

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:08-cv-1227-T-30EAJ

KLEIN & HEUCHAN, INCORPORATED,

Plaintiff,

-vs-

1 March 2010

9:10 a.m.

**COSTAR REALTY INFORMATION,
INCORPORATED, et al.,**

Courtroom 13A

Defendant.

-----/

**TRANSCRIPT OF PROCEEDINGS
(BENCH TRIAL)
BEFORE THE HONORABLE JAMES S. MOODY, JR.,
UNITED STATES DISTRICT COURT JUDGE**

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(appearances continued on next page)

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P R O C E E D I N G S (9:10 a.m.)

1 THE COURT: Good morning.

2 MR. GIBSON: Good morning, Your Honor.

3 MR. OPPENHEIM: Good morning.

4 THE COURT: You ready to proceed?

5 MR. OPPENHEIM: Yes, Your Honor.

6 THE COURT: All right. There are two motions in
7 limine. Do we still need to entertain those, or have you
8 resolved them?
9

10 MR. GIBSON: On behalf of our motion in limine, we
11 have not resolved either one.

12 THE COURT: All right. Well, CoStar has a motion
13 in limine to prevent K&H from pursuing an irrelevant and
14 unfounded claim to victim defense. Do you want to argue
15 that?

16 MR. OPPENHEIM: Yes, Your Honor. Matthew
17 Oppenheim here on behalf of CoStar.

18 Your Honor, with respect to this motion, CoStar is
19 trying to figure out exactly what it is the case is that
20 we're trying here today.

21 In the pretrial materials that were jointly
22 submitted to the Court, Klein & Heuchan did not submit that
23 they were pursuing any of the kitchen-sink, boiler-plate
24 affirmative defenses that they had listed in their original
25 answers to the complaint several years ago.

1 While they had included in the pretrial statement
2 contested facts, those facts didn't seem to go to any of the
3 legal issues in the case other than arguably a legal
4 proposition about the copyright holder's obligation to
5 police their copyrights, which CoStar vehemently disagreed
6 as to the state of the law.

7 CoStar filed its motion in limine on the grounds
8 that these affirmative defenses aren't in the case, they're
9 not listed in the pretrial procedures -- in the pretrial
10 filing; and so, therefore, permitting testimony --
11 soliciting testimony that goes to these potential
12 affirmative defenses would be improper. That is
13 particularly true, Your Honor, in this case where we don't
14 even know the legal standard that Klein & Heuchan seeks to
15 apply to those affirmative defenses.

16 THE COURT: All right. Response?

17 MR. GIBSON: Your Honor, these -- the -- to -- to
18 argue that they've been surprised can't be said. There
19 are -- in the pretrial statement we listed that those are
20 facts that are contested and will be proven here.

21 Their motion is a motion for summary judgment on
22 those affirmative defenses. They're pled. They're part of
23 this case, and the evidence that we intend to show,
24 specifically with regard to the equitable defenses --
25 waiver, estoppel, and laches -- is that they gave up any

1 rights to the copyright that they held.

2 THE COURT: Did you raise an affirmative defense
3 of mitigation of damages?

4 MR. GIBSON: Your Honor, I think -- we did,
5 Your Honor.

6 THE COURT: Wouldn't this relate to mitigation of
7 damages?

8 MR. OPPENHEIM: I'm sorry, Your Honor. One more
9 time. I didn't hear you.

10 THE COURT: Wouldn't this relate to mitigation of
11 damages?

12 MR. OPPENHEIM: Your Honor, I don't know -- I
13 don't know where under the copyright law mitigation of
14 damages would apply; but notwithstanding, I don't know what
15 law they seek to apply in terms of mitigation to the
16 copyright law, because they didn't submit any statement of
17 the law for any of these defenses in their pretrial
18 materials.

19 THE COURT: Well, just the general rule of law on
20 mitigation of damages is you're required to take reasonable
21 steps to mitigate your damages; right?

22 MR. OPPENHEIM: I know the general statement of
23 the law, yes.

24 THE COURT: How long did you let this go on before
25 you stopped it?

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1 MR. OPPENHEIM: Well, I think, Your Honor, there
2 will be a significant factual question on that. The
3 position that Klein & Heuchan has taken --

4 THE COURT: What's your position?

5 MR. OPPENHEIM: Our position is that the testimony
6 will be very clear that when CoStar became aware that the
7 infringement was occurring, they investigated and they --
8 and they stopped it; and so, factually we disagree with the
9 premise of their motion, but we're attempting to narrow the
10 trial to move it along to avoid spending time on pursuing
11 this issue, which we don't believe legally is in the case.

12 THE COURT: The question was how long did it go on
13 before you stopped it?

14 MR. OPPENHEIM: Oh, I believe the testimony -- the
15 testimony will show that the infringement occurred -- began
16 in December 2006, January 2007, continued until April of
17 2008, and that CoStar became aware of the infringing
18 behavior in March of 2008 and stopped it in April of 2008.

19 THE COURT: Okay.

20 MR. OPPENHEIM: Klein & Heuchan intends to
21 argue --

22 THE COURT: That's enough. Your position is it
23 has nothing to do with mitigation of damages. Had it gone
24 on for another two years, would your position still be the
25 same?

1 MR. OPPENHEIM: Under the copyright law, a
2 copyright holder has no obligation to affirmatively be
3 policing their works. This is not like a contract case
4 where a seller has goods and the seller has an obligation to
5 offset their losses or a landlord-tenant case where a
6 landlord has an obligation to release a facility. This is a
7 copyright case. So, the application of mitigation of
8 damages in this case doesn't seem to fit.

9 THE COURT: Your position is mitigation of damages
10 does not apply to a copyright case?

11 MR. OPPENHEIM: I don't understand how it would
12 apply in this case, Your Honor.

13 THE COURT: That wasn't my question. Your
14 position is that mitigation of damages does not apply in a
15 copyright case?

16 MR. OPPENHEIM: That is correct, Your Honor.

17 THE COURT: Well, that's a new one on me. Using
18 your reasoning, you could know about the infringement and
19 just let it go on for five years and then sue for more
20 damages than you could have when you first found out about
21 it?

22 MR. OPPENHEIM: I think, Your Honor -- let me
23 break that down, if I may. There's obviously a statute-
24 of-limitations obligation in the copyright statute, which is
25 three years. There's also the application of the laches

1 doctrine, which to the extent that a copyright owner knew
2 about the infringement of their rights and sat on those
3 rights for a long period of time -- which in the case law
4 tends to suggest periods of things like ten, 20 years --
5 then laches might apply.

6 But there is no obligation -- and there's case law
7 on this, Your Honor, that a copyright owner has no
8 obligation to go out and affirmatively try to police their
9 works.

10 An example of that case would be, for instance,
11 there was a case out of New Jersey involving a flea market,
12 and owners of sound recordings continually found that the
13 vendors in the flea market were selling infringing copies of
14 their sound recordings. So, they continually went and --
15 and asserted claims and had police enforce as against those
16 vendors, giving notice each time to the operator of the flea
17 market that he was leasing space to individuals who were
18 infringing on their rights, and they kept telling the
19 operator of the flea market that he needed to stop.

20 Ultimately in -- in the flea market case in
21 New Jersey, the copyright holder sued the operator of the
22 flea market, and the flea market said, "It's your obligation
23 to police your work." The court disagreed. The court said,
24 the copyright holder has no obligation to affirmatively be
25 policing their works but did hold that the operator of the

1 flea market was secondarily liable for the infringement.

2 THE COURT: Motion's denied.

3 Does K&H want to argue their motion on this
4 evidence?

5 MR. GIBSON: Your Honor, we filed this motion, and
6 we found, in essence, that the Court had ruled on it without
7 comment with regard to the summary judgment.

8 Our motion is based on Rule 37(c), a failure to
9 disclose or update discovery. When CoStar filed its motion
10 for summary judgment, included with it were affidavits and
11 then attachments to those affidavits of materials that had
12 never been provided in discovery. In fact, one of the
13 witnesses, Mr. Lardizabal -- I know I'm murdering his
14 name -- was never disclosed.

15 Rule 26 disclosures were exchanged. Discovery,
16 interrogatories, and requests for production were exchanged.
17 And these documents were never provided to K&H until summary
18 judgment was filed, and only after that. Then after the
19 summary judgment and after we moved to strike those
20 materials, even more materials were provided to us, all the
21 photographs and things that were the subject of the
22 copyright-infringement claim.

23 None of the actual photographs were provided.
24 None of the registrations were provided. Only in support of
25 their motion for summary judgment were they provided.

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1 We did have discussions afterward about whether or
2 not to seek discovery for K&H to move the Court to allow it
3 to permit discovery after the summary-judgment deadline;
4 but, Your Honor, I would submit that Rule 37(c) is clear:
5 If you don't provide the information, it shouldn't come in
6 at trial; and K&H shouldn't have the obligation of having to
7 move this Court to seek discovery outside of the
8 summary-judgment deadline, outside of the disclosure
9 deadlines that the Court sought in order to defend itself
10 against the claims that CoStar has brought.

11 For that reason we ask that all materials that
12 were not provided prior to the summary-judgment deadline not
13 be permitted to be admitted as evidence in this case.

14 THE COURT: Well, I agree with you that it's
15 CoStar's obligation to file a motion to extend the deadline
16 in order to give you new documents. On the other hand, they
17 responded by saying that part of those documents were
18 previously produced by Mr. Bell so it's no surprise to you
19 and the other documents were referred to in their pleadings
20 and that you could have asked for them more specifically.

21 MR. OPPENHEIM: And I did ask for every single
22 document that they intended to use to support their claim.
23 Rule 26 specifically provides that they have to provide the
24 Court documents they're going to use to support their claim,
25 and they didn't do that.

1 THE COURT: Response?

2 MR. OPPENHEIM: Your Honor, Mr. Gibson correctly
3 states that the Court has already ruled on this motion once,
4 and it's essentially the same motion as was previously
5 submitted to the Court. But beyond that, Your Honor, this
6 is really an instance where Defendants took no discovery
7 essentially, and they're trying now to remedy that.

8 They didn't pursue a single deposition. They
9 issued one set of vague and ambiguous and very large --
10 largely worded requests for production. They now come and
11 complain that -- that they didn't get the documents in
12 advance.

13 I will acknowledge I came into this case late; but
14 having come into the case late, we -- Mr. Gibson was
15 repeatedly offered any opportunity he wanted to take any
16 follow-up discovery; and, in fact, when I first was retained
17 by CoStar to handle the trial in this case, we sought an
18 extension from this Court, and I -- before filing a motion
19 for the extension of the trial calendar with this Court, I
20 consulted with Mr. Gibson. He consented on the grounds that
21 he indicated that he -- he intended, he thought, to file a
22 motion in limine to either exclude the documents or, in the
23 alternative, to take additional discovery.

24 And I told him -- I said, "I would be happy to
25 allow you to take discovery, and I'll consent to reopening

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1 discovery."

2 He said, "Well, I will consider it, and we may
3 file that motion."

4 So, we were fine with extending the trial calendar
5 so we'd have an opportunity to do that. That's set forth in
6 the motion to extend the date of this trial.

7 Mr. Gibson then chose not to file that motion. We
8 offered that discovery in early November. We then offered
9 it again in early December. He's had every opportunity to
10 take the discovery he wanted on -- on the evidence that he
11 now seeks to exclude. He chose not to pursue that.

12 So, to the extent that there is any prejudice --
13 and I don't believe that there is -- that prejudice lies at
14 his feet, not at that of CoStar's.

15 But notwithstanding, as we detailed in our papers,
16 the documents that he seeks to exclude were in large measure
17 disclosed to him. They were documents that had already been
18 provided but not been date-stamped. They were documents
19 that were referenced in the Rule 26 disclosure, so on and so
20 forth. It's detailed on pages 5 through 8 of our filing.

21 Their motion makes no effort to describe what it
22 is specifically that they are seeking to exclude, just
23 generally all of this material, and doesn't describe why the
24 exclusion of that -- the failure to exclude that material
25 would result in any prejudice to them.

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1 THE COURT: All right. Motion's denied.

2 You want to make opening statements or go right
3 into evidence?

4 MR. OPPENHEIM: With the Court's permission, we'd
5 like to make an opening statement.

6 THE COURT: All right, proceed.

7 *OPENING STATEMENTS*

8 MR. OPPENHEIM: Is it all right if I do it at the
9 podium?

10 THE COURT: Please.

11 MR. OPPENHEIM: Good morning, Your Honor. Good
12 morning, Mr. Gibson.

13 If I may, Your Honor, I'd like to introduce those
14 who are sitting at trial table with me today: My colleague,
15 Mr. Scott Zebrak, and my client, Mr. Chris Winters, the
16 associate general counsel for CoStar.

17 May it please the Court. I'd like to do three
18 things in my opening statement this morning: One, outline
19 the legal and factual claims that are at issue in this case;
20 two, discuss the facts and issues that have been resolved by
21 virtue of stipulations between the parties and by the
22 Court's prior summary-judgment finding; and, three, to
23 introduce the initial witnesses that we intend to present.

24 CoStar Realty Information, Inc., and CoStar Group,
25 which I'm going to collectively refer to as "CoStar" for the

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1 ease of everybody, has asserted claims for contributory and
2 vicarious infringement against Klein & Heuchan.

3 CoStar is a publicly-traded company on the NASDAQ
4 Stock Exchange. Its business is building commercial
5 real-estate information services that it licenses to
6 companies like Klein & Heuchan, companies in the commercial
7 real-estate industry. Those services consist of information
8 and photographs that depict offices, industrial and retail
9 properties in geographic markets throughout the
10 United States and even in Europe.

11 The CoStar service provides a critical tool to
12 those in the commercial real-estate market so that they can
13 spend less time doing research and more time doing business,
14 and that is why the majority of the commercial real-estate
15 industry, both from the commercial side and the government
16 side of the business, markets and licenses CoStar's
17 products.

18 CoStar's acceptance in the marketplace is
19 nationwide, including here in Florida. Klein & Heuchan is a
20 medium-sized Florida real-estate brokerage company, which
21 CoStar has been attempting to license for many years without
22 success.

23 In late 2006, Klein & Heuchan retained an
24 individual by the name of "Scott Bell" as a sales associate.
25 Mr. Bell had previously worked for Coldwell Banker NRT,

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1 another Florida real-estate broker. Coldwell, unlike Klein
2 & Heuchan, had obtained a license from CoStar for its sales
3 associates to access its online information services.

4 After Mr. Bell left Coldwell and joined Klein &
5 Heuchan, he continued to use the CoStar Services by using
6 his user name and password that he had received when he was
7 at Coldwell. He accessed the CoStar Service regularly
8 between 2007 and 2008, downloading thousands of photographs
9 and market reports.

10 THE COURT: What was the pay structure that
11 Coldwell Banker was paying? Did they pay a certain amount
12 each month depending on the number of sales associates?

13 MR. OPPENHEIM: Yes, Your Honor. The license
14 agreement, which we'll put into evidence, will show that the
15 payment structure was based on the number of authorized
16 users, the number of products that were licensed from
17 CoStar -- because CoStar has a variety of different
18 products -- and the period of time obviously that it was
19 used.

20 THE COURT: So when Mr. Bell left Coldwell Banker,
21 I assume they quit paying for him; right?

22 MR. OPPENHEIM: They did not deactivate Mr. Bell
23 as an authorized user until after CoStar had identified
24 the -- the ongoing infringement.

25 THE COURT: Okay. So, Coldwell Banker continued

1 to pay for him?

2 MR. OPPENHEIM: No. Coldwell Banker continued to
3 pay for their use of the service. Klein & Heuchan never
4 paid for their use of the service through Mr. Bell.

5 THE COURT: Apparently you and I are not on the
6 same wave length. If Coldwell Banker was paying based on
7 the number of associates authorized to use the service, when
8 Mr. Bell left, did they continue paying the same amount so
9 they continued counting him as an authorized user, or did
10 their rate go down?

11 MR. OPPENHEIM: I understand your question now.
12 The license agreement that a commercial real-estate firm
13 enters into is a firm-wide license. CoStar does not license
14 individuals ever. So, their license is based on the number
15 of sales associates or brokers in the office. That office
16 then can assign -- can have CoStar provide a user name and
17 password to each of its sale associates.

18 When Mr. Bell left -- excuse me, and that license
19 agreement obligates the brokerage firm, like Coldwell, to
20 pay a certain amount for a certain period of time based on
21 that number of authorized users.

