

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

The Direct Marketing Association,	)	
	)	
Plaintiff,	)	Civil Action No:
	)	10-CV 01546
vs.	)	REB-CBS
	)	
Roxy Huber, in her capacity as	)	
Executive Director, Colorado	)	
Department of Revenue,	)	
	)	
Defendant.	)	

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DEPOSITION OF DIETER GEORGE GABLE

Phoenix, Arizona

November 17, 2010

Prepared by:  
Meri Coash, RMR, CRR  
Realtime Reporter  
Certified Reporter #50327

(Copy)

**Coash & Coash, Inc. 602-258-1440**

1 apologize for interrupting.

2 What is the business of Finance Law Center?

3 A. HR sourcing.

4 Q. Meaning that you place employees with --

5 A. People.

6 Q. -- with other companies?

7 A. Yes.

8 Q. You said "Law Center." Is there a particular  
9 type of company for whom you place employees?

10 A. For attorneys and in the area of experts for  
11 mortgages, mortgage-related matters.

12 Q. Okay. The experts, though, they're intending to  
13 be employed?

14 A. Contract.

15 Q. Contract. Okay.

16 A. HR placement.

17 Q. I see.

18 So temp, sort of?

19 A. Yes.

20 Q. Okay. All right. Any other actively operating  
21 LLCs?

22 A. Next Step Advisors.

23 Q. Okay. LLC?

24 A. Yes.

25 Q. And where is Next Step Advisors located?

1 A. Nevada. Operations in Arizona.

2 Q. All right. When was it founded?

3 A. 2003.

4 Q. You're currently a manager of that?

5 A. Yes.

6 Q. What is its business?

7 A. That's how I run any consulting work for myself  
8 primarily.

9 Q. Have you engaged -- Does Next Step  
10 Advisors, LLC, have any part in your engagement in this  
11 case?

12 A. No.

13 Q. So what type of consulting, then, would you be  
14 managing for yourself through Next Step Advisors?

15 A. Example would be work I did for the Colorado  
16 lottery. Essentially work outside of the scope of what I  
17 would do as TB Consulting.

18 Q. Do you have partners in TB Consulting or other --

19 A. In TB Consulting?

20 Q. Yes.

21 A. Yes.

22 Q. Okay. How many other folks are principals of --

23 A. One.

24 Q. How many other people are principals, if any, in  
25 AZ Merchant Partners?

1 A. One.

2 Q. Is it the same person?

3 A. No.

4 Q. Who is it for TB?

5 A. Marcus Sipolt, S-i-p-o-l-t.

6 Q. And for AZ?

7 A. Shannon, S-h-a-n-n-o-n, Bard, B-a-r-d.

8 Q. All right. Other than Finance Law Center and  
9 Next Step Advisors, any other actively operating LLCs?

10 A. I don't believe so.

11 Q. Okay. Now, you mentioned that there were some  
12 that are not actively operating but may still be in  
13 existence based on Arizona's treatment of LLCs. So  
14 inactive LLCs, are you currently a manager of any inactive  
15 LLCs?

16 A. Yes.

17 Q. Okay. Which ones?

18 A. I don't even know the exact names of them. I  
19 would honestly have to look that up. I can give you my  
20 best approximation and my best list of them, but --

21 Q. Okay. That's fine.

22 A. I honestly was not prepared for this part of --  
23 what you were looking for.

24 Q. Okay. Give me your best list. That's all I can  
25 ask for if that's the best you can do.

1 all the different variations of that. There's also  
2 IntelliChoice Home Services. There might be one more  
3 iteration of that. I don't know. I don't recall.

4 Q. When you say "different iterations," does that  
5 mean -- Are they dbas? Are they --

6 A. No. They are different -- IntelliChoice  
7 Mortgage Services was the main one. And then other ones  
8 were meant to branch off, but those were never -- we never  
9 did anything with them.

10 Q. Okay. When did IntelliChoice Mortgage  
11 Services, LLC, come into existence? When was it founded?

12 A. 2005.

13 Q. And where was it located?

14 A. Phoenix.

15 Q. What was its business?

16 A. Mortgage origination.

17 Q. What does that mean exactly?

18 A. So mortgage origination and loan modifications.  
19 So mortgage origination for the vast majority of that  
20 time. And that's -- When you go to a mortgage broker to  
21 get your financing, that's considered mortgage  
22 origination. So the company was doing that on behalf of  
23 whoever they brokered it out to, Wells Fargo or  
24 Fannie Mac (sic) and so forth. Those are mortgage brokers  
25 doing mortgage origination.

1 A. I don't think so.

2 Q. When did mortgage -- IntelliChoice Mortgage  
3 Services, LLC, stop operating?

4 A. 2009.

5 Q. Okay. And why did it discontinue its operations?

6 A. It's a very long story. Bottom line is we did an  
7 acquisition of a firm in California in the business of  
8 loan modifications.

9 Q. Okay.

10 A. And we were licensed through the California --  
11 it's CFL. It's a corporation finance license, I think is  
12 what it's called.

13 Q. Okay.

14 A. Because California has two ways to license  
15 mortgage brokers. One is through the Corporation  
16 Commission with a CFL license. The other is through the  
17 Department of Real Estate with what they call a DRE  
18 license.

19 Q. Okay.

20 A. After -- I'm sorry. Go ahead.

21 Q. I was just going to ask, when was the acquisition  
22 of this company in California?

23 A. I believe late 2008 or early 2009.

24 Q. And what was that firm called?

25 A. Mantis, M-a-n-t-i-s, Inc.

1 Q. Okay. Where was it located?

2 A. San Diego.

3 Q. Was the acquisition of Mantis the manner in which  
4 you began doing business in California?

5 A. No. That's the manner by which we expanded into  
6 loan modifications in California.

7 Q. Okay. Prior to that, you were doing --

8 A. Mortgage originations.

9 Q. In California?

10 A. Yes.

11 Q. Okay. And was Mantis doing business in any other  
12 states than California?

13 A. I don't believe so.

14 Q. Okay. After the acquisition, what happened with  
15 regard to the business of IntelliChoice?

16 A. The state of California changed the rules as to  
17 who was allowed to do loan modifications from allowing  
18 either a CFL or a DRE licensee to only DRE licensees. We  
19 applied for a DRE license and for an approved contract to  
20 do loan modifications, which they called an advance fee  
21 agreement. We were granted the license and the contract.

22 The legislature passed -- California  
23 legislature then passed -- and I don't remember the exact  
24 act, but I believe it might have been -- I should probably  
25 remember it better. SB 1902 is my best guess as to what

1 the number was.

2 Q. When was this?

3 A. This would have been summer of '09, June of '09,  
4 somewhere in that time frame. They passed that act which  
5 made any advance fee agreement void, including the ones  
6 approved by the state under our license.

7 We had completed about 1,200 loan  
8 modifications, and we had, I am thinking, about 500 called  
9 in flight or in process. And essentially, we had to  
10 refund the money to those people, and that put us out of  
11 business.

12 Q. Okay. When you said -- When you were using the  
13 term "we," was it including we with regard to applying for  
14 a DRE license? Who is the "we" that applied for a DRE  
15 license?

16 A. My partner Shannon Bard and I.

17 Q. And you obtained such a license?

18 A. Yes.

19 Q. When did you get your DRE license?

20 A. Spring of '09. Maybe March time frame.

21 Q. Okay. Did the firm need to be licensed? Did  
22 IntelliChoice need to be licensed?

23 A. Absolutely.

24 Q. So did you apply on behalf of IntelliChoice or as  
25 an individual?



1           A.    You have to apply as both.  It's like an alcohol  
2 license, I suppose.  It's not only the establishment.  
3 Plus the individuals have to be vetted.

4           Q.    The --

5           A.    Sorry.  I just realized we had an FHA and a VA  
6 license, so even though -- I want to make sure.  We may  
7 have originated loans in other states where we're allowed,  
8 where we, through FHA or VA, wouldn't need to be licensed  
9 in that state.  So we're still doing that through Arizona.  
10 I mean, the operation is all in Arizona, but ultimately,  
11 the customer could have been in a -- could have been in  
12 Utah.

13          Q.    When you say "Utah," is that specifically  
14 because --

15          A.    A random -- a random -- It has to be in our  
16 region.

17          Q.    What was your region?

18          A.    So we weren't doing a -- I don't recall.  It's  
19 southwest.  So it would be -- Southwestern states is the  
20 FHA region that we operated in.

21          Q.    It's a region defined by the FHA?

22          A.    Yes.  So those are the two other licenses we had,  
23 was FHA and VA.

24          Q.    You also indicated that you applied for approval  
25 of an advanced fee agreement.

1 A. Yes.

2 Q. Who applied for that?

3 A. The company has to apply for that.

4 Q. When did you receive that approval?

5 A. Shortly after we got approval of the DRE license.

6 Q. So you think that was in spring of '09?

7 A. Yes.

8 Q. And your recollection is that the law changed  
9 soon after in California?

10 A. All the rules started changing early in '09, and  
11 whenever that state bill was put the nail in the coffin  
12 for anybody, even if they had approved agreements by the  
13 state. So it was a -- what's called a fluid environment  
14 at that time.

15 Q. When were the loan modifications you've  
16 described -- you say there were 1,200 or so. When did you  
17 begin contracting for the loan modification services with  
18 individuals in the state of California?

19 A. State of California? I don't know when exactly.  
20 Most of them was -- I would say the vast majority of our  
21 business was Arizona, California. It was the fall of '08,  
22 maybe summer of '08. I honestly don't -- I don't have  
23 that exact -- I mean, I was, I guess, ill prepared for  
24 that, the details. But I can -- Those are approximately  
25 right.

