

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO

3
4 Civil Action No. 10-CV-01546-REB-CBS

5
6 The Direct Marketing Association,

7 Plaintiff,

8 v.

9 Roxy Huber, in her capacity as Executive
10 Director, Colorado Department of Revenue,
11 Defendant.

12
13 DEPOSITION OF **THOMAS J. ADLER, Ph.D.** taken at
14 Norwich, Vermont, on October 22, 2010.

15
16 APPEARANCES:

17 Matthew P. Schaefer, Esquire
18 Brann & Isaacson
19 184 Main Street, Fourth Floor
20 P.O. Box 3070
21 Lewiston, Maine, 04243-3070, on behalf of the
22 Plaintiff, The Direct Marketing Association.

23 Jack Wesoky, Esquire
24 Senior Assistant Attorney General
25 1525 Sherman Street, 7th Floor
26 Denver, Colorado, 80203, on behalf of the Roxy
27 Huber in her capacity as Executive Director,
28 Colorado Department of Revenue.

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1 ourselves, yes.

2 Q Okay. After you undertook the project, there were
3 survey questions drafted, is that correct?

4 A Yes.

5 Q And who did the initial draft of the survey
6 questions?

7 A Well, I did the draft of our survey questions.

8 EXHIBIT 42 MARKED FOR IDENTIFICATION

9 Q I show you what's been marked as Exhibit 42, and
10 it's an e-mail to you from Mr. Schaefer dated the
11 11th of May of this year. And just to make sure
12 that I'm correct with that identification.

13 A It was May 11th, 2010. Yes.

14 Q And at the bottom it says RSG 696?

15 A Yes.

16 Q And that e-mail, Mr. Schaefer says to you and
17 Mr. Whipple, I attach two versions of survey
18 questions we offer for your consideration.

19 A Yes.

20 Q Was that the first time you got any survey
21 questions related to this case?

22 A That was the first time we received anything from
23 Mr. Schaefer with questions suggested.

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1 Q And had you drafted any questions before receipt
2 of the survey questions from Mr. Schaefer?

3 A I don't recall whether we had begun drafting.
4 Nelson and I, I believe, had talked over the phone
5 about it, but I'm not sure that we'd put anything
6 on paper yet.

7 MR. WESOKY: Again, my apologies, Matt. Some
8 of these didn't get copied as I have asked so I
9 only have one copy.

10 MR. SCHAEFER: Okay. I'll be looking on with
11 the witness.

12 EXHIBIT 43 MARKED FOR IDENTIFICATION

13 Q Let me show you Exhibit 43 which shows
14 DMA/Colorado: Possible Survey Questions, Version
15 1 for Discussion, document RSG 676. Is that one
16 of the versions of the draft survey questions you
17 received from Mr. Schaefer along with the e-mail?

18 A Yes.

19 EXHIBIT 44 MARKED FOR IDENTIFICATION

20 Q I show you what's marked as Exhibit 44 called
21 DMA/Colorado: Possible Survey Questions, Version
22 2 for Discussion. Is that the second version of
23 the questions you received from Mr. Schaefer in

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1 connection with the e-mail we just discussed?

2 A Yes.

3 Q Now, my question is had you, you meaning RSG, not
4 you personally, drafted any survey questions
5 before receiving documents 43 and 44 related to
6 the Colorado survey that you eventually did?

7 A I don't recall whether we had anything on paper at
8 that time. We had certainly discussed over the
9 phone with Mr. Schaefer the form of the
10 questionnaire and the kinds of questions we might
11 ask.

12 Q Did you provide him any specific questions during
13 those conversations?

14 A I don't recall whether we provided specific
15 questions during those conversations. We
16 certainly did at the later date.

17 Q Would your notes reflect whether you provided
18 specific questions to Mr. Schaefer before receipt
19 of Exhibits 43 and 44?

20 A Probably not. If you're referring to the phone
21 notes, probably not. That's usually the other
22 side of the conversation rather than my side.

23 EXHIBIT 45 MARKED FOR IDENTIFICATION

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1 Q Takes surveys of various kinds; of consumers,
2 users of products, whatever, right?

3 A Yes.

4 Q I take it then it's your habit to receive draft
5 questions from your clients to use in your
6 surveys, is that correct?

7 A It's not necessarily our habit. In some cases, we
8 draft with little more than a sentence or two from
9 our client about what their objectives are. In
10 some cases, we have clients who provide what I
11 would consider to be close to a complete draft of
12 a full questionnaire.

13 EXHIBIT 48 MARKED FOR IDENTIFICATION

14 Q I show you what's marked as Exhibit 48 for
15 identification. It's an e-mail chain. The top
16 date is 17th of May, and it's RSG 749 at the
17 bottom.

18 A Yes.

19 Q And the middle e-mail there is yours to
20 Mr. Whipple saying that you were going to develop
21 a first questionnaire that you'll send out for
22 review, is that correct?

23 A Yes.

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1 Q Did you develop a first questionnaire and send it
2 out for review later that morning?

3 A I couldn't say that I sent it out later that
4 morning, but I definitely developed that first
5 draft.

6 Q And that first draft is not Exhibits 43 or 44?

7 A No.

8 EXHIBIT 49 MARKED FOR IDENTIFICATION

9 Q I show you what's marked as Exhibit 49. It's
10 called DMA/Colorado: DRAFT Questionnaire, Version
11 3 RSG for Discussion bearing numbers at the bottom
12 starting with page 612 and ending with 616. Is
13 this document the draft you referred to in the
14 prior exhibit?

15 A I believe so. The only question, I don't recall
16 whether those comments were embedded at the time
17 that I initially transmitted this. They may well
18 have been. I'd have to read more in detail.

19 Q Those comments are TGA. I assume that is you?

20 A That is. Yes.

21 Q For this Version 3, did you use any material from
22 Exhibits 43 and 44 which are the drafts 1 and 2?

23 A I'd have to check, but I believe I did copy and

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1 paste the descriptions of the law and some other
2 pieces.

3 Q You can look at 43 and 44 and maybe that will help
4 you.

5 A So it appears that question 10, the elements of
6 it, the description of the law I believe I copied
7 out of Version, well, it's not exact, but it's
8 copied out of the pieces, pieces of the text are
9 copied out of these two versions.

10 Q Okay. Thank you. Who is Karyn?

11 A Karyn Dossinger is a senior associate in our
12 Chicago office.

13 Q Where Mr. Whipple is?

14 A That's correct.

15 Q Did she work on this project at all?

16 A I believe that she was involved in some way.
17 She's under the direction of Mr. Whipple, and I'm
18 not sure what the full extent of her role was.

19 Q Would Mr. Whipple know what the extent of her role
20 was?

21 A Yes.

22 Q But whatever role she had, he never shared that
23 with you?

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1 A Sorry.

2 MR. WESOKY: I'm glad.

3 MR. SCHAEFER: In fact, I intended to take it
4 out as unrelated.

5 EXHIBIT 51 MARKED FOR IDENTIFICATION

6 Q I show you Exhibit number 51. It's an e-mail
7 chain dated the 18th of May from you to
8 Mr. Schaefer and Mr. Schaefer to you. It's
9 designated by numbers RSG 750 and 751.

10 A This is 778, 779.

11 MR. SCHAEFER: Could be the same document.

12 Q Yes. They're actually the same.

13 MR. SCHAEFER: So at least for the one that's
14 been marked for the record is 778 and 779.

15 Q And I have another copy with a different number so
16 that's why. Referring to the middle e-mail in
17 that chain?

18 A Yes.

19 Q It says attached is a first draft of the
20 questionnaire that I built around the core
21 questions that you sent last week?

22 A Yes.

23 Q That refers to the questions in number Exhibits 43

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1 and 44?

2 A Yes.

3 Q And is that first draft the Version 3 that you
4 had?

5 A I believe it would be Version 1. Sorry. It would
6 be, there would be a Version 1. This is Version
7 3. And I'm not sure what happened to Version 1,
8 but --

9 Q I will represent to you that the Version 1 and
10 Version 2 that I have are Exhibits 43 and 44.

11 A All right. Okay. So this is, so Version 3, I
12 guess, I didn't recall that I started numbering
13 from the version numbers that Matt had provided,
14 but this does appear to be something close to what
15 I would have drafted as the first draft.

16 Q That would be the draft you referred to?

17 A As Version 3.

18 Q As Version 3 which is Exhibit 49.

19 A 49.

20 Q So in Exhibit 51, you refer to Exhibit 49 as the
21 questionnaire that you drafted?

22 A Yes. I believe so.

23 Q Also it refers to notes and annotations in the

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1 e-mail?

2 A Yes, it does.

3 Q So does that coincide now with Version 3?

4 A Version 3 does have the notes and annotations,
5 yes.

6 Q So we're confident that this e-mail refers to
7 what's been called Version 3 of the survey?

8 A I believe it does, but it's also possible that
9 there is another version. Certainly there were
10 internal versions before this one.

11 EXHIBIT 52 MARKED FOR IDENTIFICATION

12 Q Exhibit 52. Sir, I've handed you what's been
13 marked as Exhibit 52, and it's also an e-mail
14 chain. The top one is from Nelson Whipple to you?

15 A Yes.

16 Q Dated the 18th of May and it's RSG 759-760?

17 A Yes.

18 Q And it talks about phone conversation or trying to
19 set up a phone conversation.

20 A Yes.

21 Q Did you have that conversation with Mr. Whipple?

22 A I don't recall for certain. I know I had a
23 conversation with him, but I'm not sure it was at

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1 the time that was described here.