22 Coldwell did not notify CoStar that they wanted to
23 switch the Scott Bell user name to another sales associate,
24 a new sales associate that came in, and they didn't seek to
25 renegotiate the contract, no. But Klein & Heuchan didn't

1 notify CoStar that they were now using the CoStar services
2 through Mr. Bell and did not obtain a license for all of the
3 individuals who were working at Klein & Heuchan, which is
4 what they would have had to do in order to allow the
5 individuals at Klein & Heuchan, including Mr. Bell, Mr. Mark
6 Klein, Mr. Steve Klein, Judy Healey, and others at Klein &
7 Heuchan who had the benefit of the CoStar information in
8 their office and used it.

9 THE COURT: That still doesn't answer my question.

10 I think you've told me that Coldwell Banker's rate
11 was based on the number of authorized users in its office.

12 MR. OPPENHEIM: In part, yes, Your Honor.

13 THE COURT: So, if there were 15 authorized users
14 and that number went from 15 to 14, did the rate go down?

15 MR. OPPENHEIM: If -- if Coldwell had sought to
16 renegotiate the contract with CoStar, which presumably
17 CoStar would have done, yes, the rate would have gone down,
18 not necessarily pro rata, because it's -- the per-user fee
19 is not -- is not necessarily -- it's incremental, if you
20 will. You get a discount with the increasing number of
21 users.

22 THE COURT: So, Coldwell did not notify CoStar
23 that Mr. Bell had left and also did not ask for its rate to
24 go down because now it had one less authorized user?

25 MR. OPPENHEIM: That is correct, Your Honor.

1 THE COURT: All right. Proceed.

2 MR. OPPENHEIM: Mr. Bell accessed the CoStar
3 service regularly between 2007 and 2008, downloading
4 thousands of photographs and market reports. He did this
5 while he was at Klein & Heuchan, and he did that with the
6 full knowledge of Klein & Heuchan.

7 The evidence will show that Mr. Bell used what he
8 downloaded from CoStar in his capacity as a sales associate
9 for Klein & Heuchan; that Mr. Bell regularly shared the
10 material that he downloaded with others at Klein & Heuchan,
11 including Mark Klein, Steve Klein, and Judy Healey; that he
12 used it with clients and prospective clients. In fact, the
13 evidence will show that the principals at Klein & Heuchan
14 would from time to time ask Mr. Bell to download reports and
15 images from the CoStar service so they could have them and
16 have the benefit of them.

17 In 2008, CoStar became aware of Mr. Bell's
18 unauthorized activities, and it promptly investigated the
19 matter and ultimately discontinued Mr. Bell's access.

20 Once the infringing activities were stopped,
21 CoStar sought to resolve the claims arising out of the
22 unauthorized use. Efforts to end the dispute without
23 litigation failed when Klein & Heuchan filed a declaratory-
24 judgment claim here in Florida. Subsequently, CoStar
25 asserted claims against both Klein & Heuchan and Mr. Bell

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1 individually.

2 While the claims against Mr. Bell have been
3 settled, the dispute -- the dispute between Klein & Heuchan
4 and CoStar remains unresolved. CoStar has asserted claims,
5 as I said, both as to vicarious and contributory
6 infringement against Klein & Heuchan. With respect to the
7 this contributory infringement claim, Costar is pursuing
8 both a site and facilities theory and an inducement theory.
9 So, all told, there are going to be three theories of
10 liability that are presented to the Court during the course
11 of this trial. Of course, CoStar need only succeed on one
12 of those claims in order to prevail.

13 Under all three theories of liability, the
14 vicarious claim and the two contributory theories, CoStar
15 must first establish that there was an underlying direct
16 infringement.

17 On that issue, there's really no dispute as to the
18 direct infringement element, which the Court has essentially
19 already found in its prior summary-judgment decision. And
20 the parties have stipulated to facts sufficient to establish
21 it.

22 If I may direct the Court to what is listed as
23 Exhibit 68 in the exhibit notebooks, this is a copy of the
24 stipulated facts that the parties entered into; and I would
25 like to read a couple of the relevant provisions.

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1 (Changes overhead exhibit.) Stipulated Fact
2 Number 1, Your Honor: CoStar is the exclusive owner of the
3 photographs described on the list of CoStar photographs
4 allegedly infringed, which is set forth on Exhibit 1, and we
5 will put that before the Court. Each of those photographs
6 was properly registered by CoStar within five years of the
7 date of the first publication of the work.

8 Stipulated Fact Number 2: CoStar is the exclusive
9 owner of the market reports described on the list of CoStar
10 market reports that were allegedly infringed, which is set
11 forth on Exhibit 2 that we will also put before the Court.

12 CoStar's market reports are part of the literary
13 works that CoStar properly registered within five years of
14 the date of the first publication of the works.

15 Number 3: Between January 2007 and April 16,
16 2008, Bell downloaded -- Mr. Bell downloaded to his computer
17 each of the photographs described on the list of CoStar
18 photographs allegedly infringed -- that will be Exhibit 1 --
19 and each of the market reports described on the list
20 allegedly infringed. That will be Exhibit 2.

21 Skipping, Your Honor, to -- to Stipulated Fact
22 Number 6: (Changing overhead exhibit) CoStar registered the
23 photographs and literary works described on both Exhibits 1
24 and 2 prior to the dates on which Bell -- Mr. Bell is
25 alleged to have infringed them and/or within three months of

1 the date of the first publication of the work.

2 Mr. Bell worked -- Number 7: Mr. Bell as a
3 real-estate broker who worked for Coldwell from September
4 2005 to November 2006. During his time at Coldwell, as one
5 of their brokers, Bell was authorized to download
6 photographs and information from the CoStar online services
7 pursuant to the terms of a written license agreement between
8 CoStar and Coldwell. Bell was not authorized to access or
9 use the CoStar online services following his departure from
10 Coldwell.

11 Sorry, I didn't turn the page here. Let me skip
12 to Number 9, Your Honor. Mr. Bell joined Klein & Heuchan in
13 December of 2006. Mr. Bell continued to access the CoStar
14 products using the user name and password associated with
15 his Coldwell subscription while he was working for Klein &
16 Heuchan.

17 And Number 11, Your Honor: Between January of
18 2007 and April 16, 2008, Bell used his Coldwell password to
19 access CoStar's online services. By downloading various
20 materials from the CoStar system without authorization, Bell
21 violated CoStar's exclusive right of reproduction; and while
22 there will be evidence presented in the case of Mr. Bell's
23 subsequent distribution of the copyrighted works to
24 individuals within Klein & Heuchan and clients and
25 prospective clients, that evidence is, frankly, redundant

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1 for purposes of establishing the underlying direct
2 infringement by Mr. Bell.

3 For purposes of establishing liability, it does
4 not matter whether Mr. Bell infringed on CoStar's rights
5 once or twice. He infringed. So, now let me briefly
6 turn -- having dealt with the issue of the underlying direct
7 infringement, let me turn to the three elements of the three
8 theories of liability.

9 In order to prove vicarious infringement, a
10 copyright claimant must show that the Defendant had the
11 right and ability to supervise the infringing activity and a
12 financial interest in the activity. To prove vicarious
13 infringement, it is not necessary to prove knowledge or
14 intent.

15 In this Court's summary-judgment opinion, it
16 resolved that Klein & Heuchan had the right and ability to
17 supervise the infringing activity. On page 7 of its order,
18 the Court said, "The undisputed evidence shows that Klein &
19 Heuchan had the right and ability to supervise Bell."
20 Notwithstanding, the Defense would likely persist in their
21 argument that there was no right or ability to supervise his
22 activities because they will claim Mr. Bell was an
23 independent contractor. The facts with respect to this,
24 however, will be clear. Mr. Bell worked at the direction of
25 Klein & Heuchan, and the principals at Klein & Heuchan could

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1 have stopped the infringing behavior at any time, but they
2 chose not to.

3 Moreover, Klein & Heuchan has stipulated to the
4 following stipulated fact, Number 12: (Changes overhead
5 exhibit) While at Klein & Heuchan, Mr. Bell was required to
6 attend two mandatory sales meetings each week. Both Mark
7 Klein, the chief executive officer and sole owner of Klein &
8 Heuchan, and Steven Klein, the executive vice-president of
9 Klein & Heuchan, oversaw Mr. Bell's work, including giving
10 constructive feedback on his work performance.

11 All property listings obtained by Bell had to be
12 accepted by either Mark Klein or Steven Klein. The listing
13 agreements for Bell's properties had to be signed by Mark
14 Klein or Steven Klein, and Mark Klein and Steven Klein also
15 discussed marketing strategies with Mr. Bell.

16 Turning to the financial benefit requirement of
17 vicarious liability: The Court's summary decision already
18 determined that the avoidance of license fees constituted
19 financial benefit. On page 8 of its order, the Court said,
20 "As in the context of a night club or music hall, avoidance
21 of a licensing fee can be a direct benefit -- financial
22 benefit."

23 And in this respect, Klein & Heuchan has
24 stipulated in Stipulated Fact Number 15. Klein & Heuchan
25 has never been a licensed subscriber to any of CoStar's

1 commercial real-estate information products, nor has Klein &
2 Heuchan ever paid CoStar any license fees for the access and
3 use of the CoStar products.

4 But beyond just the lost license fees, Your Honor,
5 you will hear testimony that Mr. Bell's infringing
6 activities were all done in his capacity as a Klein &
7 Heuchan sales associate. You'll also see and hear that he
8 shared material that he downloaded from CoStar with others
9 at Klein & Heuchan was for the purpose of furthering Klein &
10 Heuchan's business. The testimony will make clear that
11 Mr. Bell's activities were intended to and did benefit Klein
12 & Heuchan.

13 Turning now to the contributory infringement
14 claim. As I indicated, there are two separate ways to prove
15 contributory negligence infringement. Under both a site and
16 facilities theory and an inducement theory, a copyright
17 holder must show that the Defendant knew or should have
18 known of the infringing activity. It is not necessary that
19 Klein & Heuchan had actual knowledge of specific
20 infringements.

21 In this respect, Klein & Heuchan has now
22 stipulated in Stipulated Fact Number 10 (changing overhead
23 exhibit) that Klein & Heuchan was aware that Bell was
24 accessing online services. Mark Klein and Steven Klein are
25 likely to testify that while they knew Mr. Bell was using

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1 CoStar, they did not know that his use was unauthorized.

2 But you will also hear testimony that will call
3 into question this claim that Klein & Heuchan did not know
4 that what Mr. Bell was doing was wrong; and, at a minimum,
5 the evidence will demonstrate that even if there is a
6 question as to whether they actually knew, it will be clear
7 that they did not act in good faith and absolutely should
8 not have -- absolutely should have known that the activity
9 that Mr. Bell was engaged in was unauthorized.

10 With respect to the next element, the evidence
11 will show that Klein & Heuchan provided Mr. Bell with the
12 site and facilities to infringe. The infringement at issue
13 in this case took place at Klein & Heuchan using its
14 physical and Internet services. The evidence will also show
15 that Klein & Heuchan induced Mr. Bell to infringe by virtue
16 of assisting and encouraging Mr. Bell's use of CoStar.
17 Indeed, the principals of Klein & Heuchan sought Mr. Bell's
18 use of CoStar for their own benefit.

19 Based on the pretrial statement, Klein & Heuchan
20 intends to raise a number of issues in their defense. Most
21 of them, however, are red herrings. We discussed earlier
22 that the affirmative defenses that Klein & Heuchan intends
23 to assert -- apart from the disagreement as to the legal
24 standard, which we will be briefing to the Court, there will
25 be a disagreement as to the facts.

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1 While Klein & Heuchan will attempt to establish
2 that CoStar knew that the infringement was occurring early
3 in the case, the evidence will demonstrate that, in fact,
4 they didn't, and had they known, they would have stopped it.
5 Of course, they would have stopped it. It served them no
6 purpose to have somebody infringing on their copyrights.

7 The evidence will show that when they did become
8 aware, they acted promptly. Klein & Heuchan will also argue
9 that they did not have actual knowledge that the specific
10 infringing material was being accessed by Bell. Of course,
11 as I described earlier, the standard is not actual
12 knowledge. It's an objective standard: Should Klein &
13 Heuchan have known. And the knowledge requirement does not
14 require that the Defendant knew of the individual acts of
15 infringement. The Defendant need only know of the
16 infringing activity.

17 In this respect, we ask the Court to listen not
18 only to the bald denials by the Kleins, but also to consider
19 all of the other evidence to see whether or not those bald
20 denials are credible or even consistent.

21 Finally, I expect that Klein & Heuchan will also
22 spend some time complaining that CoStar is not a
23 particularly helpful or useful service, that the information
24 it contains can be obtained from -- from other sources.
25 Well, this bears absolutely no relevance as a legal matter.

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1 CoStar's broad use in the market and a customer renewal rate
2 of over 90 percent demonstrates that the attack on CoStar as
3 a service is without merit.

4 CoStar intends to call as its first witness Mr.
5 Stephen Alliegro, a CoStar executive who's been with the
6 company over ten years and oversees the entire East Coast
7 region, including the Florida market.

8 He will broadly speak and describe the CoStar
9 service and CoStar's relationship with Klein & Heuchan.

10 THE COURT: You don't need to tell me about every
11 witness you're going to call.

12 MR. OPPENHEIM: Very well, Your Honor.

13 I thank the Court for its time and attention.

14 THE COURT: All right. Thank you.

15 Mr. Gibson.

16 MR. GIBSON: May it please the Court. Your Honor,
17 Jeff Gibson, along with Joshua Magidson, of Macfarlane,
18 Ferguson. Sitting to his right is Mr. Mark Klein, president
19 and owner of Klein & Heuchan; and behind him is Steven
20 Klein.

21 Your Honor's summary-judgment ruling has fairly
22 limited the issues that are going to be tried before
23 Your Honor. With respect to the vicarious claim, the issue
24 remaining is whether or not Klein & Heuchan directly
25 profited from the activities of Mr. Bell as he was there.

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1 The Eleventh Circuit case directly profited.
2 Counsel uses the term "financial benefit of any kind," and I
3 point out that this is not the case; and then we will argue
4 these legally with you, but this is the type of case where a
5 licensed -- avoidance of a license is the appropriate direct
6 profit in this case.

7 With respect to the contributory claim, the
8 evidence is going to show that CoStar as a product never had
9 any value to Mr. Klein or to Steven Klein. They -- CoStar
10 sought for them to buy the licenses for this product over
11 ten years, and they never -- never saw any value. Anything
12 that was provided by CoStar could and was obtained in a
13 variety of different tools that they also used in the
14 real-estate market.

15 The third remaining real large issue, Your Honor,
16 is CoStar's conduct as it related to Mr. Bell and his
17 license. Their own documents will show that on February of
18 2007, 14 months before they turned his access off, they were
19 aware that Mr. Bell was no longer with the company. There
20 will be testimony that CoStar knew --

21 THE COURT: When you say "the company," you mean
22 Coldwell Banker?

23 MR. GIBSON: I'm sorry, that CoStar knew on
24 February 1st of 2007 that Mr. Bell was no longer with
25 Coldwell Banker, that is correct. The testimony will be

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1 that they knew for quite some time and were simply waiting
2 in order to determine where he was.

3 And they got that on November of 2007. They were
4 able to link an IP address from the Klein & Heuchan office
5 with access by Mr. Bell. Even then, they waited another
6 five months in order to turn his access off and then
7 threaten litigation against Klein & Heuchan.

8 In a case where the level of damages can be the
9 number of times that an infringement occurs, Your Honor, we
10 would submit that having known that he wasn't there in
11 February, the evidence will be clear that not doing
12 anything, linking it with a specific other real-estate
13 property -- other real-estate company in November of 2007
14 and still not doing anything and then seeking to have Klein
15 & Heuchan retroactively pay for the CoStar service,
16 Your Honor, based on the theories of estoppel and laches,
17 they did not act reasonably.

18 They alone held the keys. It was a flip of the
19 switch to turn Mr. Bell's access off, and they knew he
20 wasn't with then, but they still allowed him to access the
21 database; and based on that activity of CoStar, Your Honor,
22 we would submit that the equitable defense is even if
23 CoStar's able to prevail on any of its claim, those
24 equitable defenses will belie any ability to recover based
25 on the copyright infringement claims.

