

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF LOS ANGELES, VAN NUYS COURTHOUSE EAST
3

4 JNS COPY SERVICE, INC.,)
5 Plaintiff,)
6 vs.) No. LC068480
7 OPTIMA FUNDING, INC.; ALI) VOLUME I
8 SHAH; DAVID TAYANIPOUR;)
9 DOES 1 through 25,)
10 INCLUSIVE,)
11 Defendants.)

12
13
14 DEPOSITION OF THE PERSON MOST KNOWLEDGEABLE
15 OF OPTIMA FUNDING, INC., AND ALI SHAH, taken on
16 behalf of the Plaintiff, at 14156 Magnolia Boulevard,
17 Suite 200, Sherman Oaks, California, commencing at
18 10:54 A.M., on Wednesday, February 2, 2005, pursuant
19 to Notice, before ALLA PONTO, CSR No. 11046, a
20 Certified Shorthand Reporter, in and for the County
21 of Los Angeles, State of California.

22 ***
23
24
25

1 APPEARANCES:

2 For the Plaintiff:

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17 For the Defendants:

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25 Also Present:

Eric Rigney

I N D E X

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By Mr. Manson

Alli Shah

Afternoon Session

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WITNESS

EXAMINATION

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(All exhibits are bound under separate cover.)

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4 - License Information for Optima Funding, Inc., from the State of California Department of Real Estate

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5 - License Information for All Shah from the State of California Department of Real Estate

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6 - Complaint for Damages and Injunction Relief

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1 SHERMAN OAKS, CALIFORNIA; WEDNESDAY, FEBRUARY 2, 2005

2 10:54 A.M.

3
4 ALI SHAH,

5 called as a witness by and on behalf of
6 the Plaintiff, being first duly sworn,
7 was examined and testified as follows:

8
9 EXAMINATION

10 BY MR. MANSON:

11 Q. All right. Mr. Shah, do you want me to call
12 you Mr. Shah or Ali?

13 A. Mr. Shah is good, or whichever way.

14 Q. I got it. You know we're here at your
15 deposition --

16 A. Uh-huh.

17 Q. -- in this, what I call, a junk fax
18 litigation. I am going to depose you regarding your
19 background, your affiliation with Optima Funding, the
20 company operations of Optima, how Optima generates
21 its leads and certain unsolicited facsimile
22 advertisements. That's the technical term. I may
23 use the term "junk faxes" to have the same meaning as
24 unsolicited facsimile advertisements. All right?

25 A. Uh-huh.

10:54:22AM

10:54:33AM

10:54:51AM

1 Q. Have you ever had your deposition taken
2 before?

3 A. Yeah, I have.

4 Q. What were the circumstances?

5 A. It was a few years ago. It had to do with a
6 retail company. 10:54:57AM

7 Q. A retail -- what was your position with that
8 company?

9 A. I was doing a depo for an employee for that
10 company. 10:55:14AM

11 Q. I am not sure what you mean.

12 A. It was an employee of that company. They
13 wanted me to come in five, six years ago.

14 Q. Were you the plaintiff or the defendant in
15 that matter? 10:55:26AM

16 A. I wasn't even in it. They just depo'd [sic]
17 me.

18 Q. They deposed you as an employee of the
19 company?

20 A. Yeah. 10:55:30AM

21 Q. What was the type of litigation, if you
22 know?

23 A. You know what? I don't recall. It was ---
24 they depo'd me. It was it.

25 Q. You probably remember, then, that there are 10:55:40AM

1 certain ground rules for a deposition?

2 A. Uh-huh.

3 Q. First and foremost is that we don't
4 interrupt each other. We have a court reporter here
5 taking down your testimony and mine, and in order to
6 do that, she needs to be able to hear everything I
7 say distinctly from everything you say. It's
8 important that you let me ask an entire question, and
9 I'll let you give an entire answer.

10:55:55AM

10 Is that clear?

10:56:08AM

11 A. I think so.

12 Q. It's also important that you know your
13 testimony is being taken under oath. This oath is
14 the same oath that will be taken in court. You are
15 under penalty of perjury. Your testimony can be used
16 in trial.

10:56:21AM

17 Do you understand that?

18 A. Yes.

19 Q. At the end of the deposition, you will be
20 sent a written transcript of the questions and
21 answers here. You will be able to make any changes
22 or corrections, but if you make substantial changes,
23 those can be used to affect your credibility at
24 trial.

10:56:35AM

25 Is that clear?

10:56:48AM

1 A. Absolutely.

2 Q. It's important to answer these questions out
3 loud rather than just with a nod or other gestures.
4 Again, the court reporter has to be able to take
5 these things down.

10:56:59AM

6 Do you understand that?

7 A. Yes.

8 Q. It's also better rather than "uh-huh" or
9 "huh-uh" to say "yes" or "no" so it's clear to the
10 court reporter. Okay?

10:57:06AM

11 A. Okay.

12 Q. Is there any reason you can't give complete
13 and accurate testimony today?

14 A. No.

15 Q. Are you on any medication at this time that
16 might affect your ability to answer?

10:57:16AM

17 A. No.

18 Q. Are you undergoing any significant life
19 stress events -- a marriage, divorce, new child, new
20 job -- anything that is going to affect your ability
21 to testify today?

10:57:25AM

22 A. No.

23 Q. In addition to testifying as an individual,
24 you are also testifying today as a person most
25 knowledgeable about certain matters with respect to

10:57:37AM

1 Optima.

2 Did your attorney go over with you the
3 Deposition Notice and those areas that would be
4 covered?

5 MS. BREER: I'm going to object because that
6 would certainly invade the attorney-client privilege.

10:57:47AM

7 MR. MANSON: Okay. All right. In that
8 case, let me go ahead and introduce the first
9 exhibit. This is a Deposition Notice that was served
10 on your counsel, your attorney. There is a copy, and
11 there is a copy for the record. We can have this
12 marked as Exhibit 1.

10:58:07AM

13 (Plaintiff's Exhibit 1 was marked for
14 identification by the court reporter
15 and is bound under separate cover.)

10:58:20AM

16 BY MR. MANSON:

17 Q. If you turn to Page 2 of this document,
18 there are five numbered areas that go to the person
19 that for which you have been identified as the person
20 most knowledgeable. I'm going to run through them
21 really quickly.

10:58:29AM

22 Rather than running through them, let me
23 just say for the record, please read the first one.

24 Are you the person most knowledgeable at
25 Optima to testify about the things that are described

10:58:40AM

1 in Item No. 1?

2 A. Yes.

3 Q. Same question with respect to No. 2.

4 Are you the person most knowledgeable to
5 testify with respect to those things at Optima?

10:58:55AM

6 A. Yes.

7 Q. Same question with respect to No. 3.

8 A. Yes.

9 Q. Same question with respect to No. 4.

10 A. Uh-huh, yes.

10:59:23AM

11 Q. Same question with respect to No. 5.

12 A. On No. 5, when they come in, I do forward
13 them to my attorney.

14 Q. When what comes in?

15 A. Demands. When you say, "Information with
16 respect to the demands, allegations, claims and
17 complaints," yes, I would be. But I --

10:59:48AM

18 Q. You forward them to your attorney?

19 A. Yes.

20 Q. But on initial receipt, you are the person
21 who sees them and gets them?

10:59:58AM

22 A. Correct.

23 Q. We'll get back to that. I want to start out
24 with a little bit of your personal background.

25 Would you state and spell your full name for

11:00:14AM

1 the record.

2 A. Ali, A-l-i; last name Shah, S-h-a-h.

3 Q. Have you ever used or gone by any other
4 names or any variations or derivations of your name?

5 A. Shah Velayati. 11:00:28AM

6 Q. Can you spell Velayati?

7 A. V-e-l-a-y-a-t-i.

8 Q. Any other spellings of your name that you
9 ever used that might appear on any particular
10 documents? 11:00:39AM

11 A. No.

12 Q. Please state your home address.

13 A. 4066 Rivoli, R-i-v-o-l-i, Newport Beach,
14 California 92660.

15 Q. How long have you lived there? 11:01:00AM

16 A. I just moved to that address about a month
17 ago.

18 Q. About a month ago. What was your prior
19 address?

20 A. 6233 Residencia, R-e-s-i-d-e-n-c-i-a, in 11:01:06AM
21 Newport Beach, California 92660.

22 Q. And why did you move?

23 A. Why did I move?

24 Q. Was there any particular reason or just --

25 MS. BREER: Is there any particular 11:01:23AM

1 relevancy?

2 MR. MANSON: Maybe.

3 BY MR. MANSON:

4 Q. Was it by choice?

5 A. Absolutely. 11:01:35AM

6 Q. Are you married?

7 A. No. Thanks for asking.

8 Q. What is your business address?

9 A. It is 5 Hutton, H-u-t-t-o-n, Center Drive,
10 Suite 120, Santa Ana, California 92707. 11:01:54AM

11 Q. And is the Optima Funding business located
12 at that address?

13 A. It sure is.

14 Q. How long has Optima been at that address?

15 A. Approaching two years. 11:02:09AM

16 Q. Is that the physical address or a mailing
17 address?

18 A. That is the physical address.

19 Q. And please state your date of birth.

20 A. 9/15, 1979. 11:02:19AM

21 Q. Your citizenship?

22 A. I was born a citizen, born in Missouri.

23 Q. United States citizenship?

24 A. Yes.

25 Q. I also want to get into some background, 11:02:34AM

1 some general background on Optima Funding.

2 How long have you been with Optima?

3 A. Since June 6.

4 Q. Of what year?

5 A. 2003.

11:03:01AM

6 Q. Thank you. What was your position when you
7 started there?

8 A. President.

9 Q. Did you found the company, or were you a
10 founder or co-founder?

11:03:12AM

11 A. Yes.

12 Q. Were there other founders along with you?

13 A. Were there other founders along with me?

14 Yes.

15 Q. Who were those people?

11:03:22AM

16 A. There was Farzad Nafeiy.

17 Q. Can you spell that for me, please.

18 A. F-a-r-z-a-d, N-a-f-e-i-y.

19 Q. E-i-y?

20 A. Correct.

11:03:36AM

21 Q. Anyone else?

22 A. No.

23 Q. Is Farzad Nafeiy -- am I saying that
24 correctly?

25 A. Yes.

11:03:52AM

1 Q. Is he still with the company?

2 A. He sure is.

3 Q. What is his title?

4 A. As far as title-wise, no set title for him.

5 Q. Do you have a set title as president? 11:04:05AM

6 A. Uh-huh, yes.

7 Q. Are you a director of the company?

8 A. I sure am.

9 Q. Who are the other directors?

10 A. Just me. 11:04:15AM

11 Q. Do you hold any other titles at Optima
12 besides director and president?

13 A. And secretary.

14 Q. I believe you stated you founded Optima in
15 2003. 11:04:53AM

16 Is it a corporation?

17 A. It sure is. Yes.

18 Q. Did you operate it in any way prior to
19 incorporating it as a sole proprietorship or any
20 other partnership or any other business? 11:05:03AM

21 A. No.

22 Q. Do you have significant stakes in any other
23 businesses, whether as a director, more than a five
24 percent shareholder or as an officer?

25 MS. BREER: I want to object here. We can 11:05:21AM

1 talk about it, but I am curious as to what sort of
 2 admissible evidence you think his prior business
 3 affiliations would have.

4 MR. MANSON: I believe his prior business
 5 affiliations are relevant to everything from his
 6 management ability and his involvement with the
 7 company to just a very broad range of things on a
 8 personal level.

9 MS. BREER: Let's see. Go ahead.

10 MR. AMKRAUT: And his knowledge of the law
 11 such as the TCPA and the faxing provisions of the
 12 TCPA.

13 MS. BREER: You are right. It may have some
 14 assistance.

15 BY MR. MANSON:

16 Q. Again, have you had any significant stake or
 17 interest in another business, whether as a five
 18 percent or greater equity interest holder, an officer
 19 or director position?

20 A. Of another company?

21 Q. Yes.

22 A. There is Shah Enterprises. That's the only
 23 company.

24 Q. What business is that?

25 A. It's a holding company.

11:05:33AM

11:05:47AM

11:06:16AM

11:06:24AM

1 Q. Shah spelled like your last name?

2 A. Absolutely.

3 Q. Is that a corporation?

4 A. Yes, a corporation.

5 Q. What does it hold? Does it hold any other
6 businesses?

11:06:36AM

7 A. No. Mainly for real estate.

8 Q. Does Optima have any parent company or any
9 subsidiaries?

10 A. No.

11:06:52AM

11 Q. How many stockholders are there of Optima?

12 A. There is only one.

13 Q. Are you the sole stockholder?

14 A. Correct.

15 Q. Are there any other officers of Optima
16 Funding?

11:07:01AM

17 A. No.

18 Q. You are the sole officer?

19 A. I'm the sole officer.

20 Q. Do you make all decisions for Optima?

11:07:19AM

21 A. Most of them.

22 Q. Who else makes decisions for Optima?

23 A. There are employees that can make decisions
24 depending on what decision is to be made: Who gets
25 the coffee.

11:07:31AM

1 Q. Significant company decisions.

2 A. Okay. Right.

3 Q. That would be you?

4 A. Yes.

5 Q. As president, what are your duties?

11:07:38AM

6 A. My duties are to basically maintain the
7 numbers that the company is doing, keep the sales
8 force in line and just -- there is a wide array of
9 duties that I have.

10 Q. Are you in the office usually five days a
11 week?

11:08:10AM

12 A. Yes, I am.

13 Q. When I say "in the office," is that the
14 office at 5 Hutton Center Drive?

15 A. Yes.

11:08:20AM

16 Q. Does Optima Funding maintain any other
17 physical locations, physical offices?

18 A. No.

19 Q. Does it use any other mailing addresses
20 including any P.O. boxes?

11:08:31AM

21 A. No.

22 Q. Do any of the employees work from home or
23 from any other locations?

24 A. No.

25 Q. So 5 Hutton Center Drive is the sole

11:08:42AM

1 location at which any Optima Funding relations take
2 place?

3 A. Yes.

4 Q. At Optima who is in charge of legal and
5 regulatory compliance?

11:08:58AM

6 A. Legal and regulatory compliance -- that
7 would be -- I have a different set of attorneys; so
8 the question to that --

9 Q. I will expand a little bit.

10 Are there attorneys in-house at Optima? Are
11 there attorneys who are actually employees of Optima
12 itself?

11:09:17AM

13 A. No, not in-house. No.

14 Q. In-house, with that meaning, as employees,
15 who would be the person who deals with those
16 attorneys? Who is in charge of working with outside
17 attorneys to make sure that Optima is in compliance
18 with DRE, Department of Real Estate laws and other
19 laws?

11:09:30AM

20 A. Okay. I don't understand your question.

11:09:46AM

21 Q. Okay. Who is --

22 MS. BREER: I want to at this point -- I
23 don't know what the information is going to -- well,
24 I just want to make sure he understands that he is
25 not to give any information that would be protected

11:10:01AM

1 by the attorney-client privilege.

2 So any information that you have, if you're
3 going to answer this question, is just based on not
4 information from other attorneys.

5 MR. MANSON: Right. I am not asking --

11:10:14AM

6 MS. BREER: I don't even know if it's
7 getting in there, but he seems confused. It might be
8 because a lot of this is --

9 BY MR. MANSON:

10 Q. I am not asking about things, specific
11 things that your attorneys may have told you or
12 things that you may have told your attorneys.

11:10:22AM

13 I am asking who at Optima interacts with
14 your attorneys? Who is the person at Optima who is
15 responsible for working with attorneys on issues?

11:10:36AM

16 A. Donna Thomson.

17 Q. What is that person's name, please?

18 A. Donna Thomson.

19 Q. Is there anybody else?

20 A. The thing is --

11:10:53AM

21 MS. BREER: Let me make sure -- first of
22 all, other than yourself. I don't know that he has
23 even mentioned --

24 MR. MANSON: He hasn't mentioned.

25 MS. BREER: Okay.

11:11:00AM

1 BY MR. MANSON:

2 Q. Do you interact with your attorneys?

3 A. I do. Yeah.

4 Q. Then you mentioned Donna Thomson. Is there
5 anyone else who would talk to your attorneys, any
6 other employee of Optima who would talk to attorneys?

11:11:09AM

7 A. No.

8 Q. Who is Donna Thomson?

9 A. Donna Thomson -- she does the marketing for
10 Optima.

11:11:22AM

11 Q. When you say "does the marketing," what do
12 you mean?

13 A. Handles the marketing. We have different
14 vendors that we work with.

15 Q. Is she in charge of marketing, then?

11:11:34AM

16 A. Yes.

17 Q. Is there anyone else in charge of marketing?

18 A. Her assistant Daniel Rudd.

19 Q. Could you spell that last name?

20 A. R-u-d-d.

11:11:51AM

21 Q. Is there anyone at Optima that's the primary
22 contact for the Department of Real Estate?

23 A. No.

24 Q. If the DRE, Department of Real Estate,
25 interchangeable -- if they were to contact Optima,

11:12:29AM

1 who would they talk to?

2 A. They would call me, if they would like.

3 Q. Who is in charge of lead generation or
4 working with lead generation or referral companies?

5 A. Donna Thomson and her assistant. 11:12:59AM

6 Q. Does Donna Thomson have a title?

7 A. Does she have a title? She is in charge of
8 marketing.

9 Q. Is she a vice president of marketing?

10 A. No. 11:13:20AM

11 Q. Manager of marketing?

12 A. No.

13 Q. No title?

14 A. No. It would be marketing manager -- you
15 could put. 11:13:27AM

16 Q. She doesn't have a formal title on a
17 business card, for instance?

18 A. She does. I don't recall what that is.

19 Q. There is one, but you just don't recall?

20 A. Yeah. 11:13:38AM

21 Q. Let's talk a little bit about marketing.

22 I am going to walk through a couple of
23 elements of marketing and these lead generation
24 companies and ask you to touch on them.

25 Who writes the copy for your advertisements, 11:13:54AM

1 the verbiage?

2 MS. BREER: I am going to object. That's
3 kind of uncertain. Can you rephrase it? I mean,
4 "advertising" -- that's awfully broad.

5 BY MR. MANSON:

6 Q. What advertising methods does Optima use?

7 A. Different types.

8 Q. What are those different types?

9 A. As far as media? Is that what you are
10 saying? 11:14:19AM

11 Q. Sure.

12 A. We have billboards. We have TV commercials.
13 We have print ads.

14 Q. Are there any radio ads?

15 A. No. 11:14:32AM

16 Q. Direct mail?

17 A. Direct mail --

18 MS. BREER: I'm going to object. That's
19 leading. He will tell you.

20 MR. MANSON: I am allowed to be leading in a
21 deposition. 11:14:41AM

22 MS. BREER: I don't think.

23 BY MR. MANSON:

24 Q. Does Optima do any direct mail advertising?

25 A. Yes. To our clients, to our own list of 11:14:49AM

1 clients.

2 Q. Okay. Let's talk about television ads.

3 A. Okay.

4 Q. Who writes the script for those ads?

5 A. The television companies, the vendors that
6 we work with, the different channels that we work
7 with.

11:15:03AM

8 Q. Do they also -- I am sorry. Let me rephrase
9 that.

10 Who approves or refuses the advertisements
11 prior to them being aired?

11:15:16AM

12 MS. BREER: First of all, that's kind of
13 speculative. That assumes that some are being aired
14 right now. I don't know. Maybe there is. But maybe
15 can you lay a little more foundation --

11:15:33AM

16 MR. MANSON: Sure.

17 MS. BREER: -- so it's not uncertain.

18 MR. MANSON: He specifically said that
19 Optima engages in television advertising. I'm asking
20 that -- then he said that a television company
21 prepares the script for the advertisement.

11:15:44AM

22 BY MR. MANSON:

23 Q. Does the television company also --

24 MS. BREER: Maybe we can define the time
25 period you are talking about.

11:15:58AM

1 BY MR. MANSON:

2 Q. During calendar year of 2004, let's say, am
3 I correct in saying that in California year 2004,
4 television companies would prepare scripts for
5 commercials?

11:16:13AM

6 A. Give us ideas.

7 Q. Give you ideas?

8 A. Yes.

9 Q. Who would build on those ideas and turn them
10 into a finished advertisement?

11:16:21AM

11 A. I would.

12 Q. You would. Okay. After an advertisement
13 was filmed, did someone at Optima review it prior to
14 it being aired on television?

15 A. Yes.

11:16:38AM

16 Q. And who would that person be?

17 A. Me.

18 Q. Did you have to give an approval of the
19 final product before it was aired?

20 A. Absolutely.

11:16:47AM

21 Q. And approximately how many different
22 television advertisements did you approve during
23 2004?

24 A. Several.

25 Q. "Several," more than 10 or less than 10?

11:17:00AM

1 A. More than 10.

2 Q. Could you give an estimate of how many
3 "several" might be?

4 A. I couldn't because there's different
5 versions on a TV commercial. 11:17:16AM

6 Q. Let's, then, talk -- you also mentioned
7 print advertisements?

8 A. Uh-huh.

9 Q. Who prepared the text or copy for print
10 advertisements? 11:17:32AM

11 A. I do. As far as who approves or who
12 prepared?

13 Q. Prepared.

14 A. Donna Thomson.

15 Q. Then who approves them? 11:17:41AM

16 A. I do.

17 Q. How about any graphics that are involved in
18 print advertisements? Does Donna prepare those?

19 A. Yes.

20 Q. Do you approve those? 11:18:04AM

21 A. Uh-huh.

22 Q. You have final approval on the complete
23 advertisement before it runs?

24 A. Yes.

25 Q. Same -- I won't say "same questions." 11:18:12AM

1 You mentioned that you sent direct mail to
2 your client list?

3 A. Uh-huh.

4 Q. How is that client list derived or prepared?

5 A. How is it derived or prepared?

11:18:29AM

6 Q. I will rephrase.

7 Where do you get the names of clients to add
8 to this list?

9 A. The clients that have basically -- repeat
10 your question. I am not understanding.

11:18:45AM

11 Q. As I understand it, you said Optima sends
12 direct mail to clients on Optima's own client list?

13 A. Correct.

14 Q. Where do you get the names and addresses on
15 that client list?

11:18:59AM

16 A. The folks -- family members that we have
17 done loans for.

18 Q. Okay. Again, I'm going to say please don't
19 interrupt me so the court reporter can get it down.

20 MS. BREER: I don't know why that confused
21 you.

11:19:06AM

22 BY MR. MANSON:

23 Q. What types of advertisements do you send to
24 them? Is it simply a copy of your print ads, or are
25 there specific things targeted to existing clients?

11:19:19AM

1 A. We send them T-shirts, mugs with Optima logo
2 on it. You know, nice gifts. Something like that
3 (indicating), like the black mug that will say
4 "Optima Funding" on it.

5 Q. Okay. 11:19:37AM

6 A. It's freezing in here.

7 Q. I know.

8 There is a thermostat right behind you. If
9 you want to adjust that, Terri.

10 MS. BREER: Let's see. It says 71, which is 11:19:44AM
11 shocking.

12 MR. MANSON: It doesn't feel like 71.

13 MR. AMKRAUT: It is cool in here.

14 MS. BREER: Hold on. For whatever reason --
15 there it goes. Okay. 11:19:58AM

16 MR. MANSON: That would be an interesting
17 read in the transcript -- the temperature discussion.

18 BY MR. MANSON:

19 Q. Do you ever send any kind of direct mail,
20 whether it's small gifts, as you mentioned, or 11:20:12AM
21 advertising to non clients?

22 A. To non clients?

23 Q. Or to prospective clients, people who
24 haven't done business with Optima in the past.

25 A. Repeat that question. 11:20:37AM

1 Q. Sure. You mentioned that you sent direct
2 mail which you described as mugs, T-shirts, small
3 gifts or nice gifts to past clients and their
4 families, I believe. Am I correct in restating what
5 you said?

11:20:53AM

6 A. Correct.

7 Q. Do you ever send those same types of things
8 to prospective clients or non clients?

9 A. No.

10 Q. What is Optima's advertising budget for
11 calendar year 2004, let's say?

11:21:01AM

12 A. That's --

13 MS. BREER: I don't know why that would be
14 relevant. I mean, what the budget would have to do
15 with -- I don't even see how it would lead to
16 anything admissible.

11:21:25AM

17 THE WITNESS: I couldn't tell you. There
18 are different budgets for different areas of the
19 business.

20 BY MR. MANSON:

21 Q. I am asking for advertising.

22 A. I couldn't tell you. I can find out for
23 you.

24 Q. That would be helpful.

25 A. Absolutely.

11:21:41AM

1 Q. Would you happen to know any particular
2 aspects of Optima's budget for, say, direct mail, as
3 you have described your direct mail when you send
4 small gifts to clients and so on? Do you know what
5 the budget would be for that in a year?

11:22:08AM

6 A. I couldn't tell you.

7 Q. How about in any particular month? You can
8 name a month.

9 A. I can find out for you, though.

10 Q. That would be great.

11:22:15AM

11 Do you know how much it spent in 2004 in TV
12 ads?

13 A. I couldn't tell you, but I can find out for
14 you.

15 Q. Do you know how much they spent on
16 billboards?

11:22:25AM

17 MS. BREER: I will have a running objection
18 on the relevancy of anything regarding the amount of
19 money they are spending.

20 But you can go ahead and answer. I will
21 preserve the objection.

11:22:35AM

22 THE WITNESS: I can find out for you.

23 BY MR. MANSON:

24 Q. Thank you. Rather than deal with relevancy
25 objections, let's get a little bit into the meat of

11:22:53AM

1 this case.

2 Have you ever heard of a federal law called
 3 the "Telephone Consumer Protection Act" of 1991 also
 4 known as the TCPA?

5 MS. BREER: At this point, too, I also want 11:23:12AM
 6 to object because I am sure that that question is
 7 seeking for information that would be protected by
 8 the attorney-client privilege.

9 And I will instruct the witness -- you can
 10 answer, but only to the extent that any knowledge 11:23:17AM
 11 that you have of that act is independent of anything
 12 that you may have learned from an attorney or from me
 13 or any other attorney.

14 MR. MANSON: From any attorney representing
 15 Optima, please, because other attorneys may have -- 11:23:30AM
 16 like, I contacted him regarding TCPA. That's not
 17 privileged. When I sent him a demand letter, that's
 18 not privileged. So it's not just any attorney. It's
 19 any attorney representing Optima.

20 MS. BREER: But he also has to be 11:23:41AM
 21 comfortable that he can respond to that question and
 22 he can differentiate whether it was -- he learned a
 23 particular aspect of that.

24 With that admonishment, if you feel that you
 25 can answer independent of any information, you can do 11:23:56AM

1 so.

2 THE WITNESS: Okay.

3 MS. BREER: Otherwise, I will instruct you
4 not to answer.

5 BY MR. MANSON:

6 Q. Let me rephrase the question, please.

7 Have you ever heard mention of the TCPA, the
8 Telephone Consumer Protection Act of 1991, from any
9 attorney not representing you or Optima Funding?

10 A. Yes.

11:24:18AM

11 Q. Can you recall the first time that you heard
12 of the TCPA from any attorney other than one
13 representing Optima or you personally?

14 A. No. I can't.

15 Q. Can you approximate when that might have
16 been?

11:24:32AM

17 A. I can't.

18 Q. Can you place it in a year?

19 A. I couldn't. No.

20 Q. Were you aware of the law on January 1,
21 2004?

11:24:40AM

22 MS. BREER: It's been asked and answered.
23 He said he couldn't place it as to a date.

24 MR. MANSON: I would like to try a couple of
25 specific dates to see if he has heard of it relative

11:24:52AM

1 to then. He might not be able to place it to a year,
2 but he may know if he has heard of it before a
3 particular time.

4 BY MR. MANSON:

5 Q. Let me step back. 11:25:04AM

6 Have you heard of the TCPA prior to July 1,
7 2004?

8 A. I don't recall. You are going back -- I got
9 so much in my mind. I couldn't tell you. I do know
10 what the TCPA is, to answer your question. 11:25:22AM

11 Q. How familiar are you with the TCPA?

12 MS. BREER: I'm going to object. I don't
13 know what that means: "How familiar?"

14 BY MR. MANSON:

15 Q. Have you ever read the text of the law 11:25:35AM
16 itself?

17 A. The text of the law?

18 Q. Of the TCPA.

19 A. Exactly what do you mean by "text"?

20 Q. Have you read the words of the law itself? 11:25:48AM

21 A. The words -- I don't understand. Explain
22 what you mean by that.

23 Q. Sure.

24 A. The definition of it? Is that what you are
25 asking? 11:26:01AM

1 Q. Right. Have you ever seen a piece of paper
2 with the text of the statute laid out, and have you
3 read that?

4 A. I went over it once, maybe, I believe.

5 Q. Okay.

11:26:13AM

6 MS. BREER: That's okay.

7 MR. MANSON: I beg your pardon?

8 MS. BREER: That's fine. You can answer.

9 BY MR. MANSON:

10 Q. So you believe you have read the words of
11 the law.

11:26:22AM

12 Do you have any idea when you might have
13 read that?

14 A. No, I don't. I can't recall that.

15 Q. Okay. Has Optima ever been sued for TCPA
16 violations other than this action?

11:26:30AM

17 A. I believe so.

18 Q. Can you tell me -- has there been one other
19 suit or more than one?

20 A. More than one that I can recall.

11:26:53AM

21 Q. Can you recall an approximate number or a
22 range of times that Optima has been sued for TCPA
23 violations?

24 A. Gosh, a couple.

25 Q. More than five?

11:27:07AM

1 A. I don't recall. A few, though.

2 Q. How many of those are ongoing right now?

3 A. There is one that I am aware of -- Jimmy
4 Sutton.

5 Q. Okay. Are there any others? 11:27:27AM

6 A. Any others? There might be. I just don't
7 recall right now.

8 Q. I think we may have some information on that
9 in the documents that you have produced.

10 Have you personally ever been sued for TCPA 11:27:31AM
11 violations other than this lawsuit?

12 A. I believe so. Personally by Jimmy Sutton.

13 Q. And are there any lawsuits against you
14 personally that you are aware of for TCPA violations?

15 A. Not that I am aware of, but there might be. 11:28:20AM

16 Q. Have you ever had any other -- let me
17 rephrase that.

18 Has any person or entity -- by "entity," I
19 mean any business, any government agency, any
20 consumer group, any person or entity ever sent you 11:28:39AM
21 any letter or any other notice regarding TCPA
22 violations?

23 MS. BREER: Can we break it down. It's a
24 little compound.

25 MR. MANSON: Yes. 11:28:52AM

1 BY MR. MANSON:

2 Q. Has any person ever sent you a letter or
3 notice regarding TCPA violations?

4 A. Yes.

5 Q. And how many individuals have done so?

11:29:01AM

6 A. I don't recall, but I forward them to my
7 attorney.

8 Q. Are there a lot or a very few, or can you
9 give me a range of how many there might have been,
10 say, in 2004?

11:29:18AM

11 A. I couldn't, but you can ask my attorney.

12 Q. Your attorney is not under oath. I can't
13 ask her. And also you have been designated as the
14 person most knowledgeable about that issue. That's
15 why I am asking you.

11:29:32AM

16 MS. BREER: He did say other than his
17 attorney. Obviously his attorneys are more
18 knowledgeable, and he mentioned that when you went
19 over those.