1 Marcus Sipolt and I individually invested in the firm, and  
2 then we are providing services to the company in the area  
3 of conversions and ongoing advice.

4 Q. Okay. When you say "conversions," what do you  
5 mean?

6 A. So these are when doctors convert whatever method  
7 they have right now for electronic medical records, they  
8 convert to this platform. It might be training the people  
9 and converting their old data, their patient data, patient  
10 records into a format that's usable in the system.

11 Q. Do you have, yourself, a background in  
12 programming of software?

13 A. Yes.

14 Q. Just tell me briefly about that.

15 A. I grew up, so to speak, in the Arthur Andersen --  
16 what was called the management information consulting  
17 division, MICD, and everybody there went through the  
18 training course to learn COBOL. So I programmed in COBOL,  
19 RPG, Assembler, Machine Instructions, and Job Control  
20 language. I don't know. You can list a whole bunch of  
21 other things -- I've got a very good background in  
22 programming, because that's how everybody got trained at  
23 that firm at that time.

24 Q. Have you programmed in Linux?

25 A. I have not.

1 case in just a moment, but just so that the question is  
2 resolved, you yourself -- would you identify yourself as  
3 an expert in any other areas?

4 MS. SCOVILLE: Same objection.

5 THE WITNESS: Lottery systems and services.

6 BY MR. SCHAEFER:

7 Q. Any others?

8 A. No.

9 Q. Okay. Which areas of expertise are you applying  
10 in this case?

11 MS. SCOVILLE: Object to the form.

12 THE WITNESS: I believe the systems  
13 integration, probably the program management as well. And  
14 for that matter, I suppose the running of a business and  
15 realities of running a business.

16 BY MR. SCHAEFER:

17 Q. Okay. Any others?

18 MS. SCOVILLE: Same objection.

19 THE WITNESS: No.

20 BY MR. SCHAEFER:

21 Q. Have you ever been employed by a company that  
22 derives a substantial portion of its revenues from  
23 direct-to-the-consumer sales of goods?

24 A. No.

25 Q. Have you ever served as an officer or a manager

1 of a company that derives a substantial portion of its  
2 revenues from direct-to-the-consumer sales of goods?

3 A. Yes.

4 Q. Which company?

5 A. F1 Race Factory.

6 Q. What does F1 Race Factory sell?

7 A. Indoor karting.

8 Q. Indoor karting?

9 A. Karting.

10 Q. C-a-r-t-i-n-g?

11 A. No. Ironically, it's k-a-r. There's a slight  
12 difference there. Probably only appreciated by people in  
13 the industry. But they do indoor karting. Primary  
14 business is consumers and companies for team-building  
15 events, probably the easiest way to understand it.

16 Q. So what do they sell?

17 A. Indoor kart racing.

18 Q. A package? Are they selling a service or a good?

19 A. Well, they sell some goods in the sense that  
20 there's a pro shop that sells racing gear, and the rest is  
21 services, so it's racing and entertainment. We have a  
22 kitchen, bar.

23 Q. The pro shop is located on-premise of a place  
24 that has indoor karting?

25 A. On-premise and on the web.

1 Q. So -- But with regard -- Sort of to separate  
2 the service from the product for the moment, what is the  
3 service they're providing? They're providing a service  
4 of --

5 A. Entertainment.

6 Q. Of entertainment.

7 And it has a location here in Arizona?

8 A. Yes.

9 Q. Does it have locations anywhere else?

10 A. No.

11 Q. Do you provide the service of developing similar  
12 businesses in other locations?

13 A. We do provide consulting services, yes.

14 Q. So if someone wants to start indoor karting, they  
15 can come to you and say, "How do I do this?"

16 A. Yes.

17 Q. Do you sell franchises?

18 A. We do not.

19 Q. And you have a pro shop located at the site in  
20 Arizona?

21 A. Yes.

22 Q. People can come into the store and buy there?

23 A. Yes.

24 Q. What's the average in-store inventory?

25 A. 25,000 probably.

1 Q. And how many SKUs?

2 A. You're asking a level of detail I don't know.  
3 It's certainly not a grocery store. It doesn't have  
4 thousands. It has maybe -- less.

5 Q. Are you involved in the operation of the pro  
6 shop?

7 A. From an advisory capacity, yes.

8 Q. The pro shop is available at the Internet at what  
9 URL?

10 A. flracefactory.com.

11 Q. Were you involved in the development of the -- of  
12 the website at which you can find --

13 A. Yes. I was involved -- I cofounded it, so I was  
14 involved in, I would say, every aspect of that business.

15 Q. What are the online sales of that entity? What  
16 were they in 2009?

17 A. I don't know.

18 Q. Are you aware of whether or not the  
19 flracefactory.com makes sales to consumers in Colorado?

20 A. I don't know.

21 Q. Does it have a warehouse?

22 A. It's in a warehouse, 120,000-square-foot  
23 warehouse.

24 Q. Where are orders that are placed over the  
25 Internet fulfilled from?

1 A. In the facility.

2 Q. Do they take goods right out of the pro shop?

3 A. Or the storage.

4 Q. How many employees work in the pro shop?

5 A. Well, everybody can work in the pro shop. The  
6 pro shop is part of the operation, so total employees are  
7 50. I don't think we have it broken down by -- We  
8 cross-train people, so --

9 Q. Who supports the operation of the website? How  
10 many employees?

11 A. We have it outsourced.

12 Q. To whom is it outsourced?

13 A. I don't know the name of the company right now.

14 Q. In connection with your work for either  
15 TB Consulting or AZ Merchant Partners, LLC, have you ever  
16 been engaged as a consultant by a company that derives a  
17 substantial portion of its revenues from  
18 direct-to-the-consumer sales of goods?

19 A. Yes.

20 Q. What were those engagements?

21 A. First one is Succeed Corporation.

22 Q. What is that?

23 A. They provide, for sake of simplicity, a  
24 storefront in a box for people who want to have a web  
25 presence.



1 Q. Is this a software product that they sell?

2 A. Yes.

3 Q. So if an individual wished to operate a online  
4 store, they would potentially purchase this software?

5 A. They would buy the software, and they could buy  
6 ancillary services, which could mean everything, including  
7 building out and providing things all the way down to  
8 inventory for them, meaning things that they could  
9 actually sell.

10 Q. Do they have product?

11 A. Through fulfillment houses. So they're  
12 drop-shippers.

13 Q. So an individual who is interested in having an  
14 online store but doesn't want to have the inventory  
15 themselves, they basically contract with a drop-shipper  
16 and utilize that inventory as their product mix?

17 A. Fulfillment. So they could have that. They  
18 could have their own product; they could have a mix of it.  
19 Generally, it would be -- The typical consumer for that  
20 would be somebody who has a -- either group or personal  
21 affinity -- Maybe they're, for an example, into fishing  
22 and they build custom lures, so they would put a  
23 storefront out there, sell their custom lures, but they  
24 could then layer on top of that a whole host of fishing  
25 gear things that would be drop-shipped for them through

1 national suppliers.

2 Q. How many software packages did Succeed sell in  
3 2009? Do you know?

4 A. I don't know. So my involvement with them was  
5 2007 and 2008 primarily. We helped -- We were engaged as  
6 a result of the accountant coming to us. The company was  
7 in some financial -- facing some financial challenges,  
8 let's say. We turned around the company, and they're  
9 making sales in the low millions. So I would say on a  
10 number of customer bases, we're probably talking in the  
11 less than 10,000-a-year category of storefronts.

12 Q. Okay. Any other engagements as a consultant with  
13 companies that derive a substantial portion of their  
14 revenues from direct-to-consumer sales of goods?

15 A. Well, I put -- Well, let me ask you, if it's  
16 a -- if we have confidentiality agreements with a client,  
17 where does that fall here with respect to disclosing a  
18 company name? It's a well-known --

19 MS. SCOVILLE: Well, we don't have a  
20 protective order in place yet.

21 Matt, would it be sufficient if he described  
22 the type of engagement without giving you the company  
23 name?

24 MR. SCHAEFER: Probably. Let's start there.

25 THE WITNESS: Okay. A company that sells

1 seminars, books, CDs, DVDs, so forth and so on, both  
2 domestically and internationally.

3 BY MR. SCHAEFER:

4 Q. What are its annual sales?

5 A. In the 10s of millions.

6 Q. Sells these through what channels?

7 A. Everything from web to affiliates, resellers.

8 Q. What was the nature of your engagement?

9 A. We developed their website, and we provide  
10 hosting, meaning the technical infrastructure hosting.

11 Q. For the website?

12 A. For the website and their entire information  
13 technology infrastructure. So that would be, you know,  
14 e-mail and file servers and so forth.

15 Q. Does that mean that you actually have on-site  
16 servers at -- Is it AZ Merchant Partners?

17 A. This is through TB Consulting.

18 Q. Inside TB Consulting, the servers that provide  
19 the hosting?

20 A. We keep the servers at IO Data Centers, which is  
21 a -- basically a high-tier data center. You wouldn't keep  
22 those at an office. You would have redundant power and  
23 all the things that come with that.

24 Q. Did you contract out the hosting service to  
25 IO Data Centers?

1           A.    I believe that's the customer file, as best I  
2 understand it.

3           Q.    What is the term "householding" as that term is  
4 used in the direct marketing industry?

5           A.    My understanding of it is to aggregate purchases  
6 within a household by household members.

7           Q.    What is a "fulfillment center" as that term is  
8 used in the direct marketing industry?

9           A.    As I understand it, it's the packaging and  
10 distribution supplier. I don't know if I -- The company  
11 that takes the product and fulfills the order is the  
12 fulfillment center, is how I think -- Hopefully that's a  
13 decent definition for you.