2 Q If you remember the conversation, what was
3 discussed between you and Mr. Whipple?

4 A I don't remember that conversation.

5 EXHIBIT 53 MARKED FOR IDENTIFICATION

6 Q I show you what's marked as Exhibit 53. It's an
7 e-mail chain, you to Mr. Schaefer, then
8 Mr. Schaefer to you, the last date being May 21st,
9 2010. It's RSG 846.

10 A Yes.

11 Q Looking at the earlier of the two e-mails, the May
12 20th from you to Mr. Schaefer, you talk about a
13 revised draft that responds to your, meaning
14 Mr. Schaefer and Mr. Isaacson's, comments and
15 addresses some of the remaining issues?

16 A Yes.

17 Q Do you remember what those comments and issues
18 were that, using the terms as in this e-mail Matt
19 and George raised?

20 A Well, let me see. I'm not sure that -- it
21 responds to your comments address some of the
22 remaining issues that we had. So we certainly
23 responded to marginal comments that I had on

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1 Exhibit 49 that we were posing back to them, and I
2 don't recall the details of that conversation well
3 enough to recall what George and Matt had raised
4 at that time.

5 Q Would you have made notes of that?

6 A Probably.

7 EXHIBIT 54 MARKED FOR IDENTIFICATION

8 Q I hand you what's marked as Exhibit 54 called
9 DMA/Colorado: DRAFT Questionnaire, Version 4 RSG
10 for Discussion.

11 A Yes.

12 Q Is that Version 4 which I just handed you the
13 draft that is described in the previous Exhibit
14 53?

15 A I believe it is, but since I don't have a file
16 date on this, I couldn't say for sure that this is
17 referring to 4 rather than 5, for example.

18 Q And I think you said you don't remember the
19 comments Matt and George made?

20 A No.

21 Q Which led to this version?

22 A No. I don't recall the specific comments.

23 Q You also say in the e-mail, Exhibit 53, that you,

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1 meaning Matt and George, may have other issues
2 that we will need to address.

3 A Yes.

4 Q Do you remember if they had other issues?

5 A I don't recall.

6 Q Okay. Look at the top of that e-mail. The first
7 part. And it's from Mr. Schaefer to you, correct?

8 A Yes.

9 Q It contains suggestions or comments regarding your
10 latest draft of the survey, correct?

11 A Yes.

12 EXHIBIT 55 MARKED FOR IDENTIFICATION

13 Q I show you what's marked Exhibit 55. It's
14 DMA/Colorado: DRAFT Questionnaire, Version 5 for
15 Discussion.

16 A Yes.

17 Q Does that refer or is that the version that's
18 referenced in the last or next to last sentence of
19 the top half of the e-mail of May 21st?

20 A Again, I couldn't say for sure that this is the
21 version because it doesn't refer to a version
22 number.

23 Q If you look in the marginal notes, for example, on

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1 page 00625, does that say MS?

2 A Yes.

3 Q Can we assume that's Matt Schaefer?

4 A I believe it is, yes.

5 Q So it's likely then that this Exhibit 55 is the
6 document referred to in e-mail of May 21st which
7 is Exhibit 53?

8 A Exhibit 53. Yes. And I also see just from my own
9 recollection the attachment is Version 5. So I
10 believe that's correct then, yes.

11 Q Okay.

12 EXHIBIT 56 MARKED FOR IDENTIFICATION

13 Q I show you what's marked as Exhibit 56, sir. It
14 is another e-mail chain. The top date is the 24th
15 of May, 2010. It's designated with the numbers
16 RSG 733 and 734.

17 A Yes.

18 Q In the middle e-mail, it talks about a newly
19 revised draft that I, meaning you, put together
20 over the weekend.

21 A Yes.

22 EXHIBIT 57 MARKED FOR IDENTIFICATION

23 Q Does it refer to Exhibit 57 which I just handed

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1 you, DMA/Colorado: DRAFT Questionnaire, Version 6?

2 A It refers to a later draft than 5, and I'm not
3 sure whether, in this e-mail I don't refer to the
4 version number so I'm not certain that it's 6.
5 Likely is.

6 Q And at the top of that e-mail which is 56?

7 A Yes.

8 Q Matt Schaefer writes to you that we, assuming,
9 meaning his firm, had a couple of additional
10 thoughts. So I will send you an e-mail with the
11 next possible version. Now, would that next
12 possible version be number 6 that I handed you or
13 is it a different version?

14 A I couldn't say for certain. It could have been a
15 marked-up version of 6. I think that RSG was
16 creating the successive version numbers.

17 EXHIBIT 58 MARKED FOR IDENTIFICATION

18 Q I hand you what's marked as Exhibit 58, and it's
19 DMA/Colorado: DRAFT Questionnaire, Version 8 for
20 Discussion. I note that the number 7 is deleted
21 in the first marginal note. I will represent to
22 you that I do not have a Version 7. Do you know
23 if this Version 8 is what was referred to in the

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1 After a brief discussion with Counsel off the
2 record, it was his belief that Version 7 of the
3 survey is embedded in the e-mail and not produced
4 because it wasn't saved as such as a separate
5 document, but he believes he can obtain a copy.
6 Is that a fair statement?

7 MR. SCHAEFER: Yes, that is a fair statement.
8 It wouldn't have been saved in the drafts folder
9 maintained by RSG but should be something that can
10 be extracted from the e-mail, and I'm happy to do
11 that.

12 Q So with that caveat that you just heard, sir?

13 A Yes.

14 Q Is Version 8, which you have, the version which
15 your firm would have edited or changed after
16 receipt of a version from Mr. Schaefer's office as
17 referred to in Exhibit 59?

18 A Yes. And because it appears that I have made
19 comments that appear after Mr. Schaefer's comments
20 referring to either changes that were made or not
21 made based on our review of this draft.

22 Q Okay. So Version 8 then appears to be Version 7
23 edited by you or your firm?

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1 A Yes.

2 Q Okay. Thank you.

3 (Off-the-record discussion)

4 EXHIBIT 60 MARKED FOR IDENTIFICATION

5 Q Exhibit 60, sir, is another e-mail chain. The top
6 is Mr. Whipple to you on May 24th, 2010, and the
7 bottom is Mr. Schaefer on May 24th, 2010. RSG 697
8 and 698. In it Mr. Whipple says the attached
9 Version 8 includes my responses to comments and
10 corresponding changes.

11 A No. That's actually from me to Matthew.

12 Q Yes. I am sorry. It's from Mr. Whipple's --

13 A Right.

14 Q -- e-mail, but it's a copy?

15 A Yes.

16 Q Thank you for pointing that out. I appreciate it.
17 The attached Version 8 includes my responses --

18 A Yes.

19 Q -- to comments and corresponding changes. So if
20 we look at Version 8, that confirms that Version 8
21 is what you edited from the Version 7 that you
22 received, correct?

23 A Yes. I believe so. Yes.

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1 Q Thank you.

2 A And somehow I removed the RSG piece, but it's
3 clearly an RSG draft at that point.

4 EXHIBIT 61 MARKED FOR IDENTIFICATION

5 Q Sir, I've handed you what's marked as Exhibit 61.
6 It's another e-mail chain from you to Messrs.
7 Isaacson and Schaefer, and then a response to you
8 from Mr. Schaefer May 25th of 2010, RSG 762. And
9 you e-mail saying attached is a final version of
10 the questionnaire reflecting our discussions over
11 the past week. Do you know if what you're
12 referring to in that e-mail is survey Version 9 --

13 EXHIBIT 62 MARKED FOR IDENTIFICATION

14 Q -- which I'm handing to you as Exhibit 62? It's
15 DMA/Colorado: Questionnaire Version 9 for Final
16 Review.

17 A It would appear that this is the next version
18 that's referred to in this e-mail, yes.

19 Q And that final version reflects, as you say, our
20 discussions over the past week. Did you make
21 notes of those discussions?

22 A I may have. I don't recall whether I had them in
23 my notebook or not.

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1 Q But if you had made notes, you would have produced
2 them?

3 A Yes.

4 Q And again in Exhibit 62, Mr. Schaefer responds to
5 you with some quick edits?

6 A 61? Exhibit 61.

7 Q So I'm sorry. Thank you for pointing that out.
8 Exhibit 61.

9 A Yes. He does.

10 Q And did you make changes or was Version 9 the
11 final?

12 A The changes were just a matter of lettering of the
13 subitems and so I don't recall whether we made
14 another version of the questionnaire or just went
15 from there. Those aren't pieces that would have
16 appeared in the final questionnaire anyway.

17 Q I'm sorry. I don't understand what you mean.
18 Those wouldn't have been pieces.

19 A So it refers to the lettering of subbullets under
20 number 7. The subbullet or, sorry, the response
21 choices began with letter D rather than letter A,
22 and that was just because of the way Microsoft
23 Word handled those items.

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1 A We had conversations with SSI about their
2 address-based sampling product, and it didn't
3 appear to us to be ready for use. They had
4 advertised it, but it didn't appear that they were
5 ready to begin using it. We had had conversations
6 with Knowledge Networks over a period of a couple
7 of years about their product and felt that it was
8 the best alternative for this kind of project.

9 EXHIBIT 65 MARKED FOR IDENTIFICATION

10 Q I hand you what's been marked as Exhibit 65, and
11 it's an e-mail addressed to you from Mr. Schaefer
12 of May 27th and it's RSG 880, and it attaches a
13 redline of the questionnaire with a few final
14 proposed edits and comments for your consideration
15 flowing from our discussions with DMA and Kevin
16 Keller. And I assume -- first of all, I
17 identified that correctly, did I not?