20 MR. MANSON: Yes.

11:29:43AM

21 BY MR. MANSON:

22 Q. Have there been more than 10 such letters
23 from individuals in 2004?

24 A. When you say "letters," stating what?

25 Q. Alleging TCPA violations.

11:29:53AM

1 The temperature is a little better. It's
2 warming.

3 MS. BREER: Is it?

4 THE WITNESS: Repeat the question again.

5 BY MR. MANSON:

6 Q. Yes. Has Optima received more than 10
7 letters from individuals regarding or alleging TCPA
8 violations during 2004?

9 A. I don't know if it was more than 10, but it
10 might have been. 11:30:40AM

11 Q. I don't want to put words in your mouth.

12 A. Okay.

13 Q. But I would assume that you are saying --
14 I'm not going to put words in your mouth.

15 Have there been more than 5 such letters in 11:30:52AM
16 2004?

17 A. Yes.

18 Q. More than 5; maybe more than 10. You are
19 not sure; is that correct?

20 A. Correct. 11:31:01AM

21 Q. Thank you. How about letters from business
22 entities, other corporations or partnerships, limited
23 liability companies? Have you received any letters
24 from them alleging TCPA violations during 2004?

25 MS. BREER: Isn't that the same question? 11:31:19AM

1 So you are breaking it down to individual --

2 MR. MANSON: I asked about individuals, and
3 now I'm asking businesses.

4 MS. BREER: Were you clear that --

5 THE WITNESS: No. 11:31:27AM

6 MS. BREER: -- he was making a distinction?

7 THE WITNESS: No.

8 MS. BREER: Were you talking about 10 total?

9 THE WITNESS: Yeah.

10 MS. BREER: That's why I thought he might
11 have been misled. 11:31:32AM

12 BY MR. MANSON:

13 Q. Let me ask you to clarify your answer, then.

14 Dealing with individuals, did Optima receive
15 more than 10 such letters in 2004 from individuals? 11:31:41AM

16 A. I already answered that question.

17 Q. I believe there is some confusion.

18 MS. BREER: First he asked you about
19 individuals, and then he said, "Have any entities."

20 And I am saying were you aware he was differentiating
21 among them? 11:31:54AM

22 THE WITNESS: No.

23 BY MR. MANSON:

24 Q. Add now I am going back and saying there is
25 a difference. Like Jimmy Sutton is an individual, 11:32:01AM

1 and JNS Copy Service is a business. I'm
2 differentiating those.

3 A. Okay.

4 Q. Did you receive -- did Optima receive more
5 than 5 letters from individuals during 2004
6 alleging --

11:32:15AM

7 A. Yes.

8 Q. Is your answer the same that it was around
9 10 from individuals. Might be more or might be
10 something over 5; is that correct?

11:32:27AM

11 A. Yes.

12 Q. Now, again, moving to businesses, or
13 entities, how many such letters -- first, has Optima
14 received any letters from entities, business
15 entities, alleging TCPA violations during 2004?

11:32:43AM

16 A. Yes.

17 Q. Can you tell me approximately how many?

18 A. I can't tell you approximately how many.
19 No. I don't know the exact number.

20 Q. I am not asking for the exact number. I'm
21 asking for your best estimate.

11:32:56AM

22 A. A few.

23 Q. Can you tell me what "a few" means? I am
24 entitled to your best estimate, but I don't want you
25 to guess. If it's more than 5, say "more than 5."

11:33:13AM

1 If it's more than 50, you can say "more than 50." I
2 am entitled to an estimate.

3 A. I can find out for you, but I can't give it
4 to you. I will put that on my laundry list.

5 Q. Does Optima keep copies of all those letters
6 that it received from individuals and business
7 entities?

11:33:29AM

8 A. I already told you they get forwarded to my
9 attorneys.

10 Q. I didn't know if you forwarded copies or the
11 originals.

11:33:36AM

12 Do you forward the originals?

13 MS. BREER: I think we're getting into
14 attorney-client privilege when we're talking about
15 what he sent to me and so forth.

11:33:46AM

16 MR. MANSON: These are documents received
17 from third parties; so there is no privilege. I
18 won't get into the communication between you. But as
19 far as sending copies, that's not going to be covered
20 under attorney-client privilege.

11:33:57AM

21 MS. BREER: The sending of the document is.
22 But you can go ahead and answer.

23 What was the question?

24 BY MR. MANSON:

25 Q. The question is does Optima maintain copies

11:34:03AM

1 of those letters?

2 A. No.

3 Rest room?

4 MR. MANSON: Yes. Let's go off the record.

5 (Recess.)

11:39:30AM

6 MR. MANSON: Back on the record.

7 BY MR. MANSON:

8 Q. Before we took a break, we were talking
9 about allegations of TCPA violations.

10 Have you ever been -- has Optima Funding
11 ever been notified of any TCPA allegations by any
12 government agency?

11:39:41AM

13 A. No.

14 Q. Has there been anything from the -- have you
15 ever heard anything from the FCC, the Federal
16 Communications Commission, regarding TCPA?

11:39:59AM

17 A. No.

18 Q. How about from the Department of Real Estate
19 in California?

20 A. No.

11:40:12AM

21 Q. Has any consumer group ever complained to
22 Optima regarding junk faxes or the TCPA?

23 A. No.

24 Q. Let me go to another exhibit here. This
25 will be Exhibit 2. This is a copy of a letter I sent

11:40:42AM

1 you or that I sent to Optima in April of 2004.

2 (Plaintiff's Exhibit 2 was marked for
3 identification by the court reporter
4 and is bound under separate cover.)

5 BY MR. MANSON:

11:40:52AM

6 Q. Do you recall receiving this letter?

7 A. It looks familiar.

8 Q. All right.

9 A. Yes.

10 Q. You do recall receiving this letter?

11:41:07AM

11 A. I do.

12 Q. You will see in the third full paragraph
13 that starts, "I am sure you are aware of a federal
14 law," that it puts down the name of the Telephone
15 Consumer Protection Act, the TCPA, and puts some
16 particular language there.

11:41:23AM

17 What was your understanding of that when you
18 read that letter?

19 MS. BREER: First of all, I don't think he
20 testified that he read the letter. That would
21 misstate his testimony.

11:41:37AM

22 MR. MANSON: I am sorry.

23 MS. BREER: You asked him if he received it.

24 BY MR. MANSON:

25 Q. Did you receive the letter?

11:41:49AM

1 A. Uh-huh.
2 Q. Did you read it when you received it?
3 A. I immediately forwarded it to my attorney.
4 Q. You didn't read the text of it at all?
5 A. I went over it briefly.

11:41:55AM

6 Q. Have you read the letter or not?
7 MS. BREER: I think it's been asked and
8 answered. He said he went over it briefly.

9 THE WITNESS: Yes. What are you asking?

10 BY MR. MANSON:

11:42:07AM

11 Q. Did you read the entire letter?

12 A. No.

13 Q. What portion of the letter did you read?

14 A. I went over it briefly.

15 Q. Can you tell me what it means to go over it
16 briefly?

11:42:13AM

17 A. Looked to see who is suing me, the lawyer
18 and what they are suing me for. The thing is we
19 don't do faxing whatsoever; so if I see something
20 that has faxing involved in it, I forward it to my
21 attorney because that's not what we do. We are a
22 mortgage company. We are not a fax company
23 whatsoever. We don't do faxing at all. That's not
24 our business. It's Optima Funding Mortgage
25 Corporation and not Optima Funding Faxing

11:42:26AM

11:42:40AM

1 Corporation.

2 Q. Okay.

3 MS. BREER: Are we marking that?

4 MR. MANSON: Yes. That's Exhibit 2.

5 MS. BREER: Okay.

11:42:49AM

6 BY MR. MANSON:

7 Q. Did you read the third paragraph of the
8 letter?

9 MS. BREER: It's asked and answered. He
10 said he didn't read it.

11:42:57AM

11 MR. MANSON: He said that he went over it
12 briefly.

13 MS. BREER: All right. You can ask that
14 question.

15 BY MR. MANSON:

16 Q. Did you read the third paragraph of the
17 letter?

18 A. No.

19 Q. Please read it now.

20 A. We're at "unsolicited fax" --

11:43:15AM

21 Q. No. The paragraph above that that begins,
22 "I am sure you are aware of a federal law."

23 MS. BREER: I'm going to object. Why would
24 he be reading the letter. I don't understand that
25 question. It calls for a narration. If you have a

11:43:26AM

1 question, you can ask a question. But I don't think
2 my client needs to read documents to you.

3 MR. MANSON: I am not asking him to read it
4 into the record. I'm asking him to read it --

5 MS. BREER: To himself? 11:43:38AM

6 MR. MANSON: Yes.

7 MS. BREER: Okay. You want to read it to
8 yourself.

9 THE WITNESS: Not out loud?

10 BY MR. MANSON: 11:43:44AM

11 Q. Correct.

12 MR. MANSON: Can we go off the record for
13 one second?

14 MS. BREER: Off the record.

15 (A discussion was held off the record.) 11:45:22AM

16 MR. MANSON: Back on the record.

17 BY MR. MANSON:

18 Q. I asked you to read the third paragraph of
19 this letter which purports to lay out certain
20 language of the TCPA. 11:45:34AM

21 A. Uh-huh.

22 Q. Were you familiar with these provisions of
23 the TCPA prior to reading this letter just now?

24 A. Yes.

25 Q. How did you gain that awareness of the TCPA 11:45:46AM

1 and provisions?

2 MS. BREER: Again, I object. If the only
3 way you learned that information is through a
4 relationship with an attorney or myself, then that's
5 privileged information, and you do not need to answer
6 that question. 11:46:05AM

7 MR. MANSON: If it was by any other means,
8 he does need to answer it; correct?

9 MS. BREER: If he has knowledge and
10 information regarding that, sure. Independent of 11:46:16AM
11 those relationships, yes. I also -- I forgot my
12 objection. Hold on. Never mind. Go ahead.

13 BY MR. MANSON:

14 Q. Other than in a discussion with an attorney
15 representing you or Optima -- 11:46:39AM

16 MS. BREER: I'm sorry. Also to the
17 extent -- I don't want him -- he is not going to give
18 you any legal conclusions. That's what I was
19 thinking of. Let's not ask for legal conclusions
20 about the act. 11:46:48AM

21 MR. MANSON: I don't believe I did.

22 MS. BREER: Let's see if that comes up.

23 BY MR. MANSON:

24 Q. Other than through discussion with attorneys
25 for you individually or for Optima Funding, how did 11:46:57AM

1 you become aware of these provisions of the TCPA?

2 A. Other than my attorney?

3 Q. Correct.

4 MS. BREER: Do you have any knowledge other
5 than that? 11:47:18AM

6 THE WITNESS: No.

7 BY MR. MANSON:

8 Q. Okay. Do you ever read the full content of
9 any mail that references the TCPA other than any mail
10 that you might get from your attorney, either your
11 attorney or Optima's attorney? 11:47:39AM

12 A. Repeat that question again.

13 Q. Other than any mail that you might get from
14 your attorney or from Optima's attorney --

15 A. Uh-huh. 11:47:49AM

16 Q. -- do you read the full text of any mail
17 that mentions the TCPA?

18 A. Again, I am going to repeat what I said: We
19 don't do faxing. So if I see a letter like this that
20 has contents of us doing faxing, I will forward it to
21 my attorney because that is not our business. Once
22 again, that is not our business. We're not in the
23 faxing business whatsoever. 11:48:05AM

24 Q. You are not answering my question, though.

25 MS. BREER: I think he did answer. 11:48:18AM

1 THE WITNESS: I answered. Yeah.

2 MR. MANSON: I didn't ask him about the type
3 of business he is in. I asked him if he reads any
4 mail that mentions the TCPA.

5 MS. BREER: That's a yes-or-no question. 11:48:28AM

6 THE WITNESS: Yes.

7 MS. BREER: Go ahead.

8 BY MR. MANSON:

9 Q. Other than things from your attorney, what
10 mail do you read that mentions the TCPA? 11:48:34AM

11 Again, I don't want you to answer with
12 respect to anything to or from your attorney or
13 Optima's attorney.

14 MS. BREER: It's just that the whole
15 question is -- I think we can do better than that. 11:48:47AM
16 It's very speculative. You are saying hypothetically
17 what do you or don't you read. Why don't you ask him
18 what he does and doesn't read.

19 MR. MANSON: That's exactly what I did ask
20 him. 11:49:02AM

21 MS. BREER: He answered he didn't read this
22 particular letter. So we're not talking about this
23 mail anymore?

24 MR. MANSON: I said any mail referring to
25 the TCPA, and he said, "Yes." 11:49:10AM

1 MS. BREER: Okay.

2 MR. MANSON: Now I am asking what mail is
3 it.

4 MS. BREER: Okay.

5 THE WITNESS: I believe it was a demand
6 letter from Jimmy Sutton that had the TCPA in it,
7 that I recall.

11:49:16AM

8 BY MR. MANSON:

9 Q. Did you read that entirely?

10 A. In its entirety, I would have to say no.

11:49:28AM

11 Bless you.

12 Q. Did you bring a copy of that letter with you
13 today?

14 A. My attorney might have it.

15 MR. MANSON: Did you bring a copy of the
16 Jimmy Sutton demand letter?

11:49:46AM

17 MS. BREER: I have a Complaint. I don't
18 know that I have a demand letter.

19 THE WITNESS: That's what I mean.

20 MS. BREER: Were you talking about a

11:49:56AM

21 Complaint or demand letter?

22 THE WITNESS: Complaint.

23 BY MR. MANSON:

24 Q. So you are talking about a Complaint?

25 A. I got the two mixed up. I'm sorry.

11:50:02AM

1 Q. Let's change gears a little bit.

2 Jimmy Sutton -- you are saying you received
3 a Complaint. I think it's fair to say that Jimmy
4 Sutton has sued Optima Funding, and you also said he
5 sued you personally. Would that be a correct
6 statement? 11:50:17AM

7 A. Correct.

8 Q. Prior to that suit, did you receive any kind
9 of letter -- or did you receive any kind of letter
10 from Jimmy Sutton stating that he would sue you or
11 was planning on suing you? 11:50:27AM

12 A. Yes.

13 Q. Now there's foundation.

14 What did you do with that letter that you
15 received from Jimmy Sutton? 11:50:37AM

16 A. Forwarded it to my attorney.

17 Q. Then this is for you and your counsel: Do
18 you have a copy of that letter with you today?

19 MS. BREER: I don't believe so.

20 MR. MANSON: Why not? 11:50:48AM

21 MS. BREER: I believe that's a document that
22 came into my possession pursuant to the
23 attorney-client relationship, and it would be
24 privileged. I don't know offhand if I looked at it
25 or reviewed it, but I can tell you basically anything 11:51:01AM

1 that comes from a client, usually comes with some
2 kind of a transmittal or a cover, and I would not
3 disclose that.

4 BY MR. MANSON:

5 Q. The letter came from a third party; correct? 11:51:12AM

6 MS. BREER: No.

7 MR. MANSON: I'm asking your client.

8 BY MR. MANSON:

9 Q. The letter came from Jimmy Sutton, or at
10 least purported to come from Jimmy Sutton? 11:51:20AM

11 MS. BREER: That's not the issue.

12 MR. MANSON: Let me finish asking the
13 question, please.

14 BY MR. MANSON:

15 Q. Did the letter purport to come from Jimmy
16 Sutton? 11:51:26AM

17 A. Yes.

18 MR. MANSON: There is no privilege for a
19 document coming from a third party.

20 MS. BREER: It didn't come from a third
21 party to me. 11:51:33AM

22 MR. MANSON: I'm not asking for the
23 transmittal letter or cover letter or anything else.
24 I'm asking for the letter itself. That's not a
25 privileged document. 11:51:41AM

1 MS. BREER: I disagree. But maybe we can
2 talk about it -- why don't we move through. We can
3 talk about that. I think that anything that I get
4 from my client in the relationship is privileged, if
5 that's the only way that it is coming into my
6 possession. And I don't think that you look at what
7 the letter itself -- what it's about.

11:51:53AM

8 MR. AMKRAUT: All right. Let me put in my
9 two cents worth.

10 MS. BREER: That's my feeling on it. I'm
11 not saying it has to end here. And if you guys can
12 convince me that that is inappropriate -- I mean,
13 attorney-client privilege is pretty absolutely
14 important, and I need to claim it wherever it exists.

11:52:07AM

15 MR. AMKRAUT: Then let us put something on
16 the record so that it's clear we're trying to resolve
17 the problem. First off, the deposition Subpoena was
18 sent to Mr. Shah, not to you.

11:52:19AM

19 MS. BREER: That's right.

20 MR. AMKRAUT: A person who is in possession
21 of documents relevant to a case, whether or not he
22 handed them to someone else, is required to produce
23 them. He cannot refuse to produce them just because
24 he gave them or made copies of them and gave copies
25 to someone else who is his agent; otherwise, anyone

11:52:34AM

11:52:53AM

1 can conceal any document requested in discovery just
 2 by handing it to his lawyer and then claiming it's
 3 privileged.

4 Of course, these documents are in Mr. Shah's
 5 constructive control, even if he doesn't have the 11:53:09AM
 6 physical original with him. But he certainly cannot
 7 protect them just by handing them to his lawyer and
 8 then the lawyer saying they are protected because she
 9 got them from a client.

10 Now, any letters from him to you that he 11:53:24AM
 11 wrote or letters from his lawyer to him or to the
 12 corporation that the lawyer wrote or things like that
 13 are not being asked for here.

14 MS. BREER: Okay.

15 MR. AMKRAUT: The plaintiff is simply asking 11:53:38AM
 16 for something that is obviously relevant and may lead
 17 to admissible evidence and is within the scope of
 18 discovery because it will tend to indicate knowledge
 19 of the TCPA, and it will tend to indicate the state
 20 of mind relevant to whether there was willful or 11:53:57AM
 21 knowing violation. And one of the issues is whether
 22 the behavior might have been willful or knowingly.

23 MS. BREER: I'll look and see if there is a
 24 letter. Generally, I didn't think that would be
 25 something -- that may or may not be. I can look at 11:54:14AM

1 that. If there is a letter, I'll give you the
 2 letter, if there is a demand letter from Jimmy
 3 Sutton.

4 You also have to understand -- if I have it.
 5 I don't know that I have it. So we're not saying
 6 that I have it necessarily. I will look. 11:54:25AM

7 MR. AMKRAUT: It was certainly requested on
 8 the exhibit list in connection with this deposition,
 9 was it not?

10 MS. BREER: But I will look and see. I 11:54:40AM
 11 don't believe there is a demand letter like that.

12 MR. MANSON: I would also ask that when you
 13 take a look, you also look for any other
 14 communications from third parties to your client or
 15 Optima -- 11:54:52AM

16 MS. BREER: That are not privileged.

17 MR. MANSON: -- or to you.

18 MS. BREER: It depends how they came into my
 19 possession and if I have them. I will look. I have
 20 looked in fact for -- Jimmy Sutton -- there was a 11:55:01AM
 21 lawsuit, and that's what I copied. I didn't take it
 22 beyond that. That's what I had.

23 MR. MANSON: You copied all documents from
 24 Jimmy --

25 MS. BREER: I brought Jim Sutton's letter. 11:55:12AM

1 MR. MANSON: Letter or Complaint?

2 MS. BREER: I'm sorry. Complaint. I am
 3 just saying -- we're talking about Jimmy Sutton's
 4 letter, period. I will look for that. I didn't even
 5 bother to look further because I had the Complaint. 11:55:29AM
 6 I thought that's what you and I discussed; that I
 7 would be bringing regarding Sutton.

8 MR. MANSON: We didn't necessarily limit our
 9 discussion of Sutton. Let me expand on some more
 10 questions with your client. 11:55:40AM

11 MS. BREER: I don't think it's
 12 appropriate -- only one person can take a depo, a
 13 deposition. I don't think that in the future we need
 14 Mr. Amkraut to make objections on the record. I
 15 don't think that's appropriate. I never had that 11:55:50AM
 16 done before, but that seems odd to me.

17 MR. MANSON: He didn't make an objection.
 18 He responded to your objection. Counsel, he is
 19 allowed to speak. We agreed that I would ask your
 20 client the questions, and we've maintained that. Mr. 11:56:01AM
 21 Amkraut is free to speak here at the deposition.

22 MS. BREER: All right. Let's continue.

23 BY MR. MANSON:

24 Q. Mr. Shah, you mentioned that there were --
 25 between individuals and businesses you received over 11:56:16AM

1 5 letters containing allegations of TCPA violations.

2 Do you have copies of those letters with you
3 today or those written -- those letters? Do you have
4 copies of those letters here today?

5 A. I don't, but my attorney might. 11:56:36AM

6 MR. MANSON: Can we get those copies,
7 please?

8 MS. BREER: What are you referring to?

9 MR. MANSON: What I just said: copies of
10 letters with TCPA allegations. 11:56:47AM

11 MS. BREER: I don't know if I have any
12 letters. This is what I brought responsive to the
13 document request.

14 MR. MANSON: Let's go off the record for a
15 moment while I look at this. 11:57:00AM

16 (A discussion was held off the record.)

17 MR. MANSON: Back on the record.

18 BY MR. MANSON:

19 Q. Your attorney has provided us with some
20 documents that she claims are all that she has that
21 is responsive to the document request contained in
22 the Notice of Deposition. 12:04:16PM

23 MS. BREER: If I can clarify, all that I
24 have that are responsive and non privileged.

25 MR. MANSON: Responsive and non privileged. 12:04:33PM

1 MS. BREER: That's either by the
 2 work-product privilege or the attorney-client
 3 privilege.

4 BY MR. MANSON:

5 Q. These documents -- I am going to break them 12:04:42PM
 6 into two categories. The first is there is one page
 7 that states that it is plaintiff's claim. It appears
 8 to be a small claims court, plaintiff's claim against
 9 Optima Funding and Ali Shah Velayati. And I am sorry
 10 if I butchered the pronunciation. It's dated 12:04:59PM
 11 11/22/04. Jimmy Sutton is the plaintiff.

12 The second, what I am calling "category" is
 13 a voluminous stack of documents relating to a matter
 14 which I will title Richard Sybert, S-y-b-e-r-t, as an
 15 individual and on behalf of the general public versus 12:05:25PM
 16 Award Centers, et al., and that "et al." does include
 17 "Optima Funding Incorporated." It does not appear to
 18 name Ali Shah individually. So these are the two
 19 categories of documents that I have.

20 In earlier questioning, I believe, you 12:05:47PM
 21 stated that Optima has been sued more than five times
 22 for TCPA violations; is that correct, Mr. Shah?

23 A. No. Your question was -- you asked it
 24 differently.

25 Q. I'm sorry. I believe it was "Have you 12:06:05PM

1 received any kind of letter, communication that
2 Optima -- that alleged Optima or you individually had
3 violated the TCPA?"

4 There have been more than five of those; is
5 that correct?

12:06:22PM

6 A. Correct.

7 Q. I only have documents here relating to two
8 of them. Do you know why that might be?

9 MS. BREER: If you know. That calls for
10 speculation.

12:06:37PM

11 BY MR. MANSON:

12 Q. This is going to probably call --

13 MS. BREER: I am also going to object --

14 MR. MANSON: Can you stop interrupting me,
15 please.

12:06:44PM

16 MS. BREER: All right.

17 MR. MANSON: Go ahead with your objection
18 because that takes priority. There have been a lot
19 of interruptions.

20 MS. BREER: Why don't you -- what is your
21 next question?

12:06:50PM

22 BY MR. MANSON:

23 Q. My next question is these appear to relate
24 to two items that you may have received. What would
25 you have done with the other three or more notes of

12:07:01PM

1 allegations?

2 MS. BREER: That's been asked and answered.
 3 He told you when he gets anything regarding this type
 4 of matter, he sends it to his attorney. That's been
 5 asked and answered. If you are going to ask it
 6 again -- I hope not.

12:07:14PM

7 MR. MANSON: With you putting that on the
 8 record, no. Then I am going to ask why copies of
 9 those were not produced today. He is responsible for
 10 producing documents responsive.

12:07:24PM

11 MS. BREER: He is responsible for producing
 12 documents that he has in his possession.

13 MR. MANSON: Including his constructive
 14 possession which would be non privileged documents.

15 MS. BREER: That are in his constructive
 16 possession. I don't know that -- you've got a depo
 17 thing that doesn't say that.

12:07:34PM

18 MR. MANSON: Doesn't say what?

19 MS. BREER: Your deposition request asked
 20 him to bring whatever he has in his possession. I
 21 feel I have even gone beyond what you have asked for
 22 by producing these. But because I told you I would,
 23 I did.

12:07:42PM

24 MR. MANSON: Okay.

25 MS. BREER: That particular Notice does not

12:07:55PM

1 say "and also everything else that everyone else has
2 in their possession."

3 MR. MANSON: It doesn't limit it to his
4 possession. It says, "All documents that claim that
5 Optima Funding violated any provision of the TCPA." 12:08:10PM

6 MS. BREER: That he has in his possession.
7 That's what he is supposed to bring.

8 MR. MANSON: That includes constructive
9 possession in terms of --

10 MS. BREER: I don't know that it does. What 12:08:19PM
11 I brought you is what I think are non privileged and
12 that I think are responsive to your question.

13 MR. MANSON: Will you produce -- after today
14 in the next couple of days, will you produce any
15 remaining documents that contain -- that you have in 12:08:37PM
16 your possession, Terri, Ms. Breer, responsive to the
17 13 document requests for Optima and the 11 --

18 MS. BREER: If you want me to revisit my
19 prior analysis of what was responsive to those
20 requests and see if there is anything else that I 12:08:53PM
21 think would be responsive, also in light of the
22 objection of Mr. Amkraut put on the record, I will do
23 that. I don't believe there are going to be any
24 more, but I will look.

25 MR. MANSON: Okay. I want to clarify what 12:09:06PM

1 you just said. Am I hearing correctly that you don't
2 believe you have anything -- any other documents from
3 third parties that claim that Optima or Ali Shah
4 violated any provision of the TCPA?

5 MS. BREER: First of all, I don't have any 12:09:24PM
6 documents other than what I may have obtained from my
7 client or that is something that is an ongoing matter
8 like Sybert.

9 MR. MANSON: Okay.

10 MS. BREER: I have made my own evaluation as 12:09:37PM
11 to what was privileged and not privileged. And I
12 have the work-product privilege which I think is very
13 extensive as far as my files go, regardless of
14 whether it came from a client and was privileged,
15 which is a broad privilege and the attorney-client 12:09:53PM
16 privilege. Both are very important, and both require
17 me strictly to claim them when I can. And so I made
18 that analysis. I also was responsive to what those
19 items were. And that's what I produced.

20 Now, we've had a little bit of a skirmish 12:10:09PM
21 about apparently there may be some Jimmy Sutton
22 demand letter that apparently you seem to think it
23 exists and I should have it.

24 I did not go any further into that file
25 today other than to look for that. If there is a 12:10:19PM

1 demand letter, then I think -- if I check out what
 2 Mr. Amkraut has put on the record and I agree that
 3 that's true and I find that letter, then I will
 4 produce it.

5 MR. MANSON: And you will do the same for --

12:10:34PM

6 MS. BREER: In light of that, I still
 7 question -- I still am disputing how broad the
 8 attorney-client privilege really does go with respect
 9 to documents that I received from a client that have
 10 other markings on them or that have other things that
 11 might have to do with the attorney-client privilege,
 12 and that's all. But I will revisit those, but I
 13 really feel that you do have what is responsive
 14 there.

12:10:48PM

15 MR. AMKRAUT: I would just point out that
 16 any client communications in the form of marginal
 17 notes on documents or anything added to it can be
 18 whited out so that you don't reveal any privileged
 19 material.

12:11:06PM

20 MS. BREER: I understand that.

12:11:24PM

21 MR. AMKRAUT: You can produce the thing that
 22 the client got from the third party.

23 MS. BREER: I think that also can be
 24 burdensome, and I don't know that I am required to
 25 necessarily do that. And if I think something is

12:11:33PM

1 privileged, that's also -- also the same issue would
 2 hold with work product.

3 And, you know, I have never litigated the
 4 issue of how broad work product is going. I haven't
 5 had dispute like that. So I am having to use my own
 6 judgement on that, and that's what I have exercised.
 7 I think that's all you are entitled to.

12:11:48PM

8 Furthermore, I just want to put on the
 9 record that I don't even know that that document
 10 request even should extend to me the way it's
 11 drafted.

12:11:59PM

12 MR. AMKRAUT: Let me point out --

13 MS. BREER: It's not a document request.
 14 It's a production to bring documents to a deposition.

15 MR. AMKRAUT: Yes. And so far as I know,
 16 there was no written objection to any of these prior
 17 to the objection --

12:12:12PM

18 MS. BREER: Except --

19 MR. AMKRAUT: -- unless I am misinformed.

20 MS. BREER: You are because we had an
 21 agreement that I was not required to bring anything
 22 privileged because we got into a discussion, and we
 23 avoided bringing a motion to compel. And I
 24 applauded -- we both applauded each other that we
 25 were able to do that because we agreed that anything

12:12:22PM

12:12:33PM

1 that wasn't privileged was all we were talking about.

2 MR. AMKRAUT: No one is ever required to
3 produce at a deposition or otherwise material that is
4 privileged; so I am not sure how that would -- please
5 Ms. Breer.

12:12:50PM

6 However, litigation would certainly come to
7 a standstill if anyone from whom documents were
8 requested could avoid producing them simply by
9 handing the originals over to the possession of their
10 lawyer. That has never been the law.

12:13:10PM

11 The request was made to Mr. Shah.
12 Mr. Shah's attorneys are his agents and therefore act
13 at his command --

14 MS. BREER: You already made that objection
15 on the record.

12:13:27PM

16 MR. AMKRAUT: Ms. Breer, please. I haven't
17 interrupted you. This is really way out of line. He
18 is required to produce these things. The issue is
19 not really between the plaintiff and the defendant's
20 lawyer. The issue is between the plaintiff and
21 Mr. Shah. And if he had those things, if they exist,
22 he is supposed to produce them. If they don't exist,
23 he is supposed to answer questions about what
24 happened to them.

12:13:42PM

25 MS. BREER: Let me ask this.

12:13:58PM

1 MR. AMKRAUT: No. Please don't interrupt
2 me.

3 If there are things which Mr. Shah asserts
4 are privileged, then he should tell us what those
5 things are and what privileges apply so that an
6 appropriate motion to compel can be made. But a
7 defendant simply --

12:14:11PM

8 MS. BREER: Like I said --

9 MR. AMKRAUT: -- discovery in this way.

10 MS. BREER: I will re-evaluate my decision
11 making in what documents I have that are responsive.
12 If there is anything else that I feel should have
13 been produced, I will produce it.

12:14:23PM

14 MR. MANSON: And I would ask that you
15 identify things that you are not producing and why
16 because Mr. Amkraut is absolutely correct. We will
17 need to -- it sounds like we may need to prepare a
18 motion to compel. You and I had extensive
19 discussions that you don't simply get to evaluate
20 what you think is responsive; that you don't get to
21 evaluate --

12:14:36PM

12:14:52PM

22 MS. BREER: I get to evaluate work product.

23 MR. MANSON: Yes, you do. You still have to
24 describe the document that is being deemed privileged
25 so that we can prepare a motion to compel, whether

12:15:04PM

1 it's attorney-client privilege or work-product
2 privilege so that we can prepare a motion to compel
3 and have that document produced.