14          Q.    Are there retailers that do that for themselves?

15          A.    Fulfillment for themselves? Yes.

16          Q.    Have you ever been ordered by any state or state  
17 agency to discontinue offering any financial service in  
18 the state?

19          A.    We got related to the relicensing from our CFL to  
20 DRE license, the CFL -- looking for the right word --  
21 basically documented the fact we could not use a CFL  
22 license anymore with a -- and I hope I got the term  
23 right -- desist and refrain order.

24          Q.    Your recollection is CFL, you said, was the  
25 California --

1           A.    I believe it's the California Corporation  
2 Commission, and what it is, is a consumer or corporation  
3 finance lender, is what CFL stands for.

4                    When they cleared up who should do what and  
5 under what license, that's when we relicensed ourselves  
6 under DRE, and we had a DRE license, and the CFL issued a  
7 desist and refrain to all CFL licensees to ensure they all  
8 knew that nobody could operate with that anymore.

9           Q.    Your recollection is it was the CFL that did  
10 that?

11           A.    Well, the thrust was that you could not use a CFL  
12 license anymore. I don't know who ultimately issued that  
13 order. Somebody at the state of California issued that  
14 order.

15           Q.    Let me make sure I understand by reframing the  
16 question.

17                    Have you ever been ordered by any state  
18 agency to desist and refrain from soliciting borrowers  
19 and/or performing services for borrowers or lenders in  
20 connection with loans secured directly or collaterally by  
21 one or more liens on real property?

22           A.    Yes.

23                    MR. SCHAEFER: And we'll mark as the next  
24 exhibit --

25                    (Deposition Exhibit 109 was marked for

1 Q. And finally, it orders you to "Immediately desist  
2 and refrain from collecting advance fees, as that term is  
3 define in Section 10026 of the Code, in any form;  
4 particularly with respect to loan modification, loan  
5 refinance, principal reduction, foreclosure abatement or  
6 short sale services, unless and until you demonstrate and  
7 provide evidence satisfactory to the Commissioner that you  
8 have," and then there are two conditions listed on page 5  
9 of the order. Is that correct?

10 A. That is correct.

11 Q. Have you complied with or otherwise attempted to  
12 provide evidence to the California Department of Real  
13 Estate indicating you have complied with the two  
14 conditions on page 5?

15 A. We shut down the business, so --

16 Q. So you did not?

17 A. Did not.

18 Q. Now, does this order from the Department of Real  
19 Estate change your recollection at all regarding the  
20 nature of the events in California or your licensure in  
21 California?

22 MS. SCOVILLE: Object to the form.

23 THE WITNESS: Not at all.

24 BY MR. SCHAEFER:

25 Q. So you believe that you obtained a license in

1 California in the spring of 2009 to act as a mortgage  
2 broker, a DRE license?

3 A. Yes. Honestly, you would have to -- There's a  
4 whole lot of documentation you would have to look at to  
5 understand how this doesn't make sense to people who were  
6 going through it at the time, which is why, essentially, I  
7 think the legislature finally passed that bill and said,  
8 "You know what? We're not allowing it in any form with or  
9 without license, with or without advance fee agreement."

10 Q. If you'll look at the first finding of fact on  
11 page 2, it indicates, "At no time herein mentioned has  
12 IMS" -- that's IntelliChoice Mortgage Services -- "been  
13 licensed by the Department in any capacity."

14 Does that change your recollection about  
15 your licensure status with the Department of Real Estate?

16 A. No. There are material errors in all of this,  
17 including -- Well, like I said, you would have -- you  
18 would have to have a whole bunch of information to go  
19 along with this. These were churned out by the department  
20 when they were shutting everything down, so there are  
21 material errors throughout this.

22 Q. Did you receive a request from the Department of  
23 Real Estate to submit information in connection with this  
24 investigation?

25 A. I don't believe so, or I am certain we would have

1 Q. Did you have reason to interact with Ms. Huber in  
2 connection with your work for the Colorado lottery?

3 A. Casually. Not in any substantive manner.

4 Q. How many times have you met her since the summer  
5 of 2008?

6 A. It would have been one more all-hands meeting and  
7 a number of lottery board meetings. She is one of the  
8 board members, so I don't know what the number would be.  
9 But, again, none of those would have been of any  
10 substantive interaction.

11 Q. Why did you attend the lottery board meetings?

12 A. Because they discussed things of interest and  
13 we're a significant vendor to the lottery.

14 Q. Were these public meetings that anyone could  
15 attend, or were you on the agenda?

16 A. No. They were public meetings.

17 Q. Did you speak at any of these board meetings?

18 A. I don't believe so.

19 Q. Do you have an ongoing relationship with the  
20 Colorado lottery?

21 A. We do -- TB Consulting does.

22 Q. What do you do for them?

23 A. We implemented our proprietary back office system  
24 and provide ongoing support and services.

25 Q. Do you actually operate the back office for the



1 Colorado lottery?

2 A. No.

3 Q. Is that done by the employees of the Department  
4 of Revenue?

5 A. They are lottery employees. I don't know if they  
6 are technically Department of Revenue employees or not.  
7 We interact with the lottery. We really, other than the  
8 contract being through the Department of Revenue, don't  
9 have much interaction there. So I don't know what the --  
10 if there is a separation of Department of Revenue versus  
11 their state employees.

12 Q. The ongoing support services that you provide,  
13 are those in the nature of IT support?

14 A. Primarily.

15 Q. When you say "back office system," this is the  
16 management of the lottery administration, not of the  
17 lottery itself or --

18 A. So this is the lottery core functions except for  
19 the online terminals and systems that are at the retailer  
20 and the network that goes with it. So with respect to  
21 Powerball, Mega Millions, Lotto, and all those games,  
22 those are administered by Scientific Games using their  
23 system. We handle all the scratch ticket, accounting,  
24 inventory control, distribution, marketing, the retailer  
25 licensing, security, billing, accounting.

1 Q. How is that contract with the Colorado lottery  
2 structured in terms of compensation for TB -- is it  
3 TB Consulting?

4 A. Yes.

5 It's a time and materials, with a  
6 not-to-exceed, I believe.

7 Q. Is the not-to-exceed set on an annual basis?

8 A. On a contract basis.

9 Q. What's the term of the contract?

10 A. It is up October of 2011.

11 Q. When did it go into effect?

12 A. Would have been October 2008.

13 Q. So this is a three-year?

14 A. Three-year contract.

15 Q. What's the not-to-exceed for the three-year  
16 contract?

17 A. I don't have that number handy. It's in the  
18 neighborhood of probably \$4 million. That includes  
19 hardware, third-party, and so forth, TB Consulting  
20 professional fees.

21 Q. Are you familiar with any other officials of the  
22 Colorado Department of Revenue?

23 Actually, before I ask that, who is the  
24 point person with Colorado lottery that you interact with,  
25 if there is one?

1 A. Currently?

2 Q. Yes.

3 A. J.E. Lewellen, L-e-w-e-l-l-e-n, I believe.

4 Q. And was there a person in that role prior to  
5 Ms. or Mr. Lewellen --

6 A. Mr. Lewellen.

7 Q. Was there a person prior to Mr. Lewellen?

8 A. Jack Boehm, B-o-e-h-m.

9 Q. Who is the top official of the Colorado lottery,  
10 if you know?

11 A. The current executive director of the lottery is  
12 Abel Tapia.

13 Q. Is that an appointed position?

14 A. Yes, it is.

15 Q. Who does the appointment? Do you know? Is it  
16 Ms. Huber who makes the appointment, or is it the  
17 governor?

18 A. I do believe it's the executive director of the  
19 Department of Revenue, so Roxy Huber would be making that  
20 appointment.

21 Q. In this conference call in which individuals from  
22 the Colorado Department of Revenue participated, did they  
23 provide you any information in connection with the  
24 preparation of your report?

25 A. They reviewed the materials that were on the

1 A. Yes.

2 Q. -- or meaning --

3 A. Both.

4 Q. Did you also review the statute?

5 A. I did not review the statute.

6 Q. Did you do anything else to prepare?

7 A. No.

8 Q. How long in total did you spend preparing for  
9 this deposition?

10 A. Two hours.

11 MR. SCHAEFER: Off the record for a moment.

12 (An off-the-record discussion ensued.)

13 BY MR. SCHAEFER:

14 Q. With regard to Exhibit 116, your report, if you  
15 will turn to page 2, the Statement of Opinions,  
16 opinion A -- it's cap A -- you state, "Based on the  
17 minimum threshold of \$100,000 in gross annual Colorado  
18 sales, the relatively small number of retailers are  
19 subject to the Requirements." Did I read that correctly?

20 A. Yes.

21 Q. The report elaborates, to a certain extent, on  
22 these opinions. With regard to opinion A, there's  
23 additional material on pages 5 and 6. Is that correct?

24 A. That's correct.

25 Q. Right at the bottom of the page on page 5, last

1 few words, you indicate that "the number of affected  
2 retailers should be in the low thousands." Is that  
3 correct?

4 A. I do.

5 Q. What do you mean by the "low thousands"?

6 A. If I draw a -- or extrapolate from the numbers  
7 that are provided on sales data and see that we're going  
8 from somewhere north of a billion, excluding outlying data  
9 points like Amazon, but retailers with north of a billion  
10 dollars of sales down to 10 million in sales -- so down to  
11 1 percent of that -- and that encapsulates 500, that would  
12 suggest to get down to 6 million is not going to be an  
13 overly significant number of retailers. So there are no  
14 stats that track every possible retailer, but I would  
15 extrapolate out that it would be reasonable to say that  
16 the number we're talking about is, as I stated, low  
17 thousands and not a significant number of the entire  
18 retailer base that exists in the United States or  
19 elsewhere.

