copy of an email you sent to all
155 TBD staff on April 27, 2015?

156 A. Yes. The company's 50th anniversary was a few days away. I learned that the de-
157 partment heads had organized a big party at the Miller Tower. I cancelled it.

158 Q. I'm showing you Exhibit 7. Is this a fair and accurate copy of an email you sent to all
159 TBD staff on August 12, 2015?

160 A. Yes. I try to encourage my people. That's leadership.

161 Q. I'm showing you Exhibit 8. Is this a fair and accurate copy of a birthday card given to
162 Riley Winter on November 20, 2015?

163 A. Yes. I happened to be in the office that day and some intern came by and said, "I'm
164 Kirby Doolittle!" As if I would recognize the name. The kid asked me to sign Riley Win-
165 ter's 50th birthday card. So I did.

166 Q. Please identify all the words you wrote.

167 A. I wrote, "Only 50? You don't look a day over 60. Sawyer." I also circled someone

168 else's message and wrote, "Well done!" to indicate the comment I found funniest.

169 Q. Please identify all the words that were on the birthday card at the time you signed it.

170 A. All of them. I was the last to sign.

171 Q. I'm showing you Exhibit 9. Is this a fair and accurate copy of Riley Winter's 2015 per-

172 formance evaluation?

173 A. Again. No clue. I don't receive performance evals. I don't read performance evals.

174 Q. Exhibit 9 says you had input on Riley Winter's 2015 performance evaluation. True?

175 A. Yes, a few days before—right after Thanksgiving—I spoke with Skye Martin about Ri-

176 ley Winter. I told Skye about my concerns with Winter, which—now that I'm reading it —

177 are reflected in the eval.

178 Q. I'm showing you Exhibit 10. Is this a fair and accurate copy of an article written by Ri-

179 ley Winter and published by TBD on December 15, 2016?

180 A. Yes. This article contributed to Winter's termination.

181 Q. Why?

182 A. Winter criticized technology that helps people discover new music. This article is

183 about TURNTable, but the technology Winter criticized is similar to Spotify and Pandora.

184 Both of those companies have more than 100 million users and a market value in the

185 billions. Billions. With a B. And Winter criticized the tech. This makes Winter look stupid,

186 and it makes TBD look out of touch. To make matters worse, TURNTable is one of

187 TBD's major advertisers. Winter's article almost cost us a lot of ad revenue. So it ended

188 up costing Winter a job.

189 Q. Why didn't you fire the editor who approved the article?

190 A. Austin Perez approved the article. I told Austin this was unacceptable. Austin, howev-

191 er, has a much better track record than Winter. We've made a lot of money and in-

192 creased readership under Austin's leadership.

193 Q. I'm showing you Exhibits 11, 12, and 13. These are a series of emails between Riley

194 Winter and Austin Perez, including the attached drafts of an article. Have you seen these

195 emails or attachments before?

196 A. No. I'm not on the emails, and I don't read drafts of articles.

197 Q. Did Austin Perez mention these drafts to you? They concern the best tweets of 2015.

198 A. I don't remember anything about this. This stuff is way too in-the-weeds for people at

199 my level.

200 Q. I'm showing you Exhibit 14. Do you recognize this?

201 A. "What Kirby Learned"? Are you serious? No. I've never seen this.

202 Q. Exhibit 14 purports to be an academic paper based on an interview of you conducted
203 by Kirby Doolittle on November 20, 2015. Did Kirby Doolittle interview you on November
204 2015?

205 A. I only met this Kirby person twice, both on November 20, 2015. The first time was
206 when I signed that birthday card. The second time was that same afternoon. Kirby wanted
207 to ask me a few questions. I said sure. For about ten minutes, I answered questions
208 from Kirby while I was answering emails in my office. I have no recollection of what Kirby
209 asked or what I said because my attention was on important matters, which did not in-
210 clude questions from the intern.

211 Q. Please take a look at Exhibit 14 and tell me whether you made the statements as-
212 cribed to you.

213 A. Okay. Yeah, I'm reading this now, and I have no recollection of saying these
214 things. I'm not saying I didn't say them. I'm not saying they're incorrect. I'm not saying
215 there is anything wrong with these statements. I'm just saying I don't recall.

216 Q. I'm showing you Exhibit 15. Is this a fair and accurate copy of a screenshot from your
217 phone, showing text messages from you to TURNTable CEO Adrian Edwards at 2:28
218 a.m. and 2:33 a.m. on December 23, 2015?

219 A. Yes.

220 Q. Can you please explain the context surrounding these texts?

221 A. It was about 2:30 in the morning, Midlands time. I was in town for an event. I couldn't
222 sleep. I texted Adrian Edwards to see if Adrian was free.

223 Q. At 2:30 in the morning?

224 A. Adrian, like me, is always traveling. I had no idea what time zone Adrian was in.

225 Q. What is your relationship with Adrian Edwards?

226 A. Adrian is a close friend. We went to Stanford together. We both own companies.
227 We're both committed to changing the world.

228 Q. Did you speak with Adrian Edwards at 2:30 in the morning?

229 A. Yes. Adrian called me. We took a moment to catch up and then Adrian complained
230 about an article TBD had apparently published about TURNTable—Exhibit 10. I pulled
231 the article up on my phone as we were talking. I agreed with Adrian that the article
232 sounded antiquated, and I agreed that it was inappropriate for Winter to write an article
233 criticizing one of our major sponsors. Adrian said that unless I fired Winter, TURNTable
234 would take its advertising elsewhere.

235 Q. How did you respond to this alleged statement by Adrian Edwards?

236 A. I tried to talk Adrian down. But Adrian's mind was made up. Adrian said, "One of them
237 is leaving TBD—this writer, or my money. You decide." At that point, I knew I needed to
238 fire Winter. I told Adrian I understood, and I asked Adrian to put it in an email so there
239 was a record. Adrian said "text me what it should say." So I texted Adrian, "Dear Sawyer:
240 I am livid about the article that TBD published about TURNTable last week. As you

241 know, we are one of your largest advertisers. Unless Riley Winter is fired immediately,
242 we will pull all of our advertising. Signed, name, title, etc." I thought that accurately cap-
243 tured Adrian's position.

244 Q. Why did you think you needed a record?

245 A. People get touchy when they're fired. Some sue. I wanted a record of why Winter was
246 being fired.

247 Q. On what basis did you expect Riley Winter to sue?

248 A. On the basis that people sue for stupid, BS reasons all the time.

249 Q. Before your 2:28 a.m. text message, when was the last time you and Adrian Edwards
250 had communicated in any form—phone, email, text, anything?

251 A. We met for drinks in Tokyo in April 2015. That was the last time.

252 Q. I'm showing you Exhibit 16. Is this a fair and accurate copy of an email sent to you by
253 Adrian Edwards at 10:30 a.m. on December 23, 2015?

254 A. Yes.

255 Q. I'm showing you Exhibit 17. Is this a fair and accurate copy of a letter from you to Ri-
256 ley Winter, dated December 23, 2015?

257 A. Yes. This is Winter's termination letter.

258 Q. Who wrote it?

259 A. Skye Martin. I told Skye what it should say. Skye brought it to me. I signed.

260 Q. When did you tell Skye Martin to prepare a termination letter?

261 A. December 23, 2015. About 10:30 in the morning.

262 Q. What specifically did you say to Skye Martin on December 23, 2015?

263 A. At 10:30, I called Skye into my office and said, "put together a termination letter for
264 Riley Winter. Give Winter a decent severance, whatever is standard and then throw in
265 some more. Do it right away, so I can get this over with before the holiday party."

266 Q. When you told Skye Martin to prepare a termination letter for Riley Winter, did Skye
267 Martin say anything to you?

268 A. Skye said it was a good decision, had to be done. Skye said that Winter had been
269 given chance after chance and that it was time for the horse to be put out to pasture.

270 Q. When did you sign Exhibit 17?

271 A. About 15 minutes later. About 10:45 a.m.

272 Q. What did you do with the letter?

273 A. At 11:30 a.m., same day, I called Austin Perez into my office. I told Austin I was firing
274 Riley Winter. Austin shared Austin's thoughts on the matter. I gave Austin Exhibit 17 and

275 told Austin to deliver the news before the holiday party. I told Austin that today would be
276 Winter's last day.

277 Q. How many times did you see or speak to Austin Perez on December 23, 2015?

278 A. Twice. At 11:30, when I told Perez we were firing Winter. And at the holiday party later
279 that day.

280 Q. You said, "Austin shared Austin's thoughts on the matter." What did Austin Perez say,
281 exactly, when you said Riley Winter would be fired?

282 A. Austin said something like, I agree Riley is out of touch, but I think we should give Ri-
283 ley one more chance.

284 Q. Can you be a little more specific about what your editor in chief said?

285 A. I really can't.

286 Q. Did you have any further discussion on December 23, 2015 regarding Riley Winter's
287 termination?

288 A. No. Spoke to Skye at 10:30. Signed the letter at 10:45. Spoke to Austin at 11:30.

289 Q. When did you make the decision to fire Riley Winter?

290 A. December 23, 2015.

291 Q. At what time?

292 A. There was no one time. I decided it when I spoke to Adrian. I confirmed my decision
293 when I spoke to Skye. I finalized the decision when I spoke to Austin.

294 Q. I'm showing you Exhibit 18. Do you recognize it?

295 A. Yeah, this is the spreadsheet you made us put together showing everyone who has
296 worked as a writer for us since I took over—name, date of birth, hire date, last date, etc.

297 Q. Do you have any reason to doubt the accuracy of anything in that document in any
298 way?

299 A. Better not be inaccurate since I had to certify under oath that it was accurate. Every-
300 thing there is right. We quadruple checked.

301 Q. Is there anyone who has done any writing for TBD from January 1, 2014, through De-
302 cember 23, 2015, who is not listed on that document?

303 A. No. This is the complete list.

304 Q. The document shows that 12 writers had a last day of January 2, 2014. What is that?

305 A. I fired all of them that day.

306 Q. I'd like to direct your attention to the name Taylor Deardoff. It says his last day was
307 July 29, 2014. Do you know why he left?

308 A. I think we fired him for some reason.

309 Q. So far as you know, Mr. Deardoff did not leave TBD voluntarily?

310 A. That's right.

311 Q. How about Kristen Stoicescu?

312 A. I think she might have gotten a new job, but I'm not sure.

313 Q. Please list all of the reasons TBD terminated Riley Winter's employment.

314 A. Winter was out of sync with the direction of TBD. TBD was getting hipper. Winter was
315 stuck in nostalgia and thinkpieces. It was hurting us with our readers, and it was hurting
316 us with our advertisers.

317 Q. Anything else?

318 A. Anything else? There couldn't be anything else. Winter's job was to write relevant arti-
319 cles about American culture that would draw eyeballs, go viral, and generate advertising
320 revenue. Winter wasn't doing that. It's like a chef who isn't good at cooking. There are no
321 other criteria. The person can't keep the job.

322 Q. What was the basis for your belief that Winter's articles were not relevant?

323 McCormack: Objection, vague as to time, vague as to relevant.

324 Q. I will rephrase. On December 23, 2015, when TBD terminated Winter's employment,
325 what was the basis for your conclusion that Winter's work was not sufficiently relevant
326 and in touch with the interests of your readers?

327 A. I read TBD myself. I read every headline. I found myself not wanting to click on Win-
328 ter's articles. When I did click on them, I usually found myself bored or disappointed. And
329 I'm the target demographic for TBD. Young, smart, interested in the world, money to
330 spend. But it wasn't just me. I never heard people talking about Winter's articles. Not my
331 friends, not people online. Winter's articles never went viral. When I told Skye and Austin
332 on December 23 that we should let Winter go, they didn't really push back. That was tell-
333 ing.

334 Q. You also said Riley Winter's articles were generating insufficient advertising. It wasn't
335 just TURNTable? There were other advertisers with whom you claim TBD's relationship
336 was impaired by Winter's articles?

337 A. TURNTable is the most direct example. But if Winter's articles weren't getting clicks,
338 theoretically that hurt our relationship with other advertisers.

339 Q. How many advertisers, other than TURNTable, had ever complained about or even
340 expressed concern about Winter's articles?

341 A. None that I know of.

342 Q. I'm showing you Exhibit 19. Is this a fair and accurate copy of TBD's press release
343 announcing the hiring of Landon Greene at 11:45 a.m. on December 23, 2015?

344 A. Yes. That's the time and date the announcement went live.

345 Q. Who wrote Exhibit 19?

346 A. Me. Skye. Landon. It was a group effort. When it was done, I sent it directly to the IT
347 team and told them to get it live.

348 Q. Please describe TBD's hiring process for Landon Greene.

349 A. On December 20, 2015, I was traveling to Buenos Aires for a wine tasting. During the
350 flight, I came across a brilliant interview of Jennifer Lawrence. I thought it really captured
351 Jen. The interviewer's name was Landon Greene, and so I started reading other inter-
352 views and articles by Landon. I thought, this is the voice I want for TBD. So when I land-
353 ed on December 20, I had my secretary, Bobbie Lin, get me Landon's contact info. I
354 called Landon and said, "This is Sawyer Shaw. I want you to write for my website. I will
355 double whatever you're making now. Take all the time you need, as long as it's less than
356 48 hours." On December 22, Landon called me back and accepted the offer. I called
357 Skye that same day with the good news.