4 MS. BREER: There's a couple of things that
5 I would have to look into whether or not I feel you
6 are warranted with that. 12:15:15PM

7 Definitely regarding the nature of that
8 Notice -- I don't think that Notice was directed the
9 way you said. Okay. We made our --

10 MR. RIGNEY: May I? 12:15:27PM

11 MR. MANSON: Sure.

12 MR. RIGNEY: Our court reporter is having a
13 hard time because everybody is going at the same
14 time. So my respect to you.

15 MR. MANSON: Okay. Again, we will try not
16 to interrupt each other? 12:15:40PM

17 MS. BREER: Okay.

18 BY MR. MANSON:

19 Q. All right. Mr. Shah, have you received any
20 notices of any sort whether a Complaint, a letter or
21 other document that alleged TCPA violations that you
22 did not turn over to your attorney? 12:16:05PM

23 MS. BREER: It's compound.

24 THE WITNESS: Did not turn over to my
25 attorney? 12:16:27PM

1 BY MR. MANSON:

2 Q. Correct.

3 A. No. They were all forwarded to my attorney.
4 The ones that -- repeat your question one more time.

5 Q. Sure. Have you individually -- I am going
6 to restate the question. This is a different
7 question.

8 Have you individually received any documents
9 alleging TCPA violations that you did not turn over
10 to your attorney?

11 A. No.

12 Q. Has Optima ever received any notices of any
13 sort alleging TCPA violations that were not turned
14 over to your attorney?

15 A. No.

16 Q. I believe this may have been asked, but I am
17 going to refresh my own memory by asking again: Of
18 the documents that you turned over to your attorney
19 that you received -- let me rephrase it.

20 When you receive documents from third
21 parties alleging TCPA allegations, do you keep copies
22 of those when sending them to your attorney?

23 A. No.

24 Q. Do you send them to your attorney by
25 facsimile or by mail?

1 A. Either or.

2 Q. Either or?

3 A. Uh-huh.

4 Q. When you fax those to your attorney, what do
5 you do with the original? 12:17:34PM

6 A. Forward it to her.

7 MS. BREER: I'm going to object because this
8 is getting into the attorney-client privilege. I
9 should have done that earlier.

10 How he communicates and how he interacts 12:17:44PM
11 with his attorney is privileged.

12 So I am going to instruct you not to answer
13 any more questions about how you and I interact.

14 MR. MANSON: I don't believe the means of
15 interaction is privileged. 12:17:53PM

16 MS. BREER: I disagree.

17 MR. AMKRAUT: Also the questions are
18 designed to elicit where the originals of these
19 documents are. He is not asking --

20 MS. BREER: Why don't you ask him if he 12:18:05PM
21 knows where the originals are? That doesn't invade
22 the attorney-client --

23 BY MR. MANSON:

24 Q. Do you know where the originals of any
25 notices that you received from third parties alleging 12:18:14PM

1 TCPA violations are?

2 A. Yes.

3 Q. Where are they?

4 A. With my attorney.

5 Q. Have you ever sought the advice of counsel
6 regarding the TCPA?

12:18:20PM

7 MS. BREER: I'm going to object. That's
8 clearly engaging in the privilege.

9 MR. MANSON: I am asking whether he sought
10 advice. I'm not asking what the advice was or the
11 conversation with counsel.

12:18:40PM

12 MS. BREER: I think whether or not he sought
13 advice is privileged.

14 MR. MANSON: Are you instructing your client
15 not to answer?

12:18:46PM

16 MS. BREER: Yes.

17 BY MR. MANSON:

18 Q. Has Optima taken any actions to comply with
19 the TCPA?

20 MS. BREER: That is completely uncertain and
21 ambiguous. What does that mean?

12:19:01PM

22 MR. MANSON: Exactly what the question
23 states.

24 MS. BREER: I don't know. I think you can
25 be a little more specific about what they may have

12:19:12PM

1 done instead of just any action.

2 MR. MANSON: I don't want to be accused of
3 leading.

4 BY MR. MANSON:

5 Q. I'm going to ask the question, and you can
6 tell me if it's unclear to you.

12:19:23PM

7 Has Optima taken any action to comply with
8 the TCPA?

9 MS. BREER: If you can answer that outside
10 of that, you probably could. Go ahead, if you can.

12:19:39PM

11 THE WITNESS: We don't do faxing. When you
12 say "comply," tell me more about what you mean by
13 that.

14 BY MR. MANSON:

15 Q. You said that Optima doesn't do any faxing.
16 Have you taken any actions to ensure any of your
17 agents don't do any faxing?

12:19:54PM

18 A. Yes. It's very clear to any vendor that I
19 work with that I don't do faxing at all. I mean,
20 it's not -- very clear.

12:20:21PM

21 Q. Do any of your vendors do faxing?

22 A. No, not that I am aware of.

23 Q. Do any of your lead generation companies do
24 any faxing?

25 A. No.

12:20:30PM

1 Q. Have you ever asked them if they do?

2 A. Have I ever asked them? I made it very
3 clear with every single one of them not to do faxing
4 at all.

5 Q. Tell me how you have made that clear. 12:20:39PM

6 A. Just like I told you.

7 Q. No. Tell me how you made it clear to them.

8 You said you made it very clear. How? Have
9 you sent any written documents to any of your vendors
10 telling them not to do faxing? 12:20:53PM

11 A. Not that I am aware of, no.

12 Q. Have you sent them any e-mails telling them
13 not to do faxing?

14 A. Not that I am aware of, no.

15 Q. Have you had telephone conversations with 12:21:05PM
16 them in which you told them not to do faxing?

17 A. No.

18 Q. Have you had any in-person discussions,
19 face-to-face discussions with them in which you told
20 them not to do faxing? 12:21:22PM

21 A. No.

22 Q. I'm going to go back to the original
23 question: How have you made it clear to them not to
24 do faxing, then?

25 MS. BREER: First of all, maybe we should -- 12:21:39PM

1 MR. MANSON: There is a question pending.

2 MS. BREER: -- define who they are. That's
3 very vague and open.

4 MR. MANSON: He used the term "vendors."
5 I'm using the same term because he understands
6 vendors. 12:21:49PM

7 BY MR. MANSON:

8 Q. How have you instructed or made clear -- how
9 have you made clear to vendors that they are not to
10 do faxing on behalf of Optima or Optima's benefit? 12:21:57PM

11 MS. BREER: Do you want to take a break? I
12 don't know why this is causing you problems.

13 Can we go off the record for a minute?

14 MR. MANSON: I'd rather not with a pending
15 question. No. If he is unclear on the question, he
16 can tell me that, and I can try to rephrase it. 12:22:13PM

17 MS. BREER: I let your client take numerous
18 breaks during his deposition.

19 THE WITNESS: Rephrase the question.

20 MS. BREER: If you want to rephrase -- 12:22:24PM

21 BY MR. MANSON:

22 Q. I believe you stated that your vendor --
23 that you have made it clear to vendors that they are
24 not to fax.

25 A. Uh-huh. 12:22:34PM

1 Q. How have you made that clear to vendors?

2 A. How have I made it clear to vendors?

3 MS. BREER: Can we just use the word
4 "communicate"? Maybe that's what is throwing him.

5 MR. MANSON: I'm using his own words. 12:22:47PM

6 MS. BREER: Okay.

7 MR. MANSON: If he is going to use certain
8 words, I believe he probably --

9 MS. BREER: What did you mean by that, that
10 you made it clear to them? 12:22:54PM

11 THE WITNESS: I would like to take a break.

12 MS. BREER: Okay.

13 MR. MANSON: Off the record.

14 (A conference was held between the
15 witness and his counsel.) 12:24:28PM

16 MR. MANSON: Back on the record.

17 Can you read back the pending question.

18 (The following question was read back
19 by the court reporter as requested:

20 "QUESTION: How have you made
21 that clear to vendors?")

22 BY MR. MANSON:

23 Q. Is that enough?

24 A. When you say "vendors," who are you talking
25 about? 12:24:57PM

1 MS. BREER: It was your word.

2 THE WITNESS: Right.

3 BY MR. MANSON:

4 Q. You used the word "vendors." Who were you
5 talking about? 12:25:03PM

6 A. The people that I do business with for my
7 leads for leads.

8 Q. How do you make it clear to people that you
9 do business with for leads that they are not to fax?

10 A. I told them in person not to do faxing
11 whatsoever. 12:25:15PM

12 Q. I asked you a few minutes ago if you told
13 them in person, and you said, "No."

14 A. The way you asked the question, I didn't
15 understand. I do apologize. 12:25:28PM

16 Q. When you say "in person," do you mean face
17 to face or over the telephone?

18 A. Both.

19 Q. Let's talk a little bit. Tell me who are
20 the vendors lead companies that you do business with? 12:25:38PM
21 Who are these vendors?

22 A. As far as all of them?

23 Q. Yes.

24 A. Most of them?

25 Q. All of them. 12:25:49PM

1 A. Viacom Outdoor. We've got KTLA.

2 Q. Please go a little bit slower. Viacom
3 Outdoor, KTLA, the TV station?

4 A. Uh-huh.

5 Q. They are a lead company for you?

12:26:02PM

6 A. No, no. I'm sorry. When you say "vendor,"
7 that's a company.

8 Q. I am using it -- the way you just used it, I
9 believe you said people you get leads from?

10 A. Yes.

12:26:12PM

11 Q. I want those vendors that you get leads
12 from.

13 A. Okay. Penny Saver, Live Leads. That's all
14 I can name right now. There are more.

15 Q. There are more?

12:26:30PM

16 A. I will get you a list if you would like.

17 Q. I definitely want a list.

18 Penny Saver -- is that the small news print
19 magazine that is distributed free to homes? Is that
20 the Penny Saver you are talking about?

12:26:41PM

21 A. Yeah.

22 Q. You get leads from them?

23 A. No. They do our print ads. The way you
24 asked the question -- no.

25 Q. How about Live Leads? Do they do print ads?

12:26:55PM

1 What is your relationship with Live Leads?

2 A. They get us various type of marketing for
3 leads.

4 Q. To your knowledge, what type of marketing do
5 they do to get leads? 12:27:11PM

6 A. Telemarketing, other types of marketing.
7 Mainly telemarketing and other sources.

8 Q. What other sources?

9 A. I couldn't really tell you.

10 Q. What do you mean when you say
11 "telemarketing"? 12:27:21PM

12 A. Exactly what I mean: telemarketing.

13 Q. What is your understanding of what they do?

14 A. They call and see -- prospective clients.
15 They find prospective clients for us. Those are 12:27:37PM
16 leads. They have internet leads. We also have
17 companies that we buy internet leads from.

18 Q. What companies do you buy internet leads
19 from?

20 A. I don't recall the names, but I can get
21 that. 12:27:46PM

22 Q. Do you recall any of them?

23 A. No.

24 Q. Going back to Live Leads and telemarketing,
25 what is your understanding -- do you know whether 12:27:56PM

1 they do what is generally known as "cold calling"
2 where they are going through and calling people?

3 A. I don't know.

4 Q. Do you know -- you mentioned they also get
5 leads from other sources.

12:28:12PM

6 Do you know what other sources?

7 A. I do not know, no.

8 Q. Have you ever talked about how they get
9 leads with Live Leads?

10 A. I made it very clear I won't have nothing to
11 do with faxing.

12:28:20PM

12 Q. Have you ever had any reason to believe that
13 any of your vendors have sent faxes and gotten leads?

14 A. Yes. There was a company that was that we
15 were working with. I believe the name was Link
16 Point. As soon as I found out, I basically fired the
17 company.

12:28:41PM

18 Q. When was that?

19 A. A few months ago.

20 Q. A few months ago?

12:28:58PM

21 A. Yes. Less than a few months ago.

22 Q. When did you start doing business with Link
23 Point?

24 A. I don't recall exactly when.

25 Q. Approximately.

12:29:09PM

1 A. Six, seven months ago.

2 Q. Anyone else?

3 A. No.

4 Q. Okay.

5 A. Not to my knowledge.

12:29:30PM

6 Q. How did you become aware that they were
7 sending faxes?

8 A. I don't recall, but as soon as I found out,
9 I discontinued doing business with that company.

10 Q. How did you notify them that you were no
11 longer doing business with them?

12:29:56PM

12 A. I had Donna send them -- we stopped it
13 immediately.

14 Q. Donna sent them what?

15 A. Sent them either a letter or by telephone.

12:30:15PM

16 Q. Okay.

17 A. We stopped doing business.

18 Q. Can you check your file, and if there is
19 such a letter, produce that letter?

20 A. Absolutely.

12:30:16PM

21 MR. MANSON: I believe you would agree
22 that's responsive to the document request.

23 MS. BREER: Oh, I don't know. What did it
24 say? Depending on what she wrote. It says -- if it
25 made reference to junk fax or facsimile advertisement

12:30:20PM

1 or TCPA.

2 MR. MANSON: Okay.

3 BY MR. MANSON:

4 Q. Was there any kind of written agreement with
5 Link Point? 12:30:41PM

6 A. A written agreement, no.

7 Q. What were the terms of your business
8 arrangement with Link Point?

9 A. Paper lead.

10 Q. How much did you pay per lead? 12:30:53PM

11 A. The estimate is different. \$100 a lead or
12 \$200 a lead. It varied.

13 Q. Did it vary beyond that range, or was it
14 between 100 and 200?

15 A. Between 100 and 200. 12:31:10PM

16 Q. What constituted a lead? Was it a phone
17 call from someone -- I'm sorry. Let me strike that
18 and restate it.

19 How did they provide you with these leads?

20 A. Explain what you mean by that when you say
21 "provide." 12:31:33PM

22 Q. How did they communicate these leads to you?
23 Did they transfer a telephone call to you? Did they
24 give a number of someone to call?

25 Please tell me how they communicated the 12:31:47PM

1 leads to you.

2 A. Yeah. We would get -- that's not a clear
3 question that you are asking.

4 MS. BREER: I'm sorry.

5 BY MR. MANSON:

6 Q. I'm not sure where the confusion is.

7 You said that Link Point would give you
8 leads; is that correct?

9 A. Uh-huh, correct.

10 Q. What form were those leads in? Did they
11 give you a list of people to call, or did they
12 transfer a live call to you?

12:32:10PM

13 MS. BREER: Maybe that would help. Were
14 they verbal leads? Written leads? How would the
15 lead be sent to you? Did they come to you
16 personally?

12:32:27PM

17 Maybe that's where the problem is.

18 THE WITNESS: We get different leads from
19 different sources.

20 BY MR. MANSON:

21 Q. I am asking from Link Point. How did Link
22 Point give you leads? If there were a number of
23 different ways, tell me all the different ways.

24 A. Via e-mail. You could get the name and
25 number of the client that way.

12:33:12PM

1 Q. Were there other means?

2 A. Not that I am aware of, no.

3 Q. So Link Point would e-mail you the name and
4 telephone number of someone to call; is that correct?

5 A. The question you are asking is a little
6 confusing because there is other ways. Yeah.

12:33:30PM

7 Q. I am going to restate this. I know it's
8 probably been asked and answered, but I want to
9 clarify for my mind.

10 The only way Link Point would give you leads
11 was via e-mail with the name and number of the
12 client; is that correct?

12:33:43PM

13 A. Yes, correct.

14 Q. Was there any other information in that
15 e-mail that they would send you?

12:33:54PM

16 A. Huh-uh, no.

17 Q. Would each e-mail have one name and number
18 of a client or could it contain multiple leads?

19 A. Just one.

20 Q. Did you pay them -- you said before that you
21 paid per lead.

12:34:05PM

22 Did you pay them for each e-mail then or --
23 let me restate that.

24 You said you paid them 100 to 200 per lead.
25 Is each e-mail considered a lead?

12:34:27PM

1 A. No.

2 Q. Why not? Why was each e-mail not considered
3 a lead?

4 A. Because there is a filtration process. We
5 had basically -- how can I put that? Give me a
6 minute. 12:34:54PM

7 Okay. What happens is with Link Point there
8 is a lot of calls. We mainly specialize in
9 refinancing in Southern California. There are a lot
10 of people that are not qualified. 12:35:18PM

11 Q. Okay.

12 A. So when I say "not qualified," they don't
13 own a home or they are either renting or they are
14 looking to buy a home. We mainly specialize, again,
15 in the refinance market. That's why I am unclear. 12:35:32PM
16 So, no.

17 Q. Who would do that qualification or
18 filtration process?

19 A. Our loan officers would call, and a lot of
20 times that client would not own a home or is not even
21 qualified at all. 12:35:49PM

22 Q. When you say a "loan officer," do you mean
23 one of your employees?

24 A. Correct.

25 Q. So the loan officer would then determine 12:35:59PM

1 whether the e-mail qualified as a lead; is that
2 correct?

3 A. Uh-huh.

4 Q. You would only pay Link Point for those
5 qualified leads, then; is that correct?

12:36:21PM

6 A. Correct.

7 Q. Approximately how many e-mails -- whether
8 qualified or not, how many e-mails did Link Point
9 send you during the months that you did business?

10 A. I don't recall.

12:36:44PM

11 Q. Can you give me a best estimate?

12 A. I couldn't.

13 Q. More than 100?

14 A. I couldn't.

15 Q. More than one?

12:36:50PM

16 A. More than one.

17 MS. BREER: I think he answered the
18 question.

19 MR. MANSON: I am entitled to a best
20 estimate.

12:36:56PM

21 MS. BREER: Some kind of best estimate.

22 THE WITNESS: More than one.

23 BY MR. MANSON:

24 Q. More than 50?

25 A. I couldn't tell you.

12:37:02PM

1 Q. Do you know how much you paid Link Point
2 during the months you did business with them?

3 A. I just told you. It's between 100 and 200 a
4 lead.

5 Q. Not per lead but overall. Do you know how
6 much you paid them? 12:37:14PM

7 A. I don't recall now.

8 Q. Did you send them a 1099 at the end of the
9 year?

10 MS. BREER: I am going to object again. I
11 don't even see how the money is being paid could lead
12 to admissible evidence. It's not relevant. 12:37:19PM

13 MR. MANSON: He paid somebody who he admits
14 sent faxes. This is very relevant.

15 MS. BREER: You are talking about the
16 amount. The amount is not relevant. The amount that
17 he paid somebody is not relevant. 12:37:34PM

18 MR. MANSON: I disagree and --

19 MS. BREER: That could lead --

20 MR. MANSON: You can put your objection on
21 the record. 12:37:44PM

22 MS. BREER: Yeah. If you know, you can
23 answer that question.

24 BY MR. MANSON:

25 Q. Do you know how much you paid them total. 12:37:50PM

1 during the months you did business with them?

2 A. No.

3 Q. Did you send them a 1099 at the end of the
4 year for the money you paid them?

5 A. I do not know, but I could find out for you. 12:37:59PM

6 Q. You will find that out for me?

7 A. Uh-huh.

8 Q. And will you also find out how much you paid
9 them and send me that information?

10 A. Yeah. 12:38:07PM

11 Q. You need a sheet of paper --

12 MS. BREER: I will get it.

13 BY MR. MANSON:

14 Q. I want to clarify something.

15 MS. BREER: What was the other one? 1099 12:38:23PM
16 for Link Point and what was the other thing?

17 MR. MANSON: The amount he paid them.

18 BY MR. MANSON:

19 Q. Who was your contact person at Link Point?

20 A. I don't recall his name. 12:38:41PM

21 Q. Can you get that for me as well?

22 A. Absolutely.

23 Q. And also the contact information, address
24 and phone number.

25 A. Okay. 12:38:50PM

1 Q. Do you know if Link Point is a corporation
2 or what type of business it is?

3 A. I don't know.

4 Q. Do you know if they are based here in
5 California?

6 A. I believe so. Yeah.

7 (Interruption in the proceedings.)

8 MR. MANSON: Are you looking for me, Mike?

9 ATTORNEY: I was looking for Jim Osborne.

10 MR. MANSON: Okay.

11 BY MR. MANSON:

12 Q. Were there any other -- did you receive
13 leads from any other person or entity that you know
14 came from faxing?

15 A. No.

16 Q. You mentioned Live Leads as a company that
17 sent you leads.

18 A. Uh-huh.

19 Q. How did they send you leads? Did they send
20 you an e-mail with leads in it?

21 A. No. They would call. We would get a phone
22 call with a name and number of the client, of the
23 lead.

24 Q. Your sales agents would call those people?

25 A. Correct.

12:38:57PM

12:39:36PM

12:39:48PM

12:40:02PM

1 Q. Did you ever receive any live calls as in
2 the lead being transferred on the telephone to you?

3 A. Not that I am aware of, no.

4 Q. How about from any other vendors? Did
5 you -- from any lead generation vendor, did you ever
6 receive any live phone calls with the lead on the
7 phone?

12:40:16PM

8 A. Not that I am aware of, no.

9 Q. Are you aware of any other company in
10 California or any other individual or company using
11 the name "Optima Funding"?

12:40:34PM

12 A. Just us.

13 MS. BREER: That calls for speculation. If
14 he knows.

15 MR. MANSON: I asked for his awareness.

12:40:44PM

16 BY MR. MANSON:

17 Q. Are you aware of any other person or entity
18 or individual that uses the name Optima Funding in
19 all of California?

20 A. No.

12:40:53PM

21 Q. Who is your contact person at Live Leads?

22 A. Jimmy Horvath (phonetic).

23 Q. Could you spell his last name?

24 A. I could not.

25 Q. Could you repeat it, please.

12:41:07PM

1 A. Horvath.

2 Q. Horvath?

3 A. Yes.

4 Q. Do you know what type of business they are?

5 Are they a corporation or anything like that?

12:41:15PM

6 A. I believe they are a corporation.

7 Q. Do you have contact information from them?

8 A. I do, but I don't have them with me. I can
9 get it.

10 Q. If you can get an address and telephone
11 number, I would appreciate it.

12:41:30PM

12 MS. BREER: Quit it. We're getting a big
13 list here.

14 BY MR. MANSON:

15 Q. Terri Breer, the attorney present, is she
16 counsel for both Optima and you individually?

12:42:00PM

17 A. Yes.

18 Q. Do you have any other attorneys as an
19 individual?

20 A. Yes.

12:42:10PM

21 Q. Can you give me their names, please.

22 MS. BREER: I am going to object. What
23 would be the relevance of that? I can't even
24 believe -- it has nothing to do with this case. It's
25 not likely to lead to admissible evidence.

12:42:19PM

1 But you can answer the question. I don't
2 think it's relevant.

3 THE WITNESS: Okay.

4 BY MR. MANSON:

5 Q. Who are those attorneys? 12:42:31PM

6 A. Pistone & Wolder.

7 Q. Can you spell that, please.

8 A. P-i-s-t-o-n-e and Wolder.

9 Q. W-o-l-d -- can you spell that, please.

10 A. W-o-l-d-e-r. 12:42:44PM

11 Q. Is that the name of a law firm?

12 A. Yes. The attorney is Tom Pistone.

13 Q. Tom Pistone?

14 A. Correct.

15 Q. Where are they located? 12:42:52PM

16 A. In Irvine.

17 Q. They are your personal attorneys?

18 A. Uh-huh.

19 Q. Have you had any other personal attorneys in
20 the last two years? 12:42:59PM

21 A. No.

22 MS. BREER: I'm going to make the same
23 objection that it's not relevant.

24 Go ahead and answer.

25 THE WITNESS: No. 12:43:07PM

1 BY MR. MANSON:

2 Q. Does Optima Funding have any other
3 attorneys?

4 A. Other than?

5 Q. Other than Ms. Breer. 12:43:15PM

6 A. Pistone & Wolder.

7 Q. Has Optima Funding had any other attorneys
8 in the last two years?

9 A. No.

10 Q. Has Pistone & Wolder done any work on TCPA 12:43:30PM
11 cases for you?

12 A. No.

13 Q. Thank you. Okay.

14 What is the nature of the Pistone & Wolder's
15 work for you? 12:43:43PM

16 A. Just general.

17 MS. BREER: I'm going to object. Again,
18 that certainly would invade the attorney-client work
19 privilege. The work that that firm is doing for him
20 is privileged. And, again, it's not relevant what 12:43:53PM
21 other work other attorneys are doing. To that
22 extent, I am going to instruct him not to answer
23 regarding specifics of his relationship with Pistone
24 & Wolder.

25 MR. MANSON: It doesn't go to the 12:44:12PM

1 attorney-client privilege because I'm not asking for
 2 the nature of the communication. I'm asking for the
 3 broad -- I am asking for the type of work that they
 4 do for him.

5 MS. BREER: If you limit to that, what is 12:44:21PM
 6 the type of work, without getting into any specifics
 7 of what they have done?

8 THE WITNESS: General.

9 BY MR. MANSON:

10 Q. What is general? "General" is very general. 12:44:28PM
 11 What is the type of work?

12 A. Employee -- how can I put it? Employee
 13 matters, business issues, personal issues.

14 Q. Does any of that relate to allegations
 15 regarding the TCPA? 12:44:49PM

16 A. No.

17 Q. Does any of it relate to junk faxing at all?

18 A. No.

19 Q. Without going into the content of the
 20 communications, have you ever had any conversations 12:44:59PM
 21 with them about the TCPA or junk faxes?

22 MS. BREER: I am going to object. That
 23 would be invading the attorney-client privilege.

24 MR. MANSON: I don't want the content of it.

25 MS. BREER: The existence of those 12:45:13PM

1 conversations is also privileged. The mere fact that
2 he has conversations is privileged. I'm going to
3 instruct --

4 MR. MANSON: First of all, have you ever
5 prepared or reviewed a privilege log? You have to
6 discuss the nature of the document. 12:45:20PM

7 MS. BREER: We're not talking about a
8 document.

9 MR. MANSON: No. That points out the scope
10 of the privilege. 12:45:30PM

11 BY MR. MANSON:

12 Q. I don't want the content of the
13 communication. I want to know if you discussed a
14 particular subject with your attorney.

15 MS. BREER: I think that's very hard to do
16 but -- 12:45:37PM

17 MR. MANSON: I will phrase it as a yes-or-no
18 question.

19 BY MR. MANSON:

20 Q. Have you ever had any discussion with any
21 attorney at Pistone & Wolder regarding the TCPA? 12:45:43PM

22 "Yes" or "no" only, please.

23 A. No.

24 Q. Have you ever had any conversation with any
25 attorney at Pistone & Wolder regarding junk faxes? 12:46:06PM

1 "Yes" or "no" only, please.

2 A. No.

3 Q. Let me think for a couple of minutes.

4 What time is it, David?

5 MR. AMKRAUT: It's 12:45.

12:46:25PM

6 MR. MANSON: Shall we break at one o'clock
7 for lunch?

8 MS. BREER: Sure.

9 MR. MANSON: Let's break in about 15
10 minutes.

12:46:33PM

11 BY MR. MANSON:

12 Q. Before lunch I would like to talk a little
13 bit about how Optima does business.

14 Did Optima lend its own money to its
15 clients?

12:46:49PM

16 MS. BREER: I just still want to make the
17 objection about relevancy. I don't see any way that
18 the -- how they loan money is going to lead to the
19 discovery of admissible evidence. It's certainly --
20 it isn't relevant. I don't know how it would lead to
21 relevant evidence.

12:47:04PM

22 MR. MANSON: Okay.

23 BY MR. MANSON:

24 Q. Does Optima lend its own money?

25 A. We sure do.

12:47:14PM

1 Q. You sure do. Does Optima use third party
2 funding sources?

3 A. Give me an example.

4 Q. Wholesale money lenders. I'll give you a
5 very specific example.

12:47:28PM

6 I want to refi my house. I call you up. We
7 agree that you are going to loan me -- you are going
8 to buy out my existing loan and give me an extra
9 50,000 on top. Let's say my existing loan is
10 200,000. So you are going to loan me \$250,000.

12:47:40PM

11 Where does that money come from?

12 A. It comes from us, but we do sell that loan
13 off.

14 Q. But you being Optima --

15 A. We fund the loan in-house or broker the
16 loan, either way.

12:47:57PM

17 Q. What do you mean when you say "broker the
18 loan"?

19 A. There are different banks that would broker
20 it, meaning there would be the broker involved,
21 different banks that we can work with. There are
22 different banks out there with different programs.
23 If we don't have that program for that client, we can
24 broker that loan out to a different bank.

12:48:16PM

25 Q. What percentage of your loans would you say

12:48:30PM

1 that Optima funds in-house or funds directly?

2 A. What percentage?

3 Q. Of the number of loans.

4 MS. BREER: If you know. You don't have to
5 guess.

12:49:03PM

6 THE WITNESS: It's 30 to 40 percent.

7 BY MR. MANSON:

8 Q. Would the remaining 60 to 70 percent be
9 brokered loans?

10 A. Yeah.

12:49:11PM

11 Q. Are there criteria that determine whether
12 you -- I'm sorry. Let me go back a little.

13 When you fund the loan in-house, can we call
14 that a "direct lended loan"? Is that an acceptable
15 term?

12:49:34PM

16 A. Huh-uh.

17 Q. Is there a particular term you would use?

18 A. No.

19 Q. I am going to use a "direct loan," then.

20 When you do a direct loan, are there
21 criteria to determine whether you are going to do a
22 direct loan or a brokered loan for a particular
23 client?

12:49:41PM

24 A. Risk.

25 Q. Risk. Can you elaborate on that?

12:49:50PM

1 A. Depending on the risk. The credit score,
2 the size of the loan, income documentation. There's
3 a lot of different variables that come into play.

4 Q. Does Optima direct loan for those with
5 higher risk or lower risk? 12:50:10PM

6 A. Lower risk.

7 Q. How about for the amount of the loan? At
8 what stage does --

9 A. Criteria. There is a breakdown. It doesn't
10 really matter -- the size of the loan. The bigger 12:50:24PM
11 the loan, the risk ratio increases.

12 Q. Bigger loans, you are more likely to broker?

13 A. Depends. It all depends.

14 Q. You had mentioned the lower risks are direct
15 lended; is that correct? 12:50:41PM

16 A. Yes.

17 Q. And bigger loans by their very nature are
18 riskier; is that correct?

19 A. Sure.

20 Q. Approximately what dollar amount did Optima 12:50:50PM
21 Funding do direct loans for during 2004?

22 MS. BREER: I want to object again. Can you
23 give me an idea what you are getting at?

24 MR. MANSON: I am trying to get an idea of
25 his business operations so I can get into some more 12:51:07PM

1 questions with respect to a lot of different aspects
2 very relevant to this case.

3 MS. BREER: I hope we do it soon.

4 BY MR. MANSON:

5 Q. Approximately what amount of loans was
6 Optima a direct lender for in 2004?

12:51:21PM

7 A. You are saying volume size as far as the
8 amount of loans we do in-house?

9 Q. Dollar amount, not number.

10 A. Dollar amount for the year 2004?

12:51:39PM

11 Q. Uh-huh.

12 A. This is not going to be an exact number.

13 Q. Your best estimate, please.

14 A. Fifty million.

15 Q. And when you're a direct lender, do you
16 normally keep those loans on your books or do you
17 normally sell those loans after?

12:51:58PM

18 A. We sell those loans.

19 Q. Do you ever keep loans on your books?

20 A. No.

12:52:17PM

21 Q. When you sell them, what percentage --

22 MS. BREER: You know, I'm going to object
23 now. I think this is private, and I think this is
24 getting into trade secrets, and it's into areas that
25 I don't think he can be inquired on. I think you got

12:52:30PM

1 enough of an idea of whatever it is you need to lay a
2 foundation for further questions.

3 MR. MANSON: I disagree. I don't think I've
4 gotten into the kind of information that I want to
5 learn so I can frame questions this afternoon.