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1 Your Honor, the true issue is going to be Mr. Bell
2 and Mr. Klein. The testimony is going to be that both of
3 them thought that he was authorized. Mr. Bell thought that
4 he was given a subscription to the CoStar products and that
5 at some point it was going to stop, but he was never told --
6 orally, in e-mail, or in writing -- that it meant that when
7 he left Coldwell Banker he wasn't a, quote, authorized user
8 pursuant to the license.

9 Clearly now reading the license, that defines an
10 authorized user as someone who works with Coldwell Banker.
11 However, Mr. Bell was never given a copy of the license
12 agreement between Coldwell Banker and CoStar. The terms of
13 service -- admittedly he clicked that he read them whenever
14 he logged on. He never read them. The CoStar license
15 agreement was certainly never provided to Klein & Heuchan,
16 and Mr. Klein and Mr. -- both Mr. Kleins couldn't possibly
17 have read the terms of service that were being accessed by
18 Mr. Bell.

19 It will be clear that it wasn't until April when a
20 letter was sent from CoStar threatening litigation,
21 threatening -- seeking the payment of past licenses, that
22 they became aware that he was an unauthorized user, and that
23 was the day it stopped. Mr. Bell never attempted to access
24 CoStar ever again.

25 The evidence will show that Klein & Heuchan acted

1 appropriately and acted reasonably; and the evidence will
2 show that CoStar, with all of the knowledge that they have,
3 did not.

4 Thank you.

5 THE COURT: All right. Call your first witness,
6 please.

7 MR. OPPENHEIM: Just as a preliminary matter,
8 Your Honor, Plaintiffs would move to admit at this point the
9 stipulations of fact which appear in Exhibit 68 that the
10 parties have agreed to.

11 MR. GIBSON: No objection.

12 THE COURT: Be admitted.

13 (Defense Exhibit 68 was received in evidence.)

14 MR. OPPENHEIM: We'd also move to admit at this
15 point, based on those stipulations of fact, the copyright
16 registration at issue in this case, which would be the
17 photographs -- the copyright registration for the
18 photographs which appear in Exhibit 45 and the copyright
19 registrations for the database which appear in Exhibit 46.

20 MR. GIBSON: No objection.

21 THE COURT: Be admitted.

22 (Defense Exhibits 45 and 46 were received in
23 evidence.).

24 MR. OPPENHEIM: Your Honor, CoStar would move --
25 would call Mr. Stephen Alliegro to the stand, please.

1 (The witness was duly sworn or affirmed and
2 responded as follows:)

3 THE WITNESS: I do.

4 THE CLERK: Sir, would you please state your name
5 and spell your first and last name for the record.

6 THE WITNESS: Stephen Alliegro, S-T-E-P-H-E-N
7 A-L-L-I-E-G-R-O.

8 THE COURT: Proceed.

9 **STEPHEN ALLIEGRO,**

10 the witness, being sworn or affirmed, testified as follows:

11 *DIRECT EXAMINATION*

12 BY MR. OPPENHEIM:

13 Q Good morning, Mr. Alliegro.

14 A Good morning.

15 Q What do you do for a living?

16 A I am regional vice president for the East Coast --
17 CoStar overseas sales and service for the entire East Coast.

18 Q Do you manage or oversee other CoStar employees?

19 A I have six direct reports and approximately 50 sales
20 reps reporting and rolling up to my region, yes.

21 Q And do you have ultimate authority for what occurs here
22 in Florida?

23 A I do.

24 Q How long have you worked at CoStar?

25 A I started at CoStar in late 1998.

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1 Q And what is your educational background?

2 A I have a B.S. in marketing from the University of
3 Bridgeport in Connecticut, and I have a master's in science
4 and real estate from Columbia University in New York.

5 Q Can you describe your background in the commercial
6 real-estate industry before joining CoStar?

7 A Sure. I was actually a commercial real-estate broker
8 myself for the first half of my career, approximately 12
9 years or so, with various firms, including running my own
10 tenant rep and landlord rep firms, Centurion Group.

11 Q And then at some point you joined CoStar?

12 A My first foray into commercial real-estate information
13 was kind of a fluke. I got a call from a headhunter asking
14 me if I was interested in going to work for Dow Jones, who
15 had started in the mid '90s as a competing service to the
16 beginnings of that business. It was a product called
17 Teleret that ultimately disbanded; and from those
18 experiences, I was recruited to come over to CoStar in '98.

19 Q And can you describe the various roles you've held at
20 CoStar?

21 A Sure. When I first started, I was a sales rep, senior
22 sales rep. I went -- within six months, I was promoted to
23 running the New York office, where I still have my -- my
24 office. I had various capacities at CoStar over the 12
25 years or so I've been here: Director and different

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1 configurations of geography.

2 I was even interim senior vice president of sales and
3 customer service for a year. So, I've been with the company
4 in various roles but all in service and sales.

5 Q As a preliminary matter, the Plaintiffs in this case
6 include both CoStar Group, Inc., and CoStar Realty
7 Information, Inc. Can you describe the distinction between
8 the two entities?

9 A Sure. CoStar Group is the holding company. CoStar
10 Realty Information, Inc., is the operating company.

11 Q And can you describe at a high level, what is it that
12 CoStar does?

13 A Well, CoStar provides, as you described earlier, a --
14 provides commercial real-estate information to the industry.
15 Being a broker myself before CoStar existed -- not to age
16 myself, but I can speak to the fact that it's -- you know,
17 the industry traditionally has been inefficient in terms of
18 flow of information. So, CoStar became essentially a
19 central clearinghouse of information where the business
20 model is it's free to list. So, if you want to get your
21 listings out, buildings for sale, space for lease, you would
22 put them in CoStar, and then it costs to subscribe then to
23 that data.

24 So, it kind of aggravates information and provides a
25 valuable tool that allows people to essentially spend less

1 time assembling and aggregating information and spend more
2 time doing deals, which is what brokers do.

3 Q Does CoStar do more than just collect other information
4 that others give it?

5 A Sure. We do a lot of proprietary work. Well, first of
6 all, we are a research and data company. What clients
7 receive comes through the Web, but it is essentially an
8 800-folks-strong research staff that compiles that
9 nationwide in the U.S. -- that compiles that information.

10 In the state of Florida, we have approximately 30
11 individuals whose job it is to update that information. So,
12 when you subscribe to CoStar, you're essentially, you know,
13 outsourcing that part of your business to those 30 people.
14 You get an instant 30-person research staff.

15 We also have proprietary images. We have basically two
16 forms of research. We have the folks who are calling and
17 updating information continuously, as well as the images in
18 the database. A lot of the images -- most of them that we
19 provide are taken by our field research vehicles. We have a
20 fleet of 150 research vehicles, Prius hybrids right now
21 actually, if the brakes are working, that run around taking
22 photographs of all of the -- all the research field
23 researchers are trained in landscape photography.

24 So, the images are particularly useful to clients.
25 Having been a broker myself, I can tell you when I used to

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1 run around and had my own company, taking Polaroids myself
2 and two-sided tape and doing my own booklets before CoStar,
3 which there was no CoStar when I was a broker, but I can
4 still appreciate the time savings it can provide today.

5 Too much?

6 Q That's fine. Thank you.

7 How does CoStar make money?

8 A We make money through our subscriptions. So, as was
9 indicated earlier, we charge at the firm level to a variety
10 of clients. Our core constituents are brokers and owners.
11 That's what are -- that's the vertical that we built the
12 business on, but frankly our client base extends to
13 financial institutions. We have interests in the debtor
14 equity to banks, regional, national, to the government, to
15 the FDIC, to the Feds, to economic development corporations
16 down here in Florida, to appraisers, tax-appeal units.

17 So, it runs the gamut from the transactional
18 professionals, the brokers, the appraisers and so forth all
19 the way up to investment banks and the government.

20 Q And how did CoStar as a business develop or evolve?

21 A We started -- started in Washington, D.C., by Andy
22 Florence, who is still our -- who had this idea that the
23 business was inefficient and that he could bring efficiency;
24 and we grew both organically through market expansion, as I
25 said. It started in Washington, moved up to some of the

1 large markets: New York and Boston, L.A. We did that
2 through either organic growth, data trades, local players,
3 small acquisitions, and a number of large acquisitions over
4 the years, such companies as Jamison out of Atlanta that
5 provided data and Georgia and Texas; comstock.com, which was
6 the genesis of our -- of our comparable sales database; NRB,
7 which was the beginnings and genesis of our retail
8 information.

9 Q And can you tell us a little bit about the types of
10 entities that license CoStar's services?

11 A Sure. As I said, we built the business, and they still
12 are our core constituents or the brokerage companies. In
13 Florida, you know, most of the larger and mid-size firms and
14 small firms subscribe to CoStar, because our pricing works
15 such that if you are a -- which I was at one point a
16 one-person shop. There is a price point for one person all
17 the way up to the large national firms like CBRE and
18 Cushman, Wakefield and JLL and so forth.

19 So, we strive -- I run sales, so we strive to get
20 everybody to be a client, if possible. But it was really
21 started and still is based upon the transactional
22 professionals and owners of properties.

23 Q You described some of the commercial entities locally
24 that are licensed. Are there other -- are there government
25 entities that also license CoStar products?

1 A In Florida we have a number of -- well, throughout
2 the country, but speaking of Florida, we have a number of --
3 Pinellas County, EDC, tax-appeal units. Everyone is using
4 the FDIC down here. A lot of the banks down here. Everyone
5 has a slightly different interest obviously than what a
6 broker would use the information for.

7 Government -- the FDIC, for instance, is trying to
8 unwind a lot of bad loans right now, and they're using
9 information to do due diligence on commercial properties
10 where those loans are held.

11 Q When you say they're using information, they're a
12 licensee of CoStar?

13 A They're a licensee or ours, a licensee of --

14 Q And you also referred to EDCs. Can you explain what
15 that is?

16 A Economic development corporations. That's also a large
17 client of ours across the country. Here in Florida we have
18 probably 14, 15. They tend to be local or municipal, by
19 city or county.

20 Q And you mentioned both Pinellas County and Tampa EDCs.

21 A Yes, they're both licensed here.

22 Q And how do these type of entities use CoStar?

23 A EDCs, economic development corporations -- obviously
24 their interests are in recruiting and retaining business in
25 their counties, in the municipalities that they're in. So,

1 they like to look at CoStar to keep an eye on space
2 available to help recruit, incentivize tenants to come into
3 their areas.

4 They also use the tenant base to look for tenants that
5 they might reach out to and offer -- if nothing else, winning
6 and dining them to their areas.

7 Q Roughly what percentage of commercial brokers in
8 Florida would you say are CoStar subscribers?

9 A Roughly about 90 percent of the firms, both small and
10 large, use CoStar.

11 Q And overall, how many subscribers does CoStar have
12 nationwide?

13 A Currently we have across that gamut of different
14 entities that are using our service -- we have about 15,000
15 client firms using the data. Ninety thousand individuals
16 with those firms are using our data.

17 Q So, 15,000 companies but 90,000 authorized users?

18 A Right. So, Cushman and Wakefield would be one entity.
19 Obviously they have thousands of individuals using CoStar.

20 Q And what is CoStar's renewal rate among subscribers?

21 A Traditionally over the last five years or so we've
22 averaged over 90 percent of renewal.

23 Q I want to shift to understand what it is that CoStar
24 does to create and maintain its products. How does CoStar
25 build its service?

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1 A As I mentioned earlier, we -- we have a number of
2 products, but we maintain those products with a staff of
3 800. Each market, each state, has a specific set of
4 researchers that are assigned to that state to make sure
5 they update the properties within the database.

6 So, in Florida, for instance, we are what we call -- we
7 take a defensive approach. We strive to track every single
8 commercial property in the marketplace; not just a subset,
9 not just a sample, but every property, small, large, all of
10 them.

11 So, the research -- we build a basic database, and then
12 the researchers -- the inside researchers are calling on the
13 owners and agents that control those properties, both the
14 space or for-sale properties, to update the pieces of
15 information that are changing, such things as the space for
16 lease, the building for sale, et cetera, as well as tracking
17 comparable sales and the field research component, which is
18 pretty extensive.

19 You know, you really can't get away from what we call
20 "boots on the ground," our version of that. As a young
21 broker, I would go out and knock on doors. Our version of
22 that is to send the Prius hybrid vehicles out.

23 Q So, CoStar is not just relying on public information --
24 publically available information to compile its service, is
25 it?

1 A No.

2 Q It's collecting information from other sources as well?

3 A We're collecting every piece of information possible.

4 We subscribe to a number of sources ourselves in terms of,
5 you know, aggregating the information at the onset; but the
6 real difference between what we do and some of the free
7 resources, for instance, going up to the Web and Googling or
8 whatnot, is the proactive research component: The fact that
9 there's people behind it, the fact that the people are
10 updating it. That's what people like, is the realtime
11 component to a transactional profession and the ability to
12 really extract that information very quickly.

13 Q Updating and verifying; right?

14 A And verifying, correct.

15 Q Let me talk about -- ask about these researchers for a
16 moment. How many researchers does CoStar have?

17 A Plus or minus 800 nationwide.

18 Q And what literally do these researchers do?

19 A Well, let's use Tampa-St. Pete, which is a market --
20 CoStar market. So, it's not just downtown Tampa. It's a
21 large geographic area that comes with that module of
22 information. There would be a team of researchers assigned
23 to that marketplace. I don't know the exact number, but
24 it's probably five or six people.

25 Their job is -- there's 30 in Florida. I am just

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1 extrapolating what they might be for Tampa-St. Pete. Their
2 job is -- they come in in the morning, and there is a subset
3 of properties that they are responsible for. So, it's very
4 systematic. We've been doing this for 20 years. They will
5 come in in the morning. They might have a universe of 500
6 properties and one researcher whose job it is to stay on top
7 of those properties, see ownership changes, see buildings
8 that have sold, to update the listings, to dispatch the
9 field research vehicles if there's been a renovation or we
10 need a better photograph.

11 Oftentimes our clients will ask us, you know, about the
12 owners of the building, "Can you go out and take a lobby
13 shot of that building?" So, they are not on calling
14 San Francisco one day, Dallas the next. They become
15 immersed in their local marketplace. They get to know the
16 players in that geography, and they're all highly trained.
17 They go through extensive training, what we call the CoStar
18 University, so that they know enough about real estate to
19 know what a square foot is, know what a cap rate is, so that
20 you get professionals on the phone that can sound
21 intelligent and actually carry on a conversation as they
22 garner information.

23 Q And do the research professionals have anything to do
24 with the sales side of the business --

25 A They don't, no.

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1 Q -- or the compliance side of the business?

2 A No. Their job and their focus is strictly in updating.
3 They do a great job.

4 Q Okay. Now, you also described that, apart from the
5 research professionals, there is a different category of
6 individuals by the name "of field representative
7 professionals."

8 A Right.

9 Q Can you describe for us what they do? They're the ones
10 in the Priuses; is that right?

11 A Yes. We have a -- it's pretty impressive when we're
12 doing sales presentations. I will often show a picture of
13 our dispatch center in Bethesda, Maryland, where we're
14 headquartered and what that is. It consists of about 150
15 screens. Each screen is -- is showing one of those vehicles
16 that's in a particular market. So, there's -- there's a
17 couple of field research vehicles that are assigned to
18 northern Florida.

19 They are sent out in a very systematic manner. They
20 do -- that's -- nuts and bolts, taking photograph. They
21 actually go to -- they will go to a retail center and count
22 parking spaces as one of the fields of data we track.

23 So, it's very systematic; and, you know, it pulls all
24 together into the -- into the product that comes to the
25 Internet.

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1 Q How quickly does the information they gather get into
2 the CoStar online database for customers?

3 A Sure. Whether it's field or inside research, research
4 that's updated today will be in the service tomorrow.

5 Q So, we described research professionals and field
6 research professionals. Is there a quality-control process
7 of -- so that in the event there's a conflict of information
8 or there's a problem with information, CoStar can catch it
9 somehow?

10 A Yes. We have two forms of quality control essentially.
11 One is there's a complete hierarchy of internal quality
12 control, people control, where each individual researcher is
13 assigned to a team leader, who's assigned to a manager.
14 Just like sales reps, they have meetings twice a week. They
15 review their work. There's a metric that they go through in
16 terms of -- in some ways like sales reps, no matter how many
17 calls they make, no matter how many updates they got,
18 et cetera. So, everything is measured in terms of their
19 effectiveness and how they are able to update the data.