358 Q. So who was involved in the hiring process for Landon Greene?

359 A. Just me. Austin had no idea. Skye had no idea. Bobbie just got me the contact info. I
360 landed Landon essentially on my own. I'm very proud of that.

361 Q. What were Landon Greene's credentials when Landon Greene was hired?

362 A. Graduated from Dartmouth with a degree in English. Moved to New York as an edito-
363 rial assistant for Harper Collins. Pitched a story to Rolling Stone, which ended up being
364 the cover story. Wrote freelance for all the top magazines and websites, basically a
365 who's who of culture mags. And then the cherry on top. An offer from me and TBD. All
366 before turning 27.

367 Q. Was age a factor in Landon Greene's hiring?

368 A. It was, only in the sense that if Landon could accomplish this much at such a young
369 age, then that indicated great future value.

370 Q. What are the terms of Landon Greene's employment at TBD?

371 A. The press release calls Landon a senior writer, but I did away with that title. We made
372 that lead writer. Landon's salary is 180 thousand. Landon works remotely and still lives
373 in Brooklyn. Other than parties, we never actually see Landon.

374 Q. Did Landon Greene replace Riley Winter?

375 A. Not at all. Not at all. Landon was hired before Winter was fired, so obviously Landon
376 wasn't replacing anyone. And Landon occupies a very different position at TBD than
377 Winter did. Landon's hiring truly had nothing to do with Winter's firing.

378 Q. Did Austin Perez say the words attributed to Austin Perez in Exhibit 19?

379 A. Not specifically. But that's not uncommon for press releases.

380 Q. When did TBD staff find out Landon Greene had been hired?

381 A. At the December 2015 holiday party. People were very excited.

382 Q. I'm showing you Exhibit 20. Do you recognize it?

383 A. No. I mean, this is Austin Perez's email address, and it looks like an email from Austin
384 to Austin, but I've never seen it before. And everything in it is false.

385 Q. I'm showing you Exhibit 21. Is this an email you wrote to Ainsley Mayes on December
386 23, 2015?

387 A. Yes.

388 McCormack: The witness just authenticated the document. That's the only question I will
389 let the witness answer about Exhibit 21. We've moved to exclude it on the basis of attorney-client privilege.

390

391 Q. Who is Ainsley Mayes?

392 A. Can I answer that?

393 McCormack: That question is fine.

394 A. Ainsley Mayes is a lawyer. She's now my lawyer. But there's some debate in this case
395 over whether she was my lawyer at the time I wrote this email.

396 Q. At the time this email was sent, 5 PM on December 23, 2015, what was your relationship
397 with Ainsley Mayes?

398 A. We'd met at a cocktail party in Mexico City. She said she used to work in the White
399 House. I was impressed, so I got her email address. On December 23rd, I sent her this
400 email, Exhibit 21. That was the extent of our relationship at the time.

401 Q. Did Ms. Mayes ever agree to represent you?

402 A. Yes. We signed a retainer in January 2016.

403 Q. I'm showing you Exhibit 22. Do you recognize it?

404 A. Yes. This was attached to the interrogatories I had to sign. I spoke to Perez and our
405 IT director, and I can confirm that Exhibit 22 is a correct and complete measure of Winter's
406 article frequency, clicks, and social media shares in 2015. The comparison to our
407 other writers is also correct.

408 Q. When did you first see this data?

409 A. This document wasn't created until after you sued us and asked for the information.
410 But I get this exact information by email every week.

411 Q. When you receive data like that contained in Exhibit 22, regarding article clicks and
412 shares, how often do you actually read that data?

413 A. Rarely. Maybe once every few months.

414 Q. How about December of 2015. Do you recall reading, hearing, or otherwise learning
415 about any of the data during that specific month?

416 A. No, not that I recall.

417 Q. Is that unusual?

418 A. No. I'm a very busy person. I almost never open the email or click on the document. I
419 trust my editors and business people to tell me if there's a problem.

420 Q. When was the last time, before you fired Riley Winter, that you recall reading, learn-
421 ing, or otherwise hearing about the type of data contained in Exhibit 22?

422 A. Data about article clicks and shares? Probably June or July of 2015.

423 Q. Why does TBD track the clicks and shares for each article?

424 A. More readers means more advertising, which means greater profitability.

425 Q. So if you don't read reports like Exhibit 22, how do you know which authors and arti-
426 cles are generating web traffic?

427 A. Our business team tells me what I need to know.

428 Q. What, if anything, did your business team tell you about the web traffic for Riley Win-
429 ter's articles in 2015?

430 A. Taylor Erick runs our business team. Erick told me in 2015 that Winter's articles were
431 generating below-average web traffic compared to our other articles.

432 Q. Can you be more specific than "below average"? How far below average?

433 A. I didn't get into the details. If you're below average, you're pulling us down.

434 Q. When did Taylor Erick tell you that Riley Winter's articles were generating below av-
435 erage traffic? What week?

436 A. No idea.

437 Q. Where did this conversation take place? Was it in person?

438 A. I don't remember.

439 Q. Tell me, for what period of time were Winter's articles supposedly generating below
440 average web traffic?

441 A. Taylor didn't get into details. I think I've said this before, TBD is a small part of what I
442 do. If a writer generates below-average web traffic, she or he must be fired. Simple.

443 Q. No more questions.

444 I declare under penalty of perjury that the foregoing is true and correct.

445 Eli Navarro August 8, 2016
446 Eli Navarro Date

447

448 I certify I have read the foregoing transcript of my deposition and I swear it is a true, cor-
449 rect and complete transcript of my deposition. I have no changes or amendments.

450 Sawyer Shaw August 8, 2016
451 Sawyer Shaw Date

Affidavit of Skye Martin

1 I am over 18 and competent to make this affidavit. I am testifying voluntarily and was not
2 subpoenaed or compelled to testify.

3 I was born Christmas Day in 1988 and live at 301 Carter Road here in Midlands City. I
4 majored in psychology at the University of Delaware and earned a Masters in Business Admin-
5 istration from MIT's Sloan School of Management. I had the great fortune of meeting Sawyer
6 Shaw during my first year of B-School. Shaw is the most talented person I've ever met. When I
7 finished B-school in May 2013, Shaw recruited me to work as a lower level employee at one of
8 Sawyer's other companies, and, when Shaw purchased TBD in 2014, Shaw took me along for the
9 ride.

10 Shaw allowed me to design the role of the human resources department at TBD, and I did,
11 starting with the title: People Operations. As Director of People Operations, I assist TBD with
12 employee recruitment, promotion, discipline, termination, feedback, training, compensation, ben-
13 efits, and morale. My annual salary is \$175,000. I have one other person in my department, the
14 Assistant Director of People Operations. I was very excited to become Director of People Opera-
15 tions. It was a challenge, as my previous work for Shaw's other company had absolutely no con-
16 nection to human resources and I had no other work experience in the field.

17 I arrived at the TBD offices at 8:45 a.m. on January 2, 2014. Shaw saw me immediately
18 and explained that Shaw was going to make a short introductory speech to the entire staff in the
19 lobby. Shaw had rather famously made a fortune a few years earlier off of Shaw's first company,
20 Jel, and had just finalized the purchase of TBD. I thought Shaw's speech was pretty standard
21 stuff. The speech set out a vision for the company and introduced the new editor in chief, Austin
22 Perez. Shaw also announced that, going forward, TBD was going to be an online-only publica-
23 tion. Exhibit 2 accurately reflects what Shaw said on January 2, 2014. Shaw emailed Exhibit 2 to
24 all employees after the meeting that day. I believe we were all inspired.

25 After the meeting, Shaw called me back to Perez's office and told Perez and me that TBD
26 would be letting some writers go later that afternoon. On January 2, 2014, TBD fired 18 employ-
27 ees, most of whom were writers. I was there when Shaw decided to fire 12 of TBD's 31 writers,
28 including 7 of the 10 writers who were over 40 years old and 5 of the 21 writers under age 40.
29 Shaw said the topics those writers covered didn't reflect the brand that Shaw was trying to create.
30 It is true that the older writers were more likely to have been fired that day. But I can attest to the
31 fact that age was not a factor in those termination decisions. Shaw had never met most of the
32 writers and didn't know what they looked like. When deciding whom to fire, Shaw had the em-

33 employees' personnel files. The only information Shaw had about the 31 writers on January 2, 2014
34 was the colleges they attended and their graduation years, their work history and years of em-
35 ployment, the word count of each writer in the TBD print magazines for the past 12 months, and
36 Perez's oral, on-the-spot opinions about each writer. Perez also gave Shaw one writing sample for
37 each of the 31 writers. Shaw could usually tell from a single paragraph whether the writer should
38 be retained. We started that meeting at 10 a.m. on January 2, 2014, and by 11:45 a.m., Shaw had
39 decided—with input from Perez and me—which employees to retain and which to let go. I let the
40 terminated employees know after lunch.

41 Since that day, TBD has lost three more writers over the age of 40. In late July 2014, I had
42 to fire one of the writers because she was having trouble adjusting to Shaw's new vision for TBD.
43 Another writer left that same week for a position with another publication. And, of course, Shaw
44 fired Winter on December 23, 2015. It is true that all three of those writers were older than 40 but
45 that was not intentional by TBD. However, I do think that older writers have had trouble imple-
46 menting Shaw's vision for TBD: trendy writing; leverage of social media; focus on topics rele-
47 vant to young people; and shorter but more frequent articles. Maybe it was inevitable that older
48 writers would struggle under Shaw's leadership, but another way of thinking about it is that may-
49 be younger writers were disadvantaged under TBD's old format. In all, TBD has lost 17 writers
50 under Shaw's tenure, and gained 7 others. Exhibit 18 accurately reflects every writer employed
51 by TBD during the period from January 1, 2014, to present, including the writers' dates of birth,
52 hire dates, and departure dates.

53 But the job wasn't just super depressing stuff like firing people. Shaw gave me complete
54 control over the human resources department right away. I thought that was probably a terrible
55 idea, given my lack of experience, but I had a lot of ideas to make TBD younger and hipper,
56 which Shaw liked. I started by renaming the department. I always thought "human resources"
57 sounded way too serious and scary, so I retitled the department "People Operations." I also wrote
58 TBD's new "People Policy." Every employee had to sign the People Policy. Exhibit 3 is the copy
59 signed by Riley Winter. The People Policy is mainly language from examples I found in business
60 school articles and textbooks, along with some pieces I wrote myself. I tried to make it sound like
61 some big shot law person wrote it, but I don't know if I did it right. I didn't have any kind of hu-
62 man resources guide telling me what to include in the policy—I was just going off what I could
63 remember from my time at school. I never participated in any kind of job-related training during
64 my time at TBD. But I'm proud to say that, as Shaw told the entire staff in 2014, the People Poli-
65 cy I created guides all of our employment decisions at TBD.

66 Shaw also put me in charge of TBD's after-work social scene. Shaw told me to organize
67 events a young, hip person like myself would want to go to. I sent the invitations out on Face-
68 book, and I think the events were a pretty big hit. Turnout was high, and people seemed to have a
69 good time. I don't think I saw Winter at many of our social events in 2014, though Winter did at-
70 tend a few the next year. Come to think of it, though, I don't think Winter had a Facebook page
71 for most of 2014. So Winter may not have been getting formally invited to those events. I don't
72 know. But I know people discussed the happy hours in Winter's presence. Winter never made an
73 effort to get to know the younger writers. Shaw told everyone repeatedly that teamwork was im-
74 portant, and part of being a team player meant not just working hard together, but playing hard
75 together too. I think Winter's decision not to participate in many TBD social events contributed to
76 Winter's eventual termination.

77 As Director of People Operations, I was in charge of running TBD's training initiatives. I
78 booked motivational speaker / digital age writing expert Terry Chapin in mid-January 2014, and
79 all of the writers attended Chapin's presentation. That first training session was on how to max-
80 imize web traffic to digital articles. More traffic means more advertising revenue, so web-traffic
81 is really the most important thing for an online-only publication like TBD. I also scheduled a new
82 session on social media use for August 4, 2014. I hear Winter walked out because Winter thought
83 social media was silly, but I wasn't at the seminar. Shaw did not attend either seminar—in Janu-
84 ary or August 2014—but I informed Shaw of what had transpired.

85 A big part of my job is writing the performance reviews for all our employees. Each em-
86 ployee gets an annual performance review, which I go over in a meeting with the employee. Perez
87 and Shaw have a lot of input on the content of those reviews. I remember Winter's reviews in
88 2014 and 2015 were a mixed bag. Exhibits 4 and 9 are Winter's performance reviews from 2014
89 and 2015, respectively. Although Winter's reviews sound generally positive, they are a little sug-
90 arcoated. Most of our employees are under 30, and they don't handle criticism well, so I find that
91 it's best to give such criticism sparingly and only as part of what I call a compliment sandwich.
92 That's why Winter's reviews probably don't make clear that Winter's job performance was
93 somewhat disappointing. But Winter was certainly dedicated. You could tell from the hours and
94 the effort that Winter put in that the job was extremely important to Winter. Winter didn't seem to
95 have much of an identity outside of the job: It seemed like Winter rarely left the office. When
96 Winter attended TBD social events, Winter only wanted to talk about work.