18 A Yes.

19 Q I assume, sir, that you didn't have conversations
20 with DMA or Kevin Keller referenced in this
21 e-mail?

22 A I did not have those conversations directly.

23 Q At the top it says survey questions Version 9 B,

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1 and if you look back at the exhibits, there is a
2 version, I think, 9 A?

3 A Exhibit 63.

4 Q But I did not see a Version 9 B.

5 MR. SCHAEFER: Could be consistent with our
6 earlier conversation, and I'm happy to extract 9 B
7 as well if it's embedded.

8 MR. WESOKY: Thank you.

9 EXHIBIT 66 MARKED FOR IDENTIFICATION

10 EXHIBIT 67 MARKED FOR IDENTIFICATION

11 Q Sir, I hand you what's been marked as Exhibit 66,
12 and I'm going to also hand you at the same time
13 Exhibit 67.

14 If we could just take a look at Exhibit 67
15 first, that is an e-mail chain between yourself
16 and Mr. Schaefer, and you appear to be sending him
17 the final script for the survey; is that correct?

18 A Yes.

19 Q And Mr. Schaefer responds, this appears to capture
20 all the changes we discussed. You see that?

21 A Yes.

22 Q Do you remember what those changes were?

23 A I don't remember the substance of them. They were

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1 in response to the comments that were received
2 from Mr. Keller and DMA, I believe.

3 Q But again, you didn't speak directly with
4 Mr. Keller or with any member of DMA, correct?

5 A No. That's correct.

6 Q Take a look at Exhibit 66. Is that the Version 10
7 that we're talking about? Or is there another
8 one?

9 A This is Version 10. I don't know if there's
10 another one.

11 EXHIBIT 68 MARKED FOR IDENTIFICATION

12 Q Show you what's marked as Exhibit 68. It's
13 DMA/Colorado: Questionnaire Version 10, Final
14 Script.

15 A Okay.

16 Q Would that be the document you're referring to in
17 the e-mail 67?

18 A I don't know which of these two I was referring to
19 for sure. I'd have to compare them word for word
20 and see where they're different, but -- I'm not
21 sure. It could be either one of those two. I
22 don't know which I was referring to in the e-mail.

23 EXHIBIT 69 MARKED FOR IDENTIFICATION

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1 Q I hand you what's been marked as Exhibit 69, sir.
2 You can take a minute to arrange them. I'm trying
3 to go fast because of our limited time here.

4 A Sure. I appreciate that.

5 Q This is an e-mail from -- the top one, June 2nd,
6 from Mr. Whipple to Mr. Schaefer, a copy to you,
7 and it's marked RSG 862 and 863.

8 A Yes.

9 Q In the bottom part of the e-mail it says the
10 survey has been programmed and tested and we have
11 coordinated with the sample provider. What does
12 programmed and tested mean?

13 A We took the script that is described in Exhibit
14 68, and we programmed it as an internet-based
15 survey. So we did the, did the necessary
16 conversion of that so that it would appear as a
17 survey over the internet.

18 Q What does tested mean?

19 A We have a standard testing protocol that we go
20 through for all of our surveys to ensure that the
21 data that are, that the questions follow the flow
22 of what has been described, that the data that a
23 respondent puts into the survey are the data that

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1 we record at the end. And we also do final test
2 for readability and a number of other factors.

3 Q Is that done in-house?

4 A In-house.

5 Q The top part of the e-mail is from Mr. Whipple to
6 Mr. Schaefer saying we might want to randomize the
7 choices in question 7 and question 8?

8 A Yes.

9 Q Was that done or was that not done?

10 A Yes, it was done.

11 Q So that was a change after the program and test?

12 A It was a change after the initial program and
13 test. We, typically, whenever we make a change,
14 we go back and retest the piece of the survey
15 that's been changed.

16 Q I understand you ran a pilot survey before the
17 final survey, is that correct?

18 A Yes.

19 Q What's the purpose of that?

20 A Purpose of the pilot was to make sure that there
21 weren't any significant issues with respondents
22 interpreting the questionnaire and with the
23 responses that we received from the questionnaire.

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1 Q Did you find any?

2 A No.

3 Q With the pilot?

4 A No.

5 Q Knowledge Networks did the actual survey for you?

6 A No.

7 Q You used Knowledge Networks' panel?

8 A That's correct.

9 Q When was that complete?

10 A I don't recall. It was, I believe, in June, but I
11 don't recall the dates off the top of my head.

12 EXHIBIT 70 MARKED FOR IDENTIFICATION

13 Q Exhibit 70 is an e-mail chain marked RSG 865 and
14 866. The top date is June 21st of 2010?

15 A Yes.

16 Q I want to call your attention to the e-mail that's
17 on the bottom of page 1, top of page 2, from
18 Mr. Schaefer to you and Mr. Whipple.

19 A Yes.

20 Q Do you recall receiving that e-mail?

21 A Yes.

22 Q And with respect to that he advises that the
23 Department of Revenue in Colorado issued

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1 regulations different from the ones that you had
2 had, correct?

3 A There was a change. Not completely different but
4 there was a change, yes.

5 Q And you talk about doing another survey, correct?

6 MR. SCHAEFER: Objection to the form.

7 A He suggested that we might want to discuss the
8 potential for doing another, some changes and
9 getting additional sample.

10 Q And you did discuss that?

11 A I don't recall -- there's an indication that we
12 might discuss that later in the day, and I don't
13 recall whether we had that, whether I had that
14 discussion with him. This was an e-mail chain to
15 Nelson who was at that time managing the technical
16 work on the project.

17 Q But no second survey was done, was it?

18 A No second survey was done. That's correct.

19 Q And why not?

20 A My understanding is that the changes in the law
21 were relatively minor with respect to the
22 questions that were asked in the survey.

23 Q Where did you get that understanding from?

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1 A From the nature of the change in the law.

2 Q Did you read it?

3 A Yes, I did.

4 Q You read the Regulation that came out about the
5 time of the e-mail you're referring to?

6 A I don't recall when I read the Regulation, but
7 yes, we were advised as to what the change
8 involved.

9 Q You were advised by someone or you read it? I'm
10 trying to --

11 A Well, at one point I read the Regulation, but I
12 think at the time we were advised as to what the
13 change was.

14 Q When I say you, I mean RSG, in consultation with
15 Brann & Isaacson, considered another survey, did
16 you not?

17 A Well, there was discussion about it. Yes.

18 Q And you, someone looked into the potential cost,
19 correct?

20 A We did, yes. We actually put together estimates
21 for it.

22 Q And you also talked about using a different vendor
23 because of repeat offenders possibly appearing if

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1 you used KN. When I say repeat offenders, I mean
2 people that had taken the survey the first time?

3 A That's correct. We wouldn't have gone back to
4 that same knowledge panel.

5 Q Did anybody ever say to you that the reason they
6 didn't want you to do the survey, DMA or Brann &
7 Isaacson, was because of the expense?

8 A I don't recall that, no. And again, I wasn't
9 involved directly in those conversations as I
10 recall. It was --

11 Q Mr. Whipple?

12 A Mr. Whipple who was involved in those
13 conversations.

14 Q So if I wanted to find out about why that second
15 survey wasn't done, I should talk to Mr. Whipple?

16 MR. SCHAEFER: Objection to form. Go ahead.

17 A He and I discussed it at one point so I understood
18 that there was not going to be a second survey.

19 Q But you don't know why there wasn't going to be a
20 second survey?

21 A I don't know whether cost was discussed as the
22 reason for it. I do know that the reason it was
23 communicated to me was not based on cost.

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1 Q Who communicated to you the reason why the survey
2 was not done?

3 A Nelson, certainly Nelson and I had conversations
4 about it, and I believe at some point I had a
5 conversation with Mr. Schaefer.

6 Q Is one of the reasons the second survey wasn't
7 done because of the sensitivity or the need to
8 have it done in time?

9 A Again, that wasn't part of the discussion that I
10 had. Nelson may have had that discussion with
11 Mr. Schaefer, but the, that wasn't the reason that
12 I understood it wasn't being done.

13 Q And again --

14 A At least my recollection.

15 Q Those reasons were conveyed to you by Mr. Whipple
16 or Mr. Schaefer or both?

17 A I believe both. I certainly had conversations
18 with Mr. Whipple, and I have subsequently had
19 discussions with Mr. Schaefer so --

20 Q What were those subsequent discussions with
21 Mr. Schaefer?

22 A Well, we've had discussions over the time from
23 June to the current about the survey and the

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1 interpretation of the survey results.

2 Q I'm talking about the issue of not doing the
3 second.

4 A Oh, it was only with respect to the substance and
5 not with respect to either timing or cost.

6 Q Okay. So from firsthand knowledge, as expressed
7 to you by Mr. Schaefer, you do not know the reason
8 the second survey was not done?

9 MR. SCHAEFER: Objection to form.

10 A I know that with respect to substance that we were
11 in agreement that there was not a need to refield
12 the survey. I don't know whether cost and time
13 had entered the discussion at any point with
14 Mr. Whipple.

15 Q There was a consensus that the second survey would
16 not be done then, correct?

17 A Yes.

18 Q The person with the most knowledge as to why that
19 second survey was not done would be whom, in your
20 opinion?

21 A Mr. Schaefer.

22 Q What about Mr. Whipple? Do you know if he had
23 conversations with Mr. Schaefer about why the

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1 A I don't recall receiving it, but I recall in
2 general having some communication about completing
3 the report and affidavit, yes.

4 (Off-the-record discussion)

5 Q Why don't we take a short break while I'm doing
6 this.

7 RECESS TAKEN

8 EXHIBIT 72 MARKED FOR IDENTIFICATION

9 Q I hand you what's been marked as Exhibit 72. It's
10 another e-mail chain, and it appears to respond to
11 number 71. And I apologize, I don't have an extra
12 copy of that one. But could you identify that?