20 Q. So -- But how many do you mean when you use the  
21 word "low thousands"? What number?

22 A. I don't have a number for you. I think you can  
23 statistically extrapolate and the argument would then be  
24 whether or not that's statistically valid, because there's  
25 really no data. But I think it's a minority of

1 retailers -- a small minority of retailers.

2 Q. Can you provide a range? When you say "low  
3 thousands," what's the range of numbers you're talking  
4 about?

5 A. I would hesitate to give a range, but I would say  
6 we can be reasonably certain that it's closer to 10,000  
7 than any other much larger number.

8 Q. The affected retailers that we are talking about  
9 and that you're mentioning here are all those having  
10 annual gross sales in Colorado in excess of a hundred  
11 thousand dollars. Is that right?

12 A. That's correct.

13 Q. And I think you, on page 5, in paragraph 1 of  
14 opinion A, indicate that a hundred thousand in gross sales  
15 in Colorado translates into approximately \$6 million in  
16 total nationwide sales?

17 A. If we assume that there is a proximate  
18 relationship between population and sales, it came out to  
19 be just north of \$6 million in sales.

20 Q. That's the assumption you've made for purposes of  
21 this report?

22 A. Yes.

23 Q. So when you refer to "affected retailers," you  
24 are referring to retailers having sales in excess of  
25 \$6 million that do not collect Colorado sales tax. Is

1 that right?

2 A. Not necessarily.

3 Q. Okay.

4 A. I think I'm referring to retailers that have more  
5 than a hundred thousand in gross sales. The 6 million  
6 comes into play merely to point to the fact that the  
7 number of retailers should be low.

8 Q. Fair enough.

9 In estimating the number of affected  
10 retailers, you're using the \$6 million benchmark. You're  
11 talking a moment ago in your answer extrapolating downward  
12 from annual -- from annual sales figures that were  
13 nationwide.

14 A. Yes.

15 Q. So for purposes of approximating, you're using  
16 that \$6 million annual sales on a nationwide basis  
17 benchmark?

18 A. I think that's the best benchmark I could come up  
19 with to approximate how big of an issue this would be.

20 Q. So we know that we have the 500 potentially  
21 affected retailers in the Internet, top 500 that you  
22 identified, and of course some of them report Colorado  
23 tax. So it's not going to be all 500. Is that a fair --

24 A. I think that's -- Nothing would suggest  
25 otherwise.

1 Q. So the challenge is to identify those between  
2 6 million and 10 million, in essence?

3 A. Essentially.

4 Q. On page 6, you indicate there are certainly  
5 hundreds of thousands, at least, of total retailers,  
6 because as you cite, there are even just two Internet  
7 sales software -- strike that -- Two e-commerce platform  
8 software vendors that you're aware of have more than  
9 160,000 customers between them.

10 A. Yes.

11 Q. So we know there are at least hundreds of  
12 thousands of retailers.

13 A. I agree. If I can add one more facet to this, is  
14 if we look at the customer base for Succeed, which was an  
15 e-commerce platform, the relative number of merchants that  
16 opened a web front or storefront or start selling their  
17 wares to whoever they sell them to, the number that reach  
18 a meaningful level of -- I would argue even six-figure  
19 sales in aggregated total, forget about what locale -- is  
20 a very small percentage. So, again, everything leads me  
21 to believe we're talking a very small number here.

22 Q. Relative to the total number?

23 A. Relative to the total.

24 Q. Are you aware that there are some estimates that  
25 place the number of e-commerce sellers total from zero on



1 up, that's something like 5 million?

2 A. I think when you add in the hobby e-commerce  
3 seller, who might be selling purely through eBay and  
4 doesn't even have their own storefront, I would suspect  
5 that's probably a good number as any.

6 Q. Okay. So you think 5 million is a reasonable  
7 estimation?

8 A. Sure.

9 Q. And as you say, even if it were only -- I can do  
10 the math -- even if there were only .2 of 1 percent of all  
11 of those retailers above 6 million in sales, that would be  
12 10,000 retailers?

13 A. Am I allowed to use my calculator?

14 Q. Absolutely.

15 A. You say .2 of 1 percent?

16 Q. Yes, of the 5 mil.

17 A. .2 of 1 percent.

18 Q. That's right.

19 If it were half of a percent of all online  
20 retailers above 6 million, then we would be at 25,000  
21 potentially affected retailers?

22 MS. SCOVILLE: Object to form. I'm not  
23 sure -- Could you say that again?

24 MR. SCHAEFER: Sure.

25

1 BY MR. SCHAEFER:

2 Q. Based on the same estimate of 5 million total  
3 e-commerce sellers, if a half a percent of those total  
4 e-commerce sellers had annual sales in excess of  
5 6 million, it would approximately mean 25,000 potentially  
6 affected retailers.

7 A. From a pure mathematical standpoint, I can do the  
8 math and get to 25,000. From a legitimate likelihood of  
9 that being the real number, I think that's without any  
10 foundation I can find, at least in the statistics I looked  
11 at.

12 Q. So you think something more like 10,000 is more  
13 reasonable?

14 A. I would have no reason to believe it would be  
15 over 10,000.

16 Q. Now, that estimate is just e-commerce vendors  
17 that I mentioned. Is it your understanding that the  
18 Colorado law applies to other types of remote sellers?

19 A. The catalog and everything I think would be, yes.  
20 Anybody selling into the state of Colorado, yes.

21 Q. So that would be potentially other types of  
22 remote sellers affected by the law, potentially?

23 A. Absolutely.

24 Q. That would include not only catalog vendors but,  
25 for example, direct-to-consumer television vendors.

1 Yes?

2 A. Yes.

3 MS. SCOVILLE: I think if you need to make  
4 any notes, you sure can.

5 BY MR. SCHAEFER:

6 Q. Turning to opinion B -- we may as well work with  
7 the statement of it as contained in the body of your  
8 report. The bold headings within the body of the report  
9 are restatements of the list at the front, are they not?

10 A. They are intended to be identical, yes, sir.

11 Q. Okay. So statement B -- or opinion B, as set  
12 forth on page 6, states, "Requirements provide sufficient  
13 leeway for variances in approaches for compliance to allow  
14 affected retailers to comply with reasonable efforts."

15 Did I read that correctly?

16 A. Yes.

17 Q. The first heading underneath opinion B concerns  
18 the transactional notice. And your first subsection under  
19 Transactional Notice states, "The Requirements allow for a  
20 generalized tax statement in the event the retailer is  
21 subject to a number of taxing authorities or  
22 jurisdictions."

23 Did I state that correctly?

24 A. I believe so.

25 MR. SCHAEFER: Let's mark this document as

1 A. Yes.

2 Q. So we may be talking about those as we go along,  
3 some of the individual aspects of each of them. I just  
4 wanted us to have a framework for the discussion --

5 A. Yes.

6 Q. -- moving forward.

7 So under B3, the annual disclosure to the  
8 DOR, after referencing the Colorado Department of Revenue  
9 instructions in subpart A, you say in subpart B, "The  
10 format is a simple, well described, file that can be  
11 produced with information readily available within any  
12 viable eCommerce platform, using widely used Microsoft  
13 product Excel or an equivalent application available for  
14 free," then a citation to a couple of the documents you  
15 reviewed.

16 What do you mean by "viable eCommerce  
17 platform"?

18 A. Well, I would say viable in the sense -- and I  
19 use "viable" throughout here to encompass applications  
20 that have a meaningful life left in them. I suppose that  
21 there -- you could theoretically produce somebody who is  
22 still running on a mainframe from the '60s and doing punch  
23 cards. I would say that they may not have that readily  
24 available. But for somebody who's got a reasonable  
25 e-commerce platform, that should be readily available.

1 Q. Okay. So you mean viable in the current market  
2 environment?

3 A. Yeah.

4 Q. Okay. You indicate that they could use Microsoft  
5 Excel or an equivalent application to produce the report.

6 A. To produce the extract. The report's really a  
7 file for the department, and you can produce that extract  
8 of information using either Excel or what's available  
9 through Google tools for free, if somebody doesn't have  
10 that.

11 Q. What is the format that has to go to the  
12 department? If it's not a .xls Excel file, what is it?

13 A. .csv or a comma-delimited file.

14 Q. And is that something that you can create using  
15 Excel?

16 A. You can save your file, simple as save as, and go  
17 from Excel to a comma-delimited file with no intervention.

18 Q. Are you aware of the fact that Excel has certain  
19 limitations regarding the amount of data that can be  
20 contained in one Excel file?

21 A. Absolutely.

22 Q. It's a fairly large amount of data, but there is  
23 a limitation, is there not?

24 A. It's a very significant amount of data.

25 Q. To your understanding, is it something like

1 70,000 lines?

2 A. I would not venture an exact guess, but I  
3 actually would believe it's higher than that. But for  
4 orders of magnitude, that's fine.

5 Q. Larger retailers may well have tens of thousands  
6 or even hundreds of Colorado customers. Is that true?

7 A. I'm certain that's a possibility.

8 Q. Okay. If they were to reach the capacity of  
9 Excel to contain data from their house file or customer  
10 file, they would have to do something else, wouldn't they?

11 A. I would say that the report really doesn't  
12 address the requirements for somebody who has got a  
13 customer base of that order of magnitude, because their  
14 capabilities would probably lead me to believe that Excel  
15 would not be in their normal operating procedures, that  
16 they have much more sophisticated tools and would extract  
17 this into a comma-delimited file using their existing  
18 systems with the proverbial flip of a switch.

19 Q. There would be some cost, but it wouldn't be  
20 associated with converting to an Excel file. And they  
21 would do something else that was within their systems?