97 Shaw also had me help with hiring new employees. We have hired seven new writers at
98 TBD since I started, all of whom were under 30 when we hired them. I know that doesn't look

99 great given Winter's allegations, but almost all of the applications we receive are from younger
100 writers. Still, TBD has brought in some older writers for interviews, though none were offered a
101 position. Of those older writers, at least two said they were skeptical about working for an online-
102 only publication, so maybe that's why we don't get so many of those applications. Our most re-
103 cent hire was a writer named Landon Greene. Landon was 26 years old in December 2015. Lan-
104 don is a Dartmouth grad and has Harper Collins and *Rolling Stone* on Landon's resume. Really
105 everything you could want in a writer. Shaw read a few of Landon's articles during a business trip
106 on December 20, 2015, and immediately called me from Buenos Aires. Shaw told me that the
107 plan was to call Landon that day and offer Landon a job. I wasn't on that phone call but Landon
108 accepted a position with TBD a couple of days later on December 22, 2015. I don't believe Perez
109 was involved in the Greene hiring.

110 I know what Winter is saying about the Landon Greene hiring, and I just don't think it's
111 true. Landon wasn't just some random applicant Shaw picked to replace Winter. Shaw was over
112 the moon about hiring Landon, and I never heard a word that would make me think Landon's hir-
113 ing had anything to do with Winter. As far as I know, Landon was the only writer Shaw ever
114 sought out like that. To top it all off, TBD didn't need to free up Winter's salary to pay Landon. I
115 mean, I guess Landon did come in at a high salary. And aside from Winter, Landon was our high-
116 est paid writer when Landon was hired. And I suppose it helped TBD's bottom line that we were
117 able to cover Landon's salary by letting Winter go, but TBD had the money to pay both Winter
118 and Landon. Shaw, Perez, and I had been planning on adding staff for months prior to Landon's
119 hiring. Going digital-only meant having more content, and more content required more writers.

120 The next day, December 23, 2015, Shaw came into my office and closed the door at about
121 10:30 am. I knew something was up because no one ever closes my door like that unless it's
122 something serious. Anyway, Shaw walked over and set a copy of Winter's recent TURNTable
123 article on my desk. TURNTable is a digital music assistant that creates playlists for you based on
124 the kind of music you tell it you like. Winter had published an article on December 15 really tear-
125 ing TURNTable apart. Shaw wanted to know if I had seen the article. I had and hadn't thought
126 much of it. TURNTable is a big advertiser on the TBD website, and a large source of revenue, but
127 our writers had criticized advertisers once or twice in the past and it was never an issue. To the
128 best of my knowledge TURNTable did not have an issue with the article. So I was shocked when
129 Shaw said, "I think we have to let Riley go over this." Shaw then asked me if there were any oth-
130 er issues "that would justify letting Riley go." Shaw never asked for any reasons to keep Winter,
131 but in fairness an HR department would be much more aware of employee problems than suc-

132 cesses. If Shaw wanted to know about reasons to keep Winter, the better person to ask would be
133 Perez.

134 As instructed, I made the case for getting rid of Winter. Winter was and had been TBD's
135 highest paid writer for more than five years at that point. Winter's annual salary was \$200,000.
136 We had just hired Landon at a salary of \$180,000. After that, the next highest paid writer at TBD
137 made \$120,000 per year. And Winter just wasn't driving all that much web traffic. Despite the
138 outstanding quality of Winter's articles, those articles only generated average web-traffic, at least
139 for the most part. As I told Shaw, the lackluster web-traffic for our most experienced and most
140 well-known writer probably had something to do with Winter's refusal to get "on brand" and aim
141 content at the younger, less sophisticated readers that the new TBD wanted. Finally, I mentioned
142 Winter's attitude. I had in mind Winter's decision to leave the August 2014 social media training.
143 But I didn't spell out for Shaw what I meant by Winter's "attitude," so I don't know if Shaw
144 knew what I meant. Anyway, at the end of my pitch Shaw said, "That's all great. My mind was
145 pretty much made up, but it's good to have a list of reasons, just in case Winter gets litigious."

146 At the end of that meeting on December 23, 2015, Shaw asked me to draft a termination
147 letter, which is something I did whenever we let someone go. I had Shaw sign the termination let-
148 ter and gave the signed letter to Austin Perez, who (I'm told) let Winter go in a private meeting at
149 about 11:45 am. I wasn't there when Shaw met with Perez or when Perez delivered the news to
150 Winter. Exhibit 17 is the termination letter. I worked with Shaw to draft a press release announc-
151 ing Landon Greene's hiring, and I had our IT department post the press release on TBD's website
152 just before the holiday party started at noon on December 23, 2015. Exhibit 19 is the press release
153 announcing Greene's hiring. I then went and joined TBD's holiday party, which was about to
154 start.

155 I never saw Winter at TBD after December 23, 2015. Because Winter's departure was so
156 sudden, however, Winter's phone line at TBD kept getting calls. We realized that these calls
157 could be all sorts of things, so we eventually had Winter's old line forwarded to my desk so that
158 nothing would fall through the cracks. Three of the calls were actually headhunters who wanted
159 to speak with Winter about writing jobs with other magazines: those calls came in January 2016,
160 February 2016, and April 2016. Each time, I told the headhunter that I wasn't authorized to pass
161 along Winter's contact information but that I would see that Winter got the message. I then called
162 Winter's personal cell phone and left a voicemail with the headhunter's name and phone number.
163 I never heard anything from Winter about any of those calls, but two of the headhunters called me
164 back about a month later to say that Winter had never gotten back to them.

165 I am familiar with the following exhibits: Exhibit 2 is the transcript of the speech Shaw
166 gave on January 2, 2014. Exhibit 3 is TBD's "People Policy," which I wrote. Exhibit 5 is the
167 email Riley sent to Perez on January 12, 2015, asking to attend a supplementary social media
168 training program. Perez showed it to me and asked me to approve funds for the class, which I did.
169 Winter attended the event as described in the email. Exhibit 6 is an office-wide email Shaw sent
170 out cancelling TBD's planned 50th birthday party celebration. Exhibit 7 is another office-wide
171 email Shaw sent out on August 12, 2015. Exhibit 8 is a birthday card our intern, Kirby Doolittle,
172 bought for Riley's 50th birthday on November 20, 2015. I was the first to sign it and haven't seen
173 it since. I recognize the handwriting beside "Sawyer" and "S.S." as Sawyer Shaw's handwriting
174 and the handwriting beside "Austin" as Austin Perez's handwriting. Exhibit 10 is the final, pub-
175 lished version of the article about TURNTable that Riley published on December 15, 2016. Ex-
176 hibit 17 is the termination letter I prepared in relation to Winter's termination. Exhibit 18 is a
177 spreadsheet I prepared that lists all writers employed by TBD between January 1, 2014 and De-
178 cember 23, 2015. I personally created this spreadsheet in late July 2016 using internal company
179 records of which I am the custodian and I can attest to its accuracy. Exhibit 19 is the press release
180 that went out just before the holiday party announcing that TBD had hired Landon Greene. Ex-
181 hibit 22 is TBD's article and web-traffic data for 2015. I am familiar with that data and its format-
182 ting. The data through Week 51 was emailed to me, Perez, Shaw, and business team leader Taylor
183 Erick on the early morning of December 23, 2015.

184 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this
185 statement, I was told it should contain everything I know that may be relevant to my testimony,
186 and I followed those instructions. I know that I can and must update this affidavit if anything new
187 occurs to me until the moment before opening statements begin in this case.

188 Skye Martin
189 Skye Martin

190 Subscribed and sworn before me on this, the 3rd day of August, 2016.

191 Kendal Hruska
192 Kendal Hruska, Notary Public

Affidavit of Adrian Edwards

1 I am over 18 and competent to make this affidavit. I am testifying voluntarily and was not
2 subpoenaed or compelled to testify.

3 I like to think of myself as a citizen of the world. My parents were from completely dif-
4 ferent backgrounds and met at Live Aid in 1985. Whirlwind romance, whirlwind wedding,
5 whirlwind baby (that's me, born New Year's Day 1987), whirlwind divorce. My parents went
6 their separate ways, and I spent my childhood bouncing from place to place and school to school.

7 I am founder and CEO of TURNTABLE, Inc. TURNTABLE is the nation's best and fastest-
8 growing online, on-demand music provider. We have three simple goals: biggest song library,
9 most seamless customer interface, and best recommendations. I started TURNTABLE with a small
10 (just a million dollars or so) loan that I got from my mom's family after graduating from Stanford
11 with a degree in business in 2009. Seven years later, TURNTABLE has just under a million sub-
12 scribes, just over \$100,000,000 in annual gross receipts, and exactly 112 employees.

13 TURNTABLE operates in a crowded market space and it's getting more crowded all of the
14 time. Most obviously, we have several competitors who are far better known than us, at least with
15 the general public. But we're also living in an environment where it's possible for anyone with an
16 internet connection to stream almost any song they want for free. That's why I tell our staff that
17 it's critical for us to get and keep our name out there and to maintain a positive image with people
18 who already know us.

19 For the last three or four years, our paid advertising budget has been approximately
20 \$6,000,000 per year. That money is spread around quite a bit and covers things like celebrity and
21 athlete endorsements, sponsorships of concerts and other live events, and web advertising.

22 TURNTABLE doesn't do any paid television, radio, or print advertising. At the same time, we also
23 try to get as much free media as we can, which can include articles about our company, our
24 people, or our services. Free media is especially great because, one, it's free, and two, I firmly
25 believe that people are most receptive when they don't realize that you're trying to sell them
26 something. I wouldn't say that there's literally no such thing as bad publicity, but it's close,
27 especially when you're trying to get your name out there like we are.

28 One place we've been advertising the last few years is the webzine TBD. Before 2014,
29 TBD would have been completely out of the question for TURNTABLE. Not only was the old TBD
30 a print magazine, it also seemed eternally stuck in the 1960s, which is when I think TBD was

31 started. Lots of small text and long articles about “serious” topics that people will swear up and
32 down they care about but then don’t read. Not a lot of pictures or fun. No thank you.

33 I first learned about TBD’s makeover from Sawyer Shaw. I’ve known Sawyer since we
34 lived on the same floor at Stanford during my first year and Sawyer’s first and only full year of
35 college. Sawyer and I had never met before we started college, but we clicked from day one and
36 we were pretty much inseparable that whole year. It was pretty obvious that Sawyer wasn’t cut
37 out for school. Sawyer was too ambitious, too impatient, and had too much trouble being any-
38 thing but the boss all the time to spend four years listening to other people. Our lives have gone in
39 different directions, and these days we probably only speak a few times per year, but I still con-
40 sider Sawyer to be one of my best and closest friends. Sawyer has my personal cell phone num-
41 ber, and I always take Sawyer’s calls.

42 I still remember the call I got from Sawyer on the evening of January 2, 2014. I knew that
43 Sawyer had taken Sawyer’s first company public a while back and made some truly ridiculous
44 amount of money. I had assumed that Sawyer would follow the well-trod path of buying houses,
45 boats, and a professional sports team or two (coupled with, of course, the obligatory charitable
46 donations). Instead, Sawyer opens the call by saying “Guess what? I just bought a magazine.” I
47 was pretty stunned. In my experience, Sawyer doesn’t exactly read very much (or at all). So I
48 asked Sawyer what magazine and why in the world Sawyer had done such a thing. Sawyer’s re-
49 sponse was classic Sawyer: “I just bought TBD. For fun. And because I felt like it.” Sawyer ex-
50 plained that Sawyer had already started “cleaning house” by “encouraging the old editor in chief”
51 (someone named Leo, I think) “to take a well-deserved ride off into the sunset” and that more
52 heads would be rolling soon.

53 It was about that point in the conversation when I figured out why Sawyer was calling me.
54 And Sawyer, as usual, did not disappoint. Sawyer said “Look, A. I know that TURNTable doesn’t
55 do any print advertising and that TBD’s current readership averages somewhere between 50 and
56 dead. But that’s about to change. I just told our whole staff that TBD is going all digital and that
57 we’re going hard after a younger audience. Bottom line: we’re going after the exact same people
58 you are, and I’d love to have TURNTable as a partner. I think we could really help each other
59 out.”

60 So I said yes. Sawyer and I signed a four-year contract on behalf of TBD and TURNTa-
61 ble. The contract was an option contract, which meant that TURNTable could purchase as much
62 advertising as we wanted at a set rate but had no obligation to buy any particular amount of ad-
63 vertising (or any advertising at all). Our only obligation was to buy ads on a month-to-month ba-

64 sis and to give TBD 30 days notice of how much advertising we wanted for a given month. Sawyer and I signed the contract on January 6, 2014, and our ads were up and running on TBD's
65 website on Monday, January 7, 2014.