20 Then we also have technology in the updates, in the
21 software that they use. We have a back-end system that the
22 clients don't see where they're entering the information.
23 Just a small example of that might be if a researcher is
24 compiling square footage on a property and it doesn't mesh
25 while they're on the phone. It will spit back an error

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1 message and tell that person who's trying to put two pieces
2 of space in a building on a floor plate it does not match
3 the square footage of that floor. So, something's not
4 right.

5 So, this is one example of many different checks and
6 balances we have in the system.

7 Q And those are all -- all technology-related computer
8 controls?

9 A Yes.

10 Q Where do the photographs come from that are in the
11 CoStar database?

12 A The majority of the photos are taken by us, by the
13 landscape-trained photographers in the research. They're
14 all watermarked with a CoStar -- what he call a "watermark"
15 logo in the bottom right.

16 Q And having been a commercial real-estate broker
17 yourself, how would you rate the quality of CoStar's photos?

18 A They're outstanding. You know, like residential real
19 estate, for clients, for prospects, for brokers and others,
20 it's still a visual business. We cannot replace the local
21 knowledge that a broker has; but even the best broker in the
22 market can't know every property in the marketplace, or they
23 certainly would not have a landscape picture of every
24 property to the degree that we would across the state of
25 Florida.

1 So, that brings, you know, a breadth of imagery that is
2 terrific, number one, to yourself, to your prospect; and
3 really when you're generating reports, which is really what
4 our brokers and our clients throughout our industry are
5 doing, is aggregating that information very quickly, both
6 for internal use and external use, to generate a report with
7 those photographs with the information they want to use.

8 Q So -- I want to understand that a little better, the
9 different ways that a broker who uses CoStar's service
10 can -- uses the photos that are on the service.

11 A I alluded before when I was getting ahead of our --
12 myself here, when I was a broker, as an example, I had my
13 own firm, Centurion Group. What we would do -- I was a
14 tenant rep broker, and the process would be you would go out
15 and sell yourself essentially in representing a tenant to
16 find space; and as part of that process, you would do a
17 space showing.

18 When you did a space showing, you would do it in a
19 systematic manner. You'd go out and tour four, five, seven,
20 eight buildings, whatever it is, and you would -- you would
21 deliver -- or at least I would -- a professional receivable
22 to that client of the buildings that we were going to visit
23 that day with the pertinent information: The space
24 available, the asking rent, et cetera.

25 The critical component of that is the image. So, when

1 I was a brokerage with my own firm, our -- some of the other
2 firms I worked for I literally would run out and shoot
3 photographs myself with a Polaroid camera, which would take
4 hours, and I'm not the best photographer. I would get the
5 two-sided tape, and it would take me days and days to put
6 together that report in order to go out and professionally
7 show space to that prospective client.

8 Q So, using CoStar, how does a broker avoid doing what
9 you used to do?

10 A That really is the value proposition. You know, I --
11 one of the reasons I am working here, I believed when I came
12 here in '98 in what CoStar was offering, having lived
13 through painfully myself having the ability to aggregate
14 that stuff.

15 You can do it. It's just a matter of taking a lot of
16 time. Example: When I was -- in that example of showing a
17 space to a client, first of all, you need to know what's
18 available. You have your local market. Now, it's
19 continually changing. Those researchers we're talking about
20 are changing those things on a 30- to 45-day proactive
21 cycle, meaning that they're in touch with every agent on
22 every space every 30 to 45 days.

23 I used to use a book called *Black's Guide*. It was the
24 only thing that was available at the time. There was no
25 CoStar, as I mentioned, for me. So, I'd make phone calls.

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1 It would take me days to cull my list down of the properties
2 that I wanted to show my -- my client space in; and then
3 with CoStar now, literally -- you still have to make the
4 calls. You have to confirm -- it can bring that list down
5 from days to literally minutes or an hour or so to produce a
6 report, make your calls.

7 So, the whole value proposition is to increase your
8 velocity of deals. If you can do one deal a month as an
9 agent by spending less time researching, you know, I believe
10 that the product more than pays for itself.

11 Q How much does all of this cost? How much does CoStar
12 spend annually on building and maintaining its service?

13 A Accumulatively we spent more than a billion dollars to
14 date delivering what's in the national database. On an
15 average basis, our research budget is \$120 million.

16 Q Does CoStar ever license individual brokers to access
17 its service?

18 A No. For our professional products, they're all
19 licensed at the firm level. I mean, the way it works is
20 that the agents that -- the sales reps, rather, that work
21 for me and managers are all trained as well in pricing
22 methodology. A transactional professional firm is, as we
23 discussed earlier, licensed at the firm level.

24 So, a firm like CDR NRT would license "X" amount of
25 sites.

1 Q When you say CRDNRT, are you referring to Coldwell --

2 A Coldwell Banker. They will have licensed "X" amount of
3 sites on the front end for "X" amount of users. I believe
4 in the marketplace here it was nine sites.

5 Q By "sites" you mean --

6 A Offices. There were nine separate -- there might be
7 one person in an office, two people in an office. That's
8 set out in the license agreement, sites and agents. So,
9 you -- as an example, you'd have CB -- I will refer to them
10 as "CB" had nine sites. I believe it was 37 users in
11 northern Florida. Their license -- it's a minimum one-year
12 agreement.

13 Just to answer something that came up earlier, if
14 someone leaves the firm, we -- we don't -- the license is in
15 place. And I am actually correcting you even. We don't
16 typically renegotiate in the middle of the term. We would
17 renegotiate at renewal.

18 As a matter of fact, if we licensed a firm for ten
19 folks and then they added two people, we don't go back to
20 them in the middle of the term and say, "Hey" -- unless they
21 come to us, we don't say, "You have to pay for two more
22 people." Typically we'll address that at renewal.

23 So, whether it's downsizing or adding folks, the
24 turnover of typical -- you have your people who have been
25 around a long time, but the turnover of typical brokerage

1 firms can be rather high with the associates. It can be 40,
2 50 percent a year.

3 MR. OPPENHEIM: Your Honor, my apologies. I stand
4 corrected by the witness for my earlier statement.

5 BY MR. OPPENHEIM:

6 Q Sir, I want to come back to the concept of licensing
7 individuals. Why is it that CoStar doesn't license
8 individual brokers?

9 A Well, first of all, I don't think we'd still be in
10 business if that was our business model at this point. I
11 just mentioned that we spent \$120 million a year in updating
12 this information that is valued by our client base.

13 So, what we're trying to get is an effective head
14 count; otherwise, the information would be shared: Everyone
15 would take one license; they'd put a work station in the
16 corner; and they'd share that information. The pricing --

17 Q That's not allowed?

18 A That's not allowed. I will give you one example of
19 that. When we opened in the late '90s in New York City,
20 Cushman, Wakefield decided, "Okay, we're going to" -- they
21 had a staff themselves of 30 researchers doing what we did.
22 And they said, "Okay, we're going to try CoStar, but we want
23 one license."

24 We said, "If that is the way -- we're not going to tell
25 you how to run your business; but if you want one license at

1 the head researchers' desk, fine," but we charged them for
2 150 heads, which is what the license count was there at the
3 time.

4 Q Let me just make sure I understand that. There is one
5 license where they had one authorized user, but the cost was
6 based on every sales associate in the office?

7 A Right. The term we use is "beneficial users." So, all
8 of your sales reps and all of your management is charged
9 with getting the beneficial user head count. It's not one
10 for one. So, if you have a one-person shop, one person --
11 and we do have a lot of those, by the way, small entities
12 out there -- and then you have five, it's not five times
13 one. There's a declining rate per user as you add more
14 heads.

15 Q So, the 20th user won't cost as much as the second
16 user?

17 A That's correct, or the 19th.

18 Q So -- and is there also other elements in determining
19 what the costs are involving the services and the geography?

20 A Yes. We have several different products that clients
21 can subscribe to, as well as geography. A typical --
22 sticking with the broker/owner vertical, a typical
23 broker/owner is, you know, for the most part experts in
24 their market, and they will subscribe to the marketplace
25 where they reside.

1 Some might -- in Florida we have -- we have an offering
2 where we actually give them the state of Florida. Brokers
3 are licensed by the state, so they're licensed to transact
4 in that state.

5 I believe also -- and we've done studies on this. As
6 an example, when I started as a broker, I was a broker of
7 Wall Street Manhattan, which is downtown. We didn't even go
8 to midtown. It was almost like a different city. And
9 internal studies that we're done have shown that CoStar has
10 allowed brokers to increase their geographic coverage
11 because they can gain more of a knowledge of the building
12 set in order to work with their client base.

13 Q And do the licenses themselves specify the individuals
14 at the companies who can use the service?

15 A Yes. When we set out on a license renewal, it will
16 specify, as I said, the site. It's typically one site or
17 two sites to a midsize firm -- you might have one office or
18 two offices -- and the amount of individual licensees.

19 As part of that process, we actually have a form where
20 we list the users, their contact information, their e-mail
21 addresses, fax numbers, et cetera, phone numbers. So,
22 they're all specified right in the agreement.

23 Q And those users are called "authorized users"?

24 A Authorized users, correct.

25 Q And can an authorized user work for a different company

1 or an additional company than the one that's licensed?

2 A Not under that agreement, no. They'd have to be
3 licensed at their new company.

4 Q And so -- but would CoStar allow a user to be licensed
5 under one company and use the service for another company?

6 A Absolutely not.

7 Q Does CoStar use brochures and marketing material to
8 help explain its products?

9 A Absolutely, yes.

10 Q I believe there are binders at your feet. I'm sure
11 they have the exhibits we'll be using in this case, and if
12 you might pull out Exhibit 39.

13 (Changes overhead exhibit.) Do you see that
14 document?

15 A Yes, sir.

16 Q Can you describe what this document is, please?

17 A This is a document that sales reps use and that they
18 might leave behind with a prospect, as well as it's on our
19 Website; and it's describing five products here, three main
20 products -- Property Professional, Comps, and Tenant -- and
21 two other products, MLS and Connect.

22 Q And you're referring to the products that are listed on
23 the right-hand side of the document?

24 A Yes.

25 Q Where is this document available?

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1 A It's available in all the sale offices as a marketing
2 material for the sales rep to leave after a sales meeting or
3 demonstration or to send out, as well as that's on the
4 Website.

5 Q By "on the Website," you mean CoStar?

6 A CoStar.com is a public Website that has a lot of
7 information, marketing materials for folks that don't know
8 about us, as well as it's the access point and portal for
9 clients and their paid subscriptions.

10 Q I'm sorry?

11 A For paid subscriptions, you go to CoStar.com and put in
12 your user name and password.

13 Q My apologies. Is this a document that CoStar maintains
14 in the ordinary course of its business?

15 A Yes.

16 MR. OPPENHEIM: Your Honor, we'd move the
17 admission of Exhibit 39.

18 MR. GIBSON: No objection.

19 THE COURT: Be admitted.

20 (Defense Exhibit 39 was received in evidence.)

21 BY MR. OPPENHEIM:

22 Q Mr. Alliegro, using this document as a guide, can you
23 walk us through the primary products that CoStar offers?

24 A Sure. The first one -- we refer to it as our flagship
25 product. Our first product, the product that we built the

1 company on is CoStar Property Professional.

2 Q You're now looking at the second page of the document?

3 A Yes. This is mentioned earlier, the inventory
4 database. By "inventory" I mean that we strive to track
5 every single building and every single market, every single
6 building being office, retail, and industrial. This is not
7 a residential database. This is strictly a commercial
8 database, obviously.

9 So, this is the database that tracks approximately 215
10 fields of information on each property. It is the database
11 that would have ownership information. It would have the
12 space available. It is -- it is -- if you're going to
13 subscribe, typically if I was on a sales call and talking to
14 a broker -- frankly, to most folks, unless you're an
15 appraiser, this would be the one product that you would
16 subscribe to if you're only going to take one.

17 Q Okay. And what is the next product?

18 A The next one is CoStar Comps. I mentioned early on how
19 we grew. One of the acquisitions we made in 1999 was
20 comstock.com, which was a company out of San Diego, which
21 was a public company at the time. That was the genesis, the
22 beginning of this product. This is a comparable sales
23 database.

24 In here we're tracking buildings that have sold. So,
25 it's not -- it's those three food groups I talked about --

1 office, industrial, and retail -- but we're also tracking in
2 here multi-family, investment-grade real estate, golf
3 courses, you name it. Anything that's transferred, we're
4 picking up here.

5 We are a little different than other -- there a
6 services around the country that do this. For that matter,
7 you can go to the county courthouse and pull a deed yourself
8 for free, if you were so inclined. What we do here is our
9 research staff, one of the team in Florida, for instance,
10 those 30 folks when they come across a sale, they will pick
11 up the county courthouse deed, as well as a genesis, but
12 then we spend eight to 12 hours per record, what we call a
13 "published record" in this database.

14 So, there's a lot of work that goes into it: Talking
15 to the buyer, talking to the seller, talking to the lender,
16 putting lot of information in there besides putting those
17 photographs in, besides just the fact that the building sold
18 for three million.

19 Q If you go to the county courthouse to pull the data, it
20 won't have photographs to tell you what the building looks
21 like, will it?

22 A No. You can do that for free. You know, as an example
23 of that I mentioned earlier --

24 THE COURT: You answered the question.

25 THE WITNESS: What was the question?

1 THE COURT: No. You answered the question when
2 you said "no."

3 BY MR. OPPENHEIM:

4 Q Let's turn to the next product that you said was the
5 third major product. Can you describe that, please?

6 A Sure. CoStar Tenant is the tenant database. This is
7 where we are collecting the tenants within the property.
8 It's not a rent roll, meaning it's not the owner's exact
9 listing, but we strive to get the stacking plan of tenants
10 within property, as well as about 30 to 40 percent,
11 depending on the market, of lease expirations.

12 All these products work together. If you were to
13 subscribe to them, they would all work together with a
14 central database.

15 Q I want to turn now to talk about some of the specific
16 reports that one can access on CoStar.

17 THE COURT: When you reach a convenient stopping
18 place, we will take a break.

19 MR. OPPENHEIM: We can stop here, Your Honor, if
20 you'd like.

21 THE COURT: All right. Let's take a 15-minute
22 break.

23 COURT SECURITY OFFICER: All rise.

24 (Recess from 10:30 a.m. until 10:46 a.m.)

25 THE COURT: Proceed.

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1 MR. OPPENHEIM: Thank you, Your Honor.

2 BY MR. OPPENHEIM:

3 Q Mr. Alliegro, could you please turn to Exhibit 41.

4 A (Complies.)

5 Q Let's do Exhibit 40 since I have that up. You have a
6 copy of that in front of you?

7 A Yes.

8 Q Can you describe what this document is, please?

9 A This is a marketing piece as well outlining a couple of
10 sample reports out of Comps -- CoStar's Comps product.

11 Q And is this a product that CoStar created?

12 A Yes, it is.

13 Q And CoStar distributes this to clients and prospective
14 clients?

15 A Yes.

16 Q And it's available on its public Website?

17 A Yes.

18 Q And is that CoStar's logo in the upper left-hand
19 corner?

20 A Yes.

21 Q Is this a true and accurate copy of that document --

22 A Yes, it is.

23 Q -- that CoStar maintains in the ordinary course of its
24 business?

25 A Yes.

1 MR. OPPENHEIM: Your Honor, I move the admission
2 of Exhibit 40.

3 MR. GIBSON: No objection.

4 THE COURT: Be admitted.

5 (Defense Exhibit 40 was received in evidence.)

6 BY MR. OPPENHEIM:

7 Q Mr. Alliegro, could you briefly explain using this
8 document what kind of reports CoStar can generate for
9 clients out of its Comps product, and maybe we can start
10 with the report on the first page of this document.

11 A Sure. CoStar has in its overall product more than 200
12 different reports that you can generate. This is an example
13 of what we call the classic one-page report. The first one
14 on page 1180, this is an individual comp sale. So, you can
15 see the fields of information that we're tracking that go
16 well beyond just a public deed, such things as cap rate, the
17 income, percent down, et cetera.

18 So, this is a widely used comp-sale report by both
19 lenders, brokers who are -- work in investment sales, and
20 the appraisal industry.