12:52:46PM

6 MS. BREER: I think you are getting into
7 areas that -- the financial situation and the
8 financial condition is not relevant at all in this
9 case. And I think that's what you are trying to get
10 at, and I think that is -- you are harassing him in
11 terms of trying to ask him all these things about his
12 business that have absolutely nothing to do with this
13 case for your own sport. I don't know what you're
14 gaining from this.

12:53:02PM

15 MR. MANSON: You are free to object to a
16 particular question based on these things.

12:53:16PM

17 MS. BREER: I want to look -- I think you
18 are getting into private areas here.

19 MR. MANSON: If you think a particular
20 question goes to a private area, then object to it.
21 But let me ask the questions.

12:53:28PM

22 I lost my train of thought.

23 MS. BREER: I think you may be using this
24 information for an improper purpose because I don't
25 understand why you want this information.

12:53:40PM

1 MR. MANSON: Okay. As I said, it's going to
 2 help me to frame questions this afternoon. I need to
 3 understand his business to some extent to understand
 4 everything from his marketing, his lead generation,
 5 his relationships with other entities, and all of
 6 that is very relevant.

12:53:54PM

7 MS. BREER: I don't think -- I don't want
 8 you to get into trade secret areas and so forth. I
 9 don't even know if that's going to happen, but I --

10 MR. MANSON: If you don't know if that's
 11 going to happen, I would ask that you hold your
 12 objections until it happens, please.

12:54:05PM

13 I lost my train of thought. Give me a
 14 moment.

15 BY MR. MANSON:

16 Q. When you get a loan that you are not going
 17 to direct loan -- let me rephrase that.

18 When you get a loan that you want to broker,
 19 how do you go about brokering that? How do you
 20 contact your lenders -- and you can correct me if
 21 that's not the right term -- to see if they are
 22 interested in a particular loan?

12:55:03PM

23 A. There are guidelines that each bank has.

24 Q. Do you have any kind of written agreement
 25 with the banks regarding loans that you are going to

12:55:18PM

1 broker to them?

2 A. There is a broker package that you have to
3 get approved with each bank.

4 Q. What is in that package? And I don't want
5 the details. Just generally describe it, please. 12:55:36PM

6 A. You have to get approved. They have
7 different guidelines and criteria. I don't know what
8 they are. You do have to get approved, and basically
9 the broker package has the information of the
10 mortgage company, which would be us. And when they 12:55:50PM
11 decide to do business with you, they approve you, and
12 that's the end of the story.

13 Q. Do you have any kind of contract with them?

14 A. It's an agreement. I don't know if you want
15 to call it a contract. You can't do business with 12:56:08PM
16 another bank until you are approved with them. You
17 have to -- again, there are certain criteria that you
18 have to meet.

19 Q. Do you have to give assurances to these
20 banks that you are in compliance with laws? 12:56:27PM

21 A. Yes, if you want to get approved.

22 Q. I'm sorry. There's a lot of papers being
23 shuffled. I'm having trouble hearing you.

24 A. If you weren't, you couldn't get approved.

25 Q. Do you give an affirmative assurance to them 12:56:37PM

1 that you are in compliance with all laws?

2 A. Absolutely.

3 Q. If you are found to be breaking any laws --

4 MS. BREER: I am going to object again.

5 This is so not relevant. There is no issue in this 12:56:50PM

6 Complaint regarding representations made to other

7 lenders that he does business with. It's not leading

8 to anything admissible.

9 MR. MANSON: Relevancy is not a valid --

10 MS. BREER: Why don't you tell me -- instead 12:57:06PM

11 of saying I'm going to find out, why don't you put on

12 the record what the relevancy is? I don't know if

13 I'm going to allow you to go further into this area.

14 What is the relevancy, please?

15 MR. MANSON: One of the allegations in this 12:57:14PM

16 Complaint is that he is breaking laws. I am now

17 asking about any assurances he makes --

18 MS. BREER: Where is that in the Complaint?

19 MR. MANSON: I believe that's the entire

20 Complaint; that he is breaking the TCPA. 12:57:24PM

21 MS. BREER: What does that have to do with

22 third party lenders?

23 MR. MANSON: Go ahead.

24 MR. AMKRAUT: One of the reasons the line of

25 questioning is relevant is that there might be useful 12:57:36PM

1 material in communications between him and his third
 2 party lenders.

3 For example, he might have told them that,
 4 "yes," he is not in compliance because he has reason
 5 to believe that there have been violations of the 12:57:53PM
 6 TCPA on his behalf. Or maybe he has told them that,
 7 "no," Optima is in compliance because it's opting --
 8 it's getting permission before faxes are sent on its
 9 behalf. Or they may have written to Optima saying
 10 "We've had a complaint that you are breaking the law 12:58:13PM
 11 by violating the TCPA. We'd like an explanation."

12 There could be a whole treasure trove of
 13 information, admissions, things that are good for
 14 Optima or bad for Optima in communication.

15 MS. BREER: Why don't we just move to those 12:58:32PM
 16 things instead of getting into the details that I am
 17 objecting to?

18 MR. MANSON: I am laying a foundation for
 19 that line of questioning.

20 MS. BREER: All right. I think you have 12:58:40PM
 21 done that now.

22 BY MR. MANSON:

23 Q. The pending question, I believe, is if
 24 Optima is not in compliance with laws, would these
 25 banks cut off your funds? 12:58:50PM

1 MS. BREER: That calls for speculation. You
2 want to rephrase that?

3 MR. MANSON: Sure.

4 BY MR. MANSON:

5 Q. If Optima is -- is there anything in the 12:59:00PM
6 agreement you have with the bank that says that if
7 Optima is found to be breaking laws, the banks could
8 cut off funding?

9 A. I am not sure.

10 Q. Okay. Do you believe that if Optima was 12:59:21PM
11 found to be breaking laws that, at least, some of
12 these banks might stop doing business with Optima?

13 A. When you say "laws," what type of laws?

14 Q. Any DRE regulations, let's say.

15 If you are found to be breaking DRE 12:59:30PM
16 regulations, do you believe they would cut off doing
17 business with that?

18 MS. BREER: Why don't you explain about the
19 DRE.

20 THE WITNESS: That's -- 12:59:47PM

21 MS. BREER: That's not their licensing
22 authority. I don't know if you are aware of that.

23 MR. MANSON: I believe they are licensed
24 with the DRE.

25 ///

1 BY MR. MANSON:

2 Q. Real quick, before we get into that, are you
3 as an individual, Ali Shah, licensed by the DRE?

4 A. Yes.

5 Q. Is Optima Funding licensed by the DRE?

01:00:01PM

6 A. No.

7 Q. Under your license, do you have Optima
8 Funding listed as a dba with the DRE?

9 A. No.

10 Q. Are you licensed with the Department of
11 Corporations?

01:00:18PM

12 A. Yes.

13 MS. BREER: That's in the discovery that you
14 have.

15 BY MR. MANSON:

16 Q. To your knowledge, and not based on any
17 communication with your attorney, do you understand
18 that you're required to abide by DRE regulations as
19 part of your personal licensure by the DRE?

20 A. Repeat your question. I don't understand.

01:00:54PM

21 Q. You stated that you as an individual are
22 licensed by the DRE?

23 A. Yes.

24 Q. Is a condition of that licensure that you
25 abide by Department of Real Estate regulations?

01:01:05PM

1 A. I do. Yes.

2 Q. To your knowledge -- let me think how to
3 phrase this. I am going to have to think about this.

4 Does the Department of Corporations require
5 compliance with the Department of Real Estate
6 regulations? 01:01:30PM

7 A. I am not aware. I'm not sure. They might;
8 they might not. I don't know.

9 Q. Does the Department of Corporations require
10 compliance with the law -- with all laws to keep your
11 residential finance lender license? 01:01:41PM

12 MS. BREER: I'm going to object. I think
13 that's looking for a legal conclusion. I don't think
14 he should be standing here telling you what the law
15 is. He is not a lawyer. 01:01:58PM

16 BY MR. MANSON:

17 Q. What is your understanding of the laws that
18 govern Optima Funding?

19 MS. BREER: That's a completely uncertain
20 question. It's ambiguous. I don't even understand
21 it. 01:02:09PM

22 MR. MANSON: I will get a little more into
23 that later.

24 BY MR. MANSON:

25 Q. Going back to your funding sources, have you 01:02:16PM

1 had any communication with any bank regarding the
2 TCPA or junk faxes?

3 A. No.

4 Q. Have you -- have they ever made any
5 inquiries to you?

01:02:40PM

6 A. Not that I am aware of, no.

7 Q. Does your agreement with these banks and
8 other funding sources -- are there indemnification
9 provisions as part of these agreements?

10 A. What is that?

01:03:00PM

11 MS. BREER: Again, I'm going to object.
12 That would be a legal conclusion as well, and he is
13 not a lawyer. If he understands what the term
14 "indemnification" -- maybe we should figure that
15 out. Are you using that in the legal sense of
16 indemnification?

01:03:10PM

17 MR. MANSON: I believe it's the plain
18 English sense.

19 MS. BREER: If you understand that, you may.
20 Some people have trouble with the concept.

01:03:19PM

21 BY MR. MANSON:

22 Q. Are you familiar with the term
23 "indemnification"?

24 A. A little bit.

25 Q. Why don't you tell me your understanding

01:03:27PM

1 first, and we'll see if we can come to a mutual
2 understanding.

3 A. When you say "indemnify," are you saying you
4 are withholding or having someone exempt from
5 something?

01:03:34PM

6 Q. That's not what I mean by that.
7 Indemnification means that if -- when I say, "Are you
8 indemnifying them?" that means if they are found to
9 have any liability based on your conduct, that you
10 will repay their costs and cover their liability
11 financially.

01:03:52PM

12 A. Okay.

13 Q. Do you understand that?

14 A. Got you.

15 Q. Any questions about how I am using that
16 term?

01:04:00PM

17 A. Got you.

18 Q. Do your agreements with these banks state
19 that you will indemnify them?

20 A. That I will indemnify the bank?

01:04:08PM

21 Q. You or Optima will indemnify the bank.

22 A. No.

23 Q. Okay. All right. One more thing I
24 wanted -- real quick before lunch I want to run
25 through it.

01:04:25PM

1 If you can take out the Notice of Deposition
2 that I have given you which was Exhibit 1.

3 MS. BREER: We'll look at it together.

4 BY MR. MANSON:

5 Q. I want to run through the categories of
6 documents.

01:04:35PM

7 MS. BREER: The one for Ali or Optima?

8 MR. MANSON: This is the person most
9 knowledgeable at the bottom.

10 MS. BREER: This one. Okay.

01:04:43PM

11 BY MR. MANSON:

12 Q. I asked for all documents claiming Optima
13 Funding violated any provision of the TCPA.

14 Have you brought those with you today, other
15 than the stuff that we already discussed on the
16 record?

01:04:52PM

17 Do you have any other documents that have
18 not been produced?

19 A. No.

20 Q. Do you have with you all documents
21 evidencing awareness by officers, directors, managing
22 agents, da, da, da, of the terms or provisions of the
23 TCPA?

01:05:01PM

24 A. Repeat the question.

25 Q. Did you bring documents responsive to

01:05:16PM

1 Request No. 2?

2 MS. BREER: I don't think there were any. I
3 don't know what the term "awareness" -- it's sort of
4 odd. To the extent that these -- if you want to
5 argue that's awareness -- that's a badly worded
6 request.

01:05:30PM

7 BY MR. MANSON:

8 Q. Other than the documents that I've got here
9 which relate to the Sutton litigation and the Sybert
10 litigation, are there any other documents responsive
11 to No. 1 that are not privileged?

01:05:41PM

12 MS. BREER: You're on 2?

13 MR. MANSON: I'm asking 1.

14 MS. BREER: On the other question or the --
15 you are on the same one?

01:05:55PM

16 MR. MANSON: Yes. Copies of all documents
17 claiming Optima violated any provision of the TCPA.

18 BY MR. MANSON:

19 Q. Other than what we've got here, are there
20 any other documents responsive to No. 1?

01:06:05PM

21 MS. BREER: We've already discussed there
22 may be.

23 MR. MANSON: And you will produce those?

24 MS. BREER: Yeah.

25 MR. MANSON: Are there any other documents

01:06:12PM

1 responsive to No. 2?

2 MS. BREER: I don't know exactly what we're
3 looking for there; so I would say no.

4 THE WITNESS: No.

5 MR. MANSON: Are there any other documents
6 responsive to No. 3?

01:06:28PM

7 MS. BREER: Let me just say to the extent
8 that anyone can be construed as being responsive to
9 3. Those are some of those --

10 MR. MANSON: Other than those documents, you
11 will review your files and produce?

01:06:41PM

12 MS. BREER: Yeah. That's what I tried to do
13 with what I did produce. If it referred to that --
14 and there were a lot -- that don't refer -- they
15 might at first blush seem to be responsive, but they
16 really weren't.

01:06:52PM

17 MR. MANSON: Other than that discussion, are
18 there any other documents responsive to No. 3?

19 MS. BREER: Ali, I know you already
20 testified you don't have any, but I may. So I am
21 going to look.

01:07:04PM

22 MR. MANSON: Are there any other
23 documents -- are there any documents responsive to
24 No. 4? Because I don't believe any were produced.

25 MS. BREER: In fact, I would say yes, there

01:07:17PM

1 are more to No. 3, but they might be subject to
2 privilege, and that's what I am re-evaluating.

3 BY MR. MANSON:

4 Q. Are there any facsimile advertisements sent
5 by or on behalf of Optima? 01:07:30PM

6 A. Sent by Optima?

7 Q. Or on behalf of Optima.

8 A. No.

9 Q. Stepping off this for a moment, with respect
10 to Link Point, you said that they sent fax ads and
11 sent you leads from fax ads. 01:07:41PM

12 Did you ever obtain any copies of the fax
13 ads sent by Link Point?

14 A. No.

15 Q. How did you become aware that they were
16 sending fax ads? 01:07:59PM

17 MS. BREER: That's been asked and answered.

18 MR. MANSON: I don't recall the answer.

19 MS. BREER: It was asked and answered. We
20 went through that. 01:08:10PM

21 MR. MANSON: I don't believe it was; so I'm
22 going to ask it again.

23 BY MR. MANSON:

24 Q. How did you become aware that Link Point was
25 sending fax ads? 01:08:21PM

1 MS. BREER: I think you answered you didn't
2 know. You don't remember.

3 THE WITNESS: I don't recall.

4 BY MR. MANSON:

5 Q. Your answer now is you don't recall? 01:08:28PM

6 MS. BREER: That's the same answer.

7 MR. MANSON: I'm asking your client.

8 THE WITNESS: Uh-huh.

9 BY MR. MANSON:

10 Q. Do you recall how you became aware? 01:08:35PM

11 A. I don't recall. No.

12 Q. Moving on to No. 5, are there any other
13 documents evidencing any agreement between Optima and
14 a fax broadcaster, which in this case sounds like
15 Link Point? 01:08:52PM

16 Do you have any written agreement with Link
17 Point?

18 A. No.

19 Q. No. 7, I guess, those e-mails would be
20 responsive to that. 01:09:07PM

21 MS. BREER: If he has those.

22 Do you have copies of those e-mails?

23 THE WITNESS: I don't, but I will look into
24 that.

25 MR. MANSON: If you would add that to the 01:09:14PM

1 list, Counsel.

2 Also, I asked for copies of documents
3 referencing Live Leads which he has stated that he
4 gets leads from. So there should be some documents,
5 either e-mails or written documents.

01:09:30PM

6 MS. BREER: Why don't you ask the question
7 instead of making the assumption.

8 BY MR. MANSON:

9 Q. Do you have any documents in your office or
10 that you have given to counsel that reference -- you
11 can talk with counsel about how the privilege might
12 apply to this -- copies of documents that reference
13 Live Leads?

01:09:40PM

14 MS. BREER: Do you have anything that
15 referenced Live Leads?

01:10:03PM

16 THE WITNESS: As far as --

17 MS. BREER: A document that says "Live
18 Leads" on it somewhere.

19 THE WITNESS: No.

20 BY MR. MANSON:

21 Q. Have you ever sent Live Leads any letters or
22 e-mails?

23 A. I personally didn't.

24 Q. Have you sent them any checks?

25 A. I believe so. Yeah.

01:10:21PM

1 Q. Those would be the documents that reference
2 Live Leads.

3 Have you taken notes regarding any
4 conversations with them?

5 A. No.

01:10:31PM

6 Q. Have any of your employees ever sent any
7 letters to Live Leads?

8 A. They might have. I don't recall.

9 Q. That's something I would ask you to look
10 into. That should have been looked into.

01:10:46PM

11 MS. BREER: I was told we didn't have
12 documents.

13 MR. MANSON: Okay.

14 MS. BREER: Are we on 9?

15 MR. MANSON: Not yet. We're still on 8.

01:11:00PM

16 MS. BREER: Okay.

17 BY MR. MANSON:

18 Q. Have you ever heard of a business entity
19 named "Instant Response Marketing"?

20 A. No.

01:11:14PM

21 Q. Then have you ever seen any documents that
22 referenced Instant Response Marketing, other than
23 this one?

24 A. No.

25 Q. Have you ever heard of a business called

01:11:24PM

1 "Data Research Systems"?

2 A. No.

3 Q. So have you ever seen a document referencing
4 Data Research Systems?

5 A. I haven't.

01:11:33PM

6 Q. Have you ever heard of a business called
7 "fax.com"?

8 A. Yes.

9 Q. Tell me what you heard about fax.com.

10 A. You mentioned it earlier.

01:11:43PM

11 Q. I don't believe I did. Can you tell me what
12 was the context? I don't remember mentioning
13 fax.com.

14 MS. BREER: Okay.

15 THE WITNESS: You mentioned it.

01:11:53PM

16 BY MR. MANSON:

17 Q. Do you have -- other than from me, have you
18 ever heard of fax.com?

19 A. No.

20 Q. Have you ever seen any documents referencing
21 fax.com?

01:12:02PM

22 A. No.

23 Q. Have you ever heard of a company called
24 "Mortgage Services"?

25 A. No.

01:12:07PM

1 Q. Have you ever seen a document referencing a
2 company called "Mortgage Services"?

3 A. I saw it on the fax.

4 Q. You saw it on a fax?

5 A. I think you showed me earlier last time. 01:12:22PM

6 MS. BREER: We didn't produce those, but I
7 guess the faxes that you have that say "Mortgage
8 Services." I didn't think of that.

9 BY MR. MANSON:

10 Q. Other than that, have you seen any other 01:12:33PM
11 documents that reference Mortgage Services?

12 A. No.

13 Q. Are there any documents that provide for
14 Optima Funding to be indemnified by any other person
15 or entity relating to the TCPA or fax ads? 01:12:47PM

16 A. No, huh-uh.

17 MS. BREER: You want to go to the other one?

18 MR. MANSON: Let's put in one before lunch.
19 This will be Exhibit 3, I believe. This is a Notice
20 of Deposition to you as an individual. 01:13:06PM

21 MS. BREER: Can I take one?

22 MR. MANSON: This is actually David's copy
23 here.

24 MS. BREER: This is mine.

25 MR. MANSON: I had one copy for the two of 01:13:15PM

1 you.

2 THE WITNESS: Is that it?

3 MS. BREER: What are we looking at? Oh, I
4 sec.

5 MR. MANSON: Right now this is the Ali Shah
6 one. There should be a separate one for Optima
7 Funding.

01:13:21PM

8 (Plaintiff's Exhibit 3 was marked for
9 identification by the court reporter
10 and is bound under separate cover.)

01:13:35PM

11 BY MR. MANSON:

12 Q. If you turn to Page 3 of the Notice of
13 Deposition of Ali Shah, which is Exhibit 3, the first
14 item asks for copies of all documents alleging that
15 you violated any provision of the Telephone Consumer
16 Act of '91, the TCPA.

01:13:51PM

17 Subject to the discussion we've already had,
18 are there any other documents responsive to No. 1?

19 A. No.

20 MS. BREER: I think we covered that one.

01:14:08PM

21 BY MR. MANSON:

22 Q. Is there anything that hasn't been produced
23 that is responsive to No. 2 other than what we
24 already discussed?

25 A. No.

01:14:17PM

1 Q. Are there any documents responsive to No. 3
2 that haven't been produced?

3 MS. BREER: You are the deponent.

4 THE WITNESS: No.

5 BY MR. MANSON:

6 Q. Are there any documents responsive to No. 4
7 that haven't been produced?

8 A. No.

9 Q. Are there any documents responsive to No. 5
10 that haven't been produced?

01:14:40PM

11 A. No.

12 Q. Are there any documents responsive to No. 6
13 that haven't been produced?

14 A. No.

15 Q. Have you personally ever corresponded with
16 Live Leads?

01:14:52PM

17 A. Gosh, you got me mixed up with Live Leads
18 and --

19 MS. BREER: Any documents referring --

20 MR. MANSON: That's a separate question.

01:15:15PM

21 I'm not asking No. 7.

22 BY MR. MANSON:

23 Q. Have you ever personally corresponded with
24 Live Leads?

25 A. Live Leads, yes.

01:15:24PM

1 Q. What form of correspondence was that? Was
2 it a letter or letters?

3 A. It was telephone.

4 Q. I'm sorry. I am talking about
5 correspondence or e-mails --

01:15:37PM

6 A. No.

7 Q. Letters?

8 A. No.

9 Q. Faxes? Memos?

10 A. No, no.

11 Q. There are several "nos" there.

12 A. No, no.

13 Q. So have you produced all documents
14 responsive to No. 7?

15 A. Yes.

01:15:57PM

16 Q. Have you produced all documents responsive
17 to No. 8?

18 A. Yes.

19 Q. Have you produced all documents responsive
20 to No. 9?

01:16:04PM

21 A. Yes.

22 Q. Have you produced all documents responsive
23 to No. 10?

24 A. Yes.

25 Q. Have you produced all documents responsive

01:16:09PM

1 to No. 11?

2 A. Yes.

3 Q. Okay.

4 Let's go ahead and break for lunch. Can we
5 go off the record?

01:16:20PM

6 MS. BREER: Yeah.

7 (Whereupon, at the hour of 1:16 P.M.,
8 a luncheon recess was taken, the
9 deposition to be resumed at 2:30 P.M.)

10
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1 SHERMAN OAKS, CALIFORNIA; WEDNESDAY, FEBRUARY 2, 2005

2 2:51 P.M.

3
4 ALI SHAH,

5 having been previously duly sworn,
6 was examined and testified as follows:

7
8 EXAMINATION

9 BY MR. MANSON:

10 Q. Mr. Shah, we're coming back after lunch. Do 02:51:44PM
11 you realize that you are still under oath?

12 A. Uh-huh.

13 Q. And your statements are made under penalty
14 of perjury?

15 A. Yes. 02:51:53PM

16 Q. And that they can be used in court to
17 question your credibility if there are any changes
18 that you make later or anything comes up to the
19 contrary?

20 A. Yes. 02:52:03PM

21 Q. In the beginning of your deposition I asked
22 if you used any other names or versions of your name.
23 Do you recall that?

24 A. Yes.

25 Q. Have you ever used the name Ali Manesh, 02:52:14PM

1 M-a-n-e-s-h?

2 A. Never.

3 Q. Do you have -- have you ever heard that
4 name, or do you know a person by that name?

5 A. Yes. 02:52:30PM

6 Q. Who is that person?

7 A. It's an employee of mine.

8 Q. Employee?

9 A. Uh-huh.

10 Q. Any relation to you? 02:52:35PM

11 A. Not at all.

12 Q. Also you had mentioned that a Farzad Nafeiy
13 was a cofounder.

14 Does he still work with Optima in any
15 capacity? 02:52:53PM

16 A. In what way? When you say "capacity," what
17 do you mean?

18 Q. Is he affiliated at all with Optima those
19 days today?

20 A. Yeah. 02:53:01PM

21 Q. What is his role at Optima?

22 A. He is, you can say, my partner in the
23 business.

24 Q. Is he a stockholder?

25 A. No. 02:53:12PM

1 Q. When you say "partner," how do you mean
2 that?

3 A. Teammate or whatever you want to call it.
4 Teammate in the business. As far as the business
5 goes and shares, everything is in my name. 02:53:28PM

6 Q. What duties does Mr. Nafeiy have?

7 A. He runs -- he does the sales force, takes
8 care of the salespeople on the floor, basically.
9 That's basically it.

10 Q. So all he does is manage the sales force? 02:53:46PM

11 A. Right.

12 Q. Does he manage them on sight at 5 Hutton
13 Center Drive?

14 A. Correct, yes.

15 Q. Does he have any financial interest in
16 Optima Funding? 02:53:59PM

17 A. As far as what when you say "financial
18 interest"?

19 Q. Other than a salary and possibly a bonus,
20 does he receive -- 02:54:10PM

21 MS. BREER: I am going to object again.
22 It's absolutely not relevant or likely to lead to
23 admissible evidence to the financial arrangements of
24 the company.

25 MR. MANSON: Okay. Are you instructing him 02:54:20PM

1 not to answer?

2 MS. BREER: No. He can answer.

3 BY MR. MANSON:

4 Q. Does he have any financial interest other
5 than receiving a salary and/or bonus? 02:54:29PM

6 A. No.

7 Q. Does he have any other job responsibilities
8 other than managing the sales force?

9 A. No.

10 Q. I think I may have asked that already. 02:54:37PM
11 Does he hold any title?

12 A. No.

13 Q. No job title. Okay.

14 How about David Tayanipour? Is he still at
15 all affiliated with Optima Funding? 02:54:54PM

16 A. David, no.

17 Q. Was he ever affiliated with Optima?

18 A. In what way do you mean?

19 Q. Was he ever an employee?

20 A. No. 02:55:06PM

21 Q. Was he ever a director of Optima?

22 A. No.

23 Q. Was he ever an officer?

24 A. No.

25 Q. Was he ever -- had any kind of broker 02:55:12PM

1 affiliation with Optima Funding?

2 A. He was a broker.

3 Q. A broker affiliated with Optima?

4 A. When you say "broker affiliated," can you
5 explain?

02:55:25PM

6 MS. BREER: Use a different word. I don't
7 know what you mean.

8 BY MR. MANSON:

9 Q. What was the nature of Mr. Tayanipour's
10 relationship with Optima Funding?

02:55:31PM

11 A. He was our broker of record.

12 Q. Did he have a title at Optima Funding?

13 A. He did. I don't recall what it was.

14 Q. Do you remember when he became the broker of
15 record for Optima approximately?

02:55:50PM

16 A. First few months. I would say anywhere from
17 August, September of '03, for a few months.

18 Q. Why was he the broker of record -- let me
19 strike that.

20 Why did he terminate the broker of record
21 relationship with Optima?

02:56:26PM

22 A. We got a new license, which was CFL, and our
23 relationship just basically terminated after that
24 point.

25 Q. What is CFL?

02:56:47PM

1 A. California Finance Lenders License,
2 Department of Corporations.

3 Q. Did Mr. Tayanipour work on sight at 5 Hutton
4 Center Drive?

5 A. Yes, uh-huh. He did. 02:57:18PM

6 Q. And did he -- what were his duties while he
7 was broker of record?

8 A. Compliance. He had different duties.
9 Compliance, sales force, and again a lot --
10 compliance and sales force. 02:57:41PM

11 Q. You also stated that Mr. Nafeiy was in
12 charge of the sales force.

13 Were they in charge of the sales force
14 during the same period of time?

15 A. No. David was more -- when I say "sales
16 force," he was more compliance related. 02:58:01PM

17 Q. Can you be more specific as to what he did
18 for the sales force that was compliance related.

19 A. Make sure the apps were taken correctly,
20 make sure the names are correct, and anything that
21 had to do with compliance. 02:58:18PM

22 Q. And when did he leave Optima?

23 A. I don't recall exactly the date.

24 Q. Would it sound right to say approximately
25 March 5 of 2004? 02:58:40PM

1 A. Yeah. That would sound right.

2 Q. Who took over the compliance duties after
3 that time?

4 A. We had Dick Teno.

5 Q. Could you spell that last name. 02:58:53PM

6 A. T-e-n-o.

7 Q. Okay. Was there anyone else?

8 A. That was it.

9 Q. So when was Mr. Teno in charge of
10 compliance? 02:59:08PM

11 A. Mr. Teno -- I don't know. I don't recall.

12 Q. Is he still in charge of compliance?

13 A. No, he is not.

14 Q. Can you tell me approximately when he was at
15 Optima? 02:59:25PM

16 A. I couldn't even tell you that. He was
17 director of operations -- Dick Teno was. And one of
18 his -- one of his jobs was compliance with David.

19 Q. Could you get for me the dates when he was
20 with Optima? 02:59:43PM

21 A. Absolutely.

22 MS. BREER: Just leave a spot in the
23 transcript.

24 MR. MANSON: Okay. If you will do that and
25 leave a space for the dates that he was director of 02:59:50PM

1 operations and also a space when he was in charge for
2 compliance, in case those two are different.

3 (Information requested: _____
4 _____
5 _____
6 _____
7 _____.)

8 BY MR. MANSON:

9 Q. Was there anyone else ever in charge of
10 compliance? 03:00:03PM

11 A. No.

12 Q. Do you know how long ago Mr. Teno gave up
13 those compliance duties?

14 A. Three or four months ago.

15 Q. Who took over after that? 03:00:16PM

16 A. As far as compliance issues on that level, I
17 think it's four to two different attorneys. We have
18 attorneys that take care of that now on a larger
19 scale.

20 Q. Who at the company would be in charge of 03:00:35PM
21 determining what goes to attorneys and what doesn't?

22 A. Also Donna Thomson.

23 Q. Donna Thomson who I believe you said was in
24 charge of marketing?

25 A. Yes. 03:00:49PM

1 Q. I don't remember if I asked this: Has
2 Optima ever used any dba's or other business names
3 besides Optima Funding?

4 A. Not that I am aware of, no.

5 MS. BREER: That's covered in the
6 interrogatories, too, I am sure.

7 MR. MANSON: The interrogatories?

8 MS. BREER: Response to interrogatories.

9 MR. MANSON: They were pretty much
10 nonexistent.

11 MS. BREER: Anyway.

12 BY MR. MANSON:

13 Q. Would Mr. Teno be Richard Joseph Teno?

14 A. Yeah.

15 Q. I have -- I'm looking at a document from the
16 DRE website that lists an address for him at 620
17 Newport Center Drive, Suite 1100, Newport Beach,
18 California 92660.

19 Is that his home address, to your knowledge?

20 A. I don't know.

21 Q. Do you have any idea what that address might
22 be?

23 A. No.

24 Q. Okay. Thank you.

25 Are you familiar with a business called

1 "Streamline Escrow"?

2 A. Yes.

3 Q. Can you tell me what that business is?

4 A. It's an escrow company.

5 Q. Do you have any relationship with that
6 escrow company?

03:02:16PM

7 A. Huh-uh.

8 Q. Does Optima Funding do business through
9 Streamline Escrow?

10 A. Yes.

03:02:23PM

11 Q. Does Optima use many different escrow
12 companies, or is Streamline the only one?

13 A. No. We use different companies. Streamline
14 is one of them.

15 Q. Do you have any financial interest in
16 Streamline Escrow?

03:02:33PM

17 A. No.

18 Q. Do you have any -- are you an officer or
19 director of Streamline Escrow?

20 A. No.

03:02:43PM

21 Q. Are any of your employees affiliated with
22 Streamline Escrow in any way?

23 MS. BREER: I want to make an objection at
24 this point on relevancy again. I don't know why
25 we're talking about these other companies. And, you

03:02:50PM

1 know, I will go ahead and -- he'll answer the
2 questions, but are we getting off the track here?