66
67 I know that Sawyer really wanted to land us, and Sawyer gave us an absolutely fantastic
68 rate. In terms of engagement per advertising dollar, I'd estimate that our rates with TBD are 20%
69 lower than our next-best deal. Once we realized that, we started pouring money into our TBD ad
70 budget. Because we were personal friends and I was paying personal friend prices, I always
71 placed our orders directly through Sawyer. In October 1, 2015, I personally told Sawyer that
72 TURNTable would be buying \$212,000 of advertising on TBD's website for November 2015 and
73 \$265,000 for December 2015. I hoped that would get Sawyer's attention and I wasn't disappoint-
74 ed. For once, Sawyer seemed genuinely surprised and eventually told me that those were the larg-
75 est monthly ad buys that TBD had ever received.

76 Fast forward to the late night of December 22, 2015 slash early morning of December 23,
77 2015. I'm hanging out at my place with some musicians we are trying to get on TURNTable
78 when my not-remotely-for-public distribution personal cell phone buzzes. I discreetly check my
79 phone and see a text from Sawyer asking if I'm up. Sawyer almost never texts me, so I knew it
80 must be something important. I excused myself, went into my bedroom, and called Sawyer within
81 maybe a minute of receiving the text.

82 Sawyer answers the phone and asks me if I've seen "the article." At first, I thought Sawyer
83 was asking about that "affluenza" kid skipping town and wondering why Sawyer was calling
84 me in the middle of the night to talk about that. But then Sawyer said "the article about TURNTa-
85 ble that TBD ran last week." I told Sawyer I had no idea what Sawyer was talking about because I
86 didn't read TBD and no one had mentioned it to me.

87 I asked Sawyer what the article had said, and Sawyer started reading it to me over the
88 phone. The article was terrible, and, the more I heard, the more upset I got. The QRate function
89 was our newest product, our most exciting innovation, and the thing we were counting on to help
90 us stand out in a crowded market space, and now some hack was telling the world that we were
91 "ruining music" and "sucking the fun out of being a music lover." I told Sawyer that TURNTable
92 was TBD's most important advertiser and that this article felt like a stab in the back. I told Sawyer
93 that I wanted a heads up before TBD published any articles about TURNTable in the future
94 and that there had better be consequences for anyone responsible for the fact that I hadn't gotten a
95 heads up this time. At no point during that conversation did I tell Sawyer that I would pull our
96 advertising if I didn't get my way, though. Sawyer said that it would be helpful to have an email

97 from me that Sawyer could show to others at the company. I responded that I was busy and that I
98 didn't write emails and that if Sawyer wanted an email from me then Sawyer needed to write
99 something that summarized what I had just said. Sawyer said okay and we hung up. A few
100 minutes later, I got another text from Sawyer but at that point I was already back out in the living
101 room with the musicians. The next morning, I remembered Sawyer's text and sent Sawyer an
102 email.

103 I have never met anyone named Riley Winter. Truth be told, I don't recall ever hearing the
104 name Riley Winter before sitting down to write this affidavit. I realize that Exhibit 16 includes the
105 name Riley Winter, but I just copied and pasted the text of the text message that Sawyer had send
106 me and added my signature.

107 Of the available exhibits, I am familiar with the following and only the following: Exhibit
108 10 is the article that Shaw called to tell me about around 2:30 a.m. on the morning of December
109 23, 2015. I had never seen the article before Shaw called me, but I remember Shaw reading from
110 the article and I recognize enough of the words to know that it's the same article. Exhibit 15 is a
111 screenshot of the two text messages that I received from Shaw on the morning of December 23,
112 2015. Those are the only texts that Shaw and I exchanged that night, the timestamps on the
113 screenshot are accurate, and the phone call I had with Shaw took place between my getting the
114 two text messages. Exhibit 16 is an email that I sent Shaw at the date and time indicated on the
115 email.

116 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this
117 statement, I was told it should contain everything I know that may be relevant to my testimony,
118 and I followed those instructions. I know that I can and must update this affidavit if anything new
119 occurs to me until the moment before opening statements begin in this case.

120 Adrian Edwards
121 Adrian Edwards
122

123 Subscribed and sworn before me on this, the 3rd day of August, 2016.

124 Emily Peebler
Emily Peebler, Notary Public

Affidavit of Kirby Doolittle

1 After being duly sworn upon oath, Kirby Doolittle hereby states as follows: I am over 18
2 and competent to make this affidavit. I was not subpoenaed or compelled to testify.

3 I was born in 1997. I'm in my junior year at Midlands State University but I haven't de-
4 cided on a major yet. During my sophomore year, my favorite class was Professor Bushatz's In-
5 tern Experience. I had the chance to spend a semester working at the magazine that put Midlands
6 on the entertainment map: TBD. My work was obviously important enough that I'm a witness in
7 this case, after all. I worked at the TBD office every Tuesday and Friday from August 25, 2015,
8 through December 18, 2015 (except holidays), and I attended classes at Midlands State on Mon-
9 day, Wednesday and Thursday. My hours at TBD were 9 a.m. to 5 p.m., but a couple times I
10 stayed late to finish a project. My internship supervisor was Professor Bushatz. My internship
11 with TBD was unpaid, but I received course credit.

12 TBD used to be the kind of magazine you buy at newsstands and airports, but now it's on-
13 ly on the internet. TBD is about everything—celebrities, movies, television, music, current
14 events, technology, and other things too. When I was in high school, my parents had a weekly
15 subscription to TBD and loved reading it on Sunday mornings. I tried reading TBD a few times
16 back then but thought it was boring. But when I got the internship in June 2015, I started reading
17 the TBD website. I was surprised. I really enjoyed the articles. But when I mentioned that to my
18 parents, they said they no longer read TBD. I asked if it was because TBD is only on the internet
19 now. They said they knew that TBD was just a website now but they said they stopped reading it
20 because the articles weren't as thoughtful as they used to be. I think my parents are the exception,
21 though. I see my classmates at Midlands State reading TBD all the time (often on their laptops
22 during class). My friends were pretty jealous when they learned I got an internship at TBD.

23 My TBD internship was amazing. On Tuesdays, I worked for Austin Perez, TBD's editor
24 in chief. On Fridays, I worked for Taylor Erick, the head of TBD's business team. The internship
25 started off pretty basic. I went on a lot of coffee runs, fetched office supplies, and ran copies. But
26 once I showed everyone what I was capable of, my responsibilities increased a lot. By the end of
27 the internship, I was a valued member of the TBD team!

28 I'll start by describing my experience with the "Content Team." I got to sit in on some of
29 the "writers' circles," the weekly meetings where writers and editors work together to choose the
30 best topics. It was a very collaborative situation. Everyone seemed to respect everyone else's ide-
31 as. For the most part, everyone agreed about article topics, but one writer—Riley Winter—often
32 disagreed with the group. While most people there proposed articles about the celebrities, movies,

33 and television shows my friends and I follow and watch, Winter often said these topics were
34 “sophomoric,” “infantile” and “lowest common denominator.” For example, Winter did not think
35 TBD should write about reality TV because “reality TV isn’t reality—it’s just a production.” In-
36 stead, Winter wanted to write about things and people I’d never heard of (or had only heard my
37 parents and professors talk about). Sometimes Perez would have to say to Winter, “Let’s talk
38 about this later.” I read every article on TBD and Winter’s ideas didn’t turn into articles as much
39 as everyone else’s. I felt lucky to be able to attend these writers’ circles because, other than me, it
40 was just writers and editors. I never saw Skye Martin (the HR director) or Sawyer Shaw at the
41 writers’ circles.

42 A few times during the writers’ circles, Austin Perez actually asked my opinion about ar-
43 ticle topics. Perez said, “I want the youth perspective. Kirby is part of our core demographic.” I
44 told Perez I couldn’t speak for other people, but I offered my own opinion. Four of the article top-
45 ics Perez asked me about were topics Winter had proposed, and for three of them I said I probably
46 wouldn’t read the article.

47 I was afraid Winter would be unhappy with me after that, but Winter was actually really
48 nice to me. Winter always made a point of encouraging me to find my passion, especially after I
49 expressed interest in becoming a professional writer. Winter and I didn’t have a lot to talk about
50 because our interests in television, movies, and music are very different. But that didn’t stop Win-
51 ter and I from becoming friends. Winter encouraged me to use Twitter as a way of following the
52 news and expressing my own thoughts. Winter even helped me sign up for Twitter and then
53 taught me how to use Twitter. Winter was active on all the social media—Facebook, Twitter, In-
54 stagram, SnapChat, you name it. I was impressed, especially because Winter is kind of old.

55 On Fridays, I worked for TBD’s business team head, Taylor Erick. I helped Erick and the
56 business team find companies that might want to advertise on TBD. I learned that TURNTable
57 was TBD’s largest advertiser.

58 One of the highlights of my internship was meeting Sawyer Shaw. Shaw was only in the
59 TBD office once during my internship: November 20, 2015. At first, I was nervous to introduce
60 myself because Shaw is one of my heroes. But I found the courage. I walked into Shaw’s office
61 that morning and said, “I’m Kirby Doolittle.” Shaw started laughing even though I hadn’t said
62 anything funny. I explained I was an intern, and I asked Shaw if I could interview Shaw for my
63 internship paper. Shaw said, “For you, Kirby Doolittle, absolutely.” That afternoon, I sat in
64 Shaw’s office for an hour and got to ask Shaw anything I wanted. I turned that interview of Shaw
65 into Exhibit 14, the paper I submitted for Professor Bushatz’s internship class. Our assignment

66 was to “summarize the internship experience in a paper not exceeding 20 double-spaced pages.”
67 I titled my paper, “What Kirby Learned.” Everything in Exhibit 14 is 100 percent true, but I
68 don’t have the audio recording I made of the interview because I lost it when I got a new phone.

69 The other exciting thing that happened on November 20, 2015, was Riley Winter’s birth-
70 day. Exhibit 8 is the birthday card for Riley Winter’s 50th birthday. On November 20, 2015, I
71 picked out the card myself. Before I bought the card, I asked Skye Martin what kind of card I
72 should get Riley Winter. Skye said Riley Winter was turning 50, so I should find a card that made
73 fun of Riley Winter’s age. After I picked out the card, I went out around the office and asked
74 people to sign it. Even Sawyer Shaw signed the card! I watched everyone sign the card and then I
75 read what each person wrote. That afternoon, we had a party in the conference room. Winter read
76 the card silently. Shaw shouted, “Read it out loud!” Winter read it out loud. Some of the little
77 notes and drawings were that “over the hill” kind of stuff, and Winter didn’t seem to care for the
78 jokes. I thought Winter should come on and have a sense of humor. I remember that Winter
79 opened the card and looked pretty upset. Winter didn’t even stay for the cake. It was really good,
80 with raspberry filling and buttercream icing.

81 My last day at TBD was December 18, 2015. I said goodbye to everyone and promised to
82 keep in touch. I ended up doing really well in Professor Bushatz’s class, so after I got my grade, I
83 went to TBD to thank everyone on January 29, 2016. I went to Winter’s office, but Winter wasn’t
84 there. Instead, there was a much younger person and the name on the door said “Landon Greene.”
85 I asked Skye Martin who was in Winter’s office, and Skye said, “That’s Landon Greene, our new
86 senior writer. Landon writes the same things Winter wrote, but with a younger perspective.” I
87 asked what happened to Winter. Skye said, “I probably shouldn’t discuss that. All I can say is,
88 Riley doesn’t work here anymore.” I asked if Winter was fired and Skye said yes.

89 I felt terrible about what happened to Riley Winter. Winter was my parents’ favorite TBD
90 writer and the nicest person I met at TBD. After I found out that Winter was fired, I sent Winter
91 an email asking if I could come by to say hello. Winter said yes, so the next day—January 30,
92 2016—I went to Winter’s house. I brought some soup because I figured Winter might be sad and
93 nothing helps me when I’m feeling sad like soup. But Winter didn’t seem sad at all. Instead, Win-
94 ter smiled, gave me a big hug, and told me to come in. I asked Winter how Winter had been do-
95 ing. Winter said “A million times better. At first, it was tough getting fired. TBD was my home
96 for a long time and it was a great place to work. But that idiot Shaw is running TBD into the
97 ground, and I’m just glad I got out before the crash. America hasn’t seen the last of Riley Win-
98 ter.” I saw some fancy legal-looking papers on Winter’s kitchen table and asked Winter what they

99 were. Winter said I had to promise I wouldn't say anything to anyone at TBD. I said I wouldn't:
100 after all, I didn't work at TBD anymore. Winter said "those are for the lawsuit I'm filing tomorrow.
101 They say revenge is a dish best served cold, and there's nothing colder than suing the pants
102 off some spoiled brat who really needs to get what's coming to them." I didn't know what to say.
103 Winter and Shaw are two of my favorite people, and I really don't want to take sides.

104 In July 2016, Skye Martin called me and asked if I would testify in this trial. I said I didn't
105 want to because Winter and Shaw are two of my favorite people, and I really didn't want to take
106 sides. After I said that, Skye said, "I really hope you'll reconsider. Also, we would love to have
107 you work for us during the summer. It would be a paid position." That was the first time anyone
108 at TBD had ever mentioned even the possibility that I could work there again, and it was the first
109 time anyone at TBD mentioned the possibility that I could get paid for working at TBD. After
110 Skye said that, I agreed to testify for TBD in this trial. During that same conversation, I also said
111 yes to the paid internship at TBD. I'm scheduled to start that internship in May 2017, right after I
112 finish my spring finals. I'm super excited!