21 Q And the photo contained on the report like this would
22 be a CoStar photo?

23 A Yes. All these are photos taken by us.

24 Q And on the lower left-hand corner of the document
25 (changing overhead exhibit), is that your logo here? You

1 see that?

2 A Yes.

3 Q Can you explain what that means?

4 A Sure. Clients -- the 90 percent or so that are using
5 CoStar still want to brand their deliverables with their own
6 logos for the most part to their prospects and clients. So,
7 that's our made-up marketing logo; and often, you know, in a
8 sales presentation we'll indicate that that is where your
9 logo would go.

10 Nowhere on this report -- actually if you'll notice --
11 you probably can't see that up there at the bottom -- it
12 says, "This copyright report contains research licensed to
13 CoStar Group." That's because we produce it. That would
14 actually say the client's name. It would say "licensed to
15 CBNRT" in this case.

16 So, the clients love that, because it's branded with
17 their company on it, their logo; and to the prospective
18 client, it looks like they spent a lot of time putting this
19 together.

20 Q Can we turn to the next page of this document?

21 A (Complies.) This is a multi-property per-page sample
22 in this case. So, again, often if you're valuing a property
23 for sale, either on the buyer or seller side you want to get
24 a sense of what, you know -- what the buy price and sale
25 price should be for the appraisal, if you're doing an

1 appraisal.

2 The client would do the analysis, but this would
3 generate in this case a sample very quickly of nine
4 properties that can be aggregated very -- in a very quick
5 manner.

6 Q And this would help inform the broker of the sale of
7 comparable properties?

8 A Sure. I mean, you -- number one, for your own
9 knowledge, you have to get a sense of where the market is at
10 any particular time. Markets are always moving, but also,
11 you know, a professional smart broker is going to make a
12 case to their client using data such as this.

13 Q Can we please turn to Exhibit 41?

14 A (Complies.) I have it.

15 Q You have that in front of you?

16 A Uh-huh.

17 Q Can you please describe what this document is?

18 A Yes. This is a comparable piece. We were just looking
19 at Comps, the second major product. This is the flagship
20 product, Property Professional. In this case we have six
21 sample reports of the type of output that can be produced
22 right out of the Property Professional database.

23 Q So, this is a marketing piece that CoStar uses to
24 demonstrate the types of reports that come out of the
25 property product?

1 A Right.

2 Q Was that a "yes"?

3 A That's a "yes."

4 Q Is this a document that's been created by CoStar?

5 A Yes.

6 Q And that's CoStar's logo on the top?

7 A Yes.

8 Q And is this a document that CoStar maintains in the
9 ordinary course of its business?

10 A Yes.

11 MR. OPPENHEIM: Your Honor, we'd move the
12 admission of this document.

13 MR. GIBSON: No objection.

14 THE COURT: Be admitted.

15 (Defense Exhibit 41 was received in evidence.)

16 BY MR. OPPENHEIM:

17 Q Mr. Alliegro, I would like to do the same thing we did
18 a moment ago with the last one and get a sense of just a
19 couple of types of reports that this product can provide to
20 clients; and in that respect, if you would turn and look at
21 the first page of this document and walk us through what
22 that report shows and how it's useful to a client.

23 A Sure. This is the classic one-page report for the
24 Property Professional product, similar to the one we were
25 looking at with the Comp product.

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1 The typical use of this would be for -- I talked a
2 little earlier about a leasing tour where you're going out
3 and showing five, six properties to a prospective client.
4 You would do a search within the product, come back with a
5 space meeting your criteria, space they're looking for, and
6 then you put this in a certain order; and brokers that I've
7 worked with would leave this behind, number one, when
8 they're going on the tour -- for their knowledge first and
9 then when they're going on the tour and leave it with the
10 client.

11 Q So, this is something that brokers would use both to
12 educate themselves and as a marketing piece and a tool with
13 their clients?

14 A Yes.

15 Q Let me turn you to -- actually, turn to the second
16 page. I notice that this document is called a "classic
17 one-page report," but when I turn the page, it seems to
18 continue; is that right?

19 A Well, in this case it's actually showing all the space
20 that's available in this property for lease. All this
21 information can be tailored. So, for instance, if you just
22 want to show one of these units in your output, you know,
23 you would tailor that to what you want to show your client.

24 I think the key to all these reports for our client
25 base when we're trying to sell the product is nothing is

1 locked in the system. It's not just software that you're
2 looking at on your computer. It is the ability, number one,
3 to educate yourself and, secondarily, more importantly, in
4 my opinion, to produce output to your clients and prospects.

5 Q Now, earlier we discussed that the content in the
6 CoStar system isn't just raw factual data that's collected
7 from public sources but also includes additional
8 information. Is that the type of information that's located
9 under the building notes here, for instance, here on this
10 page?

11 A Yes. You know, we're tracking a lot of information I
12 mentioned. It is not all here in the product. That's about
13 215 fields of information. A lot of it is public. A lot of
14 is proprietary. A lot of it is a narrative that our
15 researchers will write about a particular property. It's
16 also the classification. It's a number of things that --

17 Q Let me interrupt you there for a minute. When you say
18 "classification," going back to the first page, is that the
19 classification that appears there (pointing) on the
20 right-hand side of the --

21 A Right, in the upper right. It's -- it's a -- this is
22 more of a subjective classification. We use a very
23 stringent methodology to arrive at a classification of a
24 building: An "A" building, a "B" building, "C" building.
25 So, that is something that -- that we are do ourselves in

1 terms of the classification of particular properties.

2 Q Very well. I'd like to turn, if you would, to the
3 page -- the page number -- the number on the lower corner of
4 it that says "CoStar 0000011194," if you could. I don't
5 think we need to go through every page of this document.

6 A Again, you want me to describe this?

7 Q Yeah, if you could describe what this report is and
8 what it does and how it's useful to a broker, please.

9 A Yes. It's just another form of report like we're
10 looking at before with Comps, buildings that sold. This
11 would be done for a lot of different reasons, but let's stay
12 with the broker.

13 One of the primary brokerage usages of a material like
14 this would be very quickly to deliver multiple buildings per
15 page so you can view, in this case, four buildings per page
16 with a quick thumbnail sketch of photographs that we took
17 with the availability, asking price, and you can actually
18 see contact information and a narrative that we might have
19 on the property.

20 Q And this is a document which could be, as it is here,
21 many pages with many photographs; is that right?

22 A Yes. There's lots of variations of this mapping,
23 aerials, a number of different things that you can do to
24 tailor the product.

25 Q Very well. Mr. Alliegro, are you familiar with

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1 CoStar's quarterly and annual market reports?

2 A Yes.

3 Q What are they generally?

4 A In every market that we are in, which is approximately
5 54 markets across the U.S., we produce quarterly market
6 reports. They are basically CoStar's research staff putting
7 together activity in the market in the three major food
8 groups that we're tracking: Office, industrial, and retail.
9 And they're put out a week to ten days after the market is
10 closed. They tend to be 30 to 50 pages in length.

11 Q And what CoStar services make these market reports
12 available?

13 A CoStar Property Professional.

14 MR. OPPENHEIM: With opposing counsel and the
15 Court's indulgence, I am going to try to deal with these in
16 bulk to move things along. I would ask the witness to look
17 at Exhibits 11, 12, 13, and 22 (changing overhead exhibit).

18 BY MR. OPPENHEIM:

19 Q Mr. Alliegro, are these the quarterly and annual market
20 reports we were referring to -- examples of quarterly and
21 annual market reports?

22 A Yes. I should have added that we do a year-end, and
23 this is a year-end 2007, Tampa-St. Pete office market
24 report.

25 Q And by that, you're referring to Exhibit 11?

1 A Yes.

2 Q Okay. And Exhibit 12 is the first quarter of 2007
3 office report for the Tampa-St. Petersburg office market?

4 A Yes.

5 Q And Exhibit 13 is the year-end 2007 Tampa-
6 St. Petersburg industrial report as opposed to office
7 report; is that correct?

8 A Yes.

9 Q And then Exhibit 22, the second page of which the
10 attachment to the e-mail is the year-end 2006 Tampa-
11 St. Petersburg office market report; is that correct?

12 A Correct, yes.

13 Q Now, with respect to all of these documents, were all
14 of these office reports and industrial reports -- were they
15 created by CoStar?

16 A They were, yes.

17 Q And are these four exhibits accurate copies of those
18 market reports?

19 A Yes.

20 Q When CoStar publishes them, are they in black and white
21 as these are here?

22 A No. These are poor copies in black and white. They're
23 all in color. They -- they can be output in PDF, or they
24 could be printed in color as well.

25 Q Or just downloaded in red?

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1 A Yes.

2 Q And are these documents that CoStar maintains in the
3 ordinary course of its business?

4 A Yes.

5 Q Do they all maintain CoStar's logo?

6 A Yes.

7 MR. OPPENHEIM: We would move these into evidence,
8 Your Honor.

9 MR. GIBSON: 11, 12, 13, and 22 or the color
10 versions?

11 MR. OPPENHEIM: 11, 12, 13, and 22 in their
12 correct version.

13 MR. GIBSON: No objection.

14 THE COURT: Be admitted.

15 (Defense Exhibits 11, 12, 13, and 22 were received
16 in evidence.)

17 BY MR. OPPENHEIM:

18 Q I'd now like to turn to Exhibits 42 -- 42 and 43. And
19 so, is Exhibit 42 the first-quarter 2007 office report for
20 the Tampa-St. Petersburg office market?

21 A Yes.

22 Q And is this just a color version of the exhibit we were
23 looking at a moment ago?

24 A Seems to be, yes.

25 Q And Exhibit 43 is the year-end 2007

1 Tampa-St. Petersburg office market report?

2 A Correct.

3 Q And again, it's just a color version of the prior
4 exhibit?

5 A Yes.

6 MR. OPPENHEIM: We'd move these in evidence.

7 MR. GIBSON: No objection.

8 THE COURT: Be admitted.

9 (Defense Exhibits 42 and 43 were received in
10 evidence.)

11 BY MR. OPPENHEIM:

12 Q Let's -- Mr. Alliegro, what I'd like to do, I don't
13 want you to go through all these documents or go through
14 them in too much detail, but let's just take the color
15 version of the first quarter of the 2007
16 Tampa-St. Petersburg office market report document, and what
17 I'd like to do is briefly go through that document and
18 understand what is the -- what is in these office reports
19 and how does it facilitate -- one moment.

20 (Pause.) So, starting at the beginning of that
21 document, if you would, Mr. Alliegro.

22 A You want me to describe it?

23 Q Sure.

24 A So, this is a typical quarterly report, and it's -- as
25 you indicated, we've been looking at -- this is specific

1 information on specific properties. This is now rolling up
2 an entire quarter of information that we're tracking, in
3 this case the Tampa-St. Pete office market, the first
4 quarter, 2007. Just leafing through the table of contents,
5 we talk about methodology, terms and conditions.

6 One thing to note: On this page, 1210, we talk about a
7 classification. It will actually describe their -- how
8 CoStar comes up with its classification of buildings. I
9 kind of made a joke about it. The owners always want to be
10 an A, B, or C, but we do it very systematically. It's a
11 quick description.

12 But when you get into the meat of the report, on page
13 1212, this is the -- you know, this is the narrative that
14 our researchers are taking information and -- and kind of
15 in a -- you know, our clients love these reports, because as
16 soon as they're delivered, they can read through this and
17 get a sense of what's going on in their marketplace, be
18 smart, be educated, communicate that to their clients and
19 prospects.

20 In this case, it's kind of interesting. In 2007 we had
21 an 8.2 percent overall vacancy rate. I'm sure we'd love to
22 have that here now. So, it goes through a lot of
23 information here. You know, it's talking about -- because
24 we're tracking every property, everything that's going on,
25 and we have a wealth of information. All this is

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1 essentially doing is -- the research team is pulling it all
2 together, and this will be delivered to the clients who
3 subscribe in the Tampa-St. Pete market, Property
4 Professional, the largest lease signing, rental rates; and
5 then we go into a lot of detail, market by market, submarket
6 by submarket. First we offer a bunch of employment industry
7 information, just basically pulling it all together.

8 Q What page are you on, sir?

9 A I am actually now starting to get into the meat of it.
10 1218. This will also show you the -- I was talking about
11 earlier the breadth of coverage in a market like Tampa-
12 St. Pete that we're covering. So, these are the different
13 areas that we're covering.

14 It's kind of interesting here just looking at this
15 report, too, that's -- this is talking about an amount of
16 square feet that was delivered that quarter or under
17 construction; and I can barely read this, but it's saying
18 percent preleased: 71 percent, 55 percent. Those were good
19 times.

20 So, we're basically rolling up all of this.

21 The next page has a lot of historical information. And
22 again, all this information is delivered in a timely manner,
23 select-to-date deliveries, buildings that have been built,
24 when we were building, under-construction properties, all of
25 your thumbnails.

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1 Then starting on page 1223 is when we start to get into
2 very detailed market statistics, and we're breaking -- in
3 this case breaking it out by class. All this -- all of this
4 kind of reporting can be done in the product itself, but
5 this is kind of us doing it for you.

6 Q Let me just pause there. So, when you say "breaking it
7 out by class," you're looking on page 1223, and you've got
8 Class A market stats, Class B, Class C, so on, and then you
9 break it out more -- in a more detailed way geographically;
10 is that right?

11 A Right. If you look at the first line on here, Class A
12 marketing statistics, you rapidly see, I think, why it takes
13 30 people.

14 Q Hold on a second so we can all see it. Enlarge it.
15 Otherwise it's too small.

16 A Sure. So, as one example here -- so, in central Tampa,
17 we're tracking 51 Class A properties. That is the universe
18 that that researcher would be responsible for in that
19 geographic area, 12 million square feet. Then as you go
20 across here, it talks about the coded rent rolling up that
21 subset of properties.

22 So then as you go through here, we break it out by
23 class: A, B, C. It's just really great information. Our
24 clients love this stuff. They share it both internally as
25 well as with their prospects and clients.

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1 And then we go on; and the next page, 1224, is really
2 finite submarkets: Manatee where we have three buildings,
3 S, A, P buildings. So, it will break it all out for you
4 with all the absorption, vacancy rates, total square-foot
5 vacancy.

6 CoStar is also tracking sublet availability, which is
7 something that's unique to us as well in terms of an
8 information provider.

9 So, it's a very detailed report. This one looks to be
10 40 or so pages long, and --

11 Q I want to turn to page 1232 a little further in and
12 skip a few pages here. Can you describe what this page and,
13 I guess, the subsequent couple of pages show?

14 A Right. So, again, all of this is in the product. You
15 could have picked this up out of CoStar Comps, but this is
16 aggregating it. It is -- it's -- you know, putting it in a
17 report, the top sales in the marketplace in that quarter
18 with a photograph that we had taken. So, we have nine of
19 the top sales here of properties rolled up for you at your
20 fingertips.

21 Q So, we just went through the market reports. We've
22 talked about some of the sample reports. Does CoStar --
23 does the service also maintain separate information pages on
24 individual properties?

25 A Yes.

1 Q Could a broker search particular addresses or locations
2 to -- to reference those pages?

3 A Yes. One of the most used and simplest functions of
4 our software frankly is a look-up where you would just look
5 up an individual property and bring back everything CoStar
6 knows about that property.

7 Q Let me ask you to turn to Exhibit 36, please. Let's
8 just start with the basics here. This is a multi-part
9 exhibit. What's --

10 A There's nothing under 36 here. Oh, 36A, I am sorry.

11 Q Okay. Exhibit 36 -- rather than have 41 additional
12 exhibits, what we did is Exhibit 36 has A through OO?

13 A I am a little slow on the uptake.

14 Q I apologize. I should have explained it. We were
15 doing it so we would handle the exhibits in bulk. But let's
16 just -- if you would look at these -- the tabs of this
17 exhibit generally, please.

18 A Yes, sir.

19 Q Do these tabs include the property pages that you just
20 described -- the individual property pages you just
21 described?

22 A Yes, it looks to be.

23 Q And the photos that appear on those pages?

24 A Yes.

25 Q And are these accurate copies that come from the CoStar

1 database?

2 A Yes.

3 Q Along with the addresses that are referenced in those
4 databases?

5 A Yes.

6 Q And are these documents that CoStar maintains in the
7 ordinary course of its business?

8 A Yes.

9 MR. OPPENHEIM: We would move the admission of
10 this exhibit.

11 MR. GIBSON: The entirety of 36?

12 MR. OPPENHEIM: Yes, the entirety of 36.

13 MR. GIBSON: No objection.

14 THE COURT: Be admitted.

15 (Defense Exhibit 36 was received in evidence.)