3 MR. MANSON: Okay. So you made an objection
4 of relevance.

5 MS. BREER: I am wondering if you can tell
6 me what you are trying to do with that?

03:03:04PM

7 MR. MANSON: I am just exploring different
8 business relationships that are relevant to this
9 matter.

10 MS. BREER: How is it relevant? I am
11 wondering if you know.

03:03:13PM

12 MR. MANSON: I am trying to find out.

13 Where are my documents? I have here a
14 printout from the Department of Real Estate website.
15 I would like it marked as Exhibit 4, I believe.

03:03:35PM

16 It shows a corporate license for Optima
17 Funding.

18 (Plaintiff's Exhibit 4 was marked for
19 identification by the court reporter
20 and is bound under separate cover.)

21 BY MR. MANSON:

22 Q. Has Optima Funding ever been licensed by the
23 DRE?

24 A. Yes.

25 Q. The license status midway down the page

03:03:54PM

1 says, "licensed NBA." The websites states that means
2 "licensed, no broker affiliation."

3 Is Optima currently licensed by the DRE?

4 A. No.

5 Q. Why not?

03:04:09PM

6 A. Because we stopped it. We are no longer
7 under DRE. We're under CFL, Department of
8 Corporations.

9 Q. Okay.

10 A. I'm licensed, though. I am personally
11 licensed.

03:04:19PM

12 Q. I have that.

13 Let me go ahead and give Exhibit 5 out,
14 which is another printout from the DRE website that
15 shows a license to Ali Shah.

03:04:30PM

16 (Plaintiff's Exhibit 5 was marked for
17 identification by the court reporter
18 and is bound under separate cover.)

19 BY MR. MANSON:

20 Q. Is this your personal license?

03:04:47PM

21 A. Uh-huh, yes.

22 Q. Please make a very explicit utterance.

23 You became licensed, according to this, in
24 December of 2002. Does that seem accurate?

25 A. That's correct.

03:05:05PM

1 Q. Your license expiration date is December of
2 '06.

3 This shows an employing broker being Richard
4 Joseph Teno.

5 MS. BREER: Can you ask a question. We can
6 all see what the document says.

7 MR. MANSON: Getting there.

8 MS. BREER: Okay.

9 BY MR. MANSON:

10 Q. What does it mean to have Mr. Teno as your
11 employing broker?

12 A. I have to hang my license, the salesperson
13 license, with a broker of record. And he has a
14 broker license. I just placed it with him.

15 Q. Currently is your license still a
16 salesperson license?

17 A. Correct.

18 Q. Is Mr. Teno still your employing broker?

19 A. Correct.

20 Q. Is Mr. Teno any longer affiliated with
21 Optima Funding?

22 A. No.

23 Q. Can you explain to me, please, what are the
24 criteria for someone being an employing broker?

25 A. Criteria? Explain what you mean by

1 "criteria."

2 MS. BREER: Why don't you kind of break it
3 down.

4 BY MR. MANSON:

5 Q. If he is no longer affiliated with Optima --
6 let me rephrase it.

03:06:13PM

7 Do you currently have any relationship with
8 Mr. Teno? Does he supervise your work? I'll break
9 this down into many questions.

10 Does Mr. Teno supervise your work?

03:06:27PM

11 A. No.

12 Q. Does he supervise any work done at Optima?

13 A. No.

14 Q. Does he review documentation to make sure
15 it's compliant with laws?

03:06:36PM

16 A. No.

17 Q. Does he -- does Mr. Teno -- do you talk to
18 Mr. Teno on a regular basis?

19 A. Yeah. Once in a while.

20 Q. Is he a friend?

03:06:48PM

21 A. Yeah.

22 Q. What does it mean for him to be an employing
23 broker for you? What are his duties with respect to
24 you as an employing broker?

25 MS. BREER: If we could -- as determined --

03:07:02PM

1 what are his duties? Are you saying in his mind
2 personally?

3 MR. MANSON: Yes.

4 MS. BREER: Or are you referring -- okay.

5 BY MR. MANSON:

6 Q. To your knowledge, what are his duties to
7 you as your employing broker?

8 A. To inform me of the new DRE regulations, to
9 keep my license in compliance.

10 Again, my license is a salesperson license,
11 and I'm not a real estate agent, but that's what it
12 can be used for. And I did hang my license under his
13 broker license. His duties are to keep me in
14 compliance.

03:07:33PM

15 Q. Okay. How does he go about doing that?

03:07:50PM

16 MS. BREER: How is this relevant?

17 MR. MANSON: Terri, can I ask my questions?

18 It is relevant. It's very relevant since we're
19 getting into his compliance with laws, including
20 those laws that are complained of in the lawsuit.

03:08:03PM

21 MS. BREER: What law did you complain in the
22 lawsuit that has to do with his status as a sales
23 agent and having a DRE?

24 MR. MANSON: 17200, BMT 17200.

25 MS. BREER: That's not how it's alleged at

03:08:18PM

1 all.

2 MR. MANSON: Sure. There is a 17200
3 allegation there.

4 MS. BREER: Yeah. And it's based on the
5 allegations that he violated -- that the TCPA has
6 been violated. That's what the gravamen of the 17200
7 action is. It has nothing to do with anything having
8 to do with this. So I think you are kind of getting
9 into an area that isn't going to be relevant and is
10 not likely to lead to the discovery of admissible
11 evidence. And I think it's time consuming and
12 burdensome to get into this area. I think we have a
13 lot of other issues --

14 MR. MANSON: It may be, but I am permitted
15 to get into this area. It does go to compliance with
16 laws.

17 MS. BREER: You are also asking things that
18 lead to legal conclusions as to what is -- you are
19 getting into an area where he is not a lawyer. He is
20 not competent to tell you all the duties of an
21 employing broker.

22 MR. MANSON: I asked his understanding. You
23 are taking time, and you are consuming time with
24 relevancy objections which don't carry any weight in
25 a deposition.

1 MS. BREER: I want to make sure -- I
2 understand that, but it's good to bring them up
3 because I would rather flush out some of these issues
4 now because we have to deal with them.

5 So at this point, you are saying -- you are 03:09:24PM
6 asking him questions about this because you sued for
7 17200. Your 17200 has absolutely nothing to do with
8 this relationship.

9 MR. MANSON: I am asking these questions
10 because I am entitled to ask him these questions. 03:09:36PM

11 MS. BREER: All right. Go ahead.

12 MR. MANSON: Could you repeat the last
13 question.

14 (The following question was read back
15 by the court reporter as requested:

16 "QUESTION: Okay. How does he go
17 about doing that?")

18 BY MR. MANSON:

19 Q. How does he go about insuring your
20 compliance with your license requirements? 03:10:09PM

21 MS. BREER: If you know.

22 THE WITNESS: I don't know. I don't know.

23 BY MR. MANSON:

24 Q. What does a salesperson license entitle you
25 to do? 03:10:35PM

1 Are you allowed to write loans?

2 A. Depending on what organization you are with.

3 Q. With Optima Funding.

4 A. Okay. If Optima Funding is licensed under
5 DRE, yes. 03:10:54PM

6 Q. Is Optima Funding licensed under the DRE?

7 A. Not right now.

8 Q. What gives you the authority to write
9 mortgage loans?

10 MS. BREER: Can you -- that's kind of
11 uncertain. What do you mean gives him authority? 03:11:05PM

12 BY MR. MANSON:

13 Q. Is it your understanding that in California
14 you must have certain licenses to write mortgage
15 loans? 03:11:17PM

16 A. Uh-huh.

17 Q. Could you answer out loud?

18 A. Yeah. That's a CFL license which I told you
19 earlier.

20 Q. Do you know your CFL license number? 03:11:25PM

21 A. I don't know.

22 MS. BREER: It's in the discovery.

23 BY MR. MANSON:

24 Q. Okay. A moment ago you said that in order
25 to write loans, you have to be licensed with the DRE? 03:11:37PM

1 A. You said that, not me.

2 MS. BREER: Yeah. And I don't --

3 BY MR. MANSON:

4 Q. Then there is some confusion there because I
5 thought you had said it. Okay.

03:11:48PM

6 Optima Funding writes loans under its CFL
7 license; is that correct?

8 A. Yes.

9 Q. As the salesperson, do you need anyone with
10 other than a salesperson license -- strike that. Let
11 me rephrase it. Let me broaden this a little.

03:12:05PM

12 Is someone at Optima Funding licensed by the
13 DRE?

14 A. There can be. I am sure there are. I don't
15 know who they are.

03:12:21PM

16 Q. You don't know who they are?

17 A. No.

18 Q. Do you know if -- do you know for a fact if
19 any Optima employee has a DRE license?

20 A. I believe so. Yeah. I don't know who they
21 are.

03:12:32PM

22 Q. Do you know any of them?

23 A. No.

24 Q. Is Donna Thomson licensed by the DRE?

25 A. No.

03:12:40PM

1 Q. Is Kevin Cardiel licensed by the DRE?

2 A. Not that I am aware of, no.

3 MS. BREER: Don't guess.

4 MR. MANSON: He said, "Not that I am aware
5 of." Didn't sound like a guess.

03:12:51PM

6 MS. BREER: He said, "no," and it sounds
7 like he didn't have the knowledge yes or no.

8 BY MR. MANSON:

9 Q. In order to get your sales agent license,
10 did you have to undergo any specialized education?

03:13:08PM

11 A. Yes.

12 Q. Can you tell me what the requirements are?

13 A. You have to take a class. I don't know how
14 many weeks it was. I don't recall. You have to take
15 a class, and you have to take -- there's two tests
16 you have to take. There are two tests overall, and
17 that's it. Once you pass the second test, you get
18 your license.

03:13:19PM

19 Q. Do you have to have a four-year degree to be
20 licensed by the DRE from a college or university?

03:13:40PM

21 A. No.

22 Q. Do you have a four-year degree?

23 A. No.

24 Q. Have you earned a high school diploma?

25 A. Yes.

03:13:48PM

1 Q. Have you earned a college degree, a
2 four-year college degree?

3 A. What does that have to do with anything?

4 Q. Just asking a question.

5 A. No.

03:13:57PM

6 Q. Have you earned a two-year or associates
7 degree?

8 A. No.

9 Q. Other than these classes taken for your
10 license, do you have any education beyond high
11 school?

03:14:05PM

12 A. No.

13 Q. I know you gave your date of birth, but what
14 is your current age?

15 A. Twenty-five.

03:14:16PM

16 Q. Doing the math in my head, would it be fair
17 to say you became licensed at the age of 23?

18 A. Earlier. You said, '02; right?

19 Q. Going by what I saw here, it said December
20 12 of '02.

03:14:36PM

21 How old were you at that time?

22 A. Twenty-two; right? Three years ago.

23 Q. Two years and a month.

24 A. So 23.

25 Q. That's what I was wondering.

03:14:49PM

1 What is your date of birth again, in case we
2 didn't get it on the record?

3 MS. BREER: We did. Trust me. It was asked
4 and answered because I was hearing it for the first
5 time. I remember it.

03:14:58PM

6 BY MR. MANSON:

7 Q. You became licensed at 23. What is your
8 work experience prior to founding Optima in '03?

9 A. Work experience -- I was a loan officer.

10 Q. With whom?

03:15:10PM

11 A. Quick Loan Funding.

12 Q. Do you know what your business address was
13 there?

14 A. Gosh, I don't recall. I don't recall.

15 Q. Do you know if they were licensed by the
16 Department of Corporations?

03:15:30PM

17 A. I believe so.

18 Q. Were they also licensed by the DRE?

19 A. I believe so. I don't know.

20 Q. What was your position with Quick Loan
21 Funding?

03:15:42PM

22 A. Senior loan officer.

23 Q. Did that require a license?

24 A. No.

25 Q. Did you have an employing broker there?

03:15:52PM

1 A. I believe so, yeah.

2 Q. Who was that person?

3 A. I don't know.

4 Q. Did you have a supervisor that you reported
5 to directly?

03:16:03PM

6 A. Yeah. We had a few different supervisors at
7 that time. Eric Small was one of them. Another one
8 was Paul Rodriguez. And that's all I can recall.

9 Q. I'm sorry?

10 A. That's all I can recall.

03:16:25PM

11 Q. Thank you. To your knowledge, did Quick
12 Loan Funding ever send junk faxes?

13 A. Not that I am aware of.

14 Q. To your knowledge, did Quick Loan Funding
15 ever get accused of sending junk faxes?

03:16:45PM

16 A. Not that I am aware of.

17 Q. Did anyone at Quick Loan Funding talk to you
18 about the TCPA or junk fax?

19 A. No.

20 Q. When were you at Quick Loan Funding?

03:17:03PM

21 A. Between either the end of '01 or beginning
22 of '02 to '03. About a year and a half.

23 Q. Were you employed by anyone prior to 2001,
24 end of 2001?

25 A. Yeah. I was in retail sales.

03:17:28PM

1 Q. What do you mean by "retail sales"?

2 A. Nordstroms.

3 Q. I beg your pardon?

4 A. Nordstroms.

5 Q. Completely unrelated?

03:17:39PM

6 A. Completely unrelated.

7 Q. Did you have any experience or education
8 relating to the real estate or mortgage business
9 prior to working for Quick Loan Funding?

10 A. Let me see. Repeat the question again.

03:17:52PM

11 Q. Did you have any -- I will break it down.
12 Did you have any experience with the
13 mortgage business prior to working at Quick Loan
14 Funding?

15 A. No.

03:18:06PM

16 Q. Did you have any education relating to the
17 mortgage business prior to working at Quick Loan
18 Funding?

19 A. No.

20 Q. When did you begin your class work to get
21 your mortgage license -- I'm sorry -- your
22 salesperson license?

03:18:13PM

23 A. Six months prior to getting a license; so
24 whatever that date is, go back six months.

25 (Interruption in the proceedings.)

03:20:01PM

1 MR. MANSON: Back on the record.

2 BY MR. MANSON:

3 Q. Changing subjects for a moment real quick.

4 I asked you if you were on any medications.

5 Do you have any attention deficit disorder or ADHD or 03:20:11PM
6 anything?

7 A. I think so, but the doctors say no.

8 Q. Do you suffer from memory lapses at all?

9 A. No.

10 Q. Do you have any issues with your memory that 03:20:21PM
11 you are aware of?

12 A. No.

13 Q. Do you believe that you have any memory
14 issues?

15 A. No. 03:20:26PM

16 Q. Do you suffer from any eye problems or
17 anything like that?

18 A. No.

19 Q. Do you suffer from any eye problems from
20 lights, flickering lights, bright lights or anything 03:20:37PM
21 like that?

22 A. No.

23 Q. Is your current eyewear prescription
24 eyewear?

25 A. No. 03:20:46PM

1 Q. Can I have you take it off, then, for the
2 rest of the depo?

3 A. Absolutely.

4 Q. Okay. You had mentioned you have been
5 deposed before five or six years ago; is that
6 correct?

03:20:53PM

7 A. I believe so. Give or take.

8 Q. Have you ever been deposed other than that?

9 A. No.

10 Q. Have you ever had to answer written
11 questions, a deposition by written questions?

03:21:00PM

12 A. No.

13 Q. Did the previous deposition deal with junk
14 faxes?

15 A. No.

03:21:09PM

16 MS. BREER: That's been asked and answered.

17 BY MR. MANSON:

18 Q. Did it deal with the TCPA?

19 MS. BREER: That's twice.

20 THE WITNESS: No.

21 BY MR. MANSON:

22 Q. To maintain your licensure with the DRE, do
23 you undergo any continuing education classes?

24 A. Yes.

25 Q. How often do you go to classes?

03:21:27PM

1 A. I believe that's every two years.

2 Q. Have any of them ever dealt with advertising
3 compliance?

4 A. The questions?

5 Q. The classes. 03:21:35PM

6 A. No.

7 Q. The continuing education classes.

8 A. No.

9 Q. Can you tell me what subjects are covered in
10 your continuing education? 03:21:42PM

11 A. Appraisals and -- gosh, I want to say
12 investment properties.

13 Q. Anything else?

14 A. No.

15 Q. Has any complaint ever been made against you
16 personally to the DRE? 03:21:56PM

17 A. Not that I am aware of.

18 MS. BREER: Can you rephrase that. "Made to
19 you personally to the DRE," I think you meant
20 something different. 03:22:14PM

21 BY MR. MANSON:

22 Q. To your knowledge, has anyone ever
23 complained to the DRE about you?

24 MS. BREER: There you go.

25 THE WITNESS: Not that I am aware of, no. 03:22:24PM

1 BY MR. MANSON:

2 Q. Has anyone ever complained to the DRE about
3 Optima Funding?

4 A. Not that I am aware of, no.

5 Q. Has anyone complained about Optima Funding
6 to the Department of Corporations?

03:22:33PM

7 A. I believe there was one complaint which we
8 took care of. It was a client issue.

9 Q. Tell me more about that, please.

10 A. I don't recall what it was. It had to do
11 with something -- I don't recall what it was, but I
12 do know it was handled. It was taken care of.

03:23:00PM

13 Q. Was it related to the TCPA?

14 A. I don't believe so, no.

15 Q. You don't believe so, but you are not sure?

03:23:15PM

16 A. I'm not sure. I don't think so.

17 Q. Was it related to junk faxes?

18 A. No.

19 Q. No? Are you certain of that?

20 A. Uh-huh.

03:23:22PM

21 Q. Has anyone complained -- to your knowledge,
22 has anyone complained to Richard Teno about you?

23 A. No.

24 Q. To your knowledge, has David Tayanipour ever
25 had a DRE complaint made against him?

03:23:41PM

1 A. Not that I am aware of.

2 Q. Have you ever been disciplined by the DRE?

3 A. No.

4 Q. Have you ever been disciplined by the

5 Department of Corporations?

03:23:55PM

6 A. No.

7 Q. Has Optima ever been disciplined by the DRE?

8 A. No.

9 Q. Has Optima ever been disciplined by the

10 Department of Corporations?

03:24:03PM

11 A. No.

12 Q. How many employees does Optima have?

13 A. 115.

14 Q. Are they, quote, end quote, "W-2 employees"

15 or "independent contractors"?

03:24:15PM

16 A. W-2.

17 Q. So they are employees?

18 A. Correct.

19 Q. How many of them are in charge of dealing

20 with incoming phone calls, client calls?

03:24:24PM

21 A. As far as receptionists?

22 Q. Sales force. How many are involved in the

23 sales force?

24 A. 40, 40 to 50.

25 Q. Are they licensed salespeople with the DRE?

03:24:37PM

1 A. Not all of them, no.

2 Q. To your knowledge --

3 A. When you say "DRE," I told you before that
4 we're not -- we're licensed under Department of
5 Corporations. You keep asking that question.

03:24:50PM

6 Q. I understand. But you were licensed under
7 DRE, you being Optima in this case. First of all,
8 Ali Shah, if I am not mistaken, you are personally
9 licensed by the DRE?

10 A. Yes.

03:25:00PM

11 Q. And Optima was licensed by the DRE?

12 A. Yes.

13 Q. So I'm going to keep going through both of
14 those.

15 A. Okay.

03:25:09PM

16 Q. You stated that approximately 40 of the
17 employees are involved in the sales force; is that
18 correct?

19 A. 40 to 50.

20 Q. To your knowledge, does the Department of
21 Corporations require salespeople to be licensed?

03:25:20PM

22 A. No.

23 Q. Does the DRE require salespeople to be
24 licensed?

25 A. Yes.

03:25:30PM

1 Q. To your knowledge, does that DRE requirement
2 apply even if the company is licensed by the
3 Department of Corporations?

4 A. I have no idea.

5 Q. But to your knowledge, salespeople are
6 required to be licensed by the DRE?

03:25:41PM

7 A. I believe so. Yeah.

8 Q. How many of your sales force are licensed by
9 the DRE, to your knowledge?

10 A. I have no idea.

03:25:53PM

11 Q. Would you say -- can I get your best
12 estimate?

13 A. I don't know. I couldn't tell you.

14 MS. BREER: At this point I want to make
15 sure, for clarification, I guess, that when you say
16 "required to be licensed by the DRE," I think he
17 said -- I don't know if that's -- is that the
18 question? Because you said, "Are they required to be
19 licensed?" You didn't say by whom. I just think the
20 record hasn't really been clear, and I don't want
21 something incorrect to be out there.

03:26:01PM

03:26:22PM

22 MR. MANSON: I believe I did say "by the
23 DRE," and he said, "Yes."

24 MS. BREER: Can you read back some of those.
25 I just want you to listen carefully because I want to

03:26:34PM

1 make sure that we're all agreeing when you say
2 "required," who is requiring. That's what my point
3 is. Sometimes it was not clear on the record who you
4 are saying is requiring the licensing. Just make
5 sure you did answer those questions.

03:26:50PM

6 MR. MANSON: Terri, in order for her to read
7 it back, we have to quit talking.

8 MS. BREER: Okay.

9 (The record was read back by the
10 court reporter as follows:

11 "QUESTION: But to your
12 knowledge, salespeople are required
13 to be licensed by the DRE?

14 "ANSWER: I believe so. Yeah.

15 "QUESTION: How many of your sales
16 force are licensed by the DRE, to your
17 knowledge?

18 "ANSWER: I have no idea.

19 "QUESTION: Would you say -- can I
20 get your best estimate?

21 "ANSWER: I don't know. I couldn't
22 tell you.")

23 MR. MANSON: Let's go off the record.

24 MS. BREER: Yeah.

25 (A discussion was held off the record.)

1 MR. MANSON: Back on the record. Please
2 read that question back.

3 (The following question was read back
4 by the court reporter as requested:

5 "QUESTION: But to your
6 knowledge, salespeople are required
7 to be licensed by the DRE?")

8 THE WITNESS: I don't know. Unclear
9 question.

10 BY MR. MANSON:

11 Q. Did you just say "unclear question" a moment
12 ago?

13 A. Uh-huh.

14 MS. BREER: I guess the problem is -- I
15 should probably object that it will call for a legal
16 conclusion. In other words, you are required to
17 be -- I don't know that he could say for every single
18 person in his office whether or not he has the
19 knowledge that he can say that. That's kind of my --
20 anyway, that was --

21 MR. MANSON: He has been designated as the
22 person most knowledgeable with respect to compliance
23 issues. I think it's fair to ask him his
24 understanding what is necessary for Optima to be in
25 compliance on this point.

03:29:09PM

03:29:23PM

03:29:36PM

1 MS. BREER: Okay. But the distinction I am
2 making is being in compliance with the DRE and being
3 in compliance with the Department of Corporations and
4 the licensure that he has, I wanted to make sure that
5 we were specific when he was answering which license
6 he is referring to. That is why I wanted the record
7 read back, and I want to make sure he is clear on
8 that.

03:29:46PM

9 MR. MANSON: I understand that, and the
10 question was very clearly with respect to the DRE.

03:29:57PM

11 BY MR. MANSON:

12 Q. So is it your understanding that your sales
13 force, that each person on your sales force must be
14 licensed by the DRE?

15 A. I don't know.

03:30:10PM

16 Q. Is there anyone at your company who would
17 know that?

18 A. There might be. I am not sure.

19 Q. You don't know if there is anyone at your
20 company that would know the licensure requirements
21 that you need?

03:30:36PM

22 MS. BREER: That's what he said.

23 THE WITNESS: Yeah.

24 MR. MANSON: Okay.

25 MS. BREER: He answered.

03:30:42PM

1 MR. MANSON: I am just surprised that the
 2 person most knowledgeable running a couple of million
 3 dollar business is not aware of the requirements they
 4 need not to break the laws that they operate under.

5 MS. BREER: You said "at his company." He
 6 has lawyers. He testified he has lawyers. I don't
 7 know that that's so amazing.

8 BY MR. MANSON:

9 Q. I gave you a copy of the DRE record with
 10 respect to Optima Funding. I believe that was
 11 Exhibit 4. There are no employees listed as being --
 12 there are no licensed holders listed as being
 13 affiliated with Optima Funding other than David
 14 Tayanipour.

15 To your knowledge, does that mean that there
 16 were no licensed people at Optima Funding other than
 17 David Tayanipour?

18 A. What do you mean by that? Explain.

19 MS. BREER: I think it's been asked and
 20 answered. He already talked about it. We've already
 21 gone over ad nauseam about who he knew was licensed,
 22 who has a license, does he know who they are. I feel
 23 like that's been asked and answered.

24 MR. MANSON: I am asking about the meaning
 25 of this document.

03:30:54PM

03:31:11PM

03:31:32PM

03:31:45PM

03:31:56PM

1 MS. BREER: The meaning of the document? Is
2 that what that question was?

3 MR. MANSON: Yes, it was.

4 MS. BREER: Okay. I don't think that was
5 how the question was. You might want to reform that
6 question. I think, first of all, it was you
7 testifying.

03:32:02PM

8 MR. MANSON: I will ask the question. Thank
9 you, Terri.

10 BY MR. MANSON:

03:32:12PM

11 Q. This document doesn't list any other
12 licensed people being affiliated with Optima Funding
13 while it was licensed by the DRE.

14 To your knowledge, does that mean there were
15 no other licensed people affiliated with Optima
16 Funding while Optima was licensed by the DRE?

03:32:25PM

17 MS. BREER: Do you understand the question?

18 THE WITNESS: No.

19 MR. MANSON: Okay.

20 MS. BREER: Objection. It's been asked and
21 answered.

03:32:45PM

22 MR. MANSON: Definitely hasn't been
23 answered.

24 MS. BREER: Not exactly like that, but it
25 was -- the information has been obtained.

03:32:52PM

1 BY MR. MANSON:

2 Q. When someone contacts Optima for the first
3 time to start the loan process, who do they talk to?
4 Who is the first person they speak to on the phone?

5 A. Receptionist.

03:33:15PM

6 Q. And does the receptionist ask them questions
7 about their financial situation or their interest?

8 A. No.

9 Q. What does she do or he?

10 A. Transfers it to the loan officer.

03:33:31PM

11 Q. She transfers it to a loan officer?

12 A. Loan agent, yeah.

13 Q. That's done on the very first call someone
14 makes in?

15 A. Uh-huh.

03:33:38PM

16 Q. How does she determine what loan officer to
17 transfer to?

18 A. There is a list.

19 Q. And --

20 A. Goes in order.

03:33:46PM

21 Q. She goes in order. Thank you.

22 Does she transfer them only to licensed
23 sales agents, DRE licensed sales agents?

24 A. Yeah. We're not under DRE.

25 Q. I understand. For instance, you are

03:34:04PM

1 licensed as a salesperson under the DRE?

2 A. Definitely.

3 Q. Please, let's not interrupt each other. I
4 don't want to interrupt you. Please don't interrupt
5 me.

03:34:12PM

6 When the receptionist transfers a call, does
7 she transfer it to a DRE licensed sales agent or not
8 necessarily or some other answer?

9 A. Yeah.

10 Q. "Yeah" what?

03:34:23PM

11 A. Your question -- repeat your question.

12 MS. BREER: Actually, you were sort of
13 giving him three different possible answers. Maybe
14 we need to ask an open-ended question, and then he'll
15 answer it.

03:34:36PM

16 BY MR. MANSON:

17 Q. Is the list of loan officers -- excuse me.
18 Let me start that over.

19 When she moves down the list of loan
20 officers, is there any distinction on that list
21 between licensed loan officers and non licensed loan
22 officers?

03:34:54PM

23 A. I don't know.

24 Q. Are all of your loan officers DRE licensed?

25 MS. BREER: Objection. It's been asked and

03:35:06PM

1 answered.

2 MR. MANSON: That was sales force, and this
3 is loan officers. It's a different term I am using.

4 THE WITNESS: Repeat the question.

5 BY MR. MANSON:

6 Q. Are all of your loan officers licensed by
7 the DRE?

8 A. No.

9 Q. To your knowledge, is there any requirement
10 that your loan officers be licensed by the DRE?

03:35:25PM

11 A. To my knowledge, I don't know.

12 Q. Have any of your non licensed employees been
13 the subject of a complaint to Optima?

14 A. Not that I am aware of.

15 Q. Have any of your non licensed employees been
16 the subject of a DRE complaint?

03:35:49PM

17 A. Not that I am aware of.

18 Q. Have any of your non licensed employees been
19 subject to a complaint to the Department of
20 Corporations?

03:36:05PM

21 A. Not that I am aware of, no.

22 Q. What were the requirements to become
23 licensed by the Department of Corporations?

24 MS. BREER: I'm going to object here because
25 I believe that question would seek information

03:36:27PM

1 protected by the attorney-client privilege. I am
2 sure that in discussions that was likely to have come
3 up, and so I am going to instruct him not to answer.
4 Unless you can answer about your understanding of the
5 requirements -- what was the question?

03:36:43PM

6 I'll have him ask you this in a minute.

7 If you can answer that question without
8 relying on information that you have obtained from
9 attorneys or through your attorneys or from documents
10 that you obtained from your attorney -- if you can
11 answer without relying on that information, then you
12 can go ahead and answer. If you can't, then I am
13 going to instruct you not to answer.

03:36:57PM

14 Go ahead and ask the question.

15 BY MR. MANSON:

16 Q. To your understanding, what are the
17 requirements to be licensed by the Department of
18 Corporations?

19 A. I don't want to answer.

20 Q. You don't want to, or you can't because of
21 the attorney-client privilege?

03:37:15PM

22 A. Because of the attorney-client privilege.

23 Q. Thank you. "I don't want to answer" is a
24 little open-ended.

25 MS. BREER: Yes.

03:37:25PM

1 BY MR. MANSON:

2 Q. Is Optima under any affirmative duty to
3 report violations of laws to the Department of
4 Corporations?

5 MS. BREER: Again, I'm going to make the
6 same objection that the question probably seeks
7 information protected by the attorney-client
8 privilege. If you can answer that question without
9 relying on information that you have obtained through
10 that relationship, then answer it.

03:37:36PM

03:37:48PM

11 THE WITNESS: Repeat the question.

12 BY MR. MANSON:

13 Q. Is Optima under any affirmative duty to
14 report violations of laws to the Department of
15 Corporations?

03:38:03PM

16 A. I believe so.

17 Q. Is Optima under any affirmative duty to
18 report violations of laws to the Department of Real
19 Estate?

20 MS. BREER: Again, can we just say same
21 standing objection. For this line of questioning
22 about your awareness of your requirements under
23 certain laws, I am making a standing objection that
24 any of those questions, you are only to answer them
25 if you can do so without divulging information under

03:38:15PM

03:38:28PM

1 attorney-client privilege. Otherwise, you can go
2 ahead and answer.

3 THE WITNESS: Okay.

4 BY MR. MANSON:

5 Q. Is Optima under any affirmative duty to
6 report violation of laws to the Department of Real
7 Estate?

03:38:35PM

8 A. I don't know. When you say "affirmative,"
9 explain what you mean by that.

10 Q. By affirmative duty, I mean that it's your
11 obligation not just to wait and respond to a
12 complaint from them or a question from the DRE, but
13 instead you have the duty to be active and go to the
14 DRE and say, "We've been accused of violating a law."

03:38:44PM

15 That's what I mean when I say "affirmative
16 duty." That it's your job to act first and not just
17 wait for something from them.