113 Exhibit 3 is the TBD People Policy. I had to sign a copy myself on September 1, 2015.

114 Exhibit 10 is the last article Riley Winter published on TBD. Riley Winter is very smart,
115 but I disagree with the article. TURNTABLE is a great way to find new music. I like it and so do
116 my friends. Also, I found the article confusing. It says TURNTABLE is ruining music because it
117 recommends songs a person will like based on the other songs a person likes. But there are other
118 companies that already do that, like Pandora and Spotify, which I used in high school.

119 Of the exhibits in this case, I am familiar only with Exhibits 3, 8, 10, and 14. I have not
120 read any depositions or witness statements in this case. I swear or affirm the truthfulness of every-
121 thing stated in this affidavit. Before giving this statement, I was told I should include everything
122 that I know may be relevant to my testimony, and I followed those instructions. I know that I can
123 and must update this affidavit if anything new occurs to me until the moment before opening
124 statements begin in this case.

125

Kirby Doolittle
Kirby Doolittle

126

127 Subscribed and sworn before me on this, the 3rd day of August, 2016.

128

129

Ashley Thornhill
Ashley Thornhill, Notary Public

Vic Fogel

Mass Communication Strategies, Inc.
511 4th Street, Suite 1200
Midlands City, Midlands

August 12, 2016

Winter v. TBD, Inc.; Findings and Conclusions

1 Retention and Compensation

2 I have been retained by TBD, Inc. TBD is paying a fee of \$300/hour for my services. I
3 have never served as an expert witness, so I elected simply to charge my standard hourly
4 fee for consultation services at my company Mass Communication Strategies, Inc. I have
5 spent approximately 25 hours working on this case and formulating my opinions, exclusive
6 of time spent preparing and/or appearing in court. If called to testify, I will be paid an ad-
7 ditional \$10,000 for travel and expenses.

8 Educational Background and Professional Experience

9 I received my Bachelor's Degree in Journalism from Midlands State University in 1983.
10 From 1983 until 1995, I worked as a practicing journalist. For seven years, I worked as a re-
11 porter for the *Midlands Herald*, covering everything from local arts and entertainment to
12 front-page investigative pieces on water quality and political corruption. Beginning in 1999,
13 I began working with the Associated Press and doing more freelance journalism. The lack
14 of a steady paycheck was frustrating at times, but it allowed me to focus on the content that
15 I enjoyed, primarily health and environmental reporting. During that time, my pieces were
16 picked up by regional and national publications of all types, from the *Chicago Tribune* to the
17 *Wall Street Journal* to *USA Today*.

18 In 1995 I took a break from reporting to obtain my master's degree in journalism from
19 Northwestern University. After graduation, I returned to Midlands where I served as an in
20 instructor in the School of Journalism at Midlands State University. It was around this time
21 that the internet had gone fully mainstream and began revolutionizing journalism in gen-
22 eral. As an instructor at Midlands State, I was responsible for editing the student reported
23 newspaper, the *MSU Times*. With the help of my student writers, we were the first student
24 newspaper in the country to offer a full online version beginning in 1998. The intersection
25 of technology and traditional print media interested me greatly, so I left MSU to pursue my
26 PhD in mass communications at the University of North Carolina. I received my PhD in
27 2004, and I wrote my dissertation on the impact of digital media on traditional print media
28 with a focus on the use of digital analytics in digital media. I returned to teach at MSU for
29 two years as an assistant professor between 2004 and 2006, ultimately leaving to form MCS
30 in 2006.

31 In the beginning, MCS was focused on assisting struggling print media outlets, whether
32 newspapers or magazines, with formulating and implementing technology strategies to
33 integrate online delivery options into their portfolios. In other words, we brought the
34 stragglers into the technology age. By 2010, every respectable newspaper or media had a
35 viable online delivery method, whether that supplemented its traditional print version or
36 replaced it, so MCS shifted its focus from delivery solutions to readership and audience
37 analysis through digital analytics. Digital analytics is broadly defined as the analysis of

38 qualitative and quantitative data from a business to improve online experience. MCS now
39 has a division that focuses solely on gathering and analyzing digital hit information for
40 publishers and media outlets to assist those outlets with making business decisions. As the
41 president, I do some work in that arena, but I broadly focus on helping media outlets to
42 continually innovate to keep up with changing technology and audience. I do everything
43 from running workshops for “old school” journalists (like myself) in social media and other
44 technology innovations, to running executive retreats for media outlets that incorporate
45 digital analytics into goal setting. Since 2004, in addition to my dissertation, I’ve written
46 five scholarly articles published in peer reviewed journals all focusing on the intersection
47 between ever-changing technology and traditional journalistic principles. The latest publi-
48 cation, in 2012, was titled “Teaching an Old Dog New Tricks: Traditional Reporters in a
49 Non-Traditional Age.”

50 **Materials Reviewed**

51 I reviewed and relied upon the following materials, which I received from TBD’s attor-
52 neys: (a) the deposition of Riley Winter; (b) the deposition of Sawyer Shaw; (c) Exhibit 1
53 (interrogatories); (d) Exhibit 2 (Remarks to TBD, Inc. Staff); (e) Exhibit 4 (Winter’s perfor-
54 mance evaluation of December 1, 2014); (f) Exhibit 5 (email from Winter to Perez); (g) Ex-
55 hibit 7 (Email from Shaw to All Staff dated August 12, 2015); (h) Exhibit 9 (Winter’s per-
56 formance evaluation of December 1, 2015); (i) Exhibit 10 (article by Winter about TURNTa-
57 ble); (j) Exhibits 11-13 (emails and accompanying attachments between Perez and Winter);
58 (k) Exhibit 18 (list of TBD writers); (l) Exhibit 20 (email from Perez to Perez); and (m) Exhib-
59 it 22 (TBD web traffic data).

60 **Opinions and Conclusions**

61 **A. General Industry Trends**

62 **Online Publication with Rolling Content**

63 The days of traditional print media are long-since gone. The 24-hour news cycle has
64 supplanted the 11:00 p.m. print deadline. “News” is available at all hours of the day at the
65 touch of a button. This puts tremendous pressure on journalists and writers to produce
66 more content. For example, when I worked at the *Midlands Herald*, specifically on the crime
67 beat, I would generate one story per daily edition at most. The investigative stuff would
68 take longer, so maybe I would produce a front-page story or investigative piece once a
69 week. These days, even weekly or monthly print media have online editions. Online con-
70 tent needs to be updated constantly or people will stop visiting the website. A media outlet
71 has no choice but to either demand more of its existing writers or hire more writers to pro-
72 duce the necessary amount of “new” content. Traditional journalists have found it hard to
73 adapt to the increased pressure that comes from needing to generate multiple pieces in a
74 day versus one every day or week. Notably, however the average age for a journalist in a
75 newsroom (including print, digital, and televised media) remains 47 years old.

76 Of course, the concern is always that increased production leads to decreased quality.
77 In conjunction with an article I was writing, I conducted a survey of a magazine going
78 through a significant technology change to see if that change affected the accuracy of the
79 reporting. I conducted a survey of a weekly magazine, *Culture*, in the weeks before and
80 after the introduction of a rolling-content online version of the magazine. *Culture* is a
81 weekly pop culture magazine that generally covers music, literature, movies, etc., but is not
82 viewed as a celebrity-type gossip magazine. Until 2012, *Culture*’s online content was
83 updated with the same frequency as its print publication – on a weekly basis. While the

84 advertisements on its website would change, and it would put teaser synopses of its
85 upcoming new edition, the content remained static through the production of the next
86 weekly edition. In 2012, *Culture* adopted a format that provided for updating the content of
87 its online version on a rolling basis. In other words, as new content was generated by the
88 writing staff, it was approved by editors and uploaded to the online version rather than
89 being shelved until print production.

90 Prior to the introduction of the rolling content site, *Culture*'s writers were producing an
91 average of two new content-based pieces per week (obviously not all of those made it into
92 the print edition). With the introduction of the rolling content site, *Culture* began requiring
93 its writers to generate four new content-based pieces per week. I surveyed the work of four
94 staff writers both before and after this production change to determine if there was a corre-
95 lation between an increase in required production and a decrease in the accuracy of the
96 content. Accuracy was measured by determining whether the facts in the piece could be
97 verified by two independent sources, the generally accepted gold standard in journalism. I
98 did not attempt to account for age of the writer but, because of the focus of the magazine,
99 *Culture*'s writing staff had an average age of 29 at the time of the survey.

100 For each piece I identified the factual content and evaluated source quantity (not neces-
101 sarily quality) for each fact. Any fact that could not be independently verified by two
102 sources was deemed "inaccurate." I arrived at a raw accuracy score for each piece by divid-
103 ing the number of facts by the number of inaccuracies. I averaged those raw accuracy
104 scores across each writer both pre- and post-increased production. On average, each writ-
105 er's individual accuracy remained constant both before and after *Culture* adopted the in-
106 creased production requirement, with an average accuracy rate of 95%. There were outliers
107 of course, and I did notice that pieces that were produced for the rolling-content site were
108 shorter, and in my personal opinion less in depth, than the pieces produced on the tradi-
109 tional print schedule, but the increased production requirement did not cause more errors
110 in the reporting of the content.

111 My anecdotal information from the outlets that I have worked with at MCS supports
112 this conclusion. Of course when writers are asked to produce more content, in the same or
113 less time, there have to be some concessions made. For example, the pieces may be shorter,
114 less in depth, more of a survey of existing sources rather than an analysis, but that is what
115 today's audience wants. We have slowly been conditioned to accept information in 140
116 characters or less, so writers have to be able to convey their message in less space to capture
117 the attention of the audience. I've had clients who have added staff writers when produc-
118 tion demands increase and clients who have not. The stories I hear from both are the
119 same—quality of the reporting is determined solely by the individual writer's commitment
120 to it. Whether that writer is being asked to generate one piece or five pieces, if there is a
121 commitment to doing the job well, that writer will thrive no matter what.

122 Statistical Performance Measures and Advertising

123 Back in the day, a print media outlet measured success by sales or number of subscrip-
124 tions. If subscriptions were up, the outlet (i.e. newspaper or magazine) was doing well; if
125 they were dropping, there was a problem. Outside of specific polling or surveys, it was dif-
126 ficult to create statistical data about readership of a particular article in the publication. For
127 example, if I were to subscribe to the print version of the *New York Times* 25 years ago, the
128 newspaper may generally know my age demographic, location, number of people in my
129 household, etc., but it would not specifically know what article I was reading. There was no
130 way to tell, other than if there was a correlation with increased subscriptions or through

131 polling and anecdotal information, which writers were connecting with the audience and
132 which were not. All of that changed when print media went online.

133 Magazines and newspapers can now track the readership of each individual online article.
134 An outlet can identify how many times an article has been selected by the end user,
135 how long the average user is spending on that specific article, and whether it is being
136 shared by the reader across other social media sites. More specifically than that, by combin-
137 ing that data with demographic information about the reader, which is readily available
138 and can be correlated easily by a number of companies, the publisher can know which
139 writers are most popular with a particular demographic, be that age, gender, etc. The data
140 itself allows the publisher to continually refine its staff and content to more specifically in-
141 terest its target audience. Readership equates to advertising dollars, and advertising dollars
142 are key to the success of any media outlet.

143 In 2015, the estimated total of dollars spent on advertising was \$187 billion. Advertising
144 in digital media accounted for nearly 30% of that total sum. A total of \$52.8 billion was
145 spent on advertising in digital media in 2015, surpassing the \$28 billion that was spent on
146 print advertising. Digital advertising is the fastest growing source of advertising spending
147 while print advertising continues to decline. Media outlets are for-profit companies that
148 need to make money just like everyone else and advertisements are the way money is
149 made. Companies looking to spend a limited advertising budget want to see specific data
150 about readership, demographics, social media shares/links, etc. That data serves as the ba-
151 sis for all advertising decisions made by any company these days and, as such, must be
152 tracked and monitored by the outlet itself. If a particular writer or type of story is not hit-
153 ting well with the public, adjustments must be made.

154 I caution, however, that advertisers should never be allowed to dictate content. Journal-
155 istic ethics should not be for sale. A media outlet must always be committed to reporting
156 information in an accurate manner, whether that offends an advertiser or not. Publication
157 decisions should never be made on the basis of whether an advertiser likes or dislikes a cer-
158 tain piece.

159 **B. Case Specific Conclusions**

160 It is often difficult to distinguish between age discrimination and an older writer prov-
161 ing unable (or unwilling) to keep up with the new media landscape. The latter is sometimes
162 mistaken for the former. Older journalists can struggle with adapting to new technologies,
163 relating to new/younger audiences, producing the same amount of content, and maintain-
164 ing the drive that can be so critical in a 24-7 world. On the other hand, older journalists of-
165 ten have several advantages over younger journalists: experience, superior writing skills,
166 contacts and connections in the industries they cover, greater maturity, and greater profes-
167 sionalism.