13 A Exhibit 72?

14 Q Yes.

15 A It's marked as RSG 717, and it appears to be
16 correspondence regarding timing for another
17 conference with Matt.

18 Q And it also talks about signing an affidavit, does
19 it not?

20 A It's the same as 71. I believe.

21 Q I might lean over --

22 A Oh, yes. Okay. That's correct.

23 Q Talks about your availability for signing an

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1 affidavit?

2 A Yes.

3 Q And I take it you didn't draft that affidavit; it
4 was drafted by Mr. Schaefer?

5 A That's correct.

6 Q And he sent it to you?

7 A Yes, he did.

8 Q And would I be correct in saying that that
9 affidavit is what ultimately became Exhibit 39,
10 the Declaration?

11 A Yes.

12 Q It went through a couple of drafts but it
13 ultimately became Exhibit 39, correct?

14 A That's correct. Yes.

15 Q And it was initially drafted by Mr. Schaefer and
16 sent to you, correct?

17 A Yes.

18 EXHIBIT 72 MARKED FOR IDENTIFICATION

19 Q I hand you what's marked as Exhibit 72. It's an
20 e-mail from Mr. Whipple to you, and he's talking
21 about sending something directly to Matt. And
22 it's marked RSG 00699.

23 A Yes.

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1 Q What is this?

2 A This was the transmittal of the report describing
3 the results of the survey that we conducted.

4 Q When you say the report, it was not the report
5 that was ultimately generated which was attached
6 to your Declaration, was it?

7 A It was an earlier, there were portions of this
8 that presumably made it into that report, but that
9 was essentially the Dec describing the results of
10 the study.

11 Q It wasn't in the report form that we see as an
12 exhibit to your Declaration; is that what you're
13 saying?

14 A It was a Power Point Dec and I don't think, the
15 Dec was later expanded to include the full set of
16 materials as indicated in that exhibit.

17 Q What's the date of that e-mail that you just --

18 A July 22nd.

19 Q Okay. Thank you.

20 EXHIBIT 74 MARKED FOR IDENTIFICATION

21 Q I hand you what's marked as Exhibit 74. It's an
22 e-mail transmittal from Mr. Whipple to
23 Mr. Schaefer, copy to you, which essentially says

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1 here is our report. Is that correct?

2 A Yes.

3 Q And it's RSG 00869 for identification?

4 A Yes.

5 Q Is the report he refers to the one which I have
6 just handed to you --

7 EXHIBIT 75 MARKED FOR IDENTIFICATION

8 Q -- marked Exhibit 75, Colorado Consumer Survey,
9 Final Results, July 23rd, 2010, RSG, Inc.,
10 designated on the first page was RSG 00575.

11 A I believe that that's the one. I wouldn't know
12 for certain, but it appears to be dated correctly
13 and appears to be the content that I had a chance
14 to look at, yes.

15 Q Let me represent to you I received several copies
16 of Colorado Consumer Survey Final Results with
17 different dates, and this is the one.

18 A Yes.

19 Q The pages that follow are those that came with the
20 one marked July 23rd, 2010.

21 A Okay.

22 Q And you have no reason to think otherwise, do you?

23 A No.

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1 Q Now, how did that report differ, if at all, from
2 the final report, the one you attached to your
3 Declaration dated August 9th? And if you'd like a
4 copy of that August 9th one, I can certainly
5 provide it to you.

6 (Off-the-record discussion)

7 Q Exhibit 21.

8 A Would you like me to try to enumerate all the
9 differences or just say that it is different in
10 some respects?

11 Q Yes, just go through the --

12 A Enumerate the differences?

13 Q Yes, that would be helpful.

14 A Okay. Exhibit 21 includes an additional page 4
15 that describes the survey sample itself.

16 Q On what page is that?

17 A That's page 4, RSG 328 on Exhibit 21. That's a
18 new page.

19 So then the Exhibit 75, page 9, marked RSG
20 583, 584, 585, 586, 587, 588 are not included in
21 Exhibit 21. Instead, they are summarized on page
22 4 at 328.

23 MR. SCHAEFER: Page 4 of Exhibit 21.

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1 A Right. And on page 13 marked as RSG 337, Exhibit
2 21, there is an annotation indicating the
3 qualification essentially for participating in the
4 questionnaire. And then similarly, on page 14,
5 RSG 338 of Exhibit 21, there's another annotation
6 indicating qualification.

7 Q Let me interrupt here for a moment. Why the
8 change from Exhibit 75 to Exhibit 21?

9 A To make some of the procedures and assumptions
10 that were made as part of the survey more
11 explicit, and I believe there were, there was an
12 exchange, and I don't recall whether I was part of
13 it, but I know I discussed it with Nelson about
14 the additional edits that might be made to make it
15 clearer, and I believe that was a conversation
16 with Mr. Schaefer.

17 Q Let me see if I understand. The changes from
18 Exhibit 75 to Exhibit 21 were discussed among
19 Mr. Whipple, yourself and Mr. Schaefer, and as a
20 result of that discussion, the changes were made
21 from 75 to 21.

22 A Yes.

23 Q Okay. And I assume I can just look and see what

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1 those changes are?

2 MR. SCHAEFER: Objection to form, but go
3 ahead.

4 A Yes.

5 EXHIBIT 76 MARKED FOR IDENTIFICATION

6 Q Let me hand you what is marked, sir, as Exhibit
7 76. It's an e-mail chain identified RSG 00842,
8 and it's between Mr. Schaefer and Mr. Whipple
9 where Mr. Whipple submits the report to Matt
10 Schaefer, and Mr. Schaefer responds he wants to
11 make revisions to tailor and streamline the
12 document. Correct?

13 A Yes.

14 MR. SCHAEFER: For the record, it goes on
15 from there, but it speaks for itself.

16 Q When you do your survey work for other clients, do
17 they tailor and streamline the reports that you
18 send them?

19 A Yes, typically with our review and approval.

20 Q So you let the client change your report to tailor
21 and streamline it?

22 A We work with the clients to tailor and streamline
23 a report and typically accept comments and

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1 suggestions from our clients to do it to meet
2 their purposes, yes.

3 Q Do you ever reject comments?

4 A Yes.

5 Q Did you reject any in this case?

6 A I don't recall.

7 EXHIBIT 77 MARKED FOR IDENTIFICATION

8 Q Exhibit 77 is an e-mail. The top one is from
9 Mr. Whipple, I believe. Would you identify it
10 with the RSG number at the bottom, please?

11 A RSG 722.

12 Q And in that e-mail, Mr. Whipple's responding to
13 Mr. Schaefer's comment about tailoring and
14 streamlining the documents, correct?

15 A Yes.

16 Q And he's saying that the information is there; is
17 that what he's saying?

18 A Yes. The information is in the report, yes. And
19 also indicating that it may not be clear.

20 EXHIBIT 78 MARKED FOR IDENTIFICATION

21 Q I show you what's marked as Exhibit 78. It's an
22 e-mail chain identified with RSG 704 and 705. And
23 it also looks like it's a response to the e-mail

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1 regarding tailoring and streamlining the report?

2 A Yes.

3 Q With regard to the e-mail that appears in the
4 middle of the first page?

5 A Yes.

6 Q Is that Mr. Schaefer instructing you as to what
7 needs to be put in the report?

8 MR. SCHAEFER: Objection to form.

9 A It's actually an instruction for what would be
10 included in the Declaration.

11 Q Okay. Then Mr. Whipple at the top of the e-mail
12 comments on Matt Schaefer's e-mail, correct?

13 A Yes.

14 EXHIBIT 79 MARKED FOR IDENTIFICATION

15 Q I hand you, sir, what's been marked as Exhibit 79.
16 It's an e-mail chain identified with RSG 769
17 through 717. And the first e-mail in that chain
18 talks about a revised deck. Is that another
19 revised report similar to the July 23rd that we
20 saw earlier?

21 A Yes. If you're referring to the reference to the
22 bottom of 770?

23 Q Yes. Appears to be the first e-mail in that

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1 chain?

2 A Yes.

3 EXHIBIT 80 MARKED FOR IDENTIFICATION

4 Q And that was dated July the 28th so would that
5 have been the final results that are reflected in
6 Exhibit 80 called Colorado Consumer Survey Final
7 Results July 26, 2010 which I'm handing you marked
8 as Exhibit 80?

9 A I'd say probably. It's dated July 26th. The
10 e-mails are dated July 28th. But it may well be
11 the same Dec.

12 Q And then Mr. Schaefer responds in the next e-mail
13 in the chain acknowledging receipt?

14 A Yes.

15 Q Saying it looks good, but Mr. Isaacson, he refers
16 to him as George, has not had a chance to review
17 it and make changes that he thinks should be made?

18 A Or suggest changes. Proposed changes which is the
19 way changes were discussed.

20 Q Also in that e-mail chain, Mr. Schaefer talks
21 about in the next one in the chain to see if you
22 had any revisions to the draft of the Declaration.
23 Do you see that? It's at the top of page 770?

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1 A Yes.

2 Q Did you have any changes?

3 A It appears that I did find some typos.

4 EXHIBIT 81 MARKED FOR IDENTIFICATION

5 Q And there's also another Final Colorado Consumer
6 Survey Final Results dated July 29th which appears
7 in Exhibit 81 which I've just handed you. That's
8 another revision to your report of survey results?