03:38:58PM

18 With that in mind, is Optima under any
19 affirmative duty to report violations of laws to the
20 Department of Real Estate?

03:39:09PM

21 A. I believe so.

22 Q. Is Optima under any affirmative duty to
23 report lawsuits to the Department of Corporations?

24 A. I don't know.

25 Q. Is Optima under any affirmative duty to

03:39:21PM

1 report lawsuits to the DRE?

2 A. I do not know.

3 MR. MANSON: I want to take a break for a
4 few minutes. Let's take a -- let me ask one or two
5 other questions, and then we'll take a five-minute
6 break.

03:39:47PM

7 MS. BREER: Okay.

8 MR. MANSON: One or two other questions.

9 BY MR. MANSON:

10 Q. Before you had said that Optima has written
11 approximately 50 million in direct loans during 2004.
12 What was the total amount of loans that Optima wrote
13 during 2004?

03:39:56PM

14 A. Your question -- I think you messed up when
15 you said "50 million." You said, "Optima wrote."
16 You are asking the same question as far as what did I
17 fund myself?

03:40:16PM

18 Q. When I asked you before, I thought you had
19 answered that Optima direct funded 50 million in
20 loans. Now I'm asking the total amount of loans,
21 meaning, that were not direct funded.

03:40:31PM

22 A. In the year 2004?

23 Q. '04.

24 A. Roughly about 1,200.

25 Q. 1,200 total loans?

03:40:49PM

1 A. Yes.

2 Q. What was the approximate loan dollar value
3 of those loans?

4 A. I couldn't tell you.

5 Q. Could you say upward of a certain number? 03:40:57PM

6 A. Yeah.

7 Q. What is your best estimate, then?

8 A. 50 million plus. 75 million plus and up.

9 Q. In total loans or in third party loans?

10 A. I don't know. It's not an accurate 03:41:14PM
11 question. I couldn't tell you. I can find out for
12 you, but I couldn't tell you exactly.

13 Q. I want to clarify. I know it's going to be
14 asked and answered, but now I am confused.

15 If I am not mistaken, you said that Optima 03:41:27PM
16 direct funds approximately 30 to 40 percent of its
17 loans. Does that sound right?

18 A. Yes.

19 Q. I think you also said that those direct
20 funded loans are approximately \$50 million per year. 03:41:41PM
21 Does that sound correct?

22 A. Yes.

23 Q. So that would suggest to me that Optima
24 writes approximately \$125 million in loans?

25 A. Okay. 03:41:55PM

1 Q. Not "okay." Does that sound right?

2 A. That sounds right.

3 Q. Do you think it might be more than or less
4 than that or is that fairly close?

5 A. Right around that ballpark.

03:42:03PM

6 MR. MANSON: Let's go ahead and take five
7 minutes.

8 (Recess.)

9 MR. MANSON: Back on the record.

10 BY MR. MANSON:

11 Q. Mr. Shah, to your knowledge, has anyone at
12 Optima ever contacted anyone at JNS Copy Services,
13 the plaintiff in this action?

14 A. Not that I am aware of, no.

15 Q. Has anyone at Optima ever asked anyone at
16 JNS for permission to send junk faxes?

03:52:32PM

17 A. No.

18 Q. Has anyone at Optima ever spoken to Eric
19 Rigney for any reason?

20 A. No.

03:52:43PM

21 Q. And have you personally spoken to anyone at
22 JNS?

23 A. No.

24 Q. Have you ever personally spoken to Eric
25 Rigney outside of these proceedings?

03:52:52PM

1 A. No.

2 Q. To your knowledge, has any agent of Optima
3 ever asked anyone at JNS for permission to send junk
4 faxes?

5 A. No.

03:53:01PM

6 Q. To your knowledge, has any lead generation
7 company ever asked anyone at JNS for permission to
8 send junk faxes?

9 A. No.

10 Q. Has Optima ever done business with JNS?

03:53:07PM

11 A. No.

12 Q. Has Optima ever done business with Eric
13 Rigney?

14 A. No.

15 Q. To your knowledge, has anyone at a lead
16 generation company ever done business with JNS or
17 Eric Rigney?

03:53:14PM

18 A. Not that I am aware of.

19 Q. Your counsel has provided me documents from
20 David Amkraut, Paul Kessler and Bill Mattmiller that
21 I understand allege violations of the TCPA.

03:53:29PM

22 Are you familiar with these, without looking
23 at them because we don't have copies?

24 MS. BREER: Tell him what you have again.

25 ///

1 BY MR. MANSON:

2 Q. I have a demand letter from David Amkraut
3 addressed to Optima Funding dated January 18, 2005.

4 Are you familiar with this letter?

5 A. Yes. Yeah. 03:53:55PM

6 Q. When you received this letter, did you read
7 it?

8 MS. BREER: First of all, he didn't testify
9 that he received the letter. He said he was familiar
10 with it. So the first question is did he receive it. 03:54:07PM
11 I think it's to Optima.

12 BY MR. MANSON:

13 Q. When this -- first of all, are you aware of
14 this letter only through counsel, or are you aware of
15 it having come into your office at Optima Funding? 03:54:16PM

16 A. Came into my office.

17 Q. When it came to your office, who did it go
18 to? Who would have looked at it first?

19 A. It would have come to me.

20 Q. It would have come to you? 03:54:27PM

21 A. Uh-huh.

22 Q. Do you remember receiving this letter?

23 A. I believe so. Yeah.

24 Q. Did you read the letter?

25 A. I didn't read the entire letter. No. 03:54:38PM

1 Q. What did you do with the letter once you had
2 at least began to look at it?

3 A. Forwarded it to my attorney.

4 Q. Another document given to me by your counsel
5 is what appears to be the cover sheet of a small
6 claims matter. Paul S. Kessler, K-e-s-s-l-e-r, is
7 the plaintiff. The defendant is listed as Ali Shah
8 Velayati.

03:54:54PM

9 Are you aware of this litigation?

10 A. Yes.

03:55:11PM

11 Q. To your knowledge -- strike that.

12 Was this small claims action ever served on
13 you?

14 How did you become aware of this action?

15 A. Can you rephrase the question.

03:55:31PM

16 Q. Sure. You stated a moment ago you are aware
17 of the small claims allegation. How were you aware
18 of it?

19 A. I have a court date on Monday for this case.

20 Q. Is that the first --

03:55:44PM

21 MS. BREER: Thank goodness.

22 BY MR. MANSON:

23 Q. Is that Monday court date the first you've
24 heard of this litigation, notice of this Monday court
25 date?

03:55:54PM

1 A. Rephrase the question.

2 MS. BREER: It's confusing.

3 BY MR. MANSON:

4 Q. Was a Complaint ever served on you
5 personally with respect to this litigation?

03:56:00PM

6 A. I believe so, yes.

7 Q. Do you happen to know when?

8 A. No.

9 Q. If I suggested that it was approximately
10 December, late December of 2004, would that sound
11 appropriate?

03:56:11PM

12 A. I don't recall.

13 Q. Fair enough. I also have, provided to me by
14 your counsel, a document stating that it's a
15 Complaint for Damages and Injunctive Relief with Bill
16 Mattmiller, M-a-t-t-m-i-l-l-e-r, all one word, dba
17 Mattmiller Physical Therapy as the plaintiff and
18 Optima Funding as the defendant.

03:56:25PM

19 Are you aware of this litigation?

20 A. Somewhat.

03:56:47PM

21 MS. BREER: Do you want to show him the
22 Complaint?

23 MR. MANSON: This is the Complaint, and
24 we'll make a copy for the court reporter.

25 ///

1 (Plaintiff's Exhibit 6 was marked for
2 identification by the court reporter
3 and is bound under separate cover.)

4 BY MR. MANSON:

5 Q. To your knowledge, was this Complaint ever
6 served on Optima Funding? 03:56:55PM

7 A. I don't recall.

8 MS. BREER: What is the date on that?

9 MR. MANSON: 9/15/04.

10 MS. BREER: Okay. 03:57:24PM

11 MR. MANSON: I'm sorry. It's 9/13/04.

12 MS. BREER: That's the date of the
13 Complaint.

14 MR. MANSON: And Attorney Arnold Berschler
15 is the counsel. 03:57:33PM

16 MS. BREER: One second. Can we check and
17 see if that other fax has come because you can
18 inquire about that additional --

19 MR. MANSON: Let me ask about some more
20 beforehand. 03:57:43PM

21 BY MR. MANSON:

22 Q. Are you familiar with any litigation against
23 you or Optima in which Mark Kline is the plaintiff?

24 A. Mark Kline. Repeat the question, please.

25 Q. Are you familiar with -- are you aware of 03:57:59PM

1 any litigation against you individually or Optima
2 Funding in which Mark Kline is a plaintiff?

3 A. Yes.

4 Q. What is the nature of that litigation?

5 A. I believe it has -- I take that back. No.
6 It sounds familiar. I don't know what it is for.

03:58:16PM

7 Q. You are aware of some litigation, but you
8 don't know the nature of it?

9 A. I don't know the nature. No.

10 Q. Is an attorney handling that for you?

03:58:30PM

11 A. Yes, I believe so.

12 Q. Who would the attorney be?

13 MS. BREER: It would be me.

14 THE WITNESS: The name is familiar. Maybe
15 I'm confused with another name.

03:58:37PM

16 MS. BREER: I'm familiar with Mark Kline. I
17 know that he filed actions. I'm not familiar with
18 this one.

19 MR. MANSON: I believe there is an action
20 filed against Mark Kline; so you can check your
21 files.

03:58:49PM

22 MS. BREER: I don't know if that has gotten
23 to me.

24 BY MR. MANSON:

25 Q. Are you familiar with an action against

03:58:53PM

1 Optima or you personally in which BHD, slash,
2 Worldwide is the plaintiff?

3 A. No.

4 MS. BREER: I think that's the other one she
5 is faxing with the --

03:59:08PM

6 BY MR. MANSON:

7 Q. Are you familiar with any litigation against
8 you individually or Optima Funding in which Steve
9 Kirsch, K-i-r-s-c-h, is the plaintiff?

10 A. Yeah.

03:59:24PM

11 MS. BREER: You are?

12 THE WITNESS: Kirsch?

13 MS. BREER: If you are, go ahead.

14 THE WITNESS: His name is familiar. No. I
15 don't know.

03:59:34PM

16 BY MR. MANSON:

17 Q. Do you know why the name Steve Kirsch might
18 sound familiar?

19 A. I couldn't tell you. It sounds familiar.

20 Q. How about Mark Kline? Do you have any idea
21 where you may have heard that name before?

03:59:45PM

22 A. No.

23 Q. To your knowledge, have you received any
24 correspondence from a company called "Venture
25 Capital"?

03:59:58PM

1 A. No.

2 Q. How about a company called "Fax Capital"?

3 A. No.

4 Q. Are you familiar with any litigation against
5 you or Optima Funding with Ken Duke as the plaintiff?

04:00:08PM

6 A. Yes.

7 Q. And is there an attorney handling that for
8 you?

9 A. Yes.

10 Q. Who is that attorney?

04:00:19PM

11 A. Terri.

12 Q. You are indicating Ms. Breer?

13 A. Yes.

14 MS. BREER: And that Complaint is being
15 faxed.

04:00:26PM

16 MR. MANSON: I thought you said
17 BHD/Worldwide was being faxed.

18 MS. BREER: No. That's the small claims.
19 Remember I said that she's got another fax coming. I
20 told her to break it into sections. I believe there
21 is one more small claims that we are faxing, and then
22 the Ken Duke Complaint is probably here.

04:00:32PM

23 MR. MANSON: Is the Ken Duke Complaint, to
24 your knowledge, a small claims or big court?

25 MS. BREER: It's a big court.

04:00:47PM

1 MR. MANSON: Superior court.

2 BY MR. MANSON:

3 Q. Are you familiar with any litigation against
4 you or Optima Funding in which Joel Peshkin is the
5 plaintiff?

04:01:01PM

6 A. Yes.

7 Q. Who is handling that matter?

8 A. Terri Breer.

9 MR. MANSON: Ms. Breer, will we be able to
10 get copies of those --

04:01:09PM

11 MS. BREER: That's what we're getting.
12 We're getting Peshkin. I believe that was the
13 conversation I had with my secretary. If not -- I
14 know for sure -- maybe I am thinking Peshkin was the
15 one. I don't know about BHD for sure. Like I said,
16 I don't do the small claims, but I'll have her look
17 to see if we have that one. I know we have Ken Duke
18 and Peshkin. Those are coming or here.

04:01:19PM

19 BY MR. MANSON:

20 Q. Have you ever made offers to settle any junk
21 fax case?

04:01:36PM

22 MS. BREER: I'm going to object. I think
23 that's privileged -- it's the evidence of settlement
24 negotiations.

25 MR. MANSON: The existence of settlement --

04:01:47PM

1 the terms of them are protected, but I don't believe
2 the existence is.

3 MS. BREER: Ask the question again.

4 BY MR. MANSON:

5 Q. Have you ever made, you or Optima ever made
6 an offer to settle any junk fax case? 04:01:55PM

7 A. Not that I am aware of.

8 Q. Have you ever settled any junk fax cases?

9 A. Not that I am aware of, no.

10 Q. Have you ever gone to trial on any junk fax
11 cases? 04:02:19PM

12 A. Yes.

13 Q. Who was the plaintiff in that case?

14 A. It was Jimmy Sutton. It wasn't trial.

15 MS. BREER: It's not trial. 04:02:31PM

16 THE WITNESS: It wasn't a trial.

17 BY MR. MANSON:

18 Q. What type of proceeding have you had in the
19 junk fax case?

20 A. Preliminary -- I don't know what you call
21 it. 04:02:36PM

22 MS. BREER: There was a trial date, but for
23 whatever reason, Jim Sutton continued it. So he
24 didn't go to trial, but he arrived for the trial. We
25 don't want to make a problem out of it. 04:02:48PM

1 BY MR. MANSON:

2 Q. Have you ever been deposed for any junk fax
3 TCPA case?

4 A. Deposed?

5 MS. BREER: Like today.

04:02:56PM

6 THE WITNESS: No.

7 BY MR. MANSON:

8 Q. Has anyone else at Optima Funding been
9 deposed for a TCPA case?

10 A. No.

04:03:05PM

11 Q. Do you, as an individual, maintain any
12 written records of these lawsuits?

13 A. No. My attorney handles them.

14 Q. Does Optima maintain any written record of
15 these suits including a listing of plaintiffs, court
16 dates or anything like that?

04:03:17PM

17 A. My attorney handles all of that.

18 Q. To your knowledge, has Optima been named in
19 any class action lawsuits?

20 A. No.

04:03:27PM

21 Q. To your knowledge, have you been named in
22 any class action lawsuits as a defendant?

23 A. No.

24 Q. I believe you mentioned that your only
25 attorneys were Pistone & Wolder and Ms. Breer; is

04:03:38PM

1 that correct?

2 A. Uh-huh.

3 Q. Are you familiar with a law firm named
4 Graves & King?

5 A. Yes. That was --

04:03:53PM

6 MS. BREER: Go ahead. Whatever you
7 remember. Go ahead.

8 THE WITNESS: Go ahead.

9 BY MR. MANSON:

10 Q. Do you remember -- are you familiar with the
11 law firm of Graves & King?

04:03:57PM

12 A. Yes. But I believe, Terri, you stepped in.

13 MS. BREER: Yeah. That's this case.

14 BY MR. MANSON:

15 Q. Have you ever used Graves & King for any
16 other legal work?

04:04:05PM

17 A. Yeah. No, no. Just for -- I believe it was
18 only for that, and Terri stepped in.

19 Q. For this matter?

20 A. I believe so, yeah.

04:04:15PM

21 Q. Did you make the decision to hire Graves &
22 King?

23 A. Did I make the decision? Yeah.

24 Q. How did you decide to hire Graves & King?

25 MS. BREER: I'm going to object here. The

04:04:28PM

1 question may seek information protected by the
 2 attorney-client privilege. I'm not sure how his
 3 decision process went. I know that there could be
 4 some information regarding that that is protected by
 5 the attorney-client privilege; so I would instruct
 6 you not to answer. If you can only answer -- if your
 7 selection on Graves & King was in any way a result of
 8 your reliance on just attorney-client privilege
 9 communications.

04:04:44PM

10 BY MR. MANSON:

04:04:58PM

11 Q. I don't want you to testify to the content
 12 of any conversations you may have had with an
 13 attorney or a staff person at that law firm. But I
 14 want to know how you made the decision to hire Graves
 15 & King.

04:05:22PM

16 MS. BREER: Can you answer that?

17 THE WITNESS: I would rather not.

18 MS. BREER: Because I have instructed you
 19 not to answer?

20 THE WITNESS: Yeah.

04:05:27PM

21 BY MR. MANSON:

22 Q. How did you hear of Graves & King?

23 MS. BREER: Again --

24 THE WITNESS: Uh-huh. I would rather not
 25 answer that.

04:05:36PM

1 MS. BREER: Can we go off the record?

2 MR. MANSON: Yes. Off the record.

3 (A discussion was held off the record.)

4 MR. MANSON: Back on the record.

5 BY MR. MANSON:

6 Q. Have you ever consulted with a non attorney
7 with respect to hiring a law firm?

8 A. It doesn't make sense what you just asked.

9 Q. Did you ever consult with anyone other than
10 an attorney --

04:06:52PM

11 A. You said non attorney?

12 Q. Did you consult with someone other than an
13 attorney -- did you consult with a non attorney in
14 order to ask about what law firm to hire?

15 A. That's not a fair question to ask. No.

04:07:12PM

16 It doesn't make sense the question he is
17 asking.

18 MS. BREER: I think it does.

19 THE WITNESS: When you say "non" --

20 MS. BREER: Maybe ask it as not a negative.

04:07:23PM

21 I think it's because you've got a negative in there.

22 BY MR. MANSON:

23 Q. Other than attorneys, have you talked to
24 anybody about what law firm to hire?

25 A. Yeah.

04:07:33PM

1 Q. Who are those people?

2 A. It's a very vague question. I don't recall.
3 Just people that are in the same line of work, same
4 type of business that I am in. Just like the same
5 line of work.

04:07:51PM

6 Q. Did a non attorney recommend Graves & King?

7 A. No.

8 Q. Did a non attorney recommend Ms. Breer?

9 A. No.

10 MS. BREER: I'm notorious --

04:08:15PM

11 BY MR. MANSON:

12 Q. How did you hear of Ms. Breer?

13 MS. BREER: He just said it would have
14 been -- I'm going to object.

15 MR. MANSON: I asked him if he talked to
16 people. He could have found you on the internet, in
17 the yellow pages, lots of ways.

04:08:23PM

18 BY MR. MANSON:

19 Q. If an attorney told you to contact
20 Ms. Breer, then don't answer.

04:08:32PM

21 Other than that, how did you hear of
22 Ms. Breer?

23 A. I already answered it.

24 Q. Can you speak up. I am hearing mumbling.

25 A. I have to repeat my answers over and over

04:08:45PM

1 again to you.

2 MS. BREER: It was asked and answered, and
3 he said that he can't answer that without violating
4 the attorney-client privilege. I think that's what
5 the record says.

04:08:55PM

6 BY MR. MANSON:

7 Q. Did you hear of Graves & King from anyone
8 other than an attorney?

9 A. No.

10 Q. Going to your lead generation companies, is
11 Link Point -- is that one word or two words?

04:09:03PM

12 A. I believe it's two words.

13 Q. So it's Link, L-i-n-k, space, Point,
14 P-o-i-n-t?

15 A. I believe so, yeah.

04:09:31PM

16 Q. Again, for the court reporter's benefit so
17 she doesn't get mad at me, let's not interrupt each
18 other.

19 How about Live Leads? Is that two words?

20 A. I believe so.

04:09:42PM

21 Q. And I believe there was one more I wanted to
22 ask about.

23 David, do you remember who the other one was
24 that we had spoken to the court reporter about the
25 spelling on the name?

04:09:58PM

1 MS. BREER: Quick Loans.

2 BY MR. MANSON:

3 Q. You mentioned you worked for Quick Loans.

4 Is that one word or two?

5 A. That's three. Quick Loan Funding. 04:10:03PM

6 Q. Quick, space, Loan, space, Funding?

7 A. Quick Loan Funding. Quick, space, Loan,
8 space, Funding.

9 Q. I believe you testified earlier that there
10 was no written agreement with Link Point between you
11 or Optima. 04:10:25PM

12 Would any of your sales force have had a
13 separate agreement with Link Point?

14 A. I hope not.

15 Q. Did you ever pay Link Point for any leads? 04:10:36PM

16 A. I did, yeah.

17 Q. Does that imply that there were qualified
18 leads from Link Point?

19 "Qualified," meaning you had talked about
20 they had to own a home and not be in an apartment and
21 other criteria. 04:10:52PM

22 A. Right.

23 Q. Does that mean there were qualified leads
24 that you received from Link Point?

25 A. Correct. 04:11:01PM

1 Q. Do you know if you ever closed any business
2 from any Link Point leads?

3 A. I am sure I have.

4 Q. Do you know specifically?

5 A. I don't know. 04:11:10PM

6 Q. Do you know about how much dollar volume of
7 business?

8 A. I do not know.

9 Q. When leads came from Link Point, who would
10 receive the e-mails from Link Point? 04:11:23PM

11 A. E-mails or -- either e-mails or they get
12 transferred to our receptionist.

13 Q. I specifically asked you about that.

14 Calls would be direct transferred to your
15 receptionist, live calls, or what I am calling "hot
16 call transfers." 04:11:34PM

17 So live clients would call. They would
18 get -- somehow they would respond to these fax ads
19 from Link Point and get transferred to Optima?

20 A. We don't do faxing at all. 04:11:49PM

21 Q. You said earlier that Link Point -- you
22 found out that they were sending faxes?

23 A. Correct.

24 Q. And that you terminated your relationship?

25 A. Absolutely correct. 04:12:02PM

1 Q. But they received calls from these faxes and
2 transferred some to you. Is that what you are
3 saying?

4 MS. BREER: At this point I'm going to
5 object. First of all, there's been no testimony that
6 Link Point got the phone calls from a fax. You never
7 established that; so that would be misstating his
8 testimony.

04:12:10PM

9 What he testified to was he fired Link Point
10 because he learned that they do do fax advertising.
11 He never said anything more than that.

04:12:26PM

12 MR. MANSON: I just asked him if he got
13 leads from Link Point, and he said, "Yes."

14 MS. BREER: If he got leads from them, but
15 that doesn't -- I am saying that the testimony that
16 he said -- he doesn't -- he can't testify. He
17 doesn't have any knowledge whether or not the leads
18 that he got from Link Point came from faxing.

04:12:38PM

19 MR. MANSON: He never testified --

20 MS. BREER: He testified Link Point does
21 faxing. That's what he testified to. He didn't
22 testify that "And I received leads as a result of
23 that." And I think that's what your question is
24 implying. So I want that clear that doesn't come out
25 in the transcript that that's the case. Because,

04:12:50PM

04:13:04PM

1 first of all, you haven't established that he would
2 have any knowledge of that.

3 BY MR. MANSON:

4 Q. I am going to walk through two lines of
5 questioning. I would like you to very clearly listen
6 to my complete question and think about it before
7 answering it. All right?

04:13:14PM

8 A. Uh-huh.

9 Q. Without mumbling.

10 A. Yes.

04:13:21PM

11 Q. Did Optima Funding pay Link Point for any
12 leads?

13 A. Yes.

14 Q. Do you know how Link Point got those leads
15 that you paid for?

04:13:33PM

16 A. Various ways. Telemarketing -- I believe
17 mainly from telemarketing.

18 Q. You said earlier that Link Point -- you
19 found that Link Point was also sending junk faxes.
20 Does that sound correct? Is that stating your
21 testimony correctly?

04:13:48PM

22 A. You are putting words in my mouth.

23 MS. BREER: I think you did.

24 THE WITNESS: As soon as I found out they do
25 that, I did terminate my relationship with them.

04:13:56PM

1 BY MR. MANSON:

2 Q. Did you become aware that Link Point was
3 sending unsolicited facsimile ads?

4 A. Yes.

5 Q. Did Optima receive leads from Link Point
6 that came from unsolicited fax ads?

04:14:03PM

7 MS. BREER: If you know.

8 THE WITNESS: I don't know.

9 BY MR. MANSON:

10 Q. Do you know that Optima did not receive
11 leads --

04:14:12PM

12 A. I don't know.

13 Q. -- that came from fax ads?

14 A. I don't know.

15 Q. Did your salespeople ever ask where the
16 clients heard of Optima Funding?

04:14:20PM

17 MS. BREER: Again, if you know, because he
18 is asking about other people.

19 THE WITNESS: I don't know.

20 BY MR. MANSON:

21 Q. Do your salespeople operate on a script when
22 a call comes in where they ask for certain
23 information from every client and follow a checklist
24 of any sort?

25 A. Not necessarily.

04:14:43PM

1 Q. No? So if I were to call in and talk to one
2 of your salespeople --

3 A. Actually, yeah. There is a form that we
4 have that they go by: name, address, loan amounts,
5 the address of their primary home, secondary home and 04:14:57PM
6 information like that.

7 Q. And does that include a request for where
8 they heard of Optima Funding?

9 A. No.

10 Q. Does that include how they got transferred 04:15:11PM
11 to Optima Funding?

12 A. No. I don't believe so, no.

13 Q. Have you ever instructed your sales force to
14 ask people if they heard of Optima through a junk
15 fax? 04:15:25PM

16 A. No.

17 Q. To your knowledge, have any of your -- I'm
18 sorry. You looked like you were about to say
19 something. I don't want to interrupt you.

20 A. No. Go ahead. 04:15:33PM

21 Q. To your knowledge, do any of your
22 salespeople ever talk to people about junk faxes,
23 talk to clients about junk faxes?

24 A. In what way?

25 Q. If someone called and spoke with a sales 04:15:43PM

1 agent and said, "I got transferred to you from a
2 facsimile advertisement," what would your salesperson
3 be instructed to do?

4 MS. BREER: That calls for speculation.

5 MR. MANSON: He stated he is in charge of
6 the sales force --

7 MS. BREER: The first part of the question
8 was "If somebody did this, what would they do?" I
9 don't know that he knows what everybody in the sales
10 force would do.

11 MR. AMKRAUT: Let me just say something: I
12 think the person being deposed, Mr. Ali Shah,
13 understands and he was instructed at the beginning
14 and at various times that he is only being asked for
15 what he knows. If he doesn't know something, he can
16 say he doesn't know.

17 MS. BREER: I'm just concerned about making
18 a good record, and I'm allowed to object to the form
19 of the question. And I don't want speculative
20 questions coming that he is answering when he is not
21 certain that he has the personal knowledge to
22 respond. It's difficult being on the receiving end
23 of these questions. So that's why I just want to
24 make sure that he is not -- I don't want him
25 speculating. I want him testifying as to his

1 knowledge. If I feel that that might be happening, I
2 think it's my duty to make sure the record is clear.

3 MR. AMKRAUT: At the same time, long
4 speaking objections can serve as coaching or warning.

5 We can instruct him again that Mr. Manson is
6 only asking for information that he knows. But we
7 don't need speaking objections like this each time
8 that serves as a red flag.

04:17:00PM

9 MS. BREER: But when you ask for what was in
10 someone else's mind, that's a little different than
11 what you just talked about. You were saying "Is this
12 what these people think or do?" That's a different
13 thing.

04:17:18PM

14 I think you understand that we don't want
15 you to guess, and you are only supposed to testify as
16 to your own knowledge.

04:17:29PM

17 THE WITNESS: Okay.

18 BY MR. MANSON:

19 Q. Have you instructed your sales force on what
20 to do if someone says they got the number from a junk
21 fax or from a fax ad?

04:17:39PM

22 A. Explain what you mean by that.

23 Q. Have you ever instructed your sales force on
24 any action to take if someone mentions --

25 A. To bring the name and number to me.

04:17:56PM

1 Q. To bring the name and number to you?

2 A. Yes.

3 Q. Have any of your sales force brought a name
4 and number?

5 A. No.

04:18:05PM

6 Q. I'm going to call for some speculation on
7 this one: If at trial I present evidence of somebody
8 who was told by a sales agent, "That's not this
9 week's ad. That's last week's ad," would that
10 person -- have you ever been brought the name and
11 number of a person who may have said that to your
12 salesperson?

04:18:22PM

13 A. Not that I am aware of, no.

14 Q. Can you -- knowing what you know now about
15 the illegality of unsolicited fax ads or junk faxes,
16 and since you said you are the director of compliance
17 or in charge of compliance, can you imagine why your
18 employee would not bring you that name and number?

04:18:35PM

19 MS. BREER: I'm going to object to the form
20 of that question. It's compound. It calls for
21 speculation. It's uncertain. I think you've got to
22 break that down.

04:18:54PM

23 BY MR. MANSON:

24 Q. Do you have any idea why an employee would
25 disobey such an instruction to bring you the name and

04:19:05PM

1 number?

2 A. I couldn't tell you why. Employees do
3 weird --

4 Q. Have you ever heard any of your sales agents
5 talk about junk faxes? 04:19:16PM

6 A. No.

7 Q. Okay. I have here -- give me a moment,
8 please.

9 Let's go off the record.

10 (A discussion was held off the record.) 04:24:59PM

11 MR. MANSON: Back on the record.

12 I have in front of me a document which is
13 the Affidavit of Jimmy Sutton, and we will make that
14 Exhibit 7.

15 (Plaintiff's Exhibit 7 was marked for
16 identification by the court reporter
17 and is bound under separate cover.)

18 BY MR. MANSON:

19 Q. Among other things, I am going to read just
20 a little bit of this out loud. 04:25:16PM

21 Paragraph 3 says that Mr. Sutton called the
22 numbers on certain facsimiles, "And in each case it
23 was answered 'Mortgage Services.' After giving a
24 name and phone number, I was immediately transferred
25 to Optima Funding." 04:25:33PM

1 Do you have any idea why Mr. Sutton would
2 make such an allegation?

3 A. No, I don't.

4 Q. To your knowledge, has anyone ever been
5 transferred to Optima Funding based on calling a
6 number from a facsimile?

04:25:57PM

7 A. No.

8 Q. In Paragraph 4 Mr. Sutton says he was able
9 to positively identify Optima because a message
10 stated he had reached Optima Funding and gave the
11 Hutton Center address.

04:26:15PM

12 Does your recorded message, like a hold
13 message -- when you are on hold, sometimes you hear
14 music and sometimes you hear advertising messages.

15 Does your hold message identify your company
16 as Optima Funding?

04:26:29PM

17 A. Yes.

18 Q. Does it give your address?

19 A. Yes.

20 Q. Going down a little bit, Paragraph 6 says
21 that on April 16, 2004 -- I'm sorry. In the course
22 of that phone call, he was transferred to an Optima
23 Funding representative who identified himself as Ali.

04:26:36PM

24 Did you ever have any conversation with
25 Mr. Sutton?

04:27:00PM

1 A. Not that I am aware of, no.

2 Q. Do you know if Ali -- I want to say
3 Menash -- or the other name I asked you about
4 earlier, if that person has ever had a conversation
5 with Jimmy Sutton?