22 A. It would be -- I would expect a nonmeaningful  
23 number in the scheme of somebody of that size retailer.

24 Q. Okay. I want to jump ahead in your opinions to  
25 opinion H, if you would, which is on page 11. Opinion H

1 is the one that sets forth some actual cost estimates. So  
2 on page 11, opinion H, you state as follows: "The  
3 Requirements" -- that's a capital R. It's meant to be a  
4 term of having a definition within the scope of this  
5 report. As you use the term "the Requirements," with a  
6 capital R, you mean all of the requirements in the  
7 statute, yes?

8 A. The three meaningful parts, yes.

9 Q. The transactional notice, the annual notice to  
10 consumers, and the annual report to the DOR taken  
11 together?

12 A. Yes.

13 Q. So beginning again, you state, "The Requirements  
14 will require additional effort by affected retailers  
15 resulting in onetime, non-recurring first year, costs that  
16 range from \$2,571 to \$6,000 (0.043 percent - 0.100 percent  
17 as a percent of sales) plus annual recurring costs  
18 estimated at \$589 to \$1,000 (0.010 percent to  
19 0.017 percent as a percentage of gross annual sales)."

20 Now, those ranges of cost that you provide  
21 there, you have given more detail for the manner in which  
22 you calculated those in Exhibit A -- Exhibit A.1, yes?

23 A. I -- I gave more detail behind the calculations  
24 but also provided the italicized parenthetical comment  
25 after that to notate what retailers we're talking about.

1 determined the percentage of annual sales that that  
2 represented for your small seller, or did you do it the  
3 other way around? How did you -- how did you get to your  
4 dollar figures identified in opinion H?

5 A. Yeah, I'm not sure built up to the number. I  
6 essentially took the levels of effort and the people  
7 involved in that level of effort and quantified that.  
8 Then I came to quantifying what is the cost of those  
9 resources, tabulated that, and then afterwards attempted  
10 to normalize this to give some relative meaning to the  
11 numbers by putting it as a percentage of sales.

12 Q. So it wasn't -- I think that was clear, but what  
13 you didn't do is say, "I think it's going to cost  
14 X percent of sales," apply that to some number like  
15 6 million, then come up with a --

16 A. No.

17 Q. -- range.

18 A. No.

19 Q. And as you indicate in opinion H, the  
20 parenthetical on page 11, it states, "Note: the costs are  
21 estimated for the compliance efforts of the smallest of  
22 the affected retailers." I'll stop there. When you say  
23 "the smallest of the affected retailers," what are you  
24 referring to?

25 A. I'm referring to the people who are marginally



1 meeting the minimum requirement, so they've exceeded the  
2 threshold, but they have not gotten to the level of a top  
3 500 retailer.

4 Q. Okay.

5 A. Because I think those would skew the numbers, and  
6 honestly, their costs are very different because theirs  
7 are, in the great scheme of things, probably difficult to  
8 segregate from just doing business and just maintaining  
9 their normal, day-to-day operations.

10 Q. Okay. The -- When you say the smallest, you  
11 mean below the Internet 500. Is that the 6 to \$10 million  
12 range?

13 A. Somewhere in that range, yes.

14 Q. You go on to say, "The costs for compliance by  
15 larger affected retailers is ignored as the impact, when  
16 normalized on a percentage of sales basis, is expected to  
17 be lower or even inconsequential." Did I read that right?

18 A. Yes.

19 Q. Okay. Now, I just want to clarify, you're not  
20 saying, are you, that there are -- retailers larger than  
21 the smallest retailers will incur no costs of compliance,  
22 are you?

23 A. I think I stated that for the larger affected  
24 retailers, when you normalize the cost, rather than take  
25 the absolute cost of them doing anything, that it becomes

1 inconsequential. And I put that in the context of and --  
2 a top-10 retailer may spend tens of millions a year in  
3 server and hosting and management of their infrastructure,  
4 but that number is meaningless when it gets to the smaller  
5 retailer. So I'm trying to do it for the smaller  
6 retailer. The larger retailers have large cost bases, and  
7 whatever requirements are within this are a drop in the  
8 proverbial bucket.

9 Q. Two things I want to clarify from your answer.  
10 The first is -- I think we already confirmed, but let me  
11 just make sure, because it's slightly different from what  
12 the report says.

13 When you say "the smallest retailers,"  
14 you're using the \$6 million benchmark for purposes of your  
15 discussion in your report. Is that fair to say?

16 A. Somebody who is in that ballpark --

17 Q. Okay.

18 A. -- plus or minus.

19 Q. You're not saying, though, that a retailer with  
20 \$7 million in annual revenues doesn't have costs? They  
21 have costs?

22 A. They may be identical in cost.

23 Q. Similar to the 6 million?

24 A. Similar to, exactly.

25 Q. I think we already discussed this. But same for

1 8 million, you're not saying they have no costs. Same  
2 approximate costs as the -- in absolute terms if you like,  
3 as the \$6 million seller?

4 A. I think in absolute terms, they may be similar or  
5 identical.

6 Q. The same was true up to about the 10 million  
7 level, from what I understood from our prior  
8 conversations. Sellers with 9 million in sales have some  
9 costs, you agree?

10 A. I don't know where the delineation is. You'll,  
11 I'm sure, be able to find retailers at the \$6 million  
12 level that are ahead of the game and can do this for a lot  
13 less. And there are retailers who will proportionately  
14 spend about the same who are \$20-million-a-year retailers.  
15 My report intended to reflect what is the impact on the  
16 people who, on a percentage of sales basis, would probably  
17 be most impacted.

18 Q. Okay. Your thinking in that regard is the folks  
19 outside the Internet 500, the Internet retailer?

20 A. Absolutely.

21 Q. Now, the other thing I want to clarify from that  
22 is your use of the term "normalization." It appears to me  
23 that you're using that term based upon what you've done in  
24 your report to mean as a percentage of net sales.  
25 Essentially, you're normalizing costs to view them through

1 the lens of -- as a percentage of net sales?

2 MS. SCOVILLE: Object to the form.

3 BY MR. SCHAEFER:

4 Q. Is that a fair statement of your use of the term  
5 "normalization"? And if it's not, please clarify.

6 A. I think I attempted to use percentage of sales as  
7 a way to show relative impact.

8 Q. Okay. And is that the same process as  
9 normalizing the costs, in your term?

10 A. In the way I used it, yes.

11 Q. Okay. Now, it is true, is it not, that even  
12 retailers with over a billion dollars in sales will have  
13 some costs, but on this percentage of sales basis, they  
14 may be tiny, almost inconsequential in your --

15 A. Yes. Either inconsequential or potentially  
16 immeasurable.

17 Q. Now, there are some costs, are there not, of the  
18 Colorado law that will increase with the size of the  
19 retailer. Is that a fair statement?

20 A. If nothing else, if you have a lot of notices and  
21 you have a billion-dollar retailer, they have more postage  
22 than another retailer, yes.

23 Q. Okay.

24 A. It probably reflects their overall cost of  
25 business is much higher on everything they do.

1 Q. Just to make clear we're talking about the same  
2 thing, the annual notices to the consumers is what you're  
3 referring to with regard to -- if they have more notices  
4 they have to send to consumers on an annual basis because  
5 they are a larger retailer?

6 A. Absolutely. And they have a larger warehouse and  
7 more light bills, and they have a larger warehouse and  
8 more personnel. Everything for them is probably going to  
9 be more expensive in order to generate whatever larger  
10 sales number they have.

11 Q. Okay. But they'll actually have to send out in  
12 the mail more notices. You're saying the postage, for  
13 example, at least will cost them somewhat more, although,  
14 again, it may be small to that retailer in terms of a  
15 relative cost?

16 A. I think I state in other places in the report  
17 that Colorado provides flexibility where they can offset,  
18 diminish, or eliminate the incremental cost.

19 Q. Right. We'll talk about that in a minute.  
20 They may have to send more annual notices if  
21 they're larger?

22 A. I would agree.

23 Q. Okay. H1 is the transactional notice. In  
24 part b, you give a range for compliance with the  
25 transactional notice, which reads as follows: "The cost

1 for compliance with the Transactional Notice Requirement,  
2 if any, would range from \$263 (low end for retailer  
3 modifying existing Transactional Notice to comply with  
4 Requirements) to \$1,038 (high end for retailer having to  
5 create a new Transactional Notice to comply with  
6 Requirements)."

7 Did I read that right?

8 A. Yes.

9 Q. Now, if you accept my representation from earlier  
10 this afternoon that Colorado is the first state to  
11 implement a transactional notice requirement, would you  
12 agree that all retailers are -- fall into the category you  
13 identify as being toward the higher end, that is,  
14 retailers having to create a new transactional notice?

15 A. I do not.

16 Q. Okay. And why not?

17 A. I believe retailers who are in many jurisdictions  
18 and may have multiple physical locations and be subject to  
19 tax in multiple locations already have some form of a  
20 transactional notice related to tax with respect to -- For  
21 example, we operate in Texas, Vermont, and Oklahoma, and  
22 you'll be charged taxes there but not elsewhere. So even  
23 though they don't have a transaction notice in the sense  
24 of what we're talking about here, they have a  
25 transactional notice related to taxes to cover their

1 collecting states requirements.

2 Q. Understood. But by the premise of this law,  
3 we're talking about folks -- that is, retailers -- who do  
4 not have an obligation to collect in Colorado. So their  
5 notices that exist would make no reference to Colorado,  
6 would they?