16 BY MR. OPPENHEIM:

17 Q I don't want to go through every tab here, but let's
18 just --

19 A Thank you.

20 Q -- let's just pick down to 36C, if you would, as an
21 example; and I think there are four pages to this. If you
22 could just walk through (changing overhead exhibit) what
23 these pages are, please.

24 A 36C, sure. So, 935 is a typical photograph. It looks
25 to be -- I don't know what this building is. It looks to

1 be, you know, a -- an office building. You can see the
2 quality. These are very high res-- resolution photographs.

3 The second page here, 936, is actually a screen capture
4 of what your researcher would use. So, this is not
5 delivered to the CoStar client. This is what we call our
6 "Enterprise Internal System Production Database." You see
7 it says that on the upper left-hand corner.

8 So, a researcher who is responsible for this product,
9 typically they'd come in, and they have a universe of, say,
10 500 buildings that they are responsible for updating.

11 They would come in in the morning; and, you know,
12 they'd be prompted for this set of buildings, these updates
13 that day. So, here it's telling them exactly the building
14 that needs an update. This is kind of inside baseball how
15 we make it, so to speak, with the research staff.

16 Q Let's turn to the next page.

17 A So -- in the deliverables; right? So, this is a screen
18 capture of the actual product. We --

19 Q When we say "deliverables," this is what is available
20 for CoStar's clients?

21 A (Nods head.) Right. So, this -- this happens to be a
22 building in Tampa. If you were a -- CBNRT, Mr. Bell would
23 have had access to this screen as a client of CBNRT, and
24 what you see here is the entire system is set up on what we
25 call a "tab card system." So, you have 12 different tabs.

1 It's hard to see on this screen, but --

2 Q You're referring to --

3 A The space overview is one that's lit up right now, and
4 what it's showing me down below is space that's available in
5 that product, in that property; and each -- behind each one
6 of these tabs is a wealth of information. I mentioned
7 before there are 215 fields of information. This is where
8 it all resides on individual property.

9 The power is, number one, you know, the typical broker
10 who has a -- you know, a for-sale or for-lease. We'll stick
11 with the for-lease. Representing someone looking for space,
12 we would go in the system and say, "I'm looking for 5,000
13 square feet in this geographic range." Bang. Bring back
14 12, 15, whatever it is, result sets that meet his criteria.
15 And then he or she would begin to go through these tabs, use
16 their own intelligence, market knowledge, which we can never
17 relace, and determine very quickly what it is that they want
18 to further advance with their client.

19 So, behind each one of these tabs there is information.
20 Just as one example, the property tab is -- is where the
21 researchers would have some narrative written about the
22 property, the kind of amenities it has, you know, whether it
23 has a coffee shop, et cetera.

24 So, the researchers are actually getting additional
25 information besides just the fact that it is a property that

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1 has "X" amount of square feet available.

2 The company tab is a wealth of at-your-fingertips
3 contact information: Who is the broker, who is the owner
4 who's handling the sublease if there was a sublease in the
5 building.

6 One of the things our clients love about CoStar is the
7 fact that you can communicate right within the product. So,
8 you can click on a little box that would send an e-mail to
9 the person handling the property and say, "Is this still
10 available? Can I come see it tomorrow?" or whatever.

11 So, there's a lot of information here. Each one of
12 these tabs has a separate piece of information. The comps
13 tab, for instance, if the building had sold in the -- since
14 we've been tracking Tampa, there would be -- actually,
15 the -- there would be a series of comp cards here of
16 comparable sales information.

17 Q If a user wanted to enlarge the photo in order to see
18 a -- a better quality, could they do that?

19 A Yes. You see the images tab, the fourth one up at the
20 top? That's where we archive -- it's not just one image, by
21 the way. A property like this, which looks to be, you know,
22 it's a Class A property, high -- high-exposure property. We
23 probably, you know, have three or four photos. We'd have a
24 lobby shot. We'd have floor plans, a wealth of anything
25 that -- you know, we've been doing this for years. So, as

1 we archive stuff, it all gets aggregated and stored.

2 Q Mr. Alliegro, could a commercial real-estate broker get
3 all of the information they need to do what they do in
4 business simply from public-record sources?

5 A Well, they could -- they could get a lot of what we do.
6 I did it before CoStar existed. The world survived without
7 CoStar. It would take a lot of work. I would argue that
8 you wouldn't get the ability to track the amount of
9 properties that we're tracking. It's next to impossible. I
10 don't care how large a firm you are. There's a reason that,
11 you know, the folks who probably could afford what we do and
12 some --

13 THE COURT: That's a "yes"?

14 THE WITNESS: That's a "yes."

15 MR. OPPENHEIM: Thank you, Your Honor.

16 BY MR. OPPENHEIM:

17 Q Could a commercial real-estate broker simply rely on
18 listing services and not use CoStar?

19 A By listing service --

20 Q A listing service, a bulletin-board-type service?

21 A A bulletin-board service, a listing service that I'm
22 aware of, is just that. They're bulletin boards, meaning
23 that the brokers are responsible for posting an exchange as
24 opposed to a proactive research tool.

25 Q So, let me ask, why is it -- so, let me ask the

1 question again: Could somebody rely on just those services
2 and be a commercial real-estate broker?

3 A Sure.

4 Q And what would be the impact on their business?

5 A My opinion from being a professional in this side of
6 the business now is that you would be spending a lot of time
7 culling information, collecting information, screening
8 information, rather than doing deals; but you could do it,
9 sure.

10 Q Are you aware of a service called LoopNet?

11 A Yes.

12 Q How does LoopNet differ from CoStar?

13 A CoStar is a public company. It's a large company.
14 They are an exchange. They are a bulletin board. They
15 don't have researchers.

16 Q LoopNet or CoStar?

17 A LoopNet. So, LoopNet is a -- you know, they have a
18 piece of software where brokers exchange information where
19 they post listings. They are responsible for putting the
20 listings up as well as taking the listings down, "listings"
21 being space for lease, buildings for sale.

22 Q So, the information on LoopNet is provided by the
23 brokers themselves? There's no verification process?

24 A Correct.

25 Q And are you aware of a service called MicroBase?

1 A MicroBase is a local company here in Florida that does
2 a -- a small subset of one of the pieces of what we do,
3 which is it tracks -- my understanding is -- I'm not sure of
4 the full-blown product, but what I know about it is that
5 they track deeds and properties that have transferred, and
6 they do some plat maps and things like that. I don't
7 believe there's any images -- photos of the buildings in
8 that product.

9 Q Has -- I want to shift gears now and talk about
10 CoStar's relationship with Klein & Heuchan. Has CoStar ever
11 tried to license Klein & Heuchan prior to this dispute?

12 A Yes. There were eight or nine different what we call
13 "demonstrations," demos over the years, in the past ten
14 years or so, to attempt to license them, to convince them to
15 buy.

16 Q And so, you described that there were demos. What kind
17 of communications would there have been over, you say, ten
18 years? What kind of communications would there have been
19 with Klein & Heuchan?

20 A Well, from the sales side, you know, my folks are
21 trying to get everybody to subscribe. That's their job.
22 So, they reached prospects. They would call; and our
23 typical sales cycle is we will get a meeting, come see them,
24 go to their offices, bring a projector and a -- and our
25 computer and show them the system and walk through what it

1 does and kind of some of the reports we've shown today; and
2 hopefully, you know -- we're in a subscription-based
3 service, so our job is not only get them to subscribe, but
4 to keep them as a client for a long period of time.

5 Q I want to talk about these demonstrations for a minute.
6 What would the demonstrations to Klein & Heuchan have looked
7 like?

8 A A typical demonstration -- I wasn't there; but over the
9 years, a typical demonstration would consist -- we put our
10 sales reps through, again, like we were talking earlier
11 about the research folks have a pretty extensive training
12 program that's in -- in headquarters, as well as field
13 training by managers and by myself. So, they are trained on
14 how to present the product, a systematic way to show it,
15 show what the features and benefits are, but, most
16 importantly, hopefully show the value -- because it's not
17 free -- of why someone should subscribe.

18 Q And when CoStar does a presentation or demonstration,
19 excuse me, to a prospective client, do they explain the
20 nature of the type of license they're seeking to have the
21 client enter into?

22 A Sure. The question always comes up -- I've been at
23 thousands of meetings in my 10, 12 years here, and I've been
24 responsible for opening a lot of meetings. The question
25 always comes up, "Okay, I'd like it. How much? I want one

1 license. I want two licenses," and the response is, "No.
2 We license at the firm level." I always encourage my reps,
3 if they're not bringing a contract with them to a meeting,
4 to have the price with them. When someone asks what it
5 costs, you need to tell them.

6 Q Was Klein & Heuchan ever offered a license from CoStar?

7 A I believe they were offered a license twice, to my
8 knowledge, looking in our enterprise system, to try to get
9 them licensed over a period of time. Could have been more,
10 but best I can tell.

11 Q And do CoStar -- the licenses that they offer to
12 clients like Klein & Heuchan make clear that all of the
13 individuals at the firm have to be licensed?

14 A Sure. I mean, there would be a conversation that would
15 be had at the meeting. The typical rep would, first of all,
16 do their due diligence before they even went to the meeting.
17 They would go up to -- hopefully, if the client has a
18 Website, the client will list the agents and do a due
19 diligence. So, they come in prepared saying, you know, "I
20 have you at 12 agents, 15 agents," and sometimes there's --
21 you know, that person left last week or whatever and you
22 have that conversation.

23 But they're all charged with getting the proper head
24 count, and the license agreement stipulates right on the
25 front page "X" sites. A site would be an office, one office

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1 site, two, specifically what it might be, and "X" amount of
2 users.

3 Q Did any of the licenses that CoStar offered to Klein &
4 Heuchan offer to license a single user?

5 A Again, I was not there, but no, it would not have been
6 done. It would not have been accepted. Even if we had a
7 rogue salesman, it would never have made it through
8 headquarters.

9 Q Let's shift gears and talk about Coldwell Banker NRT.
10 Can you describe who Coldwell Banker NRT is?

11 A Coldwell Banker NRT is a large commercial real-estate
12 firm. We had at the time of this a large national agreement
13 with them with multiple sites, hundreds of agents across the
14 country.

15 Q And so, they have a presence in Florida?

16 A A strong presence in Florida, yes.

17 Q How many offices in Florida that you're aware of?

18 A I know in this part of the world, northern Florida,
19 there were nine license sites. Throughout the state, I
20 believe about 30.

21 Q And in 2006, did -- was Coldwell Banker a subscriber of
22 CoStar?

23 A Yes.

24 Q And it entered into a license with CoStar?

25 A Yes.

1 Q I'd ask you to please turn to Exhibits 4 and 5 -- or
2 actually let's just start with Exhibit 4. Mr. Alliegro, you
3 referred a number of times to northern Florida. I don't
4 want to get into a discussion of geography, but when you
5 refer to northern Florida, are you including to the
6 Tampa-St. Pete market?

7 A Yes.

8 Q Okay.

9 A Actually, the -- the nine offices that I'm referring to
10 is strictly Tampa-St. Pete that were licensed.

11 Q I'm sorry. The nine offices for Coldwell Banker --

12 A NRT were just in this vicinity as part of this
13 agreement, yes.

14 Q And pardon me, I said Exhibit 4. What I really meant
15 was Exhibit 5.

16 A I have it.

17 Q (Changes overhead exhibit.) Is this a copy of CoStar's
18 September 2005 license with Coldwell Banker NRT?

19 A It is.

20 Q And is this an accurate copy of an agreement that
21 CoStar maintains in its files?

22 A Yes.

23 Q Does CoStar regularly maintain documents like this in
24 the course of its business?

25 A Yes.

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1 MR. OPPENHEIM: We move the admission of this
2 document.

3 MR. GIBSON: No objection. Number 5; correct?

4 MR. OPPENHEIM: Exhibit 5.

5 THE COURT: Received.

6 (Defense Exhibit 5 was received in evidence.)

7 BY MR. OPPENHEIM:

8 Q Are you familiar with this license agreement,
9 Mr. Alliegro?

10 A Which one now?

11 Q Exhibit 5.

12 A Yes.

13 Q What does this license say about who can use the
14 service?

15 A Like all of our agreements, it's specifically for the
16 use of the licensee, which in this case is Coldwell Banker
17 NRT.

18 Q And in that respect, can I ask you to take a look at
19 Paragraph 2.2. Do you see this language, Mr. Alliegro?

20 A Yes.

21 Q I'd ask you to please look at -- and read for us the --
22 the sentence that begins with the word -- I guess it's the
23 second sentence that starts with the word "all of such
24 users" -- the words "all of such users."

25 A "And all of such users must be authorized users as

1 defined below, and only authorized users of a specific
2 portion of the licensed product may access such portion of
3 the licensed product. All" --

4 Q Let me clarify this. Let's start at the beginning. In
5 Sub (a), just read the first sentence, if you will, please.

6 A "Each portion of the licensed product may be used by no
7 more than the number of users set forth on Exhibit A, and
8 all such users must be authorized users as defined below,
9 and only authorized users of the specific portion of the
10 licensed product may access such product as a licensed
11 product."

12 Q And then does the next sentence define what an
13 authorized user is?

14 A Yes.

15 Q Could you read -- I don't want to read the whole thing,
16 but at least through small little "i."

17 A "All such authorized users must be individuals (i)
18 employed by licensee or an independent contractor as defined
19 below of licensee and authorized site identified on Exhibit
20 A or at an additional authorized site as defined below."

21 Q You can stop there. We don't need to go through the
22 other provisions.

23 Is this language of limiting usage to authorized users
24 and the definition of what constitutes an authorized user
25 standard language in CoStar's agreements?

1 A Yes. Every one.

2 Q How does CoStar go about actually authorizing Coldwell
3 sales agents?

4 A Well, when this contract was executed, there was a user
5 list, which was Exhibit A, specifying the users, specifying
6 the sites. With that, we would have a user list delivered,
7 which would have outlined as of the time of this contract
8 execution the users with their contact information and
9 their -- their e-mail address.

10 The -- you asked me about how it's delivered?

11 Q Not yet.

12 A Okay.

13 Q Please turn to Exhibit 4.

14 A (Complies.)

15 Q Is this a copy of CoStar's renewal with Coldwell as of
16 January of 2008?

17 A Yes.

18 Q And is this a true and accurate copy of the agreement
19 that CoStar maintains in its files?

20 A Yes.

21 MR. OPPENHEIM: We'd move its admission.

22 MR. GIBSON: No objection.

23 THE COURT: Be admitted.

24 (Defense Exhibit 4 was received in evidence.)

25 BY MR. OPPENHEIM:

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1 Q And, Mr. Alliegro, does this renewal agreement contain
2 the same language in Paragraphs 2.2 limiting usage to
3 authorized users in the definition of authorized users?

4 A It does, yes.

5 Q Mr. Alliegro, in your role at CoStar, are you familiar
6 with how a user is given access to the CoStar system?

7 A Yes.

8 Q Are you also familiar with the limitations imposed on
9 that access?

10 A Yes.

11 Q And are you aware of who Scott Bell is?

12 A Yes.

13 Q Do you know if Scott Bell was ever designated as one of
14 Coldwell's authorized agents -- authorized users, excuse me?

15 A He was, yes.

16 MR. OPPENHEIM: I pause for a moment. May I
17 address an issue with the Court?

18 THE COURT: All right.

19 MR. OPPENHEIM: Opposing counsel and I have been
20 trying to resolve an issue with respect to a disputed
21 exhibit; and at this point in time, I would have -- an
22 exhibit that the Defendants have indicated that they would
23 like to present. I would, at this point in time, have
24 presented that exhibit to this client for him to explain it
25 to the Court.

1 However, the versions that were provided by
2 opposing counsel were not complete copies of that exhibit.
3 In an effort to try to resolve that dispute without putting
4 it before the Court and asking simply for an exclusion, what
5 I believe we stipulated to, with the Court's permission, is
6 we will skip this portion of Mr. Alliegro's testimony since
7 I don't have that exhibit; that when -- when the Defendant
8 goes to examine Mr. -- cross-examine Mr. Alliegro, they will
9 not ask him about that document either.