04:27:10PM

6 A. I don't know.

7 Q. Have you ever spoken to Mr. Menash about
8 Jimmy Sutton?

9 A. No.

10 Q. Do you have any other employees named Ali?

04:27:15PM

11 A. No.

12 Q. Mr. Sutton states in his affidavit that --

13 MS. BREER: Can we not read that into the
14 record and just ask him a question about the
15 document?

04:27:34PM

16 MR. MANSON: Fine.

17 MS. BREER: I don't think it's appropriate
18 for you to just read this into the transcript.

19 MR. MANSON: Fine.

20 BY MR. MANSON:

21 Q. The Ali that Mr. Sutton talked to explained
22 that Optima contracted with Impact Marketing.

23 Have you ever heard of Impact Marketing?

24 MS. BREER: I'm going to object to the way
25 the question is asked. It would create the sense, if

04:27:54PM

1 that were read at a later date, that in fact this
2 occurred. This is what he said. The question -- if
3 you can rephrase it.

4 MR. MANSON: That's why I was reading it
5 into the record. I am reading from a document which
6 we don't have a witness here to testify. I am
7 reading from a document, and this document states --

04:28:06PM

8 MS. BREER: That's different than what you
9 said.

10 MR. MANSON: Fine.

04:28:15PM

11 BY MR. MANSON:

12 Q. The document statements that Mr. Sutton --
13 strike that.

14 The document states that this Ali explained
15 that Optima contracted with Impact Marketing.

04:28:27PM

16 Have you ever heard of Impact Marketing?

17 A. It's one of the companies that we might have
18 worked with in the past.

19 Q. Did you or did you not work with Impact
20 Marketing?

04:28:42PM

21 A. Yeah. We worked with Impact.

22 Q. Were they a lead generation company?

23 A. Yes.

24 Q. Do you know how they generated leads for
25 you?

04:28:50PM

1 A. Through telephone --

2 Q. Telemarketing?

3 A. Telemarketing.

4 Q. I don't want to put words in your mouth.

5 Are you agreeing with me? It's through

04:28:57PM

6 telemarketing?

7 A. Right.

8 Q. Do you know if Impact Marketing ever sent
9 junk faxes?

10 A. I hope not.

04:29:04PM

11 Q. Did you ever instruct Impact Marketing not
12 to send junk faxes?

13 A. Instruct? I told any company that we worked
14 with -- yeah -- not to. I don't want any leads that
15 come from faxes or facsimiles.

04:29:15PM

16 Q. Who was your contact person at Impact
17 Marketing?

18 A. I don't recall his name.

19 Q. When did you do business with Impact
20 Marketing?

04:29:31PM

21 A. A little over a few months ago.

22 Q. How long -- that's when you stopped doing
23 business with them or when you started?

24 A. When we started.

25 Q. You started doing business with them a few

04:29:39PM

1 months ago?

2 A. Yeah.

3 Q. Are you still doing business with Impact
4 Marketing?

5 A. No.

04:29:46PM

6 Q. Why not?

7 A. Just better companies to work with. Better
8 companies to work out there with.

9 Q. Did Impact Marketing ever provide you with
10 qualified leads?

04:29:53PM

11 A. I believe so. Yeah.

12 Q. Did you pay Impact Marketing for leads?

13 A. Yes.

14 Q. Do you know how they generated the leads
15 that you paid for?

04:30:03PM

16 MS. BREER: That's asked and answered.

17 MR. MANSON: Slightly different question.

18 THE WITNESS: I don't know how they get
19 their leads, as far as when you ask that question. I
20 believe it's from telephone.

04:30:14PM

21 BY MR. MANSON:

22 Q. Okay. Do you know whether Impact Marketing
23 ever sent junk faxes?

24 A. I hope not.

25 Q. Do you know whether they did or not?

04:30:23PM

1 A. No. I hope they didn't.

2 Q. I understand you hope they didn't. Do you
3 know whether they ever sent junk faxes? Yes or no?

4 A. The way you are asking --

5 Q. I am asking a yes-or-no question. To your
6 knowledge, did Impact Marketing ever send junk faxes?

04:30:38PM

7 A. No. To my knowledge, no.

8 Q. Mr. Sutton in his affidavit says that the
9 Ali he spoke with stated multiple times that they
10 knew Impact Marketing was sending unsolicited
11 facsimiles.

04:30:58PM

12 To your knowledge, does Mr. Menash ever deal
13 with Impact Marketing?

14 A. I hope not. No.

15 Q. Did Mr. Menash -- refresh my memory. Is he
16 a salesperson?

04:31:11PM

17 A. Yes.

18 Q. Does your salesperson ever deal directly
19 with the lead generation company?

20 A. Not necessarily, no. Sometimes some of them
21 can get leads on their own. They have referral base
22 sources.

04:31:22PM

23 Q. So Mr. Menash could be dealing directly with
24 Impact Marketing?

25 A. I hope not. But I don't know.

04:31:38PM

1 Q. Mr. Sutton alleges that Ali had an indemnity
2 letter from Impact Marketing that they will take care
3 of fax cases. That's his allegation here.

4 Do you have any correspondence from Impact
5 Marketing with respect to fax cases? 04:32:00PM

6 A. I don't believe so, no.

7 Q. Do you have any indemnity agreement with
8 Impact Marketing whatsoever?

9 A. No.

10 Q. Okay. Do you have any written agreement
11 with Impact Marketing? 04:32:14PM

12 A. No.

13 Q. Was there ever any agreement with Impact
14 Marketing?

15 A. No. 04:32:34PM

16 Q. Let's move on to the next thing.

17 How much did you pay Impact Marketing for
18 each qualified lead they sent you?

19 A. Anywhere from 100 to \$200 per lead.

20 Q. Was there an oral agreement with them as to,
21 say, the time of the -- when they would be paid? 04:32:54PM

22 A. Once a week.

23 Q. They would be paid weekly?

24 A. Yeah.

25 Q. Do you know -- what other terms of any oral 04:33:06PM

1 agreement did you have with them?

2 A. As far as what?

3 Q. You said there was an oral agreement that
4 you would pay them once a week. What were the other
5 terms of your oral agreement with them?

04:33:26PM

6 A. No set in stone other terms.

7 Q. What were some of the other terms that might
8 not have been set in stone?

9 A. I don't recall.

10 Q. Okay.

04:33:40PM

11 A. It's just one of the companies that we
12 worked with as far as generating leads. That's all.

13 Q. How do you track who sends you a particular
14 lead?

15 A. How do we track?

04:33:52PM

16 Q. Uh-huh.

17 A. It goes to the front. The call goes to the
18 front with the name of the client.

19 Q. How do you know who sent you a particular
20 client?

04:34:06PM

21 A. Explain what you mean by that.

22 Q. A little background.

23 In order to pay 100 to \$200 per lead, you
24 have to know who a lead is coming in from so you know
25 who to pay?

04:34:19PM

1 A. Correct.

2 Q. How do you determine who is sending you a
3 particular lead?

4 A. The call goes to the front, and the
5 receptionist answers and asks where the call is
6 coming from, and it gets transferred to the
7 salesperson.

04:34:25PM

8 Q. When your receptionist answers the phone, is
9 the client on the other end or is the lead company on
10 the other end or someone else?

04:34:38PM

11 A. It can be either or.

12 Q. So in some cases when the receptionist
13 answers the phone, the client is on the other end?

14 A. Correct.

15 Q. And she asks the client "Who sent you?" or
16 what --

04:34:49PM

17 A. "How did you hear about us?" Something like
18 that.

19 Q. If someone says, "Off of a junk fax," or if
20 someone says, "I received a fax with this
21 information," is your receptionist going to transfer
22 that to a sales agent?

04:35:00PM

23 A. No.

24 Q. What is she going to do? What has she been
25 instructed to do?

04:35:11PM

1 A. It would be taken to Donna Thomson. It
2 would be taken to myself or Donna Thomson.

3 MR. MANSON: I have before me some photos of
4 a billboard. Let's make this Exhibit 8.

5 (Plaintiff's Exhibit 8 was marked for
6 identification by the court reporter
7 and is bound under separate cover.)

8 BY MR. MANSON:

9 Q. Is that an Optima Funding billboard?

10 A. Yes. 04:35:36PM

11 Q. Are you familiar with that billboard?

12 A. Yes.

13 Q. It mentions "optimafunding.com." Is that
14 your website?

15 A. Yes. 04:35:44PM

16 Q. Does anyone else use that website?

17 A. I hope not.

18 Q. When you get contacts through that website,
19 do they go to anybody besides Optima Funding?

20 A. Repeat the question. 04:35:55PM

21 Q. If someone were to go to optimafunding.com
22 and click on the contact us link, would that
23 information go to anyone besides Optima Funding or
24 only to your company?

25 A. Come to me, my company. 04:36:09PM

1 Q. Who at your company would receive those
2 contacts?

3 A. IT department.

4 Q. That picture has -- the billboard has a man
5 holding money fanned out next to him.

04:36:23PM

6 A. Uh-huh.

7 Q. Are you familiar with that graphic?

8 A. Yeah.

9 Q. You mentioned earlier that you approve ads
10 before they go out.

04:36:39PM

11 Did you approve this billboard?

12 A. I did.

13 Q. Who put this billboard together for you, or
14 who designed it?

15 A. It was between my IT department, myself and
16 Viacom Outdoor.

04:36:48PM

17 Q. Do you know who used -- who had the graphic
18 that was there? Is that a graphic that your company
19 had available to them?

20 A. Yes.

04:37:03PM

21 Q. Do you know where you got that graphic?

22 A. My IT guy got that graphic.

23 Q. Do you know where he got it?

24 A. I don't know.

25 MR. MANSON: Let's enter in mass the junk

04:37:16PM

1. faxes in this litigation, and we'll enter these as
 2. Exhibit 9.

3. MS. BREER: Just for the record, these are
 4. the alleged junk faxes in this thing. You make it
 5. sound like --

04:37:37PM

6. MR. MANSON: I said that they are the faxes
 7. at issue here, didn't I?

8. MS. BREER: You said in this case. Anyway,
 9. these are the faxes that you have attached to your
 10. Complaint.

04:37:46PM

11. MR. MANSON: That's correct.

12. MS. BREER: Or does it also include others?

13. MR. MANSON: These are the faxes -- it
 14. includes others. It includes all that were available
 15. at the deposition of Mr. Rigney a couple of weeks
 16. ago. So there are 65 [sic] here.

04:37:53PM

17. MS. BREER: Okay.

18. (Plaintiff's Exhibit 9 was marked for
 19. identification by the court reporter
 20. and is bound under separate cover.)

04:38:06PM

21. BY MR. MANSON:

22. Q. If you can turn to the ninth fax in the
 23. bunch, the facsimile that you are looking at has a
 24. man. Would you agree with me that that looks very
 25. similar to the man in the billboard?

04:38:20PM

1 A. Yeah.

2 Q. Would you agree that he is in approximately
3 the same pose holding money fanned out in front of
4 him?

5 A. Yeah.

04:38:43PM

6 Q. Did you notice any significant distinctions
7 between the man in the billboard and the man in the
8 advertisement?

9 MS. BREER: I am going to object because
10 whether or not he can --

04:38:53PM

11 THE WITNESS: First of all --

12 MS. BREER: Can I finish my objection?

13 THE WITNESS: Yeah.

14 MS. BREER: My objection is that the
15 documents speak for themselves -- what they show or
16 they don't show. Asking him to say what he sees, I
17 just -- I don't understand. It's kind of a -- what
18 is the objection?

04:39:01PM

19 MR. MANSON: I'm not sure.

20 MS. BREER: I will withdraw the objection.

04:39:18PM

21 MR. AMKRAUT: I can suggest that the way to
22 cut through it, why don't the parties stipulate that
23 that's the same photo on the billboard, the same
24 illustration on the billboard --

25 MS. BREER: Well, it's similar but --

04:39:30PM

1 THE WITNESS: I think anybody can use this,
2 though. We saw this on another mortgage company's
3 website for a couple of days.

4 BY MR. MANSON:

5 Q. Can you direct me to that company and its
6 website? 04:39:37PM

7 A. No. You can put this on anything. You can
8 just go and take this from the internet.

9 Q. I asked you if you knew where your IT guy
10 got it, and you said, "No." 04:39:47PM

11 MS. BREER: He said the internet.

12 MR. MANSON: No, he didn't. He said he
13 didn't know where he got it.

14 MS. BREER: That's what I heard. I thought
15 you said "the internet." 04:39:50PM

16 THE WITNESS: You can go find any picture on
17 the internet.

18 BY MR. MANSON:

19 Q. Okay.

20 A. Right? 04:39:57PM

21 Q. Okay.

22 A. I am saying maybe somebody liked our
23 billboard and liked the picture on there and went and
24 did that.

25 Q. To your knowledge, did you pay any license 04:40:05PM

1 fee for the use of that graphic?

2 A. I believe that we -- yeah. I don't know
3 what it was. I believe it was \$100 or \$200 or \$300.

4 Q. Can you find for me who you paid that to?

5 A. Yes.

04:40:16PM

6 Q. I would like to find out who that was paid
7 to.

8 Then let's go back to the first of the
9 faxes. Turn back to the first fax. At the bottom
10 there is a number 800-670-6024.

04:40:31PM

11 Has Optima Funding ever used that number?

12 A. Never.

13 Q. Have you ever received any calls from anyone
14 who called that number?

15 A. No.

04:40:47PM

16 Q. Again, let me ask my complete question.
17 Okay?

18 A. Yeah. Go ahead.

19 Q. A few pages further back I am showing you a
20 fax. The number is 800-752-3770.

04:40:57PM

21 Has Optima ever used that number?

22 A. No.

23 Q. Has Optima ever received calls from anyone
24 calling that number?

25 A. No.

04:41:09PM

1 Q. Skipping further back again, I am about
2 halfway through the stack.

3 MS. BREER: I see a new one coming up.

4 BY MR. MANSON:

5 Q. There is a number of 800-455-1351. 04:41:20PM

6 Has Optima ever used that number?

7 A. No.

8 Q. Has Optima ever received calls from anyone
9 calling that number?

10 A. No. 04:41:29PM

11 Q. Skipping back again, there's a phone
12 number 800-485-2917.

13 Has Optima ever received -- has Optima ever
14 used that telephone number?

15 A. Never used that telephone number. 04:41:48PM

16 Q. Has Optima ever received calls from anyone
17 calling that number?

18 A. I hope not. No.

19 Q. Do you have an employce named John Davis?

20 A. John Davis? It doesn't ring a bell at all. 04:41:57PM

21 Q. Do you have an employee named Steven
22 Anderson?

23 A. It doesn't ring a bell.

24 Q. Are you familiar with all 100 plus employees
25 that you have? 04:42:14PM

1 A. No, not with all of them. No.

2 Q. How much did Optima pay to lead generators
3 during 2004?

4 A. I don't recall. I told you I was going to
5 find out for you, though. 04:42:34PM

6 Q. I wasn't sure if I asked that particular
7 one. Let's go to another quick subject.

8 Does Optima have any insurance policy that
9 may provide coverage for the acts alleged in the
10 Complaint? 04:42:51PM

11 A. Repeat the question, please.

12 Q. Does Optima have any insurance that may
13 provide coverage for the acts alleged in the
14 Complaint?

15 A. I don't think so. I will take a look. I
16 will look into it, though. 04:43:03PM

17 Q. Has Optima submitted this action to any
18 insurance company?

19 A. Not to my knowledge, no.

20 Q. Has Optima shared information on this
21 lawsuit with anyone other than its attorneys? 04:43:13PM

22 A. No.

23 MS. BREER: "This lawsuit," meaning JNS?

24 MR. MANSON: Yes.

25 ///

1 BY MR. MANSON:

2 Q. Do you or does Optima stay in contact with
3 anyone other than attorneys about the TCPA or TCPA
4 lawsuits generally?

5 A. No. 04:43:40PM

6 Q. Is any individual indemnifying Optima for
7 liability with respect to this lawsuit?

8 MS. BREER: If he understands what
9 indemnification means. It's also been asked and
10 answered as well. 04:43:54PM

11 MR. MANSON: Before we talked
12 about agreements.

13 MS. BREER: What does it say?

14 MR. MANSON: Could you read the question
15 back, please. 04:44:02PM

16 THE WITNESS: Off the record?

17 MS. BREER: No. We have to agree to do
18 that.

19 (The following question was read back
20 by the court reporter as requested:

21 "QUESTION: Is any individual
22 indemnifying Optima for liability
23 with respect to this lawsuit?")

24 THE WITNESS: I don't believe so. No.

25 MR. MANSON: Do you want to go off the 04:44:45PM

1 record?

2 THE WITNESS: Yes.

3 (A discussion was held off the record.)

4 MR. MANSON: Back on the record.

5 BY MR. MANSON:

6 Q. Have you ever been charged with any -- in
7 the last five years, have you ever been charged with
8 violation of any law?

9 A. No.

10 Q. Have you ever been charged with any
11 violation of administrative regulation?

04:45:55PM

12 A. No.

13 Q. Has Optima ever been charged with any
14 criminal violation?

15 A. No.

04:46:05PM

16 Q. Have you ever been convicted of any criminal
17 law?

18 A. No.

19 Q. Have you ever been charged ever -- not just
20 in the last five years, but have you ever been
21 charged with perjury?

04:46:14PM

22 A. No.

23 Q. Have you ever been charged with
24 embezzlement?

25 A. No.

04:46:22PM

1 Q. Have you ever been charged with fraud?

2 A. No.

3 Q. Have you ever been charged with theft?

4 A. No.

5 Q. Okay.

04:46:27PM

6 A. Thank God.

7 Q. Have you or Optima ever purchased a fax
8 broadcast system or computer program?

9 A. No.

10 Q. Have you ever heard of "Ellipsis"?

04:46:37PM

11 A. No. What is that?

12 Q. I believe they are a company that sells fax
13 broadcast systems.

14 Are you familiar with the existence of fax
15 broadcast systems?

04:46:53PM

16 A. No.

17 Q. Have you ever heard of a company called
18 "E-Loan Sights"?

19 A. I've heard of E-Loan, but not E-Loan Sights.

20 Q. Tell me what you've heard about E-Loan.

04:47:03PM

21 A. I've seen their TV commercials. Mainly TV
22 commercials. That's a pretty large company from what
23 I've seen.

24 Q. Have you ever done any work with E-Loan?

25 A. No.

04:47:14PM

1 Q. Have they ever provided funds for any of
2 your loans?

3 A. No.

4 Q. Have you ever brokered a loan to them?

5 A. Not that I am aware of, no. 04:47:19PM

6 Q. Have you ever heard of Mark Nicholson?

7 A. No.

8 Q. Have you ever heard of Charles Martin?

9 A. The name does ring a bell.

10 Q. Can you think for a moment and try to place
11 that name? 04:47:30PM

12 MS. BREER: I'm going to object. I believe
13 that question might seek information protected by the
14 attorney-client privilege, and I instruct the witness
15 not to answer if he might have learned that name -- 04:47:40PM

16 MR. MANSON: Let me rephrase the question.

17 THE WITNESS: Okay. It rings a bell, but I
18 don't remember.

19 BY MR. MANSON:

20 Q. Let me rephrase the question. 04:47:48PM

21 MS. BREER: Maybe that's the answer.

22 BY MR. MANSON:

23 Q. Other than from an attorney, have you ever
24 heard of Charles Martin?

25 A. No. 04:47:54PM

1 Q. Other than an attorney -- other than from an
2 attorney, have you ever heard of Kevin Katz, K-a-t-z?

3 A. No.

4 Q. Other than from an attorney, have you ever
5 heard of Eric Wilson?

6 A. No.

7 Q. Other than from an attorney --

8 MS. BREER: Can I make -- it sounds like the
9 way the record is going to read is that he did from
10 somebody else. I think we're going back and
11 saying -- first, if we could -- you know, it makes it
12 sound like, yes, he heard about him, but only through
13 an attorney. Do you see what I am saying? I don't
14 want the record to reflect that. That would be
15 incorrect.

16 MR. MANSON: I believe --

17 MS. BREER: It's like a negative pregnant or
18 something.

19 MR. MANSON: There is no other way to phrase
20 it, though. Let me state for the record the witness
21 has not testified that he has heard of these people
22 from an attorney.

23 MS. BREER: That's all I wanted. Or from
24 anyone else for that matter.

25 MR. MANSON: The record speaks for itself.

1 MS. BREER: Okay.

2 MR. MANSON: We're not intending to imply
3 that he has heard of these people from an attorney.
4 That's protected by the attorney-client privilege,
5 which is why we are phrasing it this way.

04:49:00PM

6 Satisfied, Ms. Breer? Are you satisfied
7 that that takes care of the issue?

8 MS. BREER: Yeah. Just for clarification,
9 all my point was is that when you ask the question,
10 "Have you ever heard of this person other than
11 through an attorney?" it makes it sound like they
12 must have heard about it through an attorney. And I
13 don't know that he is testifying to that, either.

04:49:10PM

14 MR. MANSON: Was my statement on the record
15 enough to satisfy you?

04:49:21PM

16 MS. BREER: At this point I am satisfied.

17 MR. MANSON: Thank you.

18 BY MR. MANSON:

19 Q. Other than from an attorney, have you ever
20 heard of Clarion Mortgage?

04:49:26PM

21 A. No.

22 Q. Have you ever done business with a company
23 called "Clarion Mortgage"?

24 A. No.

25 MS. BREER: Pay attention.

04:49:34PM

1 BY MR. MANSON:

2 Q. Assume for a moment that one of your lead
3 generation companies violated the TCPA and sent fax
4 ads and sent you leads from fax ads.

5 MS. BREER: I am going to object to the form
6 of that.

7 MR. MANSON: There's no question yet.

8 MS. BREER: That calls for speculation when
9 you ask him to assume for a moment that something
10 happened that didn't happen.

11 MR. MANSON: Let me finish the question, and
12 you will see that it doesn't.

13 MS. BREER: All right.

14 BY MR. MANSON:

15 Q. Assume for a moment that a lead generation
16 company violated the TCPA and sent fax ads and then
17 sent you a lead from a fax ad.

18 A. Uh-huh.

19 Q. Why don't you think -- or do you think
20 Optima should be financially responsible for the
21 actions of that lead generation company, this
22 hypothetical lead generation company?

23 MS. BREER: I don't know --

24 MR. MANSON: I'm sorry. You are not
25 speaking for the record. If you are speaking and you

04:49:48PM

04:49:55PM

04:50:00PM

04:50:14PM

04:50:29PM

1 want it on the record, say it louder.

2 MS. BREER: Never mind.

3 BY MR. MANSON:

4 Q. Do you think Optima Funding --

5 A. No. 04:50:36PM

6 Q. Please don't interrupt me.

7 Do you think Optima Funding should be
8 responsible for the acts of this hypothetical lead
9 generation company in this hypothetical situation?

10 A. No. If they sent me leads coming from a
11 fax? Is that what you are saying? 04:50:47PM

12 Q. Correct.

13 A. No.

14 Q. Why not?

15 A. Because not only I made it very clear I
16 don't want any business from any junk fax, faxes, I
17 don't want any leads at all from that type of
18 advertisement. 04:50:55PM

19 Q. Okay.

20 A. If I knowingly knew about it, yes. 04:51:08PM

21 Q. Okay. I'll rephrase this hypothetical.

22 Let's now assume that this hypothetical lead
23 generation company sent you a lead, your salesperson
24 was on the phone, a hypothetical salesperson is on
25 the phone and is told by the client that they heard 04:51:30PM

1 about you from a fax ad, and this hypothetical
 2 salesperson goes ahead and writes up the loan anyway
 3 and you close the deal.

4 Should Optima Funding be liable, in your
 5 opinion?

04:51:43PM

6 MS. BREER: Okay. I'm going to object. And
 7 I hate to object on relevancy, but in this case it's
 8 absolutely -- my client's opinion as to what should
 9 or shouldn't be has absolutely no relevance
 10 whatsoever to whether or not -- to the issues that
 11 we're trying to determine here. It's not -- his
 12 opinion is never going to lead to admissible
 13 evidence.

04:51:57PM

14 You can go ahead and tell him your opinion.
 15 You can answer the question.

04:52:07PM

16 THE WITNESS: Rephrase the question.

17 BY MR. MANSON:

18 Q. Hypothetical lead generation company sends a
 19 lead to you. Your salesperson hears from the client
 20 that they got the number from a fax ad. Your
 21 salesperson goes ahead and writes the loan. Doesn't
 22 come to you and doesn't hang up on the person and
 23 writes the loan. You close the deal, and you earn
 24 money.

04:52:20PM

25 Should Optima be liable for any damages

04:52:33PM

1 relating to that TCPA violation?

2 MS. BREER: Same objection. Go ahead.

3 THE WITNESS: I don't know. I think that's
4 what lawyers are there for. I don't know how to
5 answer that question. I couldn't tell you.

04:52:47PM

6 BY MR. MANSON:

7 Q. I will rephrase it. I will ask a related
8 but simpler question.

9 I believe your prior testimony says that you
10 have instructed your salespeople to bring to you
11 information if anybody has received your number or
12 gotten ahold of you from a fax ad.

04:53:02PM

13 If one of your salespeople didn't do that
14 and writes a loan, do you think Optima should be
15 liable for violating the TCPA?

04:53:17PM

16 A. I couldn't answer that for you. I'm not an
17 attorney.

18 Q. I am asking for your opinion. I'm not
19 asking a legal conclusion.

20 MS. BREER: I'm going to object. I don't
21 think he needs to answer. It's just not admissible.
22 It's never going to be admissible. It's not going to
23 lead to admissible evidence. His opinion of whether
24 or not what he thinks should happen under a law which
25 he doesn't understand which calls for a legal

04:53:27PM

04:53:41PM

1 conclusion is just not --

2 MR. MANSON: Relevancy is not a valid
3 objection at a deposition.

4 MS. BREER: It's not likely to lead to the
5 discovery of admissible evidence. That's a hard one
6 to maintain. I understand that. But in this case,
7 it's just too --

04:53:50PM

8 MR. MANSON: You've made the objection.

9 BY MR. MANSON:

10 Q. I am asking for your opinion.

04:54:00PM

11 MS. BREER: And he doesn't want to answer
12 the question. He told you --

13 MR. MANSON: You are putting words --

14 MS. BREER: He already said that.

15 MR. MANSON: I believe his answer was
16 "that's for lawyers," and I asked for his opinion and
17 not a conclusion of law.

04:54:06PM

18 MS. BREER: He said he wasn't comfortable
19 doing it, but go ahead.

20 THE WITNESS: I'm not comfortable doing
21 that.

04:54:14PM

22 BY MR. MANSON:

23 Q. Who are some of your money lenders if you
24 broker a loan?

25 What kind of companies do you broker loans

04:54:33PM

1 to?

2 A. To various companies.

3 Q. Give me a few examples.

4 A. Olympus.

5 Q. Is that the full name?

04:54:43PM

6 A. Yeah. Olympus, Olympus Mortgage.

7 Q. Is Olympus Mortgage separate from Olympus?

8 A. Olympus Mortgage, no. It's the same
9 company. Let me see. As far as who we broker our
10 loans to?

04:55:05PM

11 Q. Yes.

12 A. New Century Mortgage. Give me a minute.
13 Argent Mortgage, A-r-g-e-n-t, Countrywide Mortgage.

14 Q. Is that a different company than Countrywide
15 Home Loans?

04:55:40PM

16 A. It's the same company. It's a wholesale,
17 retail business.

18 Q. Related company, but is it a separate
19 company, or do you know?

20 A. It's the same company. They do different
21 things. There are other companies. I can keep going
22 on.

04:55:49PM

23 Q. I just wanted some examples. That's fine.

24 Do any of these companies ever send you
25 leads, mortgage leads?

04:56:03PM

1 A. No.

2 Q. Are you presently facing any criminal
3 charges?

4 A. No.

5 Q. Are you presently facing any administrative
6 charges?

7 A. No.

8 Q. I believe you said that you have reviewed
9 the TCPA statute yourself; correct?

10 A. Yes.

11 Q. From your review of it, what is your
12 understanding of what it allows and disallows?

13 MS. BREER: And, again, you've got to answer
14 that question without -- I'm going to object that it
15 might involve answers including information protected
16 by the attorney-client privilege. And I'm going to
17 instruct the witness not to answer unless he can
18 independently answer it free of any information he
19 might have received from an attorney.

20 BY MR. MANSON:

21 Q. From your own review of the statute, what is
22 your understanding of what it allows and disallows?

23 A. I'm not an attorney. I couldn't tell you
24 exactly. It's such a broad scope. I think the TCPA
25 is a broad scope.

04:56:22PM

04:56:39PM

04:56:50PM

04:57:20PM

1 Q. You stated you read the statute?

2 A. Yes.

3 Q. I am asking for your understanding of what
4 you read.

5 A. I couldn't tell you. I think it's for 04:57:28PM
6 attorneys. My meaning might mean something different
7 from your meaning.

8 Q. I am asking for your meaning.

9 MS. BREER: And I'm saying that if you can
10 answer that question without relying on information 04:57:37PM
11 you obtained in the attorney-client relationship,
12 then you can do so. But if you can't -- and he's
13 asking based on your reading. And I'm saying there
14 may be other information that might be impossible for
15 you to differentiate between the two. If you think 04:57:54PM
16 that your understanding based on your reading cannot
17 be separated from what you might have learned from
18 your attorney, I still would maintain that it's
19 privileged, and I would instruct you not to answer.

20 Do you want to answer that question? 04:58:08PM

21 THE WITNESS: I don't, because my meaning
22 might mean something different. I know you want to
23 know what my meaning is.

24 BY MR. MANSON:

25 Q. Okay. Have you ever sought legal advice 04:58:28PM

1 regarding the TCPA's requirements?

2 MS. BREER: I'm going to object. Again,
3 that's going to violate the attorney-client
4 privilege. That's pretty specific about what he
5 might have discussed with an attorney in the
6 attorney-client relationship. 04:58:39PM

7 MR. MANSON: Then I want to put on the
8 record --

9 MS. BREER: I instruct you not to answer.

10 MR. MANSON: I want to put on the record the 04:58:47PM
11 understanding or an argument we'll make that Optima
12 willfully and knowingly violated the TCPA. And by
13 instructing him not to answer, then we'll move, if
14 necessary, for an order at trial prohibiting reliance
15 on any opinion of counsel protecting him from the -- 04:59:07PM
16 in order to -- let me restate this.

17 We'll seek an order at trial prohibiting
18 Mr. Shah or Optima from relying on opinion of counsel
19 with respect to the legality of sending junk faxes.

20 MS. BREER: I'm not quite sure I understand 04:59:26PM
21 what you mean. Can we go off the record for a
22 minute?

23 MR. MANSON: No. I want to keep this on the
24 record.

25 MS. BREER: I need to think about what you 04:59:33PM

1 just said.

2 MR. MANSON: What I am saying is that we
3 intend to show that Mr. Shah and Optima Funding
4 willfully and knowingly --

5 MS. BREER: First of all, you are just 04:59:44PM
6 making a statement on the record. You're just doing
7 a little narrative here, and I don't think that's
8 appropriate.

9 We're here to answer questions. If you want
10 to ask a question, you can ask the question. I don't 04:59:50PM
11 want to set out in the deposition transcript
12 something that can be used later that isn't really
13 proper in a deposition.

14 MR. MANSON: Thank you for stating that, and
15 now I am going to go ahead and do so. 05:00:00PM

16 We intend to show at some point that
17 Mr. Shah and/or Optima Funding willfully and
18 knowingly violated the TCPA that provides for treble
19 damages. I'm asking him these questions in order to
20 find out if he intends to rely at trial on any 05:00:16PM
21 opinion of counsel that sending junk faxes was legal
22 or that getting leads from junk faxes was legal.
23 Before you interrupt me --

24 MS. BREER: Okay.

25 MR. MANSON: -- if he intends to rely on 05:00:28PM

1 that, then that would constitute at some point a
 2 waiver of the attorney-client privilege to these
 3 issues, and so I would be entitled to ask about them
 4 now.