168 In this case, I see ample evidence that Winter was a successful culture writer unable or
169 unwilling to thrive in the new media environment mandated by TBD. Exhibit 10 shows a
170 lack of regard for TBD's advertising, Exhibits 11-13 show a lack of understanding of TBD's
171 goals for content, and Exhibits 4 and 9 show a pattern of content shortfalls by Winter. I also
172 see in Winter's deposition a journalist who may have been uninterested in adapting to a
173 new set of goals and writing conditions. The evidence I reviewed makes TBD's assertion—
174 that Winter was fired for performance reasons—perfectly plausible.

175 However, just as firing an older journalist for performance problems can often be mis-
176 taken for age discrimination, it is also the case that employers sometimes will try to use a

177 journalist's performance as an excuse to discriminate on the basis of age. Younger writers
178 tend to be cheaper, and youth projects a certain vitality. Admittedly, I found some evidence
179 in this case consistent with the notion that Winter was not fired because of Winter's per-
180 formance. Exhibits 18 and 22 show that the web traffic for Winter's articles was not below
181 average and certainly not below the results of many of Winter's peers who retained their
182 jobs. At the same time, engagement with Winter's articles, as measured by shares, was be-
183 low average.

184 Moreover, I should caution that while I believe the evidence justifies a conclusion that
185 perhaps Winter was not performing satisfactorily in the new media environment mandated
186 by TBD, I cannot opine as to whether that was TBD's actual reason for firing Winter. Put
187 differently, I am a journalism expert, not a psychologist, and I cannot state the reason that
188 TBD or its decision-maker Shaw made the decision to fire Winter. Indeed, there are conflict-
189 ing accounts of TBD/Shaw's reason for firing Winter. For example, if Austin Perez's ac-
190 counts from December 23, 2015 are to be believed, TBD's decision-maker, Sawyer Shaw,
191 may have used age as a primary reason in deciding to fire Winter.

192 All I can conclude with certainty is that journalists who began their career before the
193 digital age often struggle in today's media environment and there is evidence that this chal-
194 lenge befell Riley Winter.

195 I should also note that I was familiar with Riley Winter's work before I became in-
196 volved in this case. Though Winter and I have not met, Winter is one of the country's more
197 famous culture writers, as evidenced by the many awards Winter was won over Winter's
198 career. In addition, I've also been a longtime reader of Winter's work. I have enjoyed and
199 respected Winter's articles, interviews and profiles over the past three decades. Personally,
200 I have not observed a decline in the quality of Winter's work or a lack of culture relevance,
201 but admittedly I am not in TBD's target demographic.

CIRCUIT COURT OF MIDLANDS

Riley Winter,**Plaintiff,****v.****TBD, Inc.,****Defendant.****Case No. CV 11-715**

Judge Rachel Oliver

Defendant TBD, Inc.'s Responses to Plaintiff's Interrogatories

August 1, 2016

Defendant TBD, Inc. ("TBD"), represented by counsel, hereby responds to Plaintiff Riley Winter's ("WINTER") Interrogatories as follows:

#1: Identify each person who made or participated in the decision to terminate WINTER's employment with TBD and explain the nature of that person's role.

Response to Interrogatory #1: The decision to terminate Winter's employment was made by Sawyer Shaw, in Shaw's capacity as TBD's CEO. In making that decision, Shaw consulted with Austin Perez, who was TBD's editor in chief and was Winter's most direct supervisor, and with Skye Martin, who is TBD's Director of People Operations. No legal counsel was consulted before the decision was made and communicated to Winter.

#2: State WINTER's dates of employment at TBD and list WINTER's job responsibilities from the date of hire until the date of termination.

Response to Interrogatory #2: Winter was hired as a junior copy editor in 1988 and promoted to copy editor that same year. Winter became a staff writer in 1990 and a senior staff writer in 1997. As a writer, Winter's responsibilities included conceiving, researching, and writing articles about popular American culture, including, but not limited to, movies, television, celebrities, music, sports & leisure, and pop culture. From 1997 to 2015, Winter had exclusive responsibility for all celebrity interviews.

#3: Do YOU (defined hereinafter as TBD, its officers, directors, and employees) contend that any misconduct by WINTER was a basis for the termination of WINTER's employment?

Response to Interrogatory #3: Because Winter was an at-will employee, TBD was permitted to terminate Winter's employment for no reason or for any reason not otherwise prohibited by law. However, Winter was not terminated for engaging in misconduct.

#4: State all reasons that YOU claim that TBD terminated WINTER's employment.

Response to Interrogatory #4: Winter's employment was terminated because Winter's job performance was unsatisfactory, because TBD did not believe that Winter's job performance would become satisfactory in the future, and because TBD received complaints about Winter from one of TBD's largest advertisers. Since terminating Winter's employment, TBD has not become aware of any other reason or evidence that would have justified or supported the termination.

#5: State the date YOU made the decision to terminate WINTER's employment.

Response to Interrogatory #5: December 23, 2015.

#6: Identify all documents YOU claim support or relate to your decision to terminate WINTER's employment.

Response to Interrogatory #6: The only documents that relate to TBD's decision to terminate Winter's employment are those labeled Exhibit 2-22, inclusive.

#7: State Landon Greene's job responsibilities from date of hire to present.

Response to Interrogatory #7: Greene's first day with TBD was Monday, December 28, 2015. Greene's job title is lead writer. Greene's job responsibilities include conceiving, researching, and writing articles about popular American culture, including but not limited to movies, television, celebrities, music, sports & leisure, and pop culture. Greene also has exclusive responsibility for all celebrity interviews.

#8: List the name, date of birth, date of hire, and date of termination of any and all writers employed by TBD between January 1, 2014, and December 23, 2015, inclusive.

Response to Interrogatory #8: The requested information is contained in the attached and herein provided spreadsheet captioned "Writers Employed by TBD (1/1/14 to 12/23/15)" which has been marked "Exhibit 18" for the *Winter v. TBD, Inc.* trial.

#9: Provide weekly data concerning the frequency, web traffic, and social media shares of Winter's articles for 2015 as compared to the same data for all other TBD writers during that time.

Response to Interrogatory #9: The requested information is contained in the attached and herein provided spreadsheet captioned "Riley Winter Articles, Clicks, and Shares," which has been marked "Exhibit 22" for the *Winter v. TBD, Inc.* trial. TBD confirms the accuracy of the data contained therein.

Respectfully submitted,

S. Cohen

Zhu, Cohen, and Stern
Attorneys for Defendant, TBD, Inc.

VERIFICATION

I certify that the responses are true, accurate, and complete to the best of my knowledge.

Sawyer Shaw

Sawyer Shaw

CEO, TBD, Inc.

August 1, 2016

Date

Remarks to TBD, Inc. Staff
January 2, 2014

Good morning. I'm Sawyer Shaw. And I'm your new boss.

As you've probably heard, I just bought TBD and the company that owns it. The whole thing. We're going to make a lot of money. But I don't just see this as an investment. We're going to have fun. And the fun starts now.

First, TBD is going all digital, effective immediately. No more hard copies. Ever. Print is dying, and I want this magazine to stay alive.

Second, our content is getting a facelift. Starting now. No more long think pieces that win awards but don't get clicks. Our online audience is young. Short attention spans. Always in a hurry. We need content they want to read. And that's going to require all of us to get with the times.

Third, new leadership. Francis Leo has done a heck of a job as editor in chief for these last ten years. But we need new energy and new ideas if we're going to make the kind of transformative changes we need. So Francis gets a well-deserved gold watch and a ride off into the retirement sunset. Our young and dynamic associate editor, Austin Perez, is our new editor in chief, effective immediately. I'd also like to introduce my good friend Skye Martin as our new Director of People Operations. There will be a lot of other changes just as soon as we're done here, so stay at your desks and try not to panic when I send for you.

I know I said there were three changes. But there's really just one. It's 2014. We're going to start acting like it. Out with the old, in with the new.

TBD People Policy

(January 16, 2014)

1. Welcome to the all-new TBD and the all-new People Policy! Whether you're fresh out of school, nearing the twilight of a long career, or anywhere in between, you are a critical part of the TBD family. This People Policy provides an overview of your relationship with TBD. If you have questions, please speak with your supervisor or with Skye Martin.

History, Goals, & Culture

2. TBD was started in 1965. Legend has it that the name comes from the founders' hope that the magazine would always be evolving and becoming something new. When it was young, TBD lived up to that promise: it was innovative, exciting, even revolutionary. As time passed, however, TBD has become complacent, plodding, and boring. But today that's changing, and you all will be part of that change. Our goal is simple: to scrape away the accumulated layers of rust and buildup that have been holding this great company back and preventing it from continuing to evolve, change, and flourish. The world is changing, and TBD must change with it.

Employment At-Will

3. All employment at TBD is "at-will." That means your employment is not for any specific amount of time and may be terminated with or without cause and without prior notice by TBD. Nothing in this handbook or any other company document creates a legally enforceable right to continued employment or to have any particular set of procedures followed with respect to a termination decision.

Equal Employment Opportunity

4. TBD is committed to providing a diverse and dynamic work environment for all employees. TBD does not discriminate based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, or disability.

Open-Door Policy

5. TBD has an open door policy and encourages employees to bring any concerns or problems to their supervisor or some other member of management as soon as possible.

Performance Reviews

6. TBD continuously evaluates the performance of all employees and will conduct a formal evaluation of each employee at least once per year. The purpose of these reviews is to identify places where employees are doing well and areas that need improvement. TBD uses these reviews as one tool to determinate pay increases, promotions, and terminations. TBD also may provide written performance evaluations on an ad hoc basis to inform employees of unacceptable performance.

Disciplinary Policy

7. TBD reserves the right to discipline or fire any employee that violates TBD policies, renders poor performance, or engages in misconduct. The following behaviors are unacceptable and may be grounds for discipline or termination:

1. Possession, use, or being under the influence of alcohol or illegal drugs in the workplace;

2. Discrimination or harassment in the workplace;
3. Damage to or more than *de minimis* personal use of company property, supplies, or equipment;
4. Insubordination;
5. Lying;
6. Disclosure of confidential company-related information to outsiders;
7. Failure to adequately perform job-related tasks and duties;
8. Unexcused or excessive absences, late arrivals, or early departures; and
9. Any other conduct that violates company policies, procedures, or expectations.

8. This list is not exhaustive, and TBD reserves the right to determine whether any given action warrants discipline. TBD also reserves the right to determine the severity and extent of any disciplinary action based on the particulars of each situation. Discipline may include oral warnings or reprimands, written warnings or reprimands, suspension with or without pay, demotion, and/or termination of employment. This list is not intended to be exclusive.

* * *

I acknowledge having read and understood the above policy.

Riley Winter
Riley Winter

January 16, 2014
Date

MEMORANDUM

TO: RILEY WINTER
FROM: SKYE MARTIN, DIRECTOR OF PEOPLE OPERATIONS
RE: ANNUAL PERFORMANCE EVALUATION
DATE: DECEMBER 1, 2014

Our People Operations team has conducted a review of your performance in 2014 by speaking with editor in chief Austin Perez, analyzing the frequency of your publications, and reviewing the web traffic associated with your published articles.

Riley, you should be proud of your work. We all are. Our leader, Sawyer Shaw, announced in January that we were going digital exclusively and we recognize this couldn't have been easy for you. You spent your career on paper. But you adapted well. Your publication rate increased almost twofold year-over-year. We feel a great synergy with you and feel your work has the potential to align with the TBD mission.

At this juncture, though, we do have some action items for you:

1. **Get on the same page as our new readership.** Our audience is young people, 20s and 30s. They aren't all college educated. They don't know you. You need to win them over.
2. **Get outside your comfort zone.** See #1.
3. **Be a team player.** Last June, we took the entire company to Las Vegas for Sawyer's birthday bash and arranged for a company VIP table at Rave, one of the most popular night clubs in Las Vegas. You said it was late and went to bed. This was not an isolated incident. We want to start seeing you at the optional company Highly Happy Hours.

As always, if you have questions, email me or any of our other People People.

* * *

I received this performance evaluation on the date above.

Riley Winter

Riley Winter

To: <austin.perez@TBDmag.com>
From: <riley.winter@TBDmag.com>
Date: January 12, 2015 9:02 a.m.
Re: Social Media Training

Dear Austin,

Good morning. I hope you enjoyed the weekend.

I would like to attend a social media training seminar. It's at the Hampton Hotel next month, and registration is \$400 per person. Is that something TBD will cover?

I am dedicated to staying current and I understand social media is an important component.

Best regards,

Riley

To: <All-Staff@TBDmag.com>
From: <sawyer@TBDmag.com>
Date: April 27, 2015 8:45 a.m.
Re: birthday pty cancelled

i just heard theres a 50th bday celebration planned for tbd, big public event, streamers, that kinda thing

no no no no no

why would we want to emphsz fact that were irrelevant, age is embarrassment, not something to be celebrated

no party no press release

thx and sorry

ss

This message was sent from my iPhone. Please excuse any typos.

To: <All-Staff@TBDmag.com>
From: <sawyer@TBDmag.com>
Date: August 12, 2015 12:40 p.m.
Re: not dead yet

Team:

Guess whose article about DJ culture just got retweeted by Calvin Harris? That's right, our very own Riley Winter.