10 If they produce that exhibit to me in the course
11 of the next few hours and we're able tomorrow morning to
12 examine -- we'll be permitted tomorrow morning to call
13 Mr. Alliegro to discuss that exhibit, and then they'll be
14 allowed to cross-examine him on that exhibit with the
15 Court's permission. I recognize that it's unusual to recall
16 a witness, but we're attempting to resolve a dispute for the
17 benefit of the Court.

18 THE COURT: All right.

19 MR. OPPENHEIM: Is that fairly accurate?

20 MR. GIBSON: Yes, Your Honor.

21 Just so we're clear, the documents were produced
22 by CoStar in various forms. One form was TIFF images that
23 couldn't be manipulated of various forms. Then they also
24 produced the native Excel file. What we did is printed out
25 that Excel file, and inadvertently one of the rows was not

1 printed. So, that's why we're trying to again print it out
2 on large paper so that everything in the document is there.

3 THE COURT: All right.

4 BY MR. OPPENHEIM:

5 Q Mr. Alliegro, does CoStar say or do anything that would
6 lead a user to believe that a description or license
7 continues after a salesperson leaves a licensed company?

8 A No.

9 Q And why doesn't CoStar do that?

10 A Well, it's -- it would be bad business, number one. I
11 mean, it -- we're licensing an individual firm. We are
12 granting access to the agents at that firm. If that agent
13 were to leave that firm, then he would notify us and
14 discontinue use, and hopefully we would -- you know, if he
15 went to another firm that was licensed, we would pick up
16 that person or, even better, a firm. Often what happens is
17 a firm that is not using CoStar, we'd license the firm.

18 Q Has CoStar historically faced problems with companies
19 using the CoStar service without a license or an -- an
20 adequate license?

21 A I wouldn't say it's common; but, you know, there are
22 always instances. We have 15 -- as I said earlier, 15,000
23 clients, 90,000 individuals using this on a daily basis or
24 weekly basis. So, there's -- it's a constant struggle to
25 try to keep tabs on it all.

1 Q Not to just keep tabs on the existing users to make
2 sure they're in compliance, but also what about companies
3 and individuals who aren't licensed at all?

4 A Oh, sure. We have a compliance division whose job it
5 is to track for wayward IP addresses and such and try to
6 pick up on -- there's bad people out there, and there are
7 times where, you know, we uncover things that are unsavory,
8 to say the least.

9 Q When you say "bad people," you mean people that are
10 using the service without a license? You're not passing a
11 moral judgment?

12 A No, not moral judgment.

13 Q And why is it that CoStar faces this problem of usage
14 outside or beyond a license?

15 A It's a valuable product in my estimation. So, if you
16 could get it for free, why wouldn't you, if you were so
17 inclined to take that route? I mean, it's just a great tool
18 if you're in the business.

19 Q And so, what does -- knowing that, what does CoStar do
20 to try to prevent that, I will use the word, "leakage" or
21 that misuse?

22 A Well, first, we've been talking a lot about the license
23 agreements. The license agreements stipulate how the
24 product can be used. That's number one.

25 I talked about the compliance division that we have.

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1 Q So -- I just want to slow down. So, you're saying the
2 first thing they do is use the license agreement to prevent
3 unauthorized use?

4 A Right, the binding license agreement. The broker --
5 you know, I was a broker. I still hold a broker's license
6 in two states. I don't use them, but I hold them still.
7 He's responsible for his folks and his agents.

8 Q By "folks" you mean sales --

9 A Sales people. They're responsible for the conduct of
10 those agents. So, when we -- first of all, when we send out
11 a user name and password to a user, Mr. Bell in this case,
12 he would receive an e-mail. We've talked earlier about
13 terms and conditions. It would have had the terms and
14 conditions that he would have accepted that specifies that
15 he cannot use that user name and password outside of the
16 licensed firm, in this case CBNRT.

17 Additionally, we force -- it happens to me myself when
18 I go into the product. Once a month -- we force you to
19 accept those terms and conditions once a month, reaffirming
20 the usage or -- the allowed usage of the product.

21 Q So, you described there's a license agreement. There's
22 a terms of use. What else does CoStar do to try to prevent
23 unauthorized use?

24 A We -- I talked about the -- talked about the
25 compliance. We have -- what happens when a -- when a user

1 first logs on to CoStar is there's a certificate, we call
2 it, on the database that reads your computer.

3 Q You're now talking about a piece of technology?

4 A Piece of technology. So, the technology that we use to
5 contain usage. So, it reads the certificate on that
6 computer. So, if it was a work station of a broker and it
7 read -- it was owned by the brokerage firm, it wouldn't be
8 an issue.

9 If the person leaves, it would still be residing at the
10 agent's office. If he had his own laptop, which is often
11 the case with agents, then it would read his laptop. Many
12 people today are obviously using laptops, and then
13 hypothetically -- I guess it happened in this case -- you
14 could take the product with you.

15 Q Because the certificate -- because the certificate
16 issued by CoStar is loaded onto that laptop?

17 A It read his -- his -- that person's hypothetical --
18 hypothetical example here. It read their laptop. It's
19 locked onto that laptop. The purpose -- the point is that
20 you can't use CoStar on two or three or four different
21 computers. So, we talked about licensing the firm,
22 licensing the agents. It's locked down onto that computer,
23 much like Microsoft Office, which does a similar-type thing.

24 Q So, you've been going through and telling us about the
25 types of things that CoStar does to prevent that

1 unauthorized use. You talked about terms of use, license
2 agreements. You now talked about a security certificate and
3 passwords, which were technological limitations. Are there
4 other things that CoStar does to try to prevent unauthorized
5 use?

6 A Sure. The whole organization is aware. We have the
7 Compliance Division that's looking for wayward IP addresses
8 where a user would pop up on multiple IPs, and that would
9 send a red flag. That would be investigated. The entire
10 organization is also, you know -- we're -- as I said, on the
11 sales side of things, anyway, we're incentivized to try to
12 capture new business.

13 So, if someone had left a firm and gone to another
14 firm, we'd try to get that person added as a -- legitimately
15 added as a user in the new firm.

16 Q So, licensing efforts would be part of a way of dealing
17 with unauthorized use to convert somebody from unauthorized
18 to authorized?

19 A First and foremost, we want a license. We want to get
20 someone to subscribe. We want to sell them essentially.
21 So, that probably should have been at the top of my list.
22 That's the first -- the first choice is to get someone to be
23 licensed.

24 Q Does enforcement play a role at all?

25 A Sure. I mean, as I said earlier, we have a -- cases

1 that occasionally that come up that are unpleasant, but we
2 have to have enforcement, you know. Otherwise, the way I
3 look at it is we have -- I have clients who are paying for
4 our service, and it's not fair to them that someone else, a
5 competitor, would gain access to those products for free.

6 Q So, do you know why in this case that CoStar asserted
7 claims again Klein & Heuchan and Scott Bell?

8 A I believe that we were sued, that -- by opposing party
9 here. I know we were investigating it and trying to resolve
10 it and that we were -- I believe that's the reason we're
11 sitting here today.

12 Q Okay. But subsequently CoStar asserted claims against
13 Klein & Heuchan and Mr. Bell; is that correct?

14 A Yes.

15 Q And so, why is it that CoStar is trying to hold Klein &
16 Heuchan responsible for Mr. Bell's activities?

17 A Well, as I indicated a second ago, it's -- I believe
18 that, number one, it devalues what we do when someone is
19 gaining access to valuable information for their trade at no
20 cost. It's a matter of fairness to people who are
21 subscribing, you know, who are paying for the product that
22 someone is not. But, also, it just devalues it. People
23 pay -- it's not a cheap product. It is a valuable product,
24 but people pay. So, in my estimation it is a devaluation of
25 what we do when someone's receiving it for free.

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1 Q So --

2 MR. OPPENHEIM: One moment, Your Honor. Knowing
3 that we have the opportunity should an exhibit be produced
4 shortly to Mr. Alliegro, we'll at this time rest with him.

5 THE COURT: All right. Cross?

6 CROSS-EXAMINATION

7 BY MR. GIBSON:

8 Q Good morning.

9 A Good morning.

10 Q You rendered your testimony with items that CoStar does
11 in order to protect its -- the data that's contained within
12 the CoStar database; is that correct?

13 A Yes.

14 Q The first thing that you brought up was the license
15 agreement?

16 A Yes.

17 Q You would agree with me that the terms of the license
18 agreement are confidential?

19 A Define "confidential."

20 Q Can any public person see the license agreement between
21 CoStar and Coldwell Banker?

22 A Only if Coldwell Banker chose to share them, but that
23 wouldn't be our domain.

24 Q The terms of each individual license agreement -- with
25 each individual broker is proprietary information, is it

1 not?

2 A We would not share that with anyone else, no. CoStar
3 would not.

4 Q Do you -- you have no knowledge that any individual
5 agent of Coldwell Banker receives a copy of the license
6 agreement?

7 A I don't have knowledge of that, no.

8 Q You don't have any knowledge that anyone at Klein &
9 Heuchan received a copy of this license agreement; is that
10 right?

11 A I have no knowledge of that.

12 Q If you could turn to Number 5.

13 A (Complies.)

14 Q Now, you referenced and read into the record Paragraph
15 2.2?

16 A Yes.

17 Q And Paragraph 2.2 indicates that the authorized users
18 will be listed on Exhibit A?

19 A Yes.

20 Q Where is that? Is there an Exhibit "A" to this
21 document?

22 A Is there? I don't see it.

23 Q We'll go to what's Bates-numbered in the lower
24 right-hand corner as 117 -- the upper -- well, it would be
25 the upper left-hand corner, if you turn to it. That's

1 Exhibit "A"?

2 A Yes.

3 Q (Changes overhead exhibit.) Is Exhibit "A" a list of
4 the authorized users pursuant to this license agreement that
5 are authorized by CoStar to be an authorized user of
6 Coldwell Banker?

7 A No. This is not outlining the specific users. This is
8 describing the amount of users licensed -- the maximum
9 number of users and total number of license sites per
10 market.

11 Q So, even if someone had the license agreement and
12 Exhibit "A," they still would not have a list of the
13 authorized users; correct?

14 A No. They would. There's another document that
15 apparently is not attached here that is a -- an actual list
16 of the users of each individual office.

17 Q If somebody had what is Number 5 in your book that had
18 been admitted in evidence, had the entirety of Number 5,
19 they would not have a list of the authorized users; is that
20 correct?

21 A On this document, no.

22 Q You testified that agents come and go at offices; is
23 that correct?

24 A Absolutely.

25 Q And I believe you testified that, for example, a broker

1 such as Coldwell Banker -- changes aren't made to the
2 contract as these agents come and go? You usually catch up
3 and make up for it on renewals?

4 A That's right.

5 Q The research arm that you were talking about that
6 CoStar does --

7 A Uh-huh.

8 Q -- one of the areas where the researchers get the
9 information is from the individual brokers; is that correct?

10 A That's right.

11 Q CoStar researchers are in constant contact with the
12 brokers that are in their geographic area; is that correct?

13 A That's correct.

14 Q They are constantly calling individual agents to find
15 out about their listings; is that correct?

16 A Correct.

17 Q You said the majority of the photos that are obtained
18 from CoStar come from CoStar photographers or freelancers,
19 if you will?

20 A They're employees, but yes.

21 Q Does CoStar obtain photographs that they use on their
22 system from other sources?

23 A There are marketing flyers. There was an example, I
24 think, in one of our exhibits we didn't point out. There
25 are floor plans that are supplied from the broker or owners,

1 and occasionally there are photographs that we accept as
2 well from -- if they have something that we deem worthy of
3 being in the system and they ask us, there are times, but
4 the majority are from us.

5 Q As a matter of fact, CoStar sometimes downloads the
6 photographs from the individual broker Websites and utilizes
7 those photographs in the CoStar database?

8 A No.

9 Q It's your testimony that CoStar never utilizes a
10 photograph from an individual broker and then put that back
11 into their database?

12 A Not without their permission.

13 Q Are there any products that CoStar offers that are
14 available for an individual?

15 A We -- not in the listing inventory side of the
16 business. We've recently, about six months ago, begun
17 marketing a product to the individual called CoStar
18 Showcase. It is sold to the individual. It's not a
19 competing product to these products we're talking about here
20 today. It's a marketing tool.

21 Q Okay. And Showcase allows an individual person to have
22 this product in CoStar; correct?

23 A An individual person can buy Showcase to market only
24 their listings, yes.

25 Q Has CoStar ever provided -- strike that. Let me ask

1 you, do you know what the designation "CCIM" is?

2 A Sure.

3 Q What is in?

4 A Certified Commercial and Industrial -- give me the last
5 one. I forget.

6 Q What does it mean to you?

7 A It's a professional designation for people in the
8 commercial real-estate business. They have to take pretty
9 extensive course training to receive that designation. So,
10 it's a well sought-after --

11 Q There's specific courses that must be taken and
12 passed --

13 A Right.

14 Q -- until that designation is provided?

15 A Uh-huh.

16 Q It's sort of a special commercial realtor; correct?

17 A I don't think I'd call it "special." I don't think I'm
18 special because I have a master's in real estate, but it's
19 a -- it is a designation that is sought after.

20 Q Why?

21 A It gives you some clout in the business that you've
22 taken additional education. Let's face it, being a broker
23 myself for half of my career, brokers don't always have the
24 best of reputations, and I think it elevated people that
25 educate themselves to the industry. So, I think it's --

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1 I'll say that I still consider myself a broker, just for the
2 record. So -- because I was one -- once one, always one.
3 So, it's a well sought-after designation.

4 Q CoStar has at times offered access to the CoStar
5 database to individual CCIM Realtors, have they not?

6 A There was -- that's correct. There was a time where we
7 did a -- a short promotion. We were trying to do something
8 with CCIM on a company-wide level, and where we -- we
9 offered them what's called the "CMLS" product, which is a
10 very light version for trial purposes. It was strictly for
11 a set period of time for a trial purpose.

12 Q If I were to log onto the CoStar database, Website,
13 right now, would I be completely unable to access any data
14 that CoStar maintains?

15 A You would not be able to access any of the professional
16 products. You would get some cursory -- you'd get all the
17 marketing materials we've been looking at. We put up, you
18 know, a wealth of information about the company. We put up
19 some aggregated information. You may be referring to the
20 access to the Showcase search engine that is now up there as
21 well.

22 Q I can log on right now and do a search for commercial
23 real estate that's for lease in a given geographic area;
24 correct?

25 A Right.

1 Q And when I did that, it would show the photographs that
2 are part of what is now Exhibit 36; correct?

3 A No. Can I explain the Showcase product?

4 We'd have to, first of all, be crazy to introduce a
5 product that is going to jeopardize more than \$300 million
6 in revenue that is sold.

7 Q Explain Showcase, if that's what you --

8 A I am doing that. That is sold to the individual at
9 49.95 a month. Very low-cost option. What Showcase is is
10 it probably -- probably covers about -- well, first let's
11 start with Showcase will never track more than 50 percent of
12 the marketplace, as a starting point.

13 So, if you're a broker and need a professional tool and
14 you have 50 percent of the marketplace, it's not -- we're
15 not losing business to Showcase.

16 Secondly, to answer your question about the photograph,
17 there is a -- a -- you'd have to be a -- a Showcase
18 subscriber where we'd market your listings and we provide
19 about less than 10 percent -- maybe less than 5 percent of
20 the content of what's in our professional product. Very
21 cursory information. There will be a small photograph,
22 you're right, in Showcase of the individual showcased
23 property up on that Website; but the idea behind that is to
24 garner folks who are not professionals so much and users,
25 tenants, people -- and drive that usage to the brokers, not

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1 so much a broker professional tool.

2 Q But as I understand it, I could go onto CoStar.com and
3 search for commercial property that's for lease or sale in a
4 given geographic area; correct?

5 A Fifty percent of it at maximum.

6 Q And the data that would come up would include the
7 photographs that CoStar takes and a part of Exhibit 36;
8 correct?

9 A One photograph, a small thumbnail, yes.

10 Q So, it's your testimony the only thing that would be
11 viewable would be a small thumbnail?

12 A One photograph on each property; correct.

13 Q I can click that photograph and look at an enlargement
14 of that photograph?

15 A You could, correct.

16 Q If you could go to Exhibit 39, please.

17 A (Complies.)

18 Q Exhibit 39 was the promotional brochure that listed the
19 different properties that CoStar offers; is that correct?