5 If he relies on the attorney-client
 6 privilege now -- I believe, and we would argue --
 7 that that's going to bar him at trial from relying on
 8 an opinion of counsel at this point.

05:00:40PM

9 MS. BREER: We're going to be firm in
 10 asserting the attorney-client privilege where
 11 necessary, and that would be in this case. So you
 12 are free to do whatever you do. I understand that.

05:00:50PM

13 MR. MANSON: You have instructed him not to
 14 answer?

15 MS. BREER: I am instructing him not to
 16 answer anything that would invade the attorney-client
 17 privilege, and in particular that question which I
 18 think I did.

05:01:02PM

19 BY MR. MANSON:

20 Q. Do you have any understanding that the TCPA
 21 will allow people to send junk faxes in some cases?

05:01:13PM

22 MS. BREER: I'm going to object. It seeks a
 23 legal conclusion. He is not an attorney. And,
 24 again, we've discussed that most of his understanding
 25 of the TCPA could possibly be from the

05:01:29PM

1 attorney-client relationship, and he is not going to
2 be responding to questions where that's the case.

3 If you can answer that question independent
4 of that information, then you can answer it.

5 Ask the question again.

05:01:47PM

6 THE WITNESS: Yeah.

7 MR. MANSON: I would ask that the client
8 please focus on my question so we can move forward.

9 MS. BREER: Let me get these out of your
10 way.

05:01:58PM

11 THE WITNESS: Go ahead.

12 BY MR. MANSON:

13 Q. Do you have an understanding whether the
14 TCPA allows you to send junk faxes in some cases, in
15 some circumstances?

05:02:09PM

16 MS. BREER: Do you want to answer that?

17 MR. MANSON: Do you want to put the
18 objection on the record again?

19 MS. BREER: I'm going to object. Again, I
20 am instructing the witness not to answer because I
21 feel that he can't answer that question without
22 disclosing information that's protected by the
23 attorney-client privilege.

05:02:16PM

24 BY MR. MANSON:

25 Q. Can you answer that without invading the

05:02:27PM

1 attorney-client privilege?

2 A. No.

3 Q. Do you understand that the TCPA bans sending
4 junk faxes?

5 MS. BREER: I am going to do the same
6 objection. And also "ban" is pretty uncertain and
7 ambiguous. There's also the attorney-client
8 privilege issue that we've been discussing. And also
9 I don't know what the word "ban" is in terms of this
10 act. I think that's vague.

05:02:39PM

05:02:53PM

11 MR. MANSON: Okay.

12 BY MR. MANSON:

13 Q. Can you answer that question?

14 A. No.

15 Q. Do you understand that the TCPA provides
16 statutory damages of 500 for transmitting an
17 unsolicited fax advertisement?

05:02:59PM

18 MS. BREER: Again, the same objection. I am
19 instructing you not to answer.

20 MR. MANSON: Okay.

05:03:23PM

21 BY MR. MANSON:

22 Q. Do you have an understanding that the TCPA
23 requires certain informational disclosures in the
24 header or body of an unsolicited facsimile
25 advertisement?

05:03:31PM

1 MS. BREER: You are speaking about legal
2 conclusions. It's not appropriate at a deposition.
3 He is not a lawyer.

4 MR. MANSON: Are you also -- any objection
5 on attorney-client privilege? 05:03:40PM

6 MS. BREER: Yeah. Let's just say any
7 questions that you have regarding what the act says,
8 what it means, how it affects him -- all of those I
9 feel are seriously invading on information protected
10 by the attorney-client privilege, and I am going to 05:03:53PM
11 instruct him not to answer. You can go through each
12 little piecemeal --

13 MR. MANSON: That's what I am doing.

14 MS. BREER: All right. We'll instruct him
15 not to answer. 05:04:05PM

16 BY MR. MANSON:

17 Q. Are you aware that the TCPA provides for
18 treble or meaning triple damages if the TCPA is
19 violated willfully and knowingly?

20 Do you want to make the same objection and 05:04:23PM
21 instruct him not to answer?

22 MS. BREER: It's up to him. If you feel
23 that you've got that information from some other
24 source -- I just don't know if you are going to be
25 able to separate them out. If you have knowledge 05:04:32PM

1 that --

2 THE WITNESS: I don't.

3 MS. BREER: -- the TCPA says "treble
4 damages" from some other manner other than possibly
5 with an attorney -- I don't even know if that's the
6 case. 05:04:40PM

7 MR. MANSON: Is this an objection, Terri?
8 Can you state this as an objection rather than
9 instructing your client how to answer.

10 MS. BREER: I stated my objection. 05:04:49PM

11 BY MR. MANSON:

12 Q. I am going to restate this question: Are
13 you aware that the TCPA provides treble or triple
14 damages if someone violates the TCPA willfully and
15 knowingly? 05:05:05PM

16 A. I don't know.

17 Q. You don't know?

18 MS. BREER: He said he didn't know. He
19 answered that question.

20 MR. MANSON: I want to note for the record 05:05:16PM
21 there was no objection to that question. If you want
22 to object to the question that --

23 MS. BREER: I said I am objecting to any
24 questions based on what the statute says, does,
25 means. It will impact all of that. I thought we had 05:05:32PM

1 a standing objection and agreement. So I would
2 object. If he felt that he could answer that
3 differently -- he said he doesn't know the answer.

4 MR. MANSON: It's my understanding of laws
5 regarding discovery in depositions that standing
6 objections are actually not proper. 05:05:48PM

7 MS. BREER: I don't want to do a standing
8 objection, but I don't want to be here all day either
9 doing this, but we can do that.

10 MR. MANSON: Please don't interrupt me. 05:05:58PM

11 So I am asking is there any -- would you
12 like me to restate the question to have an objection
13 on the record?

14 MS. BREER: Okay.

15 BY MR. MANSON:

16 Q. Are you aware that the TCPA provides for
17 treble or tripling of damages if someone violates the
18 TCPA willfully or knowingly?

19 MS. BREER: Objection. The question seeks
20 information protected by the attorney-client
21 privilege. 05:06:23PM

22 If you can answer that outside of
23 information you've obtained in the attorney-client
24 privilege, go ahead and answer. If not, I instruct
25 you not to answer. 05:06:33PM

1 THE WITNESS: No.

2 BY MR. MANSON:

3 Q. Earlier you said -- I asked you if you ever
4 heard of fax.com -- I believe I asked if you had ever
5 heard of fax.com, and you said that I had mentioned
6 them. 05:06:49PM

7 Have you ever heard of fax.com other than
8 from me and your attorney?

9 A. Might have been one of the companies that we
10 worked with for lead generation. 05:06:59PM

11 Q. Fax.com may have --

12 A. May have. I don't recall. The name sounds
13 familiar. I will look into it, though.

14 Q. Please note that one of the requests in the
15 deposition was that you provide all documents
16 referencing fax.com. That would include any e-mails,
17 any paychecks to them -- or not paychecks -- any
18 payments for lead generation. I asked you to look
19 for all those. 05:07:10PM

20 A. Okay. 05:07:23PM

21 Q. Who at Optima would know if you had done any
22 business with fax.com?

23 A. Other than myself?

24 Q. Uh-huh.

25 A. Donna Thomson. 05:07:35PM

1 Q. Would she know better than you what lead
2 generation companies you had done business with?

3 A. Not necessarily, no.

4 Q. How about with respect to Impact Marketing?
5 Would she be the person who would know the most about
6 dealing with Impact Marketing?

05:07:51PM

7 A. Yes. She is one of the people. She would
8 know. Donna would know.

9 Q. Can you explain to me your understanding of
10 how calls were generated to your receptionist from
11 lead generation companies?

05:08:17PM

12 A. The call would come in and get transferred
13 to the receptionist.

14 Q. Come in to whom?

15 A. Rephrase the question. What are you asking?

05:08:31PM

16 Q. I'm sorry. I interrupted you. I apologize.
17 I said I wouldn't do that.

18 I'm asking for your understanding of how
19 calls get to your receptionist from lead generation
20 companies.

05:08:42PM

21 A. One of the people from lead generation calls
22 the receptionist.

23 MR. AMKRAUT: Excuse me.

24 BY MR. MANSON:

25 Q. Please continue your answer.

05:09:11PM

1 A. Okay. Let me back it up.

2 (The previous answer was read back by
3 the court reporter as follows:

4 "ANSWER: One of the people from
5 lead generation calls the
6 receptionist.")

7 THE WITNESS: I should take you everywhere
8 with me.

9 Yeah. One of the people from the lead
10 generation calls the receptionist, and the
11 receptionist transfers the call to the salesperson.

05:09:27PM

12 I am exhausted, by the way. You can put
13 that on the record.

14 BY MR. MANSON:

15 Q. Is that the end of your answer? I don't
16 want to interrupt.

05:09:43PM

17 A. Yes.

18 Q. How does the lead generation company decide
19 to call Optima Funding, transfer the call to Optima
20 Funding?

05:09:59PM

21 MS. BREER: I would object. That calls for
22 speculation. He is not the lead generation company;
23 so I don't know how he can answer for them.

24 MR. MANSON: I would expect he would know
25 how they are determining whether to call him. That's

05:10:10PM

1 part of his business. So I'm going to ask that
2 again.

3 BY MR. MANSON:

4 Q. How does the lead generation -- to your
5 knowledge, how does the lead generation company
6 decide to call Optima Funding with this particular
7 call? 05:10:20PM

8 A. I don't know their business. Again, you are
9 asking me about somebody else's business. I don't
10 know how -- what they do exactly. 05:10:35PM

11 Q. Do you preorder calls from a lead generation
12 company?

13 Let me rephrase the question. Do you
14 contact a lead generation company and tell them,
15 "Please send me 1000 leads," or how do you go about
16 ordering -- and I am using air quotation marks --
17 leads from a lead generation company? 05:11:00PM

18 A. Basically I told you that it's on a weekly
19 basis. So I tell them I want 300 leads, 200 leads,
20 400 lead, and they send them to me. It's not exactly
21 that number, but close to it. 05:11:24PM

22 Q. So 300 to 400 leads per week?

23 A. Sometimes more and sometimes less.

24 Q. On average, can you give me your best
25 estimate as to how many of those will turn into 05:11:38PM

1 closed deals?

2 A. Let me back up. It's not really 300 to 400.
3 It's less than that. I couldn't tell you. No. I
4 couldn't tell you how many. I wish all of them. But
5 that's not the case. Maybe 15 percent, maybe 10 to
6 15 percent. 05:12:02PM

7 Q. And you said 300 to 400 isn't correct?

8 A. No. 150 to 250 a week.

9 Q. Per week?

10 A. Per week. 05:12:16PM

11 Q. Which doing the math, then, would be 10 to
12 20 closed deals from lead generation companies per
13 week?

14 A. Yeah. Correct.

15 Q. I think we're just about done. I know our
16 court reporter needs to leave soon. 05:12:26PM

17 Are you aware -- let me ask two more
18 questions.

19 A. Okay.

20 Q. Are you aware that the plaintiff in this
21 action testified that he got dozens of faxes, and
22 when he called the number on the faxes, that he was
23 put through to Optima Funding? 05:12:49PM

24 MS. BREER: I'm going to object because I
25 was at that deposition, and he never testified to 05:13:01PM

1 that. So I'm going to let -- that question is not
2 proper at all.

3 THE WITNESS: What number did he call?

4 BY MR. MANSON:

5 Q. The number is there. 05:13:11PM

6 A. We can --

7 MS. BREER: No, no. I was at the
8 deposition; you weren't. He did not testify to that.
9 That would be misstating evidence. That assumes
10 facts not in evidence. That's not a proper question. 05:13:20PM

11 MR. MANSON: Let me restate the question.

12 BY MR. MANSON:

13 Q. Were you aware that the plaintiff in this
14 action is alleging he got dozens of faxes from
15 Optima, and that when people called the 800 numbers 05:13:30PM
16 on those faxes, they were put through to Optima? Are
17 you aware of that?

18 A. No.

19 Q. I will give you the hypothetical, then, that
20 that is his allegation in this Complaint. 05:13:44PM

21 Are you suggesting that those people are
22 lying when they say they were put through to Optima
23 with respect to -- when calling those numbers?

24 MS. BREER: I'm going to object to the form
25 of that question. That's an example of where leading 05:13:58PM

1 is not proper. That question is saying -- you are
2 basically telling him what you want him to testify
3 to. That is not proper, even from you.

4 MR. MANSON: I will rephrase the question.

5 BY MR. MANSON:

6 Q. Assume that hypothetical: That the
7 plaintiff received these faxes and had people call
8 the numbers on these faxes, and they claimed they
9 were transferred to Optima.

10 Can you explain how they may have been
11 transferred to Optima when calling numbers from junk
12 faxes?

13 A. No.

14 Q. Do you have any thoughts on that?

15 A. Huh-uh, no.

16 Q. I want to make two statements. First of
17 all, I want to confirm with your counsel that one of
18 the things you are going to get me is contact
19 information for Link Point -- a person, a phone
20 number and address.

21 MS. BREER: It seems to me the easiest way
22 is to leave a spot in the deposition transcript when
23 we said that you wanted certain information. I
24 believe you are probably going to ask for an
25 expedited transcript or maybe not. I don't know. It

1 is awfully close to trial. And therefore, when we
2 make corrections to the depo, the deposition, which
3 again we're going to have to do on a shortened time
4 frame -- less than 30 days -- that he will fill in
5 the information that he is able to obtain that you 05:15:21PM
6 are requesting. That seems to me the best -- the
7 most economical way to go about doing that. Would
8 you have a problem with doing it that way?

9 MR. MANSON: I would like them sooner than
10 we're going to get the transcript back. I'd like to 05:15:39PM
11 get them within, say, five business days.

12 MS. BREER: So let me go over -- all right.
13 Do you know what those items are?

14 I'm just saying that the transcript is our
15 best way of making sure -- that's all I am saying. I 05:15:52PM
16 don't know how accurate your list is. We'll do our
17 best to get them to you sooner than that.

18 MR. MANSON: There's things that I recall
19 that we asked for. There may be others in the
20 deposition transcript. But the things that I recall 05:16:05PM
21 that we're going to get is an advertising budget and
22 amounts paid for advertising in 2004.

23 MS. BREER: All right.

24 MR. MANSON: Amounts paid to lead generation
25 companies in 2004, amount paid to Impact Marketing in 05:16:21PM

1 2004, amount paid to Link Point in 2004, contact
2 information for Impact Marketing, contact information
3 for Link Point, contact information for Live Leads
4 and amounts paid to Live Leads in 2004.

5 David, do you recall other information? 05:16:53PM

6 MR. AMKRAUT: Any documents about fax.com.

7 MR. MANSON: That's right. Any copies of
8 any checks sent to fax.com or anything else that
9 we've talked about that might be responsive to the
10 requests in the Deposition Notice. 05:17:09PM

11 MR. AMKRAUT: And fax.com including any
12 dba's that they are operating under that you know of.

13 MS. BREER: All right.

14 MR. MANSON: Okay.

15 MS. BREER: All right. 05:17:26PM

16 MR. MANSON: Let me ask -- I realize I have
17 two more questions real quick.

18 BY MR. MANSON:

19 Q. We've presented prior several facsimile
20 advertisements. 05:17:36PM

21 Do you have any idea who might have sent
22 those to the plaintiff?

23 A. No.

24 Q. And also your counsel has provided me a copy
25 of a lawsuit by Ken Duke, and I think we've already 05:17:49PM

1 gone through that. You provided me with the copy. I
2 just want to put that on the record.

3 MR. AMKRAUT: Page 2 of the demand letter
4 from Amkraut is missing. There is a Page 1 and a
5 Page 3 there.

05:18:10PM

6 MS. BREER: I thought I gave you two pages.

7 MR. MANSON: He is saying it was a
8 three-page letter. You provided Page 1 and Page 3
9 but not Page 2.

10 MS. BREER: I will look and see what we
11 have, but we provided what we have. My secretary is
12 pretty good about that. I don't think she would have
13 missed that.

05:18:18PM

14 MR. MANSON: Okay. Real quickly I want to
15 put, I guess, on the record that I am concerned that
16 Donna Thomson may be more knowledgeable, may be the
17 actual PMK with respect to certain issues that we've
18 covered here today. There have been a lot of things
19 that we brought up that he has said that he doesn't
20 know but that Donna Thomson may know.

05:18:30PM

21 MS. BREER: Donna hasn't been with the
22 company that long. That's why I think that Ali is
23 probably your better -- is the person most
24 knowledgeable.

05:18:47PM

25 ///

1 BY MR. MANSON:

2 Q. Okay. When did Donna Thomson join the
3 company?

4 A. Two and a half, three months ago.

5 Q. So November -- would it be accurate to say
6 November of 2004?

7 A. Maybe sooner than that. That's roughly.

8 Q. Sooner more recently or earlier?

9 A. Earlier.

10 Q. Maybe back in October? September?

11 A. Right.

12 Q. Can you find out for me specifically?

13 A. Absolutely.

14 MR. MANSON: Other than that, I guess we can
15 go off the record. I do want to leave the deposition
16 open until we do have these documents provided.

17 MS. BREER: I thought the whole goal would
18 be to terminate the deposition, and we are so close
19 to trial, and I think that's really a mistake for all
20 of us. And I don't know about you, but I don't
21 usually prepare this late in the game. And I would
22 like to tell you that we will -- if you want to get
23 an expedited transcript, we can put that information
24 in it and go from there. I think that it's really,
25 you know, silly to continue this any further.

1 Are you saying open possibility that you
2 will be satisfied?

3 MR. MANSON: Yes. I anticipate that I will
4 be satisfied, but if there are issues raised or we
5 don't think we have gotten the documents --

05:20:13PM

6 MS. BREER: You haven't given us a whole lot
7 of time to do this type of thing.

8 MR. MANSON: Over two full weeks.

9 MS. BREER: With the trial coming up, that's
10 asking a lot.

05:20:22PM

11 MR. MANSON: Okay.

12 MS. BREER: It is a jury trial. We'll do
13 our best, and we'll try to get this within a week. I
14 mean, it's your deposition. You can do what you want
15 to do. I am just saying now you have a transcript
16 that isn't being completed. Are we going to go ahead
17 and get the transcript so that we can have it? I
18 would like to have it. I don't want to have to wait
19 around for this information. I want the transcript.

05:20:33PM

20 MR. MANSON: Yes. We'll have the transcript
21 to date prepared on an expedited basis and sent to
22 your client for review on an expedited basis.

05:20:47PM

23 MS. BREER: But --

24 MR. MANSON: Can I finish a statement?

25 MS. BREER: Go ahead.

05:20:56PM

1 MR. MANSON: I will leave the record open so
2 that if we need to continue the deposition based on
3 what is there that hadn't been timely provided or
4 based on the things that come out of there, that I
5 would like to have this open. However, we'll go
6 forward, and I don't anticipate continuing. But I am
7 not going to close it at this point.

05:21:09PM

8 MS. BREER: I want a stipulation that if you
9 get all of these items, we're done.

10 MR. MANSON: Except --

05:21:20PM

11 MR. AMKRAUT: Terri, Mr. Manson cannot write
12 you a blank check until he sees these things and sees
13 the information in them.

14 MS. BREER: I have been very cooperative
15 even allowing you to do a deposition because you were
16 not timely, it was not noticed timely, and it was
17 never noticed timely on all of them. I have
18 cooperated. I am asking for a little cooperation in
19 return. I don't think that's a whole lot considering
20 you jammed it up right here to the trial date. I
21 didn't have any control over that.

05:21:34PM

05:21:47PM

22 I am just asking for a courtesy that you
23 could at least tell me that if I produce this, if we
24 get you what you need and we get it as quick as we
25 can, that you will not reopen a deposition a week or

05:22:00PM

1 two from trial. I think that's fair.

2 MR. MANSON: I am not willing to give you
3 that statement, and I will tell you why.

4 MS. BREER: Then I will have to get a
5 protective order possibly, but let's hope we can
6 resolve this. 05:22:13PM

7 Go ahead and tell me why.

8 MR. MANSON: Because up to this point I have
9 had to demand documents and threaten a motion to
10 compel in order to get the documents that you brought
11 with you today. 05:22:20PM

12 During this deposition, I introduced
13 specific requests that were called for in the
14 Deposition Notice, and you had to call your secretary
15 to produce those. I am going to get those documents. 05:22:30PM
16 Frankly, I'm no longer willing to rely on your word
17 that you will get me things because I have not been
18 satisfied each and every time.

19 MS. BREER: I don't appreciate you saying
20 that you had to -- I did not produce documents that I
21 in good faith believe are privileged. I still
22 believe those documents that I have given you may be
23 privileged. 05:22:43PM

24 I, however, want to move forward to trial
25 preparation. I don't want to play around anymore 05:22:55PM

1 with depositions. So I have decided -- and even
2 though out of abundance of caution, I still think I
3 could have prevailed on those privileges.

4 I have agreed and made a good faith effort
5 to resolve the dispute, and I've produced them today. 05:23:08PM
6 So I don't appreciate the statement on the record
7 that you had to threaten me with a motion to compel
8 to bring them. That's not true at all. So that is
9 not accurate. And I have been more than cooperative
10 to let you have a deposition when you waited this 05:23:20PM
11 long.

12 So now we're doing it, and I was just asking
13 for a courtesy that you might make that
14 representation. If you don't want to make the
15 representation, that's fine. But I don't want it to 05:23:30PM
16 be based on something that I caused because I didn't
17 cause this, you did, by waiting this long to notice
18 the deposition. It's your own causing.

19 MR. MANSON: That's fine.

20 MR. AMKRAUT: Let me ask one 05:23:48PM
21 housecleaning -- have the documents related to this
22 deposition all been marked, or are there still things
23 that need to be numbered or marked?

24 MR. MANSON: Can we go off the record now?

25 MS. BREER: No, because I want to get the 05:23:59PM

1 stipulation on the record. Assuming that we don't
 2 reopen the deposition, when are we going to inform
 3 the court reporter that she is relieved of her
 4 duties?

5 How would we do that?

05:24:10PM

6 MR. MANSON: You can go off the record.

7 (A discussion was held off the record.)

8 MR. MANSON: Okay. So the stipulation is
 9 that the court reporter will transcribe the
 10 deposition on an expedited basis. Today is
 11 Wednesday. If we can have it by next Tuesday.

05:26:58PM

12 The court reporter is relieved of her duties
 13 with respect to this volume of the transcript, if I
 14 am using that terminology correctly. The deposition
 15 is subject to continuation by me. And that's
 16 everything.

05:27:23PM

17 Are we missing anything?

18 MS. BREER: Where is the original going to
 19 go?

20 MR. MANSON: The original will go to
 21 Mr. Shah for review -- to Ms. Breer to have her
 22 client review it within five days.

05:27:39PM

23 MS. BREER: Sure.

24 MR. AMKRAUT: And the original should be
 25 sent by FedEx or something.

05:27:52PM

1 MR. MANSON: Please send the original by
2 overnight. And I will take a copy with the CD and
3 manuscript and everything.

4 MS. BREER: Okay.

5 (The deposition was adjourned
6 at 5:27 P.M.)
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Please be advised I have read the foregoing
deposition, and I state there are:

(Check one)

_____ NO CORRECTIONS

_____ CORRECTIONS ATTACHED

ALI SHAH

Date Signed

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DEPONENT'S CHANGES OR CORRECTIONS

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Note: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "Add" or "Delete" and sign this form.

DEPOSITION OF: PMK OF OPTIMA AND ALI SHAH
CASE: JNS COPY VS. OPTIMA FUNDING
DATE OF DEPOSITION: FEBRUARY 2, 2005

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, ALI SHAH, having appeared for my deposition on February 2, 2005, do this date declare under penalty of perjury that I have read the foregoing deposition, I have made any corrections, additions or deletions that I was desirous of making in order to render the within transcript true and correct.

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of _____, 2005.

W I T N E S S

1 STATE OF CALIFORNIA)
 2 COUNTY OF LOS ANGELES) ss.

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I, ALLA PONTO, CSR No. 11046, a court reporter for the County of Los Angeles, State of California, do hereby certify;

That prior to being examined, THE PERSON MOST KNOWLEDGEABLE OF OPTIMA FUNDING, INC., AND ALI SHAH, the witness named in the foregoing deposition, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken before me at the time and place herein set forth, and was taken by me in shorthand and thereafter transcribed into typewriting under my direction and supervision, and I hereby certify that the said deposition is a full, true and correct transcript of my shorthand notes so taken;

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I hereto subscribe my name this 7th day of February, 2005.



 Certified Shorthand Reporter in
 and for the County of Los Angeles,
 State of California

Word

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JNS VS. OPTIMA FUNDING, INC.
DEPOSITION OF PMK AND ALI SHAH

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B5A

<p>Concordance Report Unique Words: 1,884 Total Occurrences: 14,107 Noise Words: 384 Total Words In File: 38,772</p> <p>Single File Concordance Case (nsensitive Noise Word List(s): NOISE.NOI Cover Pages = 4 Includes ALL Text Occurrences Dates ON Includes Pure Numbers Possessive Forms ON</p> <hr/> <p>** DATES **</p> <p>9/13/04 [1] 170:11 9/15/04 [1] 170:9 11/22/04 [1] 57:11</p> <hr/> <p>** \$ **</p> <p>\$100 [2] 79:11; 206:3 \$125 [1] 164:24 \$200 [4] 79:12; 198:19; 199:23; 206:3 \$250,000 [1] 94:10 \$300 [1] 206:3 \$50 [1] 164:20</p> <hr/> <p>** 0 **</p> <p>01 [1] 143:21 02 [3] 141:18, 20; 143:22 03 [3] 125:17; 142:8; 143:22 04 [1] 163:23 06 [1] 133:2</p> <hr/> <p>** 1 **</p> <p>1 [12] 10:12, 13; 11:1; 32:20; 33:6;</p>	<p>108:2; 109:11, 13, 20; 117:18; 240:4, 8 1,200 [2] 163:24, 25 10 [13] 25:25; 26:1; 36:22; 37:6, 9, 18; 38:8, 15; 39:9; 119:23; 235:5, 11 100 [8] 79:14, 15; 81:24; 83:13; 84:3; 198:19; 199:23; 207:24 1000 [1] 234:15 1099 [3] 84:8; 85:3, 15 10:54 [1] 8:2 11 [2] 60:17; 120:1 11/22/04 [1] 57:11 1100 [1] 129:17 11046 [1] 252:4 115 [1] 149:13 12 [1] 141:20 120 [1] 13:10 12:45 [1] 93:5 13 [1] 60:17 15 [3] 93:9; 235:5, 6 150 [1] 235:8 16 [1] 192:21 17200 [6] 135:24; 136:2, 6; 137:7 18 [1] 167:3 1979 [1] 13:20 1991 [2] 31:3; 32:8 1:16 [1] 120:7</p> <hr/> <p>** 2 **</p> <p>2 [15] 6:1; 10:17; 11:3; 41:25; 42:2; 44:4; 109:1, 12; 110:1; 117:23; 121:1; 240:3, 9; 249:10; 251:8</p>	<p>20 [1] 235:12 200 [5] 79:14, 15; 81:24; 84:3; 234:19 200,000 [1] 94:10 2001 [2] 143:23, 24 2002 [1] 132:24 2003 [2] 14:5; 15:15 2004 [32] 25:2, 3, 23; 29:11; 30:11; 32:21; 33:7; 36:10, 23; 37:8, 16, 24; 38:15; 39:5, 15; 42:1; 96:21; 97:6, 10; 126:25; 163:11, 13, 22; 169:10; 192:21; 208:3; 238:22, 25; 239:1, 4; 241:6 2005 [7] 6:1; 121:1; 167:3; 249:10; 251:8, 16; 252:23 23 [3] 141:17, 24; 142:7 250 [1] 235:8 2:30 [1] 120:9 2:51 [1] 121:2</p> <hr/> <p>** 3 **</p> <p>3 [13] 11:7; 110:6, 9, 18; 111:1; 116:19; 117:8, 12, 13; 118:1; 191:21; 240:5, 8 30 [3] 95:6; 164:16; 238:4 300 [4] 234:19, 22; 235:2, 7</p> <hr/> <p>** 4 **</p> <p>4 [7] 11:9; 110:24; 118:6; 131:15, 18; 155:11; 192:8 40 [6] 95:6; 148:24; 150:16, 19; 164:16 400 [4] 234:20, 22; 235:2, 7 4066 [1] 12:13</p> <hr/> <p>** 5 **</p> <p>5 [19]</p>	<p>11:11, 12; 13:9; 18:14, 25; 37:15, 18; 39:5, 10, 26; 56:1; 112:12; 118:9; 123:12; 126:3, 25; 132:13, 16 50 [9] 40:1; 83:24; 149:24; 150:19; 163:11, 15, 19; 164:8 50,000 [1] 94:9 500 [1] 227:16 5:27 [1] 247:6</p> <hr/> <p>** 6 **</p> <p>6 [4] 14:3; 118:12; 170:1; 192:20 60 [1] 95:8 620 [1] 129:16 6233 [1] 12:20 65 [1] 203:16</p> <hr/> <p>** 7 **</p> <p>7 [5] 112:19; 118:21; 119:14; 191:14, 15 70 [1] 95:8 71 [2] 28:10, 12 75 [1] 164:8</p> <hr/> <p>** 8 **</p> <p>8 [4] 114:15; 119:17; 201:4, 5 800 [1] 236:15 800-455-1351 [1] 207:5 800-485-2917 [1] 207:12 800-670-6024 [1] 206:10 800-752-3770 [1] 206:20</p> <hr/> <p>** 9 **</p> <p>9 [4] 114:14; 119:20; 203:2, 19 9/13/04 [1] 170:11 9/15 [1]</p>	<p>13:20 9/15/04 [1] 170:9 91 [1] 117:16 92660 [3] 12:14, 21; 129:18 92707 [1] 13:10</p> <hr/> <p>** A **</p> <p>a-i-i [1] 12:2 a-r-g-e-n-t [1] 220:13 a.m. [1] 6:2 abide [2] 104:18, 25 ability [3] 9:16, 20; 16:6 able [9] 8:6, 21; 9:4; 33:1; 63:25; 174:9; 192:8; 228:25; 238:5 absolutely [19] 9:1; 13:5; 17:2; 25:20; 28:25; 52:13; 65:16; 78:20; 85:22; 98:12; 101:2; 123:22; 127:21; 137:7; 146:3; 183:25; 217:8, 9; 241:13 abundance [1] 245:2 acceptable [1] 95:14 according [1] 132:23 accurate [6] 9:13; 132:24; 164:10; 238:16; 241:5; 245:9 accused [3] 70:2; 143:15; 162:14 act [10] 31:3, 11; 32:8; 42:15; 46:20; 64:12; 117:16; 162:16; 227:10; 228:7 action [16] 34:16; 70:1, 7; 136:7; 165:13; 168:12, 14; 171:19, 25; 176:18, 22; 189:24; 208:17; 235:21; 236:14; 252:20 actions [4] 69:18; 70:16; 171:17; 215:21 active [1] 162:13 acts [3] 208:9, 13; 218:8 actual [1] 240:17</p>
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DEPOSITION OF PMK AND ALI SHAH

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