7 A. They would make no notice or make no reference to  
8 Colorado, but they would be able to modify an existing  
9 notice. And from a level of effort standpoint, it's a  
10 matter of "Do I have something that we can modify, or do I  
11 need to find a new place for it? Because I have to find  
12 room for it. Now, do I need to move things around?" That  
13 level of effort. So that's the modification part. It  
14 doesn't imply that there is a modification of a generic  
15 transactional notice, because that wouldn't require it.  
16 That's covered in item C, which says, theoretically, if  
17 they had a generic notice, there would be no cost.

18 Q. Right. So just to clarify with regard to item C,  
19 you're saying, theoretically, if they had such a thing --  
20 if Colorado is the first -- then no one would?

21 A. At onset.

22 Q. Right.

23 A. But the reality is going down five years from now  
24 when somebody starts a retailer and grows up and it  
25 becomes a retailer subject to this, at that point they may

1 have one and may actually not have an incremental cost.

2 Q. Right.

3 A. So these are retailers also in the future. So I  
4 understand that currently there may be none, but certainly  
5 in the future, as retailers bubble up and get to that  
6 mark, they may very well not have any incremental cost.

7 Q. You're talking about first-year requirements here  
8 now being first year of the bill as well as first year  
9 of --

10 A. Yes. So I think -- I don't believe it's a fair  
11 representation to say that everybody's going to be having  
12 to create one. I think there are going to be people who  
13 are going to modify an existing multistate transactional  
14 notice, and there will be people who will have to create  
15 one from scratch.

16 Q. So in that regard, you're using the term  
17 "transactional notice" here broadly, any kind of notice  
18 with regard to the transaction -- any kind of notice that  
19 concerns taxes on the transaction?

20 A. As one example. It's a transactional notice,  
21 anything related to some sort of notification to the  
22 customer about that. It could be that they give notices  
23 about shipping charges or taxes, something in the general  
24 area of your checkout that you can modify to -- and  
25 leverage to meet the requirement.



1 specific forms that I don't recall in the Colorado  
2 regulation. So I'm not entirely certain I could say that  
3 it's all new or so substantially new.

4 Q. On page 12, we have the customer service  
5 inquiries item there at the top of the page, item  
6 number 2. And you indicate that "Retailers may have to  
7 amend or add to their Customer Service call or web-chat  
8 scripts to address inquiries from customers related to the  
9 compliance with the Requirements." In the next  
10 subparagraph, "The estimated cost of this one time change  
11 will range from \$735 to \$1,470." Did I read those right?

12 A. Yes.

13 Q. Does the range 735 to 1470 depend on whether they  
14 are amending or adding in the words that you used in the  
15 first part?

16 A. I would say if they have substantially everything  
17 in place, it may be lower than this cost. This is more in  
18 the range of having to develop something to address this  
19 specific requirement.

20 Q. Right. This is your report, though, right? Your  
21 report says it will be between 735 and 1470. Yes?

22 A. Exactly.

23 Q. What I would like to know, for the present  
24 purpose, is, is the range from 735 to 1470 dictated by  
25 what you describe in the immediately preceding paragraph

1 as being a question of whether or not they have to amend  
2 or add?

3 A. To the extent that the report says may have to  
4 amend or add.

5 Q. So it does depend on whether they're amending or  
6 adding?

7 A. If at all.

8 Q. Okay. Is it fair to say that -- I'm  
9 interpreting this right to say that if they're amending,  
10 their costs are lower; if they're adding, their costs are  
11 higher?

12 A. Yes.

13 Q. Now, in item 3, the annual notice to consumers,  
14 you make a point to indicate again that you're estimating  
15 these costs for a retailer on the smaller side, 6 million  
16 in magnitude, certainly outside the Internet top 500. Is  
17 that fair?

18 A. Yes.

19 Q. You talked a moment ago about the fact that  
20 larger retailers will incur costs to send the annual  
21 notice, will they not?

22 A. Yes.

23 Q. Okay. So --

24 A. Subject to them having to send annual notices. I  
25 mean, it's conceivable that somebody could have 20 million

1 in sales and not send a single notice if they happen to  
2 sell a lot of lower-end ticket items and not reach that  
3 threshold.

4 Q. Right. They have to have at least one customer  
5 who purchases \$500 from them in the state of Colorado for  
6 that requirement to apply?

7 A. And they may only have 10, so to speak. I know  
8 we're talking about extremes, but --

9 Q. Right.

10 And, in fact, you indicate there the annual  
11 notice preparation and distribution requires an effort  
12 with variability only in the size of the retailer and the  
13 number of notices required to be sent. Is that correct?

14 A. Yes.

15 Q. They send more notices, they'll have somewhat  
16 more cost associated with the actual mailing and materials  
17 costs for the notice, at any rate?

18 A. Yes. To the extent that, obviously, the larger  
19 retailers will -- I am guessing at least be afforded the  
20 opportunity or take the opportunity to mitigate their  
21 costs?

22 Q. Right. And we'll talk about that.

23 In subpart B, with regard to the first year,  
24 you indicate, "For these retailers, the total initial one  
25 time or first-year cost would be between \$1,601 and \$3,023

1 or .027 percent and 0.050 percent as a percentage of gross  
2 annual sales."

3 Now, that first-year cost includes costs  
4 related to understanding the requirement, developing a  
5 system to produce it, settling upon the actual language to  
6 use, and the mailing costs for that first year. Is that a  
7 fair characterization?

8 A. I would say that's a reasonable characterization,  
9 but I don't believe you mentioned the mechanics of it and  
10 a mail merge or some sort of a process by which to bring  
11 all that together in an efficient manner.

12 Q. That would be one other component that's included  
13 in that first year also.

14 A. Yes.

15 Q. And the range there is based upon how many  
16 notices being sent in terms of the actual number of  
17 notices? Your range of costs.

18 A. I believe the spreadsheet says it was 200  
19 notices, which was somebody reaching the \$100,000  
20 threshold and sending out exactly 200 notices to add up to  
21 the hundred thousand dollars worth of sales.

22 Q. So on Exhibit A.1, your cost calculations, the  
23 last set of rows under the word "Consumables," there's an  
24 indication that there are 200 annual notices. Is that --

25 A. Simply by dividing the hundred thousand by 500

1 and saying that it happened to be that they had 500 or  
2 \$501 purchases times 200 customers, and that would be a  
3 maximum number of notices that they would have to be  
4 sending out.

5 Q. But your range of costs is based on that  
6 assumption?

7 A. On the maximum worst-case scenario.

8 Q. To make sure we get the number, it's based on the  
9 assumption of 200 notices?

10 A. Yes.

11 Q. Now, in item -- sub item i under b, you indicate,  
12 "Retailers who already have a generic notice to consumers  
13 meeting the Annual Notice requirement would not incur a  
14 '1st Year' expense but would immediately fall into the  
15 'On-going' cost estimate reflected in G.3.c."

16 If you take my representation that Colorado  
17 is the very first state to impose such a requirement, do  
18 you agree with me that there wouldn't be, in the first  
19 year, retailers who already have a generic notice to  
20 consumers that meet the annual notice requirement?

21 A. It would be highly unlikely. I think this would  
22 be more looking at future retailers that are becoming  
23 subject to. But agreed.

24 Q. Now, with regard to 3c, the ongoing cost, you  
25 indicate, "For these retailers, the on-going yearly cost

1 would be between \$354 and \$530 or 0.006 percent and  
2 0.009 percent as a percentage of gross annual sales."

3 Did I read that right?

4 A. Yes.

5 Q. And your annual sales percentages there, again,  
6 are based on a company with 6 million in annual sales?

7 A. Yes.

8 Q. Am I right that the ongoing yearly costs of the  
9 annual notice are lower because you don't have some of the  
10 first-year development costs in those later years?

11 A. Absolutely.

12 Q. So what are the -- You have materials costs,  
13 correct, in every year? What are the remaining  
14 nonmaterials costs associated with the annual notice?

15 A. The fulfillment component of that, so the  
16 extraction of data, the mail merge, the stuffing of  
17 envelopes.

18 Q. Okay. The human cost of stuffing envelopes.  
19 Okay.

20 A. And I do believe -- Let me just check something  
21 real quick here.

22 I do have in here at least some management  
23 time to glance at it and see whether or not there's  
24 anything materially different.

25 Q. Right. So Exhibit A.1 for that annual notice

1 ongoing, it looks like you have between half an hour and  
2 an hour of management time?

3 A. Yes. At least take a look at it and see if  
4 there's anything glaring.

5 Q. A higher portion of the ongoing cost is in the  
6 production. Almost all of it is in the production?

7 A. Yes.

8 Q. That little exception of management.

9 A. I believe the highest cost is in the -- continues  
10 to be labor, because we're talking a reasonably small  
11 number of notices and, quite honestly, a very high  
12 estimate of what it would take to stuff 200 notices.

13 Q. And just to -- Again, this is based on how many  
14 notices being sent?

15 A. 200 notices.

16 Q. If we look at Exhibit A.1 for a moment, the  
17 spreadsheet, just the consumables set of rows there at the  
18 bottom part of the table, going to the next to last column  
19 for annual notice ongoing, it appears to me -- tell me if  
20 I'm wrong -- that you have total cost of consumables. You  
21 would add together the paper costs of \$2, the printing  
22 cost of \$4, the envelope cost of \$68, the mailing label  
23 cost of \$17, and the stamp or postage cost of \$88 to get  
24 the cost of consumables for the 200 notices?

25 A. Understand there is some -- for readability, I

1 didn't include any cents, but for the -- Yes.

2 Q. Fair enough.

3 And if I add those up -- you're welcome to  
4 use your calculator if you'd like -- I think it's \$179 of  
5 cost associated with the 200 annual notices.

6 A. I think that's right.

7 Q. And if you were to divide that by the 200 annual  
8 notices -- tell me if I'm wrong -- but I think it is 89  
9 and a half cents per notice.