9 A Yes.

10 Q That's still not the final one. The final one was
11 dated August 9th, correct?

12 A Yes.

13 Q And that was Exhibit 21, I believe.

14 A Yes.

15 Q So July 29th was not the final?

16 A That's correct.

17 Q August 9th, Exhibit 21, was -- what was the final?

18 A Exhibit 21 is the final version.

19 Q Right. Okay. And the other versions that we've
20 looked at, the 23rd, the 26th and the 29th were
21 all changed as they went along based on
22 suggestions of Brann & Isaacson?

23 MR. SCHAEFER: Objection.

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1 A They were modifications made that were reviewed
2 with, both Nelson and I reviewed those changes and
3 made a number of, I would consider them to be
4 minor changes.

5 Q But they were the suggestion of Brann & Isaacson,
6 yes or no?

7 A Most of them, yes. Some of them typos and so
8 forth that were my suggestions.

9 EXHIBIT 82 MARKED FOR IDENTIFICATION

10 Q Sir, I'll hand you what's Exhibit 82, e-mail chain
11 designated with RSG 775 through 777.

12 A Yes.

13 Q Referring to the last two e-mails in the chain,
14 you are sending documents to Mr. Schaefer which
15 includes the revised copy of the Declaration,
16 correct?

17 A You mean the top two?

18 Q Yes.

19 A So the ones on page --

20 Q The most recent?

21 A 775. Yes.

22 Q The latest in that chain?

23 A Yes.

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1 Q Do you remember the revisions that you made?

2 A I don't remember them offhand, no.

3 Q Do you remember if they were large revisions,
4 major revisions or just kind of tweaking words?

5 MR. SCHAEFER: I'm going to object to form
6 just because he's not looking at a copy of it.

7 A Yes. I don't recall, but certainly they were, the
8 Declaration was based on the results that we had
9 presented to Brann & Isaacson and that we had
10 discussed with Mr. Schaefer and Mr. Schaefer, I
11 believe, for the most part accurately reflected
12 the opinions that we had discussed over the phone
13 in the Declaration. So I don't recall any
14 significant changes in substance.

15 Q Fair enough. Okay. Then the top e-mail in that
16 chain or the latest in that chain, looks like
17 Mr. Schaefer further revises the Declaration?

18 A Yes.

19 Q And it appears he's revising it, tell me if this
20 is your impression as well, that he's revising it
21 to comport to what Professor Keller said in his
22 Declaration?

23 A Well, I think the intent was to revise it so that

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1 it was consistent with the facts which was that
2 Professor Keller did review the survey.

3 Q So it would be consistent, your Declaration would
4 be consistent with his?

5 A So that my Declaration would be consistent with
6 the facts.

7 EXHIBIT 83 MARKED FOR IDENTIFICATION

8 Q Let me hand you what's been marked as Exhibit 83,
9 and it's an e-mail from Mr. Schaefer to you dated
10 September 10th, bearing RSG 00936 and 937.

11 A Yes.

12 Q Do you recall receiving this?

13 A I don't recall receiving this specific e-mail, but
14 I do recall the request, yes.

15 Q Was that the first time you had been told about
16 the requirements that are set forth in this
17 e-mail?

18 A It was the first time that they were listed out.
19 We may have had a prior phone conversation. I
20 don't recall.

21 Q Would you look at the second page of that?

22 A Yes.

23 Q And I think to capsulize it, Mr. Schaefer's

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1 Adler, RSG 939 through 941.

2 A Yes.

3 Q In that e-mail, Mr. Schaefer's attaching a draft
4 of an Expert Report. Correct?

5 A Yes.

6 Q You didn't draft the Expert Report; he did,
7 correct?

8 A Yes.

9 Q And is the attachment, RSG 939 through 941, that
10 draft which is referenced?

11 A Yes.

12 Q If I didn't identify for the record, the last
13 exhibit was Exhibit 86. I apologize.

14 EXHIBIT 87 MARKED FOR IDENTIFICATION

15 Q Let me hand you what's marked as Exhibit 87. It
16 is an e-mail chain designated with RSG 948, 949
17 and 950. The most current of the e-mails is
18 Monday, September 20th, 2010 at 1:51 p.m. This
19 appears to be a change in addition to the previous
20 exhibit, 86. And in the e-mail, the date is the
21 bottom of the first page and continues at the top
22 of the second, second page 949, where you state
23 your Expert Report that Mr. Schaefer drafted looks

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1 fine to you. Correct?

2 A Yes.

3 Q And you give him your hourly rate?

4 A Yes.

5 Q This is a silly question. 344.44 an hour. Why
6 not 340 an hour?

7 A Because we actually are government-audited rates
8 and so we have to include the appropriate
9 multipliers that are set by standard audit
10 procedures and so forth.

11 Q Just struck me as funny, that 44 cents in there.

12 A Well, that's the rate.

13 Q Then Mr. Schaefer responds that he thinks
14 additional documents should be added to your
15 Expert Report as documents that you referenced in
16 reaching the results in your report?

17 A They're actually documents -- yes, he references
18 those documents, and those documents are actually
19 documents that I had reviewed prior to this
20 engagement.

21 Q But it is he who suggests they should be
22 incorporated in your Expert Report, correct?

23 A Yes.

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1 description of their sampling method including
2 address-based sampling.

3 Q So the Mantiquilla deposition was not something
4 that you relied on or utilized for coming up with
5 your opinions in this case?

6 A Not specifically. And as I said, it was a
7 document that I had reviewed prior to being
8 engaged in this case.

9 EXHIBIT 90 MARKED FOR IDENTIFICATION

10 Q Just to complete the record, Exhibit 90 is your
11 final of your Expert Report in this case, is that
12 correct?

13 A Yes, it is.

14 Q And I want to make sure that, I'm not intending to
15 include any attachments to it, just the report
16 itself.

17 A It's right now just the report, yes. Just the
18 four pages of the report.

19 Q First I want to establish that your opinion in
20 this case is related to the survey, not to any
21 consumer behavior like Professor Keller did but
22 just, your expertise is in the survey area, is
23 that correct?

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1 A I have expertise in the survey area, but it's not
2 limited to my expertise in constructing and
3 conducting a survey.

4 Q But as I read your Declaration and Expert Report
5 in this case, I think your opinions are related to
6 the appropriateness of the survey and the
7 appropriate methodology was used and the
8 appropriate sample was used to get appropriate
9 results?

10 A That's the majority of what's contained in there,
11 but it's not limited to that.

12 Q What other opinions -- well, tell me what opinions
13 you're offering in this case.

14 A It's the opinions that are contained in the
15 Declaration.

16 Q Tell me what those opinions are.

17 A You want me to go through all of the opinions in
18 the Declaration or --

19 Q Not word for word, but tell me what your opinions
20 are in this case, what you're being put forth to
21 offer an opinion on and what that opinion is.

22 MR. SCHAEFER: Objection to the form.

23 A You'd like me to paraphrase the opinions expressed

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1 in the Declaration?

2 Q Sure.

3 A So the opinions, obviously, as you suggested,
4 relate to the appropriateness of the method, the
5 opinions include the description of the consumers'
6 response to the law.

7 Q And when you're saying that, you're just reporting
8 the results of the survey?

9 A The specific pieces that are included here are the
10 results of the survey. Yes. There's a
11 description of the methodology and the
12 appropriateness of the methodology and description
13 of the reliability of the survey methods that are
14 used.

15 Q So your opinions are related to the survey and
16 that it was conducted in an appropriate manner
17 with appropriate methodology, appropriate survey
18 principles were applied, which should lead to an
19 appropriate result?

20 A Yes.

21 Q I just want to make sure that you're not going to
22 offer opinions on any other area, just on the
23 methodologies of the survey and its result?

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1 A I guess the opinions, I'm not sure what you mean
2 by the Declaration includes those opinions that
3 you just described.

4 Q Okay.

5 A And what I'm asked for other opinions by you or
6 others is not something that I could speculate on.

7 Q Now, you state in your Declaration at page 3,
8 paragraph 4, that RSG designed the survey, is that
9 correct?

10 A Yes.

11 Q Now, I know from our prior discussion that at
12 least some of the design was provided by Brann &
13 Isaacson when they sent you some versions of the
14 questionnaire, isn't that correct?

15 MR. SCHAEFER: Objection to the form.

16 A No. So first of all, if you'd like me to explain?

17 Q Yes.

18 A First of all, survey isn't the same, is not
19 synonymous with questionnaire. Survey is the
20 process of designing, administering, sampling and
21 then reporting results that come from a
22 questionnaire.

23 Q Is designing the questionnaire a part of designing

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1 the survey?

2 A It's part of it. One part. Yes.

3 Q You also state that you took appropriate steps to
4 ensure its objectivity?

5 A Yes.

6 Q Would you tell me what those steps are?

7 A Yes. Most important from our perspective was to
8 frame the questions in the context, in a very
9 specific context in the context of a purchase that
10 was made by a consumer, number one. Number two
11 was to ask questions in a way that allowed us to
12 confirm validity, and number 3 was, included
13 things like the randomizing order so that we
14 didn't bias by order responses to a question.

15 (Requested portion read back by reporter)

16 Q What do you mean by confirming validity?

17 A Well, we want to make sure that consumers
18 understand response choices. So, for example,
19 with respect to the privacy question, we worded
20 the privacy question in both an affirmative and a
21 negative form, if you will, both with slightly
22 different wording to make sure that consumers
23 responded consistently independent of the wording.

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1 Q You oversaw its administration. I assume that's
2 because Knowledge Networks did the panel, but you
3 oversaw the administration of the survey, is that
4 what you mean in the next phrase there, you
5 oversaw its administration?