(Riley, fyi, Calvin Harris is one of the most famous DJ's in the world, lol.)

Between Jurassic World and Riley's recent success, it's been a great summer for dinosaurs!

Kidding aside, nice work Riley. We knew you still had it in you.

ss

Exhibit
8

HAPPY BIRTHDAY!



Only 50? You don't look
a day over 60. -Sayer

Happy birthday to
our "Senior" writer!

- Austin

Exhibit
8

Celebrate like there is
no tomorrow! At your
age that might be true!
- Sandy

Well done!
SS.

Happy Birthday Riley!

Wishing you all the -Bobbie
best in your endeavors.

Regards,
Skye

Age is just
a number -
in your case
a really big
one! LOL

Kate

You'll
too old never be
my hero!
Kirby Doolittle

MEMORANDUM

TO: RILEY WINTER
FROM: SKYE MARTIN, DIRECTOR OF PEOPLE OPERATIONS
RE: ANNUAL PERFORMANCE EVALUATION
DATE: DECEMBER 1, 2015

Our People Operations team has conducted a review of your performance in 2015 by speaking with editor in chief Austin Perez and CEO Sawyer Shaw; analyzing the frequency of your publications; and reviewing the web traffic associated with your published articles.

Riley, you have definitely taken steps forward this year and I want you to know that TBD recognizes that. Your articles have focused on more contemporary subjects and you have attended more TBD social events. Everyone enjoyed getting to know you. We firmly believe that diversity improves results because we all have so much to learn from each other's experience. I hope you've been learning as much from your colleagues as they have from you.

However, I do have one mission critical action for you. You need to approach your topics from a fresher perspective. Last month, you compared Justin Bieber to Bob Dylan. Our readers don't know who Bob Dylan is. We need you to learn some new tricks, as the saying goes.

As always, if you have questions, email me or any of our other People People.

* * *

I received this performance evaluation on the date above.

Riley Winter

Riley Winter



TURNTable's New QRate Is Ruining Music

Riley Winter, TBD Senior Writer • December 15, 2015

TURNTable is one of the fastest growing streaming music companies in the world. Its name, a play on words, tells you everything you need to know about the outfit. According to Urban Dictionary, “Turnt” is an adjective and slang for “Like hype for a party, or at the club!” (Example: *“This party is about to get turnt!”*) And, of course, a turntable is a music player that can be used to play and mix music. Last week, TURNTable introduced a new “QRate” function that recommends new music for users based on their existing music preferences.

I’m here to tell you that’s a bad thing.

Look, I’m no opponent to musical progress. I’m barely old enough to remember seeing record players at home. I remember getting my first Walkman and the excitement of my first CD. And I only momentarily lamented the switch to MP3s, before realizing the convenience of having all my Springsteen packed onto my iPod.

But unlike those advances, which made music easier to share and enjoy, TURNTable and its QRate app are sucking the fun out of being a music lover. QRate “cures” your music selection: it examines the songs you already have on your devices, asks you to rate from one to five stars various songs it selects, and then—based on your preferences—it recommends new artists you may not have encountered.

The problem? All of this can be done in your basement. Or on an island. Or in a coffee shop full of people you’re ignoring by wearing your new Beats. Music should be shared, experienced, lived, discovered. We’re supposed to learn about it because a friend suggested it, because we heard a new tune on the radio, because loved the warm-up act at a concert. Discovering new music organically is half the fun.

Apps already tell us where to eat, what to buy, and who we are going to love. Now TURNTable wants to tell us what music we’re going to like. No, thank you.

To: <austin.perez@TBDmag.com>
From: <riley.winter@TBDmag.com>
Date: December 16, 2015 8:47 a.m.
Re: Best Tweets of 2015 (draft attached)
 best-tweets-2015.docx

Good Morning, Austin.

Please find the draft attached. I know we talked about publishing this today, but I think we should wait to post it until Friday (12/18) so that we can pound-sign it #ff and #FlashBackFriday. Kids seem to like that these days. Thanks.

Riley

TBD Looks Back to 2015's Top Ten Tweets

Riley Winter, TBD Senior Writer • December [18], 2015

It's officially the end of 2015, and TBD has compiled the ultimate Flashback Friday. Collected for your reading enjoyment, here are our top 10 tweets of 2015.

1. @humansofny

23 Nov. 2015

"We let our four-year-old name the dog. So this is Broccoli."

3,091 retweets | 6,572 favorites

2. @ddlovato

12 Dec. 2015

Guys don't you get it by now? Only cool kids fall on stage.. 8-)

13,743 retweets | 23,749 favorites

3. @POTUS

26 Jun. 2015

Today is a big step in our march toward equality. Gay and lesbian couples now have the right to marry, just like anyone else. #LoveWins

432,140 retweets | 426,832 favorites

4. @Edward Snowden

29 Sept. 2015

Can you hear me now?

119,599 retweets | 124,931 favorites

5. @Lin_Manuel

20 Feb. 2015

I want to fast forward to when high schools do Hamilton & the girl playing Angelica Schuyler gets to spit the HARDEST BARS IN THE SHOW

43 retweets | 219 favorites

6. @Justinbieber

9 Dec. 2015

Europe... I'm coming.
#PurposeWorldTour

78,505 retweets | 104,272 favorites

7. @LynnBrooklyn

1 Nov. 2015

I've lost my husband to #fantasyfootball. He's like a kid discovering the rollercoaster for the 1st time.

1 retweet | 10 favorites

8. @poetrymagazine

12 Nov. 2015

Many books have I read, many people loved. They mattered and mattered and mattered.—Kathleen Ossip

38 retweets | 54 favorites

9. @algore

25 Aug. 2015

The amount of ice broken off in Greenland's most recent calving event is big enough to cover Manhattan

340 retweets | 165 favorites

10. @Caitlyn_Jenner

1 Jun. 2015

I'm so happy after such a long struggle to be living my true self. Welcome to the world Caitlyn. Can't wait for you to get to know her/me.

247,681 retweets | 398,760 favorites

To: <riley.winter@TBDmag.com>
From: <austin.perez@TBDmag.com>
Date: December 16, 2015 10:08 a.m.
Re: re: Best Tweets of 2015 (draft attached)
 best-tweets-2015 (ap markups).docx

Edits attached, comments in red/italics. Your draft misses the point—we need “top tweets” as measured by popularity or by impact. Our readers don’t care about niche poetry magazines. Also, iffy on HONY, but they’re big this year, so that might be okay.

Please update to make relevant for our target audience. Thanks.

-Austin

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1. @humansofny

23 Nov. 2015

"We let our four-year-old name the dog. So this is Broccoli." *How is this #1??*

3,091 retweets | 6,572 favorites

2. @ddlovato *Good choice*

12 Dec. 2015

Guys don't you get it by now? Only cool kids fall on stage.. 8-)

13,743 retweets | 23,749 favorites

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26 Jun. 2015

Today is a big step in our march toward equality. Gay and lesbian couples now have the right to marry, just like anyone else. #LoveWins

432,140 retweets | 426,832 favorites

4. @Edward_Snowden

29 Sept. 2015

Can you hear me now? *2 political tweets in a row = too much*

119,599 retweets | 124,931 favorites

5. @Lin_Manuel

20 Feb. 2015

I want to fast forward to when high schools do Hamilton & the girl playing Angelica Schuyler gets to spit the HARDEST BARS IN THE SHOW

43 retweets | 219 favorites

Where's One Direction? They had 5 of top 10 retweeted tweets of 2015. Kanye? Trump? Amy

Schumer?

6. @Justinbieber

9 Dec. 2015

Europe... I'm coming.
#PurposeWorldTour

78,505 retweets | 104,272 favorites

7. @LynnBrooklyn *who? For real?*

1 Nov. 2015

I've lost my husband to #fantasyfootball. He's like a kid discovering the rollercoaster for the 1st time.

1 retweet | 10 favorites *1 retweet?*

8. @poetrymagazine *No. Our readers don't want to read poetry mag tweets.*

12 Nov. 2015

Many books have I read, many people loved. They mattered and mattered and mattered.—Kathleen Ossip

38 retweets | 54 favorites

9. @algore

25 Aug. 2015

The amount of ice broken off in Greenland's most recent calving event is big enough to cover Manhattan

340 retweets | 165 favorites *Is it 1998 again?*

Boring. Too political

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1 Jun. 2015

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From: <riley.winter@TBDmag.com>
Date: December 16, 2015 11:47 a.m.
Re: re: Best Tweets of 2015 (draft attached)

Thanks for the feedback. I'd ask you to reconsider, though. Anyone can publish the most retweeted tweets—then our list would literally look like everyone else's. But this is the best tweets of the year, and I think my list has a good mix of famous and important. Those aren't always the same thing. Let me know—if you want me to revise, I will.

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Riley

Education 199
Intern Experience
Professor Z. Bushatz
December 18, 2015
Final Paper

What Kirby Learned
(by Kirby Doolittle)

On November 20, 2015, I had the privilege of interviewing Sawyer Shaw in Sawyer Shaw's office at TBD for one hour. It was just the two of us. I learned a lot of things this fall and had a terrific Intern Experience. But everything paled in comparison to what I learned while interviewing Sawyer Shaw.

Background: According to Wikipedia, Sawyer Shaw is one of the most influential business leaders in the world. Sawyer Shaw started multiple companies and made more than a billion dollars. Sawyer Shaw owns TBD and is able to run it without being there very often.

I learned so much in the hour with Sawyer Shaw that if I wrote down everything it would go over the page limit for this paper. So I will just list the top five things I learned. Please note that all of the quotes below are word for word exactly what Sawyer Shaw said. Sawyer Shaw said I could record the conversation with my phone, and then when I got back to my dorm room, I typed up everything Sawyer Shaw said.

1. I learned that I could work for TBD one day! When I asked Sawyer Shaw what TBD looks for when hiring its writers, Sawyer Shaw said, "We are looking for something very specific. We want writers who are in their 20s or early 30s. That allows them to relate to our target audience, who is also in the 20s or 30s. Ideally, we want someone with a unique viewpoint and strong voice. And, ideally, we want someone who increases the ethnic, sexual, cultural, or religious diversity at TBD." I fit that description.
2. I learned that no matter how successful you are, you can always do better. I asked if TBD had any plans to hire any new writers. Sawyer Shaw said, "Actually, I have my eye on someone right now. Very young, very talented. Landed a cover story for Rolling Stone. I just need to convince this person to leave New York." I like the fact that even though TBD is already excellent, Sawyer Shaw is trying to make it better.
3. I learned that journalism is now the literature of the people. Sawyer Shaw said, "Stories about ordinary people and ordinary experiences are the way to go. See every reality show ever produced. Give the reader reality rather than sensationalism. TBD just gets this, and it may be strange to have a pop culture magazine take such an approach, but ultimately even extraordinary people, celebrities, have ordinary experiences and we all want to relate."

4. I learned that leaders don't always need to know the details. When I asked which articles and which writers had the most readers, Sawyer Shaw, "I couldn't tell you. I receive those numbers, but I don't look at any of them. I don't need to know how many people read each article." I asked how Sawyer Shaw can make decisions without those numbers, and Sawyer Shaw said, "I know what succeeds based on what shows up in my Facebook and Twitter feeds. It's 2015. If you're not going viral, you're dying."
5. I learned the importance of new ideas. As Sawyer Shaw told me, "Tried and true only works for so long until the well goes dry. Make sure you aren't left holding the empty bucket." Great advice from a great businessperson!



3:46 PM



< TEXTS **Adrian Edwards**

Dec 23, 2015 2:28 AM

U up?

Dec 23, 2015 2:33 AM

Dear Sawyer: I am livid about the article that TBD published about TURNTable last week. As you know, we are one of your largest advertisers. Unless Riley Winter is fired immediately, we will pull all of our advertising. Signed, name, title, etc.

Enter message here

Send

To: sawyer@TBDmag.com
From: Adrian.Edwards@turntable.com
Date: December 23, 2015 10:30 a.m.
Re: TURNTable / TBD relationship

Dear Sawyer:

I am livid about the article that TBD published about TURNTable last week. As you know, we are one of your largest advertisers. Unless Riley Winter is fired immediately, we will pull all of our advertising.

Regards,

Adrian Edwards
CEO, TURNTable Media



December 23, 2015

Dear Riley:

Your employment with TBD, Inc. is hereby terminated, effective immediately.

Thank you for your 27 years of service. Your final paycheck is enclosed.