10 A. Yes. That is correct.

11 Q. So the cost of per notice based on just  
12 consumables and meaning materials and postage is about 89  
13 and a half cents per notice?

14 A. For somebody sending out 200 annual notices.

15 Q. Okay. Now, companies that have to send more than  
16 200 notices will have higher absolute costs in terms of  
17 consumables, won't they?

18 A. Higher absolute costs?

19 Q. Yes.

20 A. And potentially lower per-notice cost. But yes.

21 Q. Again, I think Amazon is sort of the elephant in  
22 the room in all of this discussion. If we assume the  
23 population of Colorado is about 5 million -- do you  
24 understand that to be the case? Population of Colorado,  
25 around 5 million people?



1 A. Around 5 million, yes.

2 Q. Would you agree with me that Amazon, the number  
3 one Internet seller on the Internet top 500, may have a  
4 million Colorado customers?

5 A. I would have no basis to say yes or no to that.

6 Q. Let's assume that they did --

7 A. Okay.

8 Q. -- for purposes of the question. The law --  
9 Colorado law at issue in this case also requires that a  
10 notice be provided to non-Colorado residents who ship  
11 goods into Colorado as well, as long as they are over the  
12 500 threshold. Is that correct?

13 A. Yes.

14 Q. So if even only 1 percent of those million  
15 customers purchased over \$500 in a year, would you agree  
16 with me that translates into about 10,000 customers who  
17 are supposed to receive a notice?

18 A. If I -- If is a big if on the 1 percent. I  
19 don't know. But if it's 1 percent, the math would work  
20 out to be 10,000, I agree.

21 Q. And on a per-notice basis, it's going to be  
22 something like 89 and a half cents per notice?

23 A. I -- I think I -- That would be ignoring the  
24 other finding in the report, that a retailer of that size  
25 would figure out a way to send out that transactional

1 notice probably at little to no cost.

2 Q. Well, why don't you explain that to me? Because  
3 I think that is highly questionable. So give me your  
4 explanation of that.

5 A. Do we have the rules handy by any chance?

6 Q. I don't.

7 A. So let me just point to something real quick.  
8 One second.

9 Okay. If I look at the opinion J on page 14  
10 and I state the opinion that "The incremental cost of  
11 mailing Annual Notices can be mitigated by including other  
12 information and materials for the consumer," essentially,  
13 the requirement is for an annual notice to be sent -- for  
14 it to be properly notated on the outside of the envelope  
15 and sent first class. Nothing precludes the retailer from  
16 providing inserts, some limited amount of advertisement  
17 within the scope, because the limitation, as I recall, is  
18 that it just not be part of a regular shipment. So it  
19 can't be part of a shipment of goods.

20 And so I believe that in these cases, it  
21 could either be mitigated by marketing costs or  
22 third-party material that could be inserted, similar to a  
23 utility statement, where you'll get a flyer advertising  
24 some other things that, essentially, take the utility  
25 company's cost of mailing that down significantly on a

1 per-piece basis.

2 And I would expect that Amazon, at that  
3 size, if we're talking about the extreme ends of the  
4 spectrum, would have a reasonable size incentive, if they  
5 had a large order of magnitude of notices, to invest money  
6 into figuring out a way to mitigate that cost.

7 Q. Thank you for the explanation.

8 I take it that your understanding of the  
9 statute, which is specifically in the statute, not in the  
10 regulations promulgated by the department but in the  
11 statute promulgated by the general assembly of the state  
12 of Colorado, indicates the notice must be sent separately  
13 and not as part of any other shipment.

14 A. That's what it said.

15 Q. Your belief is that permits a retailer to,  
16 nevertheless, include other materials, marketing or  
17 otherwise, in the envelope?

18 A. I'm not here to interpret it other than to  
19 provide my perspective. My perspective is I would expect  
20 that a regular shipment would be a shipment of goods.  
21 Could be a shipment of a catalog. It should be something  
22 that would otherwise be sent. But if it's not that, I  
23 think there are a number of things that would provide  
24 leeway for things to be included in that notice.

25 Q. But your assumption in this regard, your

1 benefits of different efforts all the time, are they not?

2 A. Absolutely.

3 Q. Are you aware that there are penalty provisions  
4 specific to each requirement of the statute?

5 A. Yes.

6 Q. Are you aware that with regard to the annual  
7 notice, that the failure to provide a compliant annual  
8 notice subjects a retailer to a \$10 notice per -- \$10  
9 penalty per noncompliant notice?

10 A. That is part of what the statute reads or the  
11 rules read.

12 Q. Isn't it far more likely that retailers  
13 evaluating the statute's specific direction that the  
14 notice be sent separate from any other shipment, in light  
15 of the \$10 penalty for noncompliance, will choose to send  
16 an annual notice without accompanying material?

17 MS. SCOVILLE: Object to the form.

18 THE WITNESS: The numbers used herein  
19 reflect no mitigation of the cost, merely a statement that  
20 the larger retailers will look to mitigate that cost. In  
21 no way would I expect that the marginal retailer who  
22 barely meets the need and has crossed that threshold would  
23 spend a whole bunch of time, energy, and money to try to  
24 figure out how to mitigate the cost of 200 notices.  
25 Doesn't make sense. By the time they get done figuring

1 out how to do it, they would have spent more than they  
2 would have to just send the notice.

3 When you bring up Amazon -- and I don't know  
4 what the numbers are -- at some point the threshold has  
5 been crossed where somebody will look into it and probably  
6 invest the time to get an attorney to look at what is or  
7 isn't reasonably possible because the numbers are large  
8 enough to map.

9 BY MR. SCHAEFER:

10 Q. But if they invested the time and an attorney,  
11 then they will have attorney costs.

12 A. For the larger retailers, they'll probably have  
13 attorneys doing work all day long. If I go back to my  
14 days at Accenture, the attorney was working doing  
15 something or another all day long. I never saw a charge  
16 for a specific item I asked a question about.

17 So the reality is the small retailers won't  
18 invest that time and energy because it won't make any  
19 sense. The larger retailers that have a lot of costs,  
20 possibly, in this area, would invest the time and energy.  
21 But, again, on a percentage-of-sales basis to make it  
22 meaningful -- a meaningful measure across the breadth of  
23 them, it's an insignificant extent amount.

24 Q. Doesn't the \$10 penalty substantially raise the  
25 bar for determining that including some other information

1 with the notice would be cost-effective?

2 A. Again, we're talking about the largest retailer.  
3 They may very well ask for an opinion -- or ask for  
4 clarification on this or -- None of this report is aimed  
5 at those people who are much more sophisticated and have  
6 almost no cost for any of the other pieces. They will  
7 address the one that is a consumables production cost if  
8 it becomes a large enough number.

9 Q. One other aspect to your answer, we're talking  
10 about Internet vendors, by and large, correct?

11 MS. SCOVILLE: Object to the form.

12 BY MR. SCHAEFER:

13 Q. The affected retailers, is it your understanding  
14 that most remote sales nowadays -- or remote sellers do  
15 business over the Internet?

16 A. I would say that statistics would support the  
17 fact that even catalog retailers have a big move towards  
18 the Internet side of the business.

19 Q. Internet sellers tend to communicate with their  
20 customers in electronic means, do they not?

21 A. That, certainly I would expect to be part of many  
22 e-commerce vendors' strategy.

23 Q. So their strategy is to communicate by e-mail,  
24 generally, because, in fact. They are an electronic  
25 vendor?

1           A.    I would probably say some differentiate  
2 themselves by having nonelectronic communication.

3           Q.    Isn't it the case that but for this Colorado  
4 requirement of sending an annual notice, the vast majority  
5 of affected retailers wouldn't be sending a mailing on  
6 January 31 of each year to their customers purchasing over  
7 \$500?

8           A.    I would suspect that if given the choice, they  
9 would probably go with -- especially when we're talking a  
10 low volume of notices would probably go with an electronic  
11 communication if they had their druthers.

12           Q.    Were it to cost a larger vendor 89 and a half  
13 cents per notice, their costs -- say they have, in my  
14 example, 10,000 notices to send. That would cost that  
15 retailer \$8,950. Is that a fair exercise of math?

16                   MS. SCOVILLE: Object to form.

17                   THE WITNESS: In your -- in your example,  
18 yes, it's an exercise in math only. But if we were to  
19 extrapolate and say that that is a cost for Amazon to  
20 generate sales in Colorado, I don't think that would be an  
21 undue burden on the size retailer like that who has lots  
22 of other costs to do business anywhere they open up shop.

23 BY MR. SCHAEFER:

24           Q.    And that's your opinion. We're talking, for a  
25 moment, about the cost associated, not necessarily whether

1 or not the cost is an undue burden in anyone's point of  
2 view. You're here to assess costs, are you not? Costs of  
3 compliance?

4 A. You're asking me what the cost is. It may --  
5 You can argue dollars and undue burden. Maybe that's a  
6 bad form of my answer. But with respect to a percentage  
7 of sales, it is a much lower issue for somebody of that  
8 size retail operation than it is for what we're talking  
9 about in this report.

10 Q. Okay. You're not purporting to offer a legal  
11 opinion about the relative burden?

12 A. No, not at all. Only to say that everything is  
13 more expensive for a larger retailer who's doing  
14 24 billion in business.

15 Q. While we're on Exhibit A.1 -- and, again, this is  
16 informed by the content of Exhibit A within the report,  
17 correct?

18 A. Yes.

19 Q. Okay. So, for example, you have in A.1, at the  
20 top of your chart, the compliance effort. You first list  
21 the effort in terms of hours for different categories of  
22 employees or professionals?