6 A Yes.

7 Q How did you ensure that the data were accurately
8 gathered?

9 A By checking the data as they came in to make sure
10 that they were consistent with the specifications
11 that we gave to Knowledge Networks.

12 Q And then you say they were processed and analyzed,
13 that is the data, in accordance with accepted
14 statistical principles. What are those
15 statistical principles?

16 A The tabulations were -- first of all, there was a
17 weighting process applied to make sure that the
18 data that we collected appropriately represented
19 the population of the state of Colorado.

20 Q What do you mean by weighting?

21 A Weighting is a process of applying a factor to
22 each response to ensure that in aggregate the
23 responses are representative of the key

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1 characteristics of the Colorado population.

2 Q Who determines the weighting? I'm sorry. I
3 didn't mean to jump on your answer.

4 A In this case, who determines the weighting, the
5 weighting criterion, that is that it should be
6 weighted to the average Colorado consumers, was
7 specified by us. The calculations of the weights
8 were done by Knowledge Networks.

9 Q Tell me a little bit about your weighing. What
10 did you give weight to and how much weight?

11 A So we wanted to make sure that the key
12 demographics of the population of the state of
13 Colorado were represented in our survey and if
14 you'd like, I can give you just a simple example
15 to illustrate how it works.

16 Q That would be great.

17 A Let's say we know that on average there are 50
18 percent males, 50 percent females in Colorado
19 which is approximately correct. And let's say
20 that in our data set we for some reason have,
21 let's say there are only three responses in our
22 data set to make it easy, two males and one
23 female. In order for that sample to be

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1 representative of the population of Colorado, we
2 have to apply weights to the individual records.
3 We downweight the two male responses, let's say
4 for right now, this isn't correctly right, but we
5 weight each of those at .5 and the female gets a
6 weight of 1. When we now average those together,
7 we get 50 percent males, 50 percent females so
8 that's the process of weighting.

9 Q So if you're heavy on one gender as opposed to the
10 other?

11 A Exactly.

12 Q Or heavy on an age category, you reduce or
13 increase the other categories by weighting?

14 A That's exactly right, yes.

15 Q And that's something that's generally accepting
16 among the statistical world?

17 A Yes.

18 Q Where could I find some literature on that
19 subject?

20 A Any elementary survey sampling textbook would have
21 that information.

22 Q Can you give me one? Any name?

23 A Any names? I'm not good at specific names, but I

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1 could find them for you and provide them if you'd
2 like.

3 Q Not at this time. But did you review any of that
4 material in connection with this survey in doing
5 your weighting?

6 A No. I've taught graduate level Probability and
7 Statistics so it's kind of engaged in my mind. So
8 I didn't have to review it for this case.

9 Q And what do you mean by statistically valid
10 results as it appears in the last sentence of
11 paragraph 4?

12 A That the results themselves have, the sample size
13 was large enough that the results themselves have
14 small error or confidence intervals compared to
15 the conclusions that were reached.

16 Q I assume, Dr. Adler, that in connection with your
17 work in this case you did not review or look at
18 any Colorado statutes requiring that information
19 received by the state Department of Revenue be
20 kept confidential?

21 A I didn't review any specific Colorado laws, no.

22 Q If you would look at paragraph 7, please. You
23 state, in light of the target population, subject

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1 would have otherwise really wanted to look at.

2 Q Okay. Is there anything you would like to have
3 done in connection with the survey which you
4 didn't do?

5 MR. SCHAEFER: Same objection.

6 A Not that I can think of.

7 Q So if you had to do this assignment all over
8 again, you would do it the same way?

9 A Well, we couldn't do it the same way. We've
10 already interviewed these people. But if we were
11 starting from scratch again?

12 Q Yes.

13 A I would recommend doing it the way that we did it.

14 Q The exact same way with no changes, no tweaks, no
15 modifications?

16 A No. Given the criteria that we had and the
17 objectives of the survey, I think it was an
18 appropriate method.

19 Q Nothing you would have done differently, I take
20 it?

21 A Nothing substantive. You know, I think obviously
22 we went through ten drafts of the questionnaire.
23 I probably would have started closer to number 10

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1 than number 1, but --

2 Q And in paragraph 9, you state that you drafted and
3 revised the survey questionnaire?

4 A Yes.

5 Q Working with others at RSG. That would be
6 Mr. Whipple?

7 A Yes.

8 Q Anybody else?

9 A Ms. Dossinger was involved in some review.

10 Q Of the questionnaire?

11 A Of the questionnaire. Yes.

12 Q Do you know what her input was to the
13 questionnaire?

14 A I don't know. Nelson works closely with Ms.
15 Dossinger, and they had discussions, but I'm not
16 privy to those.

17 Q We talked about the drafting and revising that
18 Brann & Isaacson did, didn't we?

19 A Yes.

20 Q And I think you said you never talked to Professor
21 Keller?

22 A I never talked to him directly with respect to
23 this case, no.

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1 Q Anything that he may have said would have been
2 passed on to you through Brann & Isaacson?

3 A Yes.

4 Q Okay. Let's turn if we could, please, to Exhibit
5 21. The final final. Here it is. Let me give it
6 to you. I shouldn't have taken that. I'm going
7 to ask if you'd look, please, at, it's page 18.
8 Okay?

9 A Yes.

10 Q Is this one of the questions that you said you
11 framed in the, to give alternatives?

12 A Yes.

13 Q I think we talked about that a little bit. To
14 check and see consistency?

15 A Yes.

16 Q In the second part of that question, I think these
17 are called focal questions, is that correct?

18 A I don't call them that, but maybe others do.

19 Q What do you call them as opposed to qualifying
20 questions?

21 A I don't call these qualifying. I'm not sure --

22 Q Like qualifying question, are you over the age of
23 18?

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1 A Oh, but that's not page 18.

2 Q No. I said a qualifying question is like are you
3 over the age of 18. Did you buy on the internet
4 in the last six months. Those are qualifying
5 questions?

6 A We call them screener questions.

7 Q Okay. And what do you call the meat and potatoes
8 questions? Like question 8, like the question
9 appearing on page 18, what term of art do you use?

10 A This is an opinion question.

11 Q Okay. Now, this opinion question, if you look at
12 the second part of that?

13 A Yes.

14 Q The second, it says I do not mind the state of
15 Colorado knowing the kinds of products I buy, from
16 whom I buy them, where I have them shipped and how
17 much I spend. Did I read that correctly?

18 A Yes.

19 Q Now you know, do you not, that the Colorado law
20 doesn't require a reporting to the Department of
21 Revenue of the kinds of products that an
22 individual buys, correct?

23 A I know that it's not the specific item that was

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1 purchased. It's the amount and so forth. Yes.

2 Q And then if you look at the first question, it
3 says reporting my name, billing address, shipping
4 address and amount of my purchases is an invasion
5 of my privacy?

6 A Yes.

7 Q So that correctly states what the requirements of
8 the reporting law are, doesn't it?

9 A Yes.

10 Q The second one doesn't correctly state the
11 requirements of the reporting law, does it?
12 Because it says kinds of products. And there's no
13 reporting requirement for the kinds of products,
14 is there?

15 A Not directly, but the reporting does include the
16 entity from which the product is purchased from
17 which a kind of product can be inferred.

18 Q So if I buy from Lands End, are you familiar with
19 that company?

20 A Yes, I am.

21 Q Lands End, I could buy a briefcase?

22 A Yes.

23 Q Or I could buy a pair of socks?

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1 A That's correct.

2 Q Are they similar kinds of products?

3 A They're hard goods. Yes.

4 Q So a briefcase is like an article of clothing?

5 A I didn't say it was an article of clothing. I
6 said it was a hard good.

7 Q A good as opposed to a service?

8 A As opposed to a service, that's correct, or as
9 opposed to food or other kinds of consumables.

10 Q Do you know if I could buy food from Lands End?

11 A I don't know.

12 Q So you don't think this question adds a piece,
13 quote, kinds of products, that is unnecessary?

14 A No. Because -- no.

15 Q That's fine.

16 A If you'd like me to explain?

17 Q No. I don't need you to explain. Why did you add
18 that in there, kinds of products I buy, when it's
19 not in the first half of that question?

20 A It's to rephrase the question in an affirmative
21 form so that we can check consistency between the
22 two questions.

23 Q So you could not have said I do not mind the state

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1 of Colorado knowing from whom I make purchases, my
2 name, billing address and shipping address? You
3 couldn't have said that?

4 A You could say that. I don't understand.

5 Q Would that be more in line with what the law is?

6 A It's a phrasing that is more consistent with the
7 literal phrasing of the law.

8 Q Do you think, sir, that the inclusion of the words
9 "kinds of products" in that question had any
10 residual effect on the survey respondents for the
11 following questions?

12 MR. SCHAEFER: Objection to the form.

13 A No.

14 Q You don't think that it was possible that a survey
15 respondent would have that in mind that they have
16 to report the kinds of products when answering the
17 following questions?

18 A No. First of all, the heading is very clear as to
19 what's being collected and reported; and second of
20 all, as described on page 20, there's a more
21 literal reporting of what the law looks like.

22 Q With respect to that question on page 18 that we
23 talked about, the question at the top of the page,

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1 the assumptions, talk about reporting to the
2 Colorado Department of Revenue.

3 A Yes.

4 Q Do you think that the mention of the Colorado
5 Department of Revenue caused any of the
6 respondents to think in terms of an increase in a
7 product price because the Department of Revenue is
8 the tax man?

9 MR. SCHAEFER: Objection to form.

10 A No.

11 Q Okay. Fair enough. And you don't think there are
12 people that responded knowing that the reporting
13 was to Colorado Department of Revenue because many
14 people are just tax averse?