Sawyer Shaw

Sawyer Shaw
Chief Executive Officer
TBD, Inc.

cc. Skye Martin; Austin Perez

Writers Employed by TBD (1/1/14 to 12/23/15)**Exhibit 18**

Name	Birth date	Hire date	Last day
Bond, Rowan	4/1/79	3/20/09	Still employed
Bronshteyn, Gabriel	5/9/78	3/22/13	1/2/14
Carville, Ray	8/29/41	9/1/65	1/2/14
Connolly, Chloe	1/4/90	7/7/12	Still employed
Deardorff, Taylor	9/16/72	7/14/95	7/29/14
Diamento, Francis	12/1/81	9/9/09	Still employed
Dolder, Ben	11/5/83	11/4/01	1/2/14
Elias, Andrew	8/16/88	1/10/14	7/2/14
Elmer, Ellyse	4/29/73	6/1/96	1/2/14
Fischer, Johannes	3/24/68	4/22/93	1/2/14
Godde, Scott	8/7/82	3/4/10	Still employed
Green, Kelly	4/28/87	7/5/09	12/31/14
Greene, Landon	11/3/89	12/22/15	Still employed
Gupta, Jason	10/8/88	7/9/10	Still employed
Hogan, Molly	9/8/92	7/1/15	Still employed
Humphrey, Dan	10/18/88	8/6/12	Still employed
Ingram, Jo'lissa	5/21/91	7/15/13	Still employed
Isaac, Claudine	3/6/79	7/11/03	Still employed
Kang, Esther	3/4/94	8/1/14	Still employed
Kiernan, Samantha	7/29/88	1/1/15	Still employed
Laughlin, Jackson	1/20/90	1/10/14	Still employed
Maples, Allie	10/20/78	7/12/01	Still employed
Mehrabyan, Anna	5/5/80	7/6/02	Still employed
Milhouse, Cooper	1/4/81	2/28/07	1/2/14
Mooney, Connor	11/22/80	7/6/02	Still employed
Nealley, William	2/23/51	5/24/81	1/2/14
Nuemann, Corbin	5/3/69	6/1/06	1/2/14
Ojeda, Jessie	7/11/80	4/11/10	Still employed
Penaranda, Laura	12/24/75	5/29/06	1/2/14
Podell, Jacob	8/2/62	7/14/85	1/2/14
Robinson, Sha'Huni	6/6/71	8/6/04	1/2/14
Santana, Jaime	9/13/87	12/3/11	Still employed
Smaller, Kevin	4/22/82	7/13/04	Still employed
Smet, John	7/4/79	1/1/00	1/2/14
Stitzel, Henry	6/29/91	7/1/14	Still employed
Stoicescu, Kristen	12/24/73	10/1/94	7/31/14
Weiss, Sarah	9/16/81	7/10/03	Still employed
Winter, Riley	11/20/65	7/14/88	12/23/15

Revised 10/10/2016



Greene-er Days for *TBD*'s Culture Beat

FOR IMMEDIATE RELEASE

December 23, 2015, 11:45 a.m.

TBD announced today that it has hired acclaimed writer Landon Greene. Greene, who just last month was included in *Journalism Today*'s prestigious "30 Under 30" list, will have the title of senior writer. Greene's debut article will appear on *TBD*'s website on Monday, December 28.

"This is another home run for *TBD*," said Sawyer Shaw, owner and CEO. Austin Perez, *TBD*'s editor in chief, agreed. "We need to reach younger readers if we are going to survive," Perez said. "Our target audience has choices, they're busy, and they want stories that speak to their interests, their concerns, and in their language. Landon is just what the doctor ordered for us."

TBD is the world's leading all-online current events and pop culture magazine. Founded in 1965, *TBD* became the first magazine in its class to go all-digital after it was purchased by entrepreneur Sawyer Shaw in January 2014.

For additional information, please contact Skye Martin, *TBD*'s Director of People Operations.

To: <austin.perez@TBDmag.com>
From: <austin.perez@TBDmag.com>
Date: December 23, 2015 1:59 p.m.
Re: Winter termination

At 11:30 a.m. today, Sawyer Shaw entered my office and informed me that Shaw was firing Riley Winter, effective immediately. I asked if I could provide input on this decision. I was prepared to defend Winter. Shaw said no. I said I was being blindsided and I had a right to participate in discussions about our staff composition. Shaw said there was no discussion and that it was Shaw's decision.

I asked Shaw for an explanation. Shaw said it was the web traffic for Winter's articles. I asked if Shaw had seen the data, and Shaw said no. I told Shaw that Winter's articles were drawing about as many eyes as our other articles. Shaw then said that TURNTable has pulled its advertising because of Winter's article. I said I had approved the article and that if anyone should be blamed, it should be me. Shaw said, "it's also the output, the number of articles per week." I said Winter has been improving and, besides, we have another writer who publishes even less.

Shaw got exasperated and said, "I don't need a reason, okay? And I don't appreciate being second guessed. The fact is I probably should have fired Winter last year when we canned all the other writers from Winter's generation. I was just worried it would have looked too bad to do it then."

At the holiday party, Shaw announced the addition of Landon Greene. Greene looked like a recent college graduate. It is obvious to me that Winter was not fired because of Winter's job performance, but because of age.

I had no part in the decision to fire Riley Winter.

AP

To: <austin.perez@TBDmag.com>
From: <austin.perez@TBDmag.com>
Date: December 23, 2015 2:00 p.m.
Re: Winter termination

At 11:30 a.m. today, Sawyer Shaw entered my office and informed me that Shaw was firing Riley Winter, effective immediately. I asked if I could provide input on this decision. I was prepared to defend Winter. Shaw said no. I said I was being blindsided and I had a right to participate in discussions about our staff composition. Shaw said there was no discussion and that it was Shaw's decision.

I asked Shaw for an explanation. Shaw said it was the web traffic for Winter's articles. I asked if Shaw had seen the data, and Shaw said no. I told Shaw that Winter's articles were drawing about as many eyes as our other articles. Shaw said that TURNTable has pulled its advertising because of Winter's article. I said I had approved the article and that if anyone should be blamed, it should be me. Shaw said, "it's also the output, the number of articles per week." I said Winter has been improving and, besides, we have another writer who publishes even less.

Shaw got exasperated and told me to sit down. Shaw said that, starting in 2016, we were going to include with every article a headshot of the writer (our prior practice had been to just include the writer's name). We had a professional photographer come in for that very purpose the previous week, and all writers had their photos taken. I asked what the headshots had to do with Winter. Shaw said, "Do I have to spell it out?" I just stared. Shaw said, "Our readers are in their teens and 20s. They want articles that could have been written by their cool and just slightly older cousins. They don't want articles from their parents, much less their grandparents. One look at Winter's photo, and our readers will know that Winter is way, way too old to be cool." I asked if this decision was about age. Shaw said, "Officially, of course not. The fact is I probably should have fired Winter last year when we canned all the other writers from Winter's generation. I was just worried it would have looked too bad to do it then."

At the holiday party, Shaw announced the addition of Landon Greene. Greene looked like a recent college graduate. It is obvious to me that Winter was not fired because of Winter's job performance, but because of age.

I had no part in the decision to fire Riley Winter.

AP

To: <ainsley.mayes@stern-fieldsllp.com>
From: <sawyer@TBDmag.com>
Date: December 23, 2015 5:00 p.m.
Re: Winter is (finally) over

Swapped clunker (50 y/o writer) for new model (26 y/o) today. TBD keeps getting younger and feels great. Don't worry: we've circled the wagons and everyone is on the same page re: cover story.

Drinks this weekend? I'm buying.

Sawyer

Declaration of Olivia Wolbert

1. I am the Director of Information Technology for TBD, Inc. I have held that position since January 15, 2012.
2. As part of my duties, and in the regular course of TBD's business, I manage and maintain records documenting the articles that TBD posts on its website and web traffic to those articles. The records that I maintain include data cataloguing the number of articles posted by author and reader clicks on and shares of articles (on Facebook, Twitter, and other social media). Our records of each reader click and share are automatically inputted and generated at or around the time that the reader click or share actually occurs. The information in these records is used to generate spreadsheets for each of TBD's authors that show the number of times that author's articles are clicked on and shared and to compare those numbers to TBD's average reader views and shares per article for that week.
3. The attached spreadsheet marked Exhibit 22 is a true and accurate copy of the spreadsheet that was generated for Riley Winter's 2015 articles on August 1, 2016. The spreadsheet was generated automatically; that is, no person was involved in its creation. Generating this spreadsheet was a regular course of TBD's business, and I kept and maintained this spreadsheet as part of my duties and in the regular course of TBD's business.
4. As its custodian, I have personal knowledge that this spreadsheet accurately reflects the amount of reader clicks and shares for all of Riley Winter's articles on TBD's website between January 1, 2015 and December 31, 2015, as well as TBD's average reader views ("clicks") and shares per article for each week during that time period.
5. I swear under penalty of perjury that the foregoing is true, accurate, and complete to the best of my knowledge.

Olivia Wolbert
OLIVIA WOLBERT

Sworn to before me this
8th day of August, 2016

Mary Ana Costanzo

Mary Ana Costanzo
Notary Public

Declaration of Olivia Wolbert

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8th day of August, 2016

Mary Ana Costanzo

Mary Ana Costanzo
Notary Public

Riley Winter Articles (A), Clicks (C), and Shares (S)
January 1, 2015 through December 23, 2015

Exhibit 22

<u>Week*</u>	<u>A** (Winter)</u>	<u>A (Mean)</u>	<u>A (High)</u>	<u>A (Low)</u>	<u>C*** (Winter)</u>	<u>C (Mean)</u>	<u>S**** (Winter)</u>	<u>S (Mean)</u>
1	1	2.96	5	0	155,000	135,000	2,530	3,490
2	4	2.96	6	1	112,000	141,000	3,180	3,280
3	3	3.03	5	2	146,000	134,000	3,520	3,380
4	3	3.24	7	1	136,000	143,000	3,990	3,350
5	3	3.09	6	2	123,000	120,000	1,720	3,270
6	3	3.09	6	2	131,000	136,000	3,100	3,390
7	2	2.97	6	1	156,000	128,000	2,090	3,380
8	3	3.16	6	1	109,000	124,000	3,730	3,460
9	3	3.18	6	2	170,000	126,000	2,390	3,390
10	2	2.99	4	2	200,000	135,000	1,940	3,330
11	2	2.76	5	2	173,000	135,000	2,310	3,060
12	2	3.20	6	2	159,000	136,000	3,380	3,760
13	5	3.09	6	1	157,000	139,000	3,940	3,390
14	3	3.08	5	2	164,000	137,000	5,160	3,470
15	4	3.04	5	3	146,000	134,000	2,420	3,270
16	2	3.04	7	1	165,000	129,000	4,520	3,940
17	2	2.97	4	2	121,000	136,000	4,000	3,460
18	3	2.89	5	2	139,000	129,000	3,820	3,410
19	3	3.05	4	2	167,000	143,000	2,070	3,330
20	3	3.07	6	1	184,000	129,000	2,640	3,560
21	4	2.86	6	2	140,000	134,000	4,210	3,710
22	2	2.90	4	2	174,000	136,000	2,010	3,090
23	3	2.89	5	2	145,000	132,000	4,140	3,240
24	3	3.07	5	2	128,000	136,000	2,780	3,490
25	3	2.99	4	2	134,000	128,000	3,050	3,530
26	4	2.79	5	2	168,000	137,000	3,400	3,910
27	3	2.98	6	1	155,000	123,000	2,790	3,660
28	3	3.20	6	1	162,000	138,000	2,880	3,210
29	4	3.16	4	1	161,000	123,000	2,930	3,410
30	3	3.04	7	1	180,000	137,000	2,720	3,490
31	1	3.02	5	1	135,000	133,000	3,330	3,220

Riley Winter Articles (A), Clicks (C), and Shares (S)
January 1, 2015 through December 23, 2015

Week*	A** (Winter)	A (Mean)	A (High)	A (Low)	C*** (Winter)	C (Mean)	S**** (Winter)	S (Mean)
32	2	2.83	4	2	172,000	137,000	3,660	3,180
33	4	2.84	5	2	140,000	137,000	2,350	3,320
34	4	3.18	4	3	110,000	120,000	3,110	3,700
35	4	2.96	7	1	160,000	136,000	2,680	3,550
36	3	3.19	5	3	140,000	133,000	2,670	3,600
37	3	3.20	6	1	136,000	134,000	3,370	3,120
38	3	3.08	5	2	161,000	135,000	2,240	3,240
39	3	3.05	5	2	137,000	128,000	2,870	3,430
40	4	3.10	4	2	125,000	127,000	2,220	3,540
41	3	3.05	6	1	180,000	132,000	4,960	3,210
42	5	2.93	5	2	132,000	129,000	3,660	3,450
43	3	3.15	5	2	111,000	133,000	3,490	3,430
44	2	2.89	6	1	129,000	145,000	2,600	3,580
45	4	3.21	5	1	153,000	135,000	2,767	3,540
46	3	3.14	5	2	166,000	144,000	3,570	3,400
47	4	3.04	5	2	155,000	137,000	4,870	3,810
48	3	3.07	6	1	176,000	132,000	4,210	3,630
49	3	3.31	5	3	155,000	138,000	1,590	3,360
50	4	3.16	7	1	141,000	136,000	2,840	3,360
51	3	3.10	4	2	128,000	131,000	3,290	2,990
Overall	3.06	3.04	5.31	1.67	149,059	133,431	3,132	3,427

Winter's rank among the 21 total TBD writers (including Winter) for 2015, Weeks 1 through 51

A**	C***	S****
11th	3rd	14th

*Week = Thursday -Wednesday. Week 1 began Thursday, January 1, 2015

**A = Articles per week

***C = Mean clicks per article within 7 days of posting

****S = Mean shares per article within 7 days of posting