23 A. Categories, yes.

24 Q. Okay. And you give, across the various  
25 requirements, an estimate of the number of hours that



1 someone in that category would need to invest for a  
2 retailer the size you were evaluating to comply?

3 A. Yes.

4 Q. If someone were to draw a different conclusion  
5 about the number of hours that this would require, that  
6 would have the overall effect in the way you've done the  
7 math of increasing the cost if they believed the number of  
8 hours was higher?

9 A. If you increase the number of hours, that would  
10 increase the cost, yes.

11 Q. Likewise, you have, then, a set of information  
12 here under the heading Cost (per hour) for each of the  
13 categories of professionals or employees that you  
14 identify. Is it a fair understanding what the numbers are  
15 in that sets of rows, that it's cost per hour? The hourly  
16 rate of someone in that category of employee?

17 A. Yes.

18 Q. So, for example, just to take the first one,  
19 management cost per hour is estimated to be \$105 per hour,  
20 on average?

21 A. I don't believe it's on average. I believe I  
22 articulated that's on the high end, based on the high end  
23 pay range plus standard benefits and payroll burden,  
24 taxes.

25 Q. By saying "on average," I wasn't intending to

1 imply that it was some middle-of-the-road number. Some  
2 companies would have higher costs, some would have lower  
3 costs. This is a number that you're using to estimate --  
4 here you're using some approximation for all companies?

5 A. I'm using a high-end approximation for the  
6 companies that we're talking about here.

7 Q. Fair enough.

8 If someone were to conclude that, in fact,  
9 the hourly rate for any of these categories was higher,  
10 that would have the overall impact of increasing the cost  
11 estimates, would it not?

12 A. Yes.

13 Q. Similarly, with regard to the costs of  
14 consumables in the final set of rows there, you have  
15 assigned certain costs of consumables. If someone were to  
16 conclude that consumables might be somewhat more  
17 expensive, it would have the effect of increasing the  
18 overall cost of the annual notice to customers?

19 A. Although that -- On a mathematical basis, yes.  
20 But on a basis that these are already on the high end of  
21 these types of consumables, I find it highly suspect  
22 unless it's linen envelopes and hand inscribed.

23 Q. That would be nice, wouldn't it? Perhaps in  
24 calligraphy.

25 A. Calligraphy.

1 (A recess ensued.)

2 BY MR. SCHAEFER:

3 Q. Okay. In your report, Mr. Gable, Exhibit 116, at  
4 page 13, continuing the discussion that is under the  
5 general opinion H, item 4 is the annual disclosure to the  
6 DOR. And as you note in subpart a, "Every affected  
7 retailer will have to submit a file complying with the  
8 Colorado Department of Revenue file layout."

9 That's a fair statement of the law, is it  
10 not?

11 A. My interpretation of it.

12 Q. Yes.

13 And then in subpart b, you indicate, "For  
14 these retailers, for costs for compliance with the Annual  
15 Disclosure to DOR Requirement would range from \$235 to  
16 \$470 or 0.004 percent and 0.008 percent as a percentage of  
17 gross annual sales."

18 Again, those gross annual sales figures are  
19 based on the seller with 6 million in annual sales?

20 A. Yes.

21 Q. Your estimate is that a seller with 6 million in  
22 annual sales would have -- you estimated approximately a  
23 hundred thousand customers. Is that the estimate you had  
24 used?

25 MS. SCOVILLE: Object to the form.

1 THE WITNESS: Not at all.

2 BY MR. SCHAEFER:

3 Q. Okay.

4 A. I made no assumption on number of consumers,  
5 because I'm not sure that that materially impacted the  
6 numbers. The only place where I stipulated a definitive  
7 number was a -- what I would consider, quote, unquote,  
8 worst-case scenario with 200 notices adding up to exactly  
9 a hundred thousand dollars worth of sales and barely  
10 meeting the threshold.

11 Q. Got it.

12 Have you ever worked with a -- with a house  
13 file containing several hundred thousand names in any of  
14 the work you've done?

15 A. Yes.

16 Q. In what part of your work?

17 A. Credit card services.

18 Q. And what kind of work were you doing with that  
19 house file in that consultancy?

20 A. We were handling credit card issuance.

21 Q. So were these prospects?

22 A. No. These were existing clients and clients who  
23 needed new cards, replacement cards, so forth.

24 Q. Was it for a financial institution or for a  
25 retailer?

1 A. American Express.

2 Q. Okay. And so what you were doing was managing an  
3 effort to reissue cards upon expiration, that sort of  
4 thing?

5 A. It was the entire credit card platform for their  
6 very broad set of credit card offerings, everything from  
7 the green card to the black card and blue card, their  
8 affinity cards, Delta, everybody else.

9 Q. But was it with regard to -- These were existing  
10 cardholders receiving new plastic?

11 A. Everybody. Existing and prospective.

12 Q. Okay. Your estimated listed here in item 4 is --  
13 if I'm looking at Exhibit A.1, is driven entirely by time  
14 spent by management and a business systems analyst?

15 A. That is correct.

16 Q. So, for example, you haven't included any  
17 professional time for an accountant or lawyer with regard  
18 to compliance with this requirement in the law?

19 A. I did not because the requirement is, of all of  
20 these areas, probably the most straightforward.

21 Q. Do you think that companies will need to spend  
22 time in quality assurance or quality control with respect  
23 to the file that they generate for the DOR?

24 A. I think companies should spend time on the  
25 quality of the file irrespective of this requirement, and

1 the quality of their normal day-to-day operations is  
2 driving this.

3 Q. Okay. To be more clear -- perhaps my question  
4 wasn't a good one -- do you think they have to spend time  
5 on quality assurance and quality control with regard to  
6 the file extract that they need to provide to the  
7 Department of Revenue?

8 A. I think they need to properly extract the data.  
9 If the data's bad, that has nothing to do with the  
10 extract. If the data is good, they need to at least  
11 verify that what they extracted is the right information.

12 Q. They do, in fact, need to spend time verifying  
13 that what they have done is extracted the right  
14 information.

15 A. Yes.

16 Q. And, in fact, again, the file to the DOR has to  
17 include not only folks with a Colorado mailing address but  
18 also all consumers who have -- who live in other states  
19 who have shipped goods into Colorado. Isn't that correct?

20 A. I believe all-encompassing would be shipped to  
21 Colorado.

22 Q. Okay. So it includes customers who do not reside  
23 in Colorado who may have delivered goods into Colorado or  
24 asked that goods be delivered in Colorado?

25 A. Absolutely.

1 Q. Would you agree with me that companies will have  
2 a high degree of sensitivity to ensuring that they have  
3 provided the proper list of customers to the Colorado  
4 Department of Revenue in order that they not turn over  
5 information to the department regarding individuals who  
6 have not directed that goods be shipped into Colorado?

7 A. I think their diligence of what they are  
8 submitting to the Department of Revenue is going to be  
9 reflective of their day-to-day operational diligence. I  
10 don't think there's any more or less because of this  
11 annual disclosure.

12 Q. Well, they don't, for any other purpose, have to  
13 create a data extract of individuals shipping goods into  
14 Colorado, do they?

15 A. The diligence -- I'm not talking about that as  
16 far as diligence. I'm saying that if they want to be  
17 accurate and so forth, that's part of their day-to-day  
18 operations? If they ultimately -- we'll call it wing it  
19 on a day-to-day basis, they're not suddenly going to spend  
20 more time on this. And it's right or wrong, but I think  
21 that was my point. Their day-to-day diligence will be  
22 reflected in the quality of what they're submitting either  
23 to DOR or submitting as part of their other business  
24 disclosure requirements.

25 Q. I think what you're talking about is companies

1 that are careful to maintain their customer information do  
2 so in a manner that they try to make sure that it's devoid  
3 of mistakes, that it has the proper mailing address, that  
4 they have -- the information is correct and well  
5 maintained?

6 A. Yes.

7 Q. What I'm talking about is a separate issue.  
8 Certainly how well they maintain their data may provide a  
9 degree of additional reliability with regard to any  
10 extract they take. Once they've taken an extract, would  
11 you agree with me that a company, especially one that was  
12 careful with its customer data, would invest time in  
13 quality assurance and quality control to make sure that  
14 the data that they were turning over to the Colorado  
15 Department of Revenue was the only data that was required  
16 and not data regarding individuals whose information need  
17 not be submitted?

18 A. Yes.

19 Q. Would you agree with me that consumers in  
20 general, in today's electronic commerce environment, have  
21 a high degree of sensitivity around the privacy of their  
22 information -- their personal information?

23 MS. SCOVILLE: Object to the form.

24 THE WITNESS: I think that's a  
25 generalization. I would argue that some people transact



1 the protection of the credit card or payment information  
2 from a consumer through the order process and retention  
3 and handling of that information.

4 Q. You're aware, are you not, that companies must  
5 undergo an audit with regard to their PCI compliance?

6 A. Once they reach a certain size, yes.

7 Q. And, in fact, it's viewed as being important by  
8 companies that they successfully complete such an audit?

9 A. Yes.

10 Q. So the changes with regard to their handling of  
11 customer information, whether or not it actually dictates  
12 any new measures to remain in PCI compliance, would you  
13 agree with me that they may cause a retailer to review  
14 their PCI compliance?

15 MS. SCOVILLE: Object to the form.

16 THE WITNESS: I don't believe any handling  
17 of the information talked about within here would at all  
18 make a retailer look at their PCI compliance.

19 BY MR. SCHAEFER:

20 Q. Opinion L on page 15, you indicate, "Requirements  
21 will not materially impact the call volume for customer  
22 inquiries regarding Transactional Notice."

23 Did I read that correctly?

24 A. Yes.

25 Q. I assume that you're not saying that you expect