15 MR. SCHAEFER: Objection to the form.

16 A No. I don't think that would be the reason for
17 the responses that were given, no.

18 Q Do you think that could have influenced any
19 responses?

20 A It's conceivable.

21 Q But you don't think it did?

22 A I don't think it was a material effect, no.

23 Q Are you familiar with the term reactivity bias?

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1 A Reactivity bias, no.

2 Q Maybe I'm using the wrong term, but it's where a
3 question puts a response in the head of the
4 respondent. For example, I go to buy a car or I'm
5 surveyed about buying a car and they ask me how
6 important is the location of outside turn -- is an
7 outside turn signal indicator important to you.
8 And I would never have thought of that. And all
9 of a sudden, I think, well, it's a little
10 important. In other words, the question suggests
11 an answer. Do you think any of that occurred in
12 your questionnaire?

13 A No.

14 Q Why not?

15 A It's the kind of questions that we've used
16 previously in quantitative surveys. We've also, I
17 personally have done many focus groups dealing
18 with issues of privacy, and I find that
19 individuals who have concerns about privacy bring
20 those up of their own. It's not something that's
21 suggested to them from outside. And there are
22 others who simply don't react to the issue of
23 privacy, for example. So I've done a significant

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1 amount of both qualitative and quantitative
2 research, and I don't find that to be the case.

3 Q Did you consider the use of an open-ended question
4 with a "don't know" response?

5 A We do have some other, we have some open-ended
6 questions. For example, on page 19 there is an
7 open end there.

8 Q But on 20, you don't have a "don't know" answer,
9 do you?

10 A We do not have a "don't know" but it's the same as
11 remain the same so they don't know presumably
12 would remain the same.

13 Q So you're equating don't know with remain the
14 same?

15 A Yes. Because it's --

16 Q On page 20?

17 A Yes. Because it's, as a result of this law, if
18 they don't have an opinion about the result of
19 this law, presumably they remain the same. It
20 wouldn't affect them.

21 Q I'm certainly not a survey expert, but the surveys
22 that I've seen or heard have a margin of error?

23 A Yes.

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1 Q The political, X is ahead of Y by 3 points.

2 Margin of error is one.

3 A Yes.

4 Q There's no margin of error here that I saw, is
5 that correct?

6 A There's clearly a margin of error in this sample.

7 Q I didn't see it reported.

8 A That's because it's trivial. It's trivially
9 calculated. For a sample size of a thousand, it's
10 widely known it's plus or minus 3 percent at the
11 mid point.

12 Q So three percent, you have a 67 percent figure in
13 here for one result, that 64, maybe 70?

14 A Yes. That's correct.

15 Q Again, I'm not a survey expert. Was that a
16 probability or nonprobability survey?

17 A It's a probability sample. Not a probability
18 survey.

19 Q What's the difference between a probability sample
20 and nonprobability?

21 A Recall that the survey is a process. It's not the
22 questionnaire, it's not the sample. It's a whole
23 process. The sample was constructed as a

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1 question is to what extent will consumers be
2 willing to purchase or acquire electronic tolling
3 devices given a number of issues. One being the
4 cost and the, you know, all of the issues dealing
5 with using toll facilities, for example, as well
6 as the issues of potential issue of privacy around
7 the fact that the electronic transponder is
8 recording travel, essentially details of travel
9 movements.

10 Q Any surveys with regard to the, similar to this
11 one where it's product based, intention to buy a
12 product?

13 A Well, in that case that is a product. It's the
14 intention to buy that --

15 Q Let's leave that one aside and see if there are
16 any others.

17 A We've done a tremendous amount of product work.
18 We've done work on cell phone purchases for
19 Motorola. A large number of surveys where we use
20 similar techniques to what we've done here,
21 behavioral intentions to understand purchase
22 patterns, potential purchase patterns of new
23 products.

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1 Q And you found before and after that the consumers
2 intend to buy a Motorola product and the same
3 number do?

4 A Not the same number, but the behavioral intention
5 is a reasonable predictor of actual behavior.

6 Q When you say reasonable, what do you mean by
7 reasonable?

8 A Meaning if 67 percent said that they were going to
9 buy a phone, we wouldn't expect that only 10
10 percent would.

11 Q You'd expect 30 percent would?

12 A No. I would expect something over 50 percent.

13 Q I assume you've not found a phone where people
14 would buy, over 50 percent of the population would
15 buy a phone?

16 A No. Unfortunately not. If that were the case, it
17 would be quite favorable to the product.

18 Q Any other consumer surveys come to your mind where
19 the intended behavior was --

20 A Oh, virtually every survey that we do is
21 intended behavior survey.

22 Q Talking about consumer.

23 A Yes. Consumer. And we do a tremendous amount of

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1 work with consumer products companies.

2 Q Like who?

3 A You want me to list all of our clients?

4 Q Give me a few.

5 A Heinz, Samsung. I'm trying to think of ones that
6 are specifically consumers. Ford Motor Company,
7 American Airlines.

8 Q And it's -- American Airlines, they don't exist
9 anymore.

10 A Don't put that on the record.

11 MR. SCHAEFER: One of the largest ones left.

12 Q Oh, I'm sorry. American Airlines. I was thinking
13 of Eastern Airlines.

14 A Oh, Eastern Airlines.

15 Q No. They're long gone.

16 A Anyway, yes. Large number of consumer product
17 companies of different types.

18 Q And they're all intentioned behaviors?

19 A Yes. Absolutely.

20 Q And you found across those surveys that
21 intentions --

22 A Are good predictors of behavior.

23 Q Of subsequent behavior?

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1 A Yes.

2 Q And isn't that effect best seen when the product
3 or service you're measuring becomes more specific?

4 A As I mentioned previously, it is very important
5 that people have a specific context in mind and
6 the more vague the context, the more difficult it
7 is to predict the behavior. So, for example, for
8 radical new technologies where people really don't
9 understand the context in which those technologies
10 might be placed, it's much more difficult to
11 predict behavior. But for products and services
12 and circumstances which can be described and
13 understood by a consumer, our experience has been
14 that behavioral intentions are good predictors of
15 actual behavior.

16 Q Okay. Let me turn my attention for a minute to
17 the pilot survey that you took. Mark that as the
18 next exhibit in line there.

19 EXHIBIT 91 MARKED FOR IDENTIFICATION

20 Q Just briefly, I hand you what's marked as Exhibit
21 91. This is the Colorado Survey Pilot Phase
22 Results, October the 15th.

23 MR. SCHAEFER: As a matter of clarification

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1 MR. WESOKY: Right.

2 MR. SCHAEFER: Just for the record, I don't
3 want to make, get confusing --

4 Q With that explanation, that the Pilot Survey was
5 conducted at some point in June, did you provide
6 these results to Brann & Isaacson?

7 A Yes. Well, to be clear, I personally didn't.

8 Q RSG did?

9 A I understand they were provided, yes.

10 Q The pilot survey is 250 people?

11 A 252 people.

12 Q What I wanted to do was look at, again, your final
13 survey which is I think Exhibit 21?

14 A That's correct.

15 Q And I wanted to look at your Declaration. I'm
16 going great here. We have 45 minutes left. We
17 should be done on time. If you could get those
18 two in front of you?

19 A Yes, I have them.

20 Q And if you look at your Declaration?

21 A Yes.

22 Q Paragraph, I believe it's 2?

23 A Okay.

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1 Q Talks about the objectives of the survey?

2 A No. That's not paragraph 2.

3 Q Thank you. It's paragraph 3.

4 A All right.

5 Q If you look at, it says the objectives of the
6 survey. Do you see that?

7 A Objectives, yes.

8 Q And would you look at Exhibit 21 and see what the
9 objectives of the survey are? They aren't the
10 same, are they? Exhibit 21, the objectives, and
11 the --

12 A The objective as stated on page 3 is the same as
13 objective 2 which is or equivalent to objective 2
14 which is stated on --

15 Q Exhibit 21, paragraph 3, right?

16 A Well, actually, I have Exhibit 39, paragraph 3.

17 Q I'm sorry. I was confusing the survey with the
18 Declaration.

19 A Right. Right. Right. 39 is the Declaration.

20 Q For clarity of the record, the objective number 2
21 in 39 is the same as objective stated in the
22 survey, Exhibit 21, is that correct?

23 A Yes.

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1 Q Why not make the two the same objective?

2 A Yes.

3 Q You don't know?

4 A I'm not sure. I think they're both objectives as
5 stated on page 3 and the report only included one
6 of them. Well, in the project approach on page 3
7 of Exhibit 21, there is a description of the fact
8 that we are also dealing with the invasion of
9 privacy issue.

10 Q That's not in the objectives, the project
11 approach?

12 A No. It's not stated.

13 Q And that doesn't say the project approach, it says
14 the objective in Exhibit 39?

15 A Yes. That's correct.

16 Q Now, you and your team drafted Exhibit 21,
17 correct?

18 A Yes.

19 Q And Mr. Schaefer drafted Exhibit 39, correct?

20 A Yes.

21 Q Give me a few minutes. I want to wrap some things
22 up.

23 (Off-the-record discussion)

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1 MR. SCHAEFER: They have Bates numbers, by
2 the way.

3 Q Yours doesn't. I copied them poorly.

4 A 5/2 is the next one.

5 Q Okay.

6 A Next one is 5/7.

7 Q Okay.

8 A And the next one is 5/19.

9 Q Okay.

10 A Next one is 7/19. Next one is 7/26. And then the
11 last one that I have in this package is 9/15.

12 Q Okay. That should be a complete package. This is
13 Exhibit 92. 4/9 is the first one?

14 A Yes.

15 Q 5/2 is the second one. Correct?

16 A Yes.

17 Q Okay. Then I'm sorry. Again?

18 A 5/7.

19 Q 5/19?

20 A 5/19. 7/19. 7/26. And 9/15.

21 Q Okay.

22 MR. WESOKY: Matt, please make sure you have
23 the full set.

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1 MR. SCHAEFER: I do.

2 Q Okay. These are your notes?

3 A Yes.

4 Q Let's take a look at 4/9.

5 A Yes.

6 Q What is the, this note says and you can paraphrase
7 for me, I just want to make sure --

8 A This, I believe, was an initial call from Matt
9 describing the context of a study that he was
10 requesting us to provide a scope for and the fact
11 that it was a survey of Colorado residents and
12 basically the context of the law.

13 Q Okay. The next page?

14 A Next page.

15 Q And the note is 5/2?

16 A Yes.

17 Q And you're talking about the timing?

18 A Yes. And this was a discussion basically that we
19 told him that it was going to take four weeks
20 minimum for the project, that we would want a
21 minimum of a thousand sample and then a response
22 that he had to move quickly to get funding
23 arranged for this study.

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1 Q Was the thousand sample yours?

2 A That was ours.

3 Q And the 18 plus is yours?

4 A It might have been a discussion that we had about
5 what the appropriate age group would be.

6 Q The next note is May 5th and that was just talking
7 about a call on Friday?

8 A Yes. Call coming up on the 7th.

9 Q The next day is the 7th of May?

10 A Yes.

11 Q What was that conversation about?

12 A This was a more detailed discussion about the
13 context of the project and a description of their
14 theory of the case and the fact that, and then
15 some of the mechanics that Kevin Keller and others
16 would be, would also be involved in the project.

17 Q So that second part there where it says theory,
18 that was the theory of the case as described to
19 you by Mr. Schaefer?

20 A Yes. And Mr. Isaacson.

21 Q And the second, and below that kind of a
22 logistical discussion?

23 A Yes.

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1 Q About Professor Keller commenting on the survey?

2 A Yes.

3 Q And that Mr. Schaefer will file the Keller
4 affidavit and the survey report?

5 MR. SCHAEFER: Objection. Mischaracterizes
6 the document.

7 A Yes.

8 Q Well, you were not going to file a Keller
9 affidavit, were you?

10 A No.

11 Q I didn't think so. It says May 2 in effect. What
12 does that mean? May 1 in effect.

13 A My recollection was that the law was in effect on
14 May 1.

15 Q Okay. Next is May 19th. Can you tell me what
16 that note is?

17 A So this looks like kind of a repeat of the
18 specific objectives, what we wanted to find out.

19 Q So you wanted to find out whether turning over the
20 information will cause people to not purchase?

21 A Right, versus not paying taxes. We wanted to
22 avoid getting into the issue of people not liking
23 to pay taxes because we know nobody does.

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1 Q And it says don't care about summary collateral,
2 what does that mean?

3 A I was looking at that. I don't recall what that
4 means. Oh, I know what that -- I think in
5 providing a, probably in providing the scope of
6 the project they didn't care about us putting in
7 company qualifications and all that stuff because
8 they only knew about our company.

9 Q And then the last part is those that have to make
10 the report?

11 A That was my understanding.

12 Q That was conveyed to you by Mr. Schaefer, I take
13 it?

14 A Yes.

15 Q What does the thing on the right mean, private
16 purchase?

17 A No. That was my own note. It's put purchase into
18 future context meaning we wanted to make sure it
19 was in the context of an actual purchase.

20 Q Next is 7/19?

21 A Yes.

22 Q And these notes reflect a conversation?

23 A Yes.

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1 Q That talks about the amended regulation,
2 Mr. Schaefer informed you of that?

3 A Yes.

4 Q And we talked about that earlier.

5 A That's right.

6 Q What about the remainder of this note?

7 A Well, this is the mechanical pieces of having to
8 put together an affidavit or some sort of a report
9 and the fact that it had to be on file at that
10 time by July 30th.

11 (Off-the-record discussion)

12 Q Thank you for pointing that out. As I say, these
13 were copied in a haphazard fashion.

14 The next one I have is 7/26. Is that
15 correct?

16 A Yes.

17 Q That's a call with Mr. Schaefer and tell me what
18 the note reflects?

19 A Well, it was that he wanted a results report that
20 contained the survey results, the content of the
21 survey; that we had a discussion of whether we
22 should include in that report a very detailed
23 discussion of the sampling methodology and the

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1 Knowledge Networks panel, and I think agreed that
2 we didn't need to do it there. That we'd use
3 documents that Knowledge Networks had provided us,
4 that we needed to specify who had been screened
5 out of the survey and make that specific. And
6 these were just the edits that were described in
7 the, from the draft of the final version of the
8 report.

9 Q Eliminate?

10 A Fifth bullet. It was a bullet that, and I'm not
11 sure which -- this was from the draft to the final
12 so there was apparently some item that was
13 eliminated.

14 Q And that would track from the different --

15 A Yes, it should track.

16 Q -- from the different dates of the final report,
17 7/23, 26 and so forth?

18 A Yes.

19 Q And 9/15 is the last one that I have.

20 A Right.

21 Q And tell me the content of this note.

22 A This was just the remaining items that we had to
23 do. We wanted to provide an updated copy of my

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1 resume. In addition to material that we'd already
2 provided, provide billing info, time records,
3 notes, this was the, essentially, the discovery
4 process that we discussed.

5 Q Now, I noticed in the documents that you billed,
6 I'll call it "by the piece" for this project. You
7 didn't bill an hourly rate?

8 A Yes. That's correct. It's our standard.

9 Q You billed a project rate?

10 A Yes.

11 Q And that was \$39,900?

12 A Yes. I believe so.

13 Q And you didn't do an itemized bill. You just did
14 one bill for the project, is that correct?

15 A That's correct.

16 Q And then your time is billed at the 344.44 an hour
17 after completion of the project?

18 A Yes.

19 Q Other than the two hours you met with
20 Mr. Schaefer, what did you do to prepare for this
21 deposition?

22 A Well, prior to meeting with Mr. Schaefer, I
23 reviewed the substantive pieces of our report, the

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1 Q For travel that's been long scheduled. Just
2 housekeeping matters for starters. You submitted
3 an updated CV in connection with your Expert
4 Report?

5 A Yes.

6 Q I'm going to show you, let's mark it if we can.

7 EXHIBIT 93 MARKED FOR IDENTIFICATION

8 Q I'm going to show you what been marked as Exhibit
9 93. Does that appear to be the updated version of
10 your CV?

11 A Yes.

12 Q Now, your Expert Report is marked as Exhibit 90.

13 A Yes.

14 Q And I believe your Declaration is marked as
15 Exhibit 39.

16 A Yes.

17 Q And I believe the final Survey Results document is
18 marked as Exhibit 21?

19 A Yes.

20 Q And we've just marked Exhibit 93 as your current
21 CV.

22 A Yes.

23 Q Okay. Feel free if you need to to consult Exhibit

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1 90, but do those documents together comprise the
2 packet that is your Expert Report in this case?

3 A Yes.

4 Q And I'm not going to ask you to do it because we
5 don't have, time is short. You were shown
6 different drafts of what ultimately became Exhibit
7 21?

8 A Yes.

9 Q We didn't look at them in great detail. But am I
10 correct that one could by looking at what's been
11 marked as Exhibit 80, the July 26th version, and
12 Exhibit 81, the July 29 version, and Exhibit 21,
13 the August 9th version, one could determine
14 whether or not there were revisions made between
15 those versions?

16 A Yes.

17 Q You just were handed some notes that indicated
18 that your first discussion with Brann & Isaacson
19 in this matter was on or about the 9th of April?

20 A Yes.

21 Q And your Expert Report, well, your Declaration was
22 filed dated August 10th?

23 A Yes.

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1 Q Do I have that date right? Exhibit 39?

2 A 10th.

3 Q You had a number of conversations over the
4 intervening months between April 9 and August 10
5 with Brann & Isaacson regarding this?

6 A Yes.

7 Q And you did all the work on the survey, both
8 develop the questionnaire, administer the survey,
9 create the report of the results during that same
10 time frame?

11 A Yes.

12 Q And you're comfortable that your Declaration as
13 submitted in this case which you signed under oath
14 accurately reflects your opinions in this matter?

15 A Yes.

16 Q And your Expert Report which is marked as, well,
17 first of all, your Declaration marked as 39, you
18 looked at certain drafts, you had every
19 opportunity to review those drafts?

20 A Yes.

21 Q And you were comfortable upon review that changes
22 were made as necessary?

23 A Yes.

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1 Q Exhibit 90, your Expert Report, you're comfortable
2 that Exhibit 90 that you signed under oath
3 accurately reflects your opinions and the other
4 substance contained in the Expert Report?

5 A Yes.

6 Q And we looked at certain drafts and I believe you
7 had an opportunity to review those drafts?

8 A Yes.

9 Q To suggest changes?

10 A Yes.

11 Q And you did that to the extent you felt it was
12 necessary?

13 A Yes.

14 Q We looked at a number of questionnaires, draft
15 questionnaires today as well. In your experience,
16 is it typical and consistent with your ordinary
17 practice in the field to work on a questionnaire
18 with the client interested in fielding a survey?

19 A Absolutely. Yes.

20 Q Is it something that's commonplace?

21 A Yes. Virtually every survey that we do has some
22 degree of back and forth with clients.

23 Q Thank you, Doctor. I don't have anything further.

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