20 A Yes.

21 Q Anywhere on Exhibit 39 does indicate that those
22 services are only available to entire brokerages?

23 A No. We would not put that in here.

24 Q It doesn't say that an individual cannot use those
25 types of services?

1 A Not in the marketing pieces, no.

2 Q Exhibit 41 -- excuse me, 40 and 41 were sample reports
3 that could be run on CoStar; is that correct?

4 A Yes.

5 Q Anywhere in those reports did it indicate that these
6 reports could only be run and accessed by a broker-wide
7 license?

8 A What it would say is at the very bottom -- I alluded to
9 this earlier -- this copy -- so, if someone was accessing
10 this product either at a licensed firm or a non-licensed
11 firm, at the firm level, at the very bottom there, which is
12 very hard to read, it says, "This copyright work contains
13 research licensed to..." and it would say the firm it is
14 licensed to.

15 Q Right, but that sample report doesn't say this sample
16 report is available only for company-wide licenses?

17 A No.

18 Q What is the Enterprise system that you've been
19 referring to?

20 A Enterprise is a very large back-end system that CoStar
21 uses. Number one, the sales team uses the CRM component,
22 prospective client tracking. It's used for sales. It's
23 used for customer support. It's used for the research area
24 as well. They have their own interface into that to update
25 the properties.

1 Q Is that the same -- is that the same or different from
2 the customer contact database?

3 A Well, it's -- it's -- different pieces of the business
4 access different parts of it. So, in my world, I am
5 accessing really kind of just the sales that -- customer
6 support. I don't see what the researchers are doing on a
7 daily basis, their interface that they're plugging
8 information into.

9 Q Have you ever met Mr. Klein, either one of them?

10 A I don't believe so, no.

11 Q Have you ever seen involved on a sales call with
12 Mr. Klein?

13 A I don't believe so, no.

14 Q You don't know what was said or not said during that
15 sales call then?

16 A I was not there, but I know how I train my people, and
17 I know what's said at any of those meetings.

18 THE COURT: When you reach a convenient stopping
19 place, we'll break for lunch.

20 MR. GIBSON: That works.

21 THE COURT: All right. We'll recess for lunch
22 until 1:30.

23 COURT SECURITY OFFICER: All rise.

24 (Recess from 11:59 a.m. until 1:30 p.m.)

25 THE COURT: You may proceed with cross.

1 MR. MAGIDSON: Your Honor, Mr. Oppenheim is right
2 in the hall. Let me grab hmm for a moment.

3 THE COURT: All right.

4 (Pause.)

5 MR. MAGIDSON: Thank you.

6 BY MR. GIBSON:

7 Q Good afternoon.

8 A Good afternoon now.

9 Q Before we broke, I was asking you some questions about
10 the public access to CoStar and anyone's access that is not
11 an authorized user. If I could ask you to turn in your book
12 to Exhibit 36C that Mr. Oppenheim asked questions regarding.

13 A Yes.

14 Q Those -- that 36C entry involves a building at 2202
15 North Westshore Boulevard, and it's called "Corporate Center
16 1"; is that correct?

17 A Yes.

18 Q And it's your testimony that the public non-authorized
19 users might have access to, at the most, one picture of any
20 entry that's in the CoStar database; is that correct?

21 A To the Showcase, yes.

22 Q I ask you to look (handing item to counsel) at this
23 photograph. Does that appear to have the CoStar mark on the
24 lower left-hand corner?

25 A Yes.

1 Q Is it your testimony that an individual from -- a
2 non-licensed user cannot access this photograph if they log
3 onto the CoStar database?

4 A If it was showing in Showcase, they could access this
5 photograph?

6 Q Yes.

7 A Yes, they could.

8 Q They could?

9 A (Nods head.)

10 Q I'll have you look at another one. Does that appear to
11 have the CoStar mark on the lower right-hand corner?

12 A It does.

13 Q Is it your testimony that a non-authorized user could
14 not access this photograph if they logged onto the CoStar
15 database without a user name or password?

16 A Except through Showcase.

17 Q I ask you to look at this photograph (changing overhead
18 exhibit) in the lower right-hand corner. It's the CoStar
19 mark?

20 A Uh-huh.

21 Q Could a non-authorized user access this photograph
22 without having a license?

23 A They could access this floor plan through Showcase
24 potentially.

25 THE COURT: Does this have an exhibit number?

1 MR. GIBSON: It doesn't, Your Honor. I am asking
2 for impeachment. It might later.

3 THE COURT: All right.

4 BY MR. GIBSON:

5 Q The fact is that CoStar-marked photographs are
6 accessible on the CoStar database by non-authorized users;
7 is that correct?

8 A A portion of.

9 Q Fifty percent, you said?

10 A Or less.

11 Q Okay. Of the photographs that are identified and
12 marked in Exhibit 36, can you tell us which photographs are
13 or are not accessible for non-authorized users?

14 A I can't without printing it up in the product.

15 MR. GIBSON: I don't have any further questions,
16 except for our agreement, which Mr. Oppenheim is going to,
17 in his rebuttal, ask questions regarding that document that
18 I think we've come to an agreement on.

19 THE COURT: All right.

20 MR. OPPENHEIM: As Mr. Gibson indicated, I think
21 we've reached resolution on what is now Number 69. So, with
22 the Court's permission, I will do my direct on this exhibit
23 and my redirect together at once, if that's all right.

24 THE COURT: All right.

25 MR. OPPENHEIM: May I approach the witness?

1 THE COURT: All right.

2 MR. OPPENHEIM: Will you stipulate to Exhibit 69
3 for what's currently in those binders?

4 MR. GIBSON: Okay.

5 *CONTINUED DIRECT EXAMINATION*

6 BY MR. OPPENHEIM:

7 Q Before we turn to Exhibit 69, Mr. Alliegro, I want to
8 ask you a few questions about Showcase, but I want to
9 understand it, first of all. What -- when was Showcase
10 first developed or when was it first launched?

11 A It launched in May of 2008.

12 Q So, Showcase wasn't available between January 2007 to
13 April of 2008?

14 A Correct.

15 Q So, an unauthorized user couldn't have used the
16 Showcase product to access any of the photos in the exhibit
17 that you were just shown in that period of time,
18 January 2007 to April of 2008?

19 A Correct.

20 Q Okay. And does Showcase -- what -- can you describe
21 for us what Showcase is and how it is or is not different
22 than the other products that you described earlier?

23 THE COURT: Asked and answered.

24 BY MR. OPPENHEIM:

25 Q Does -- does Showcase provide access to quarterly

1 reports?

2 A No.

3 Q Does Showcase provide access to annual reports?

4 A No.

5 Q Does Showcase provide access to any kind of analytic
6 market analysis?

7 A No.

8 Q In Showcase can you do any searches for comparables?

9 A Comparable sales, no.

10 Q Do CoStar -- who licenses Showcase?

11 A The Showcase access is free. We don't request or
12 require any registration, so you'll merely go up to the
13 Website and access it.

14 Q Do CoStar licensees or clients access Showcase?

15 A Many, if not most, of our Showcase current client base,
16 which I believe is about 10,000 or so individuals -- because
17 it is selling to the individual -- most of them are CoStar
18 clients of one of our other products.

19 Q Earlier you were shown Exhibit 39, the marketing
20 brochure that we discussed earlier, and you were asked
21 whether or not that marketing brochure described that CoStar
22 only licensed companies and not individuals. Do you recall
23 that?

24 A Yes.

25 Q Does that marketing brochure indicate at all that it --

1 that CoStar licenses individuals?

2 A No.

3 Q Are the limitations of CoStar's licenses for its
4 products publicly available?

5 A Yes. We have a whole page on our Website that is
6 publicly accessible that talks about the terms of use and
7 specifically talks about piracy issues that we deal with on
8 a, you know, continual basis.

9 Q And does that page discuss the limitation of who's an
10 authorized user in a CoStar license?

11 A It does, yes.

12 Q Could you please open up this new Exhibit 69, which you
13 have in front of you. Without delving for the moment into
14 the individual entries, what generally is this document?

15 A This looks like an export taped together of multiple
16 fields of information coming out of our Enterprise -- CoStar
17 Enterprise system.

18 Q And do these export fields relate specifically to
19 entries regarding Scott Bell?

20 A Yes. This -- these -- just looking at the first here,
21 these same pages seem to all deal with the account of
22 Mr. Bell.

23 Q Okay. What I'd like to do is walk through the entries
24 on this document, please. And it -- I believe that this
25 document's in reverse chronology; is that correct?

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1 A Let me preface everything with, I did not bring my
2 glasses, so -- but the answer is yes.

3 MR. OPPENHEIM: Your Honor, I'll put this up on
4 the Elmo, but the print is fairly small. If it would
5 benefit the Court, I'll be happy to hand up a copy so you
6 have one.

7 THE COURT: All right.

8 MR. OPPENHEIM: May I approach?

9 THE COURT: Yes.

10 BY MR. OPPENHEIM:

11 Q Let's start on the last page, if you will,
12 Mr. Alliegro, which should include the -- actually, I guess
13 it's the second-to-last page the way this was created. The
14 document -- I believe in the document is what's labeled as
15 4A --

16 A Yes.

17 Q -- okay, and the -- and the -- it says "Native Row 13."
18 Do you see that?

19 A Yes.

20 Q Now, that -- the handwriting on the side of this, is
21 that from CoStar?

22 A No.

23 Q And can you describe what the Enterprise entry is here
24 in this Row 13?

25 A Native Row 13, you're referring to? Native Row 13 is

1 dated November 13th, 2006; and this is a typical e-mail that
2 we would send to a new user indicating their user name and
3 password. The password has been starred out here, but he
4 would have received a password to gain initial access to the
5 product, at which point he could change his password. And
6 it talks a little bit about the terms and conditions in the
7 body. So, we track this, all communications, with prospects
8 and clients.

9 Q So, this entry is when CoStar is first sending out to
10 Mr. Bell his user name and password; is that right?

11 A Correct.

12 Q And this -- the text in what is Column T is the text of
13 the e-mail that would have been sent to Mr. Bell?

14 A It is the identical e-mail that would have been sent to
15 Mr. Bell.

16 Q All right. And I know it's exceedingly small, but
17 could you read what's Important Note Number 1 in that
18 e-mail?

19 A Sure. I certainly will try here.

20 "If there is not a valid subscription license agreement
21 to place between your company and CoStar relating to the
22 delivery of the above-referenced CoStar service, then you
23 should reply to this e-mail and notify CoStar customer
24 support of the error. You may not use or access CoStar
25 service if you are a non-subscriber."

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1 Q Let's move now to the next entry, which is actually on
2 the -- it begins on the preceding page, 3A -- I'm sorry.
3 Just for clarification, that e-mail, you can tell based on
4 the entry there (pointing), was sent November 13th, 2006; is
5 that right?

6 A Yes.

7 Q Okay. So, let's go to the next entry, which I believe
8 is the very first row on page 3A. You see that?

9 A Yes.

10 Q Can you describe what that -- what that entry is? And
11 I acknowledge it goes down the rest of that page and some of
12 the following page.

13 A There's some back and forth here between -- these are
14 all, it looks like, CoStar employees about getting access to
15 Mr. Bell and a Mr. John Skicewicz and another individual
16 here -- I can't make it out -- Mike Matero. Bob Geist is
17 one of the people here. He was my manager at the time in
18 Florida, and he is talking to some of the people in both
19 Accounting and Fulfillment.

20 Ben Buckley is a CoStar professional accounting
21 individual in Bethesda, where the headquarters are; and I
22 presume that goes to a group of people that can help service
23 requests.

24 Q So, this is just a series of e-mails indicating, first,
25 that Mr. Bell should receive a password and then indicating

1 that he received it?

2 A Yes.

3 Q And this was sent shortly after the password was
4 actually sent to Mr. Bell --

5 A Yes.

6 Q -- on that date?

7 A Typically there can be a delay between the manager
8 knowing that the individual actually accessed the service.
9 So, he was probably talking to them, and he was just
10 following up.

11 Q All right. Let's turn to the preceding page, which
12 would be page 2A. On the very bottom of this page, Entry --
13 Entries 13, 14, and 15. Do you see those?

14 A Yes.

15 Q (Changes overhead exhibit.) Okay. And I ask you to
16 give the dates of those three entries?

17 A The first was December 6th, 2006, through -- there were
18 three or four here. The first three -- 12/28/06 and
19 1/16/07.

20 Q And those -- the substance of what happened on those
21 dates was what?

22 A Sylvia Alvarenga is the individual making the notation
23 in our system. She --

24 Q What notation did she make?

25 A The first one: "Have left voice mail about updating to

1 Mr. Bell." I assume she is calling regarding listings that
2 are either space for lease or buildings that he's handling
3 for sale, whatever.

4 Q What's the next entry?

5 A The next entry on -- I should look at your screen here.
6 It's a little easier. On February 1st, 2007, again that's
7 Sylvia. It looks like this time she made some contact, and
8 her note is, "Receptionist said he was no longer at
9 Coldwell." That would be Coldwell Banker NRT, speaking of
10 Mr. Bell. "Did not give further info as to where he
11 transferred to. Reassigned his listings."

12 Q Okay. Then let's go to the next entry, which actually
13 is three-quarters of the way up that way, Native Row 7. Do
14 you see that?

15 A Yes.

16 Q And can you describe what that entry is?

17 A It looks to be a -- I am assuming there was an e-mail
18 sent out to Mr. Bell because he had either forgotten his
19 password or for some reason he needed to be set up again.
20 He could have changed computers. So, we reissued the
21 password for Mr. Bell.

22 Q That was on?

23 A February 27th of 2008.

24 Q 2008. Okay. And let's look at the next entry, please.
25 It's right above that.

1 A Yes.

2 Q Describe what that entry is, please.

3 A There's an entry from Theresa Charbonneau. Theresa is
4 in our compliance area, and she makes a notation on
5 March 18th, thank you, 2008; and her note is -- this would
6 have been typed in by the individuals from Activity entered
7 under Jerry Lamb at the Coldwell Banker location.

8 This is an internal I.D. for the Coldwell Banker site
9 that we have internally in the Enterprise system, that long
10 number there. "Jerry called in and left a message.
11 Confirmed Bell is no longer with the company. Said he wants
12 to reassign the user name and password to someone else."

13 Q Okay. Let's go to the next entry, please.

14 A Scott Bohl. Scott Bohl is in Fulfillment, Customer
15 Service; and his note -- and that is on April 22nd, 2008,
16 "Disabled per request of Legal. Contact Steve Williams."
17 Steve is the head of the compliance group. Theresa
18 Charbonneau would be reporting to Steve Williams with
19 questions.

20 Q And that happened on April 22nd, 2008?

21 A Yes.

22 Q And the next entry, please.

23 A 6/10/08, Jennifer Densmore, which is a salesperson or
24 was at the point -- at that point in time in this region,
25 who was leaving a message for Mr. Bell; and that is our

1 internal jargon for LVM TRGN, which means left message for
2 training. Our sales reps, just so you know, are salespeople
3 obviously first and foremost, but they also wear two hats
4 and, they train customers on how to use the product so
5 they're incentivized to reach out and do that. That looks
6 like what she was doing here was trying to help him if she
7 could.

8 THE COURT: She was trying to help who -- whom?

9 MR. OPPENHEIM: I'm sorry, Your Honor?

10 THE COURT: She was trying to help whom?

11 THE WITNESS: She was --

12 MR. OPPENHEIM: Absolutely.

13 THE WITNESS: The sales reps -- they're -- how
14 much detail you want me to get into? Their compensation is
15 obviously to sell. That's their first and foremost role,
16 but they also are paid a flat fee for training where they
17 would actually physically go meet with a user who's using
18 the product. The reason for that is it makes sense that if
19 folks aren't using our products correctly they're not going
20 to renew their contracts.

21 THE COURT: Remember the question?

22 THE WITNESS: Yes.

23 THE COURT: You testified that she was trying to
24 help "him," and I said she was trying to help whom?

25 THE WITNESS: Oh, she was trying to help Mr. Bell.

1 THE COURT: And this was after his password had
2 been --

3 THE WITNESS: Correct.

4 MR. OPPENHEIM: I'm sorry, Your Honor. Did you
5 have further questions?

6 THE COURT: No.

7 BY MR. OPPENHEIM:

8 Q How was she trying to help him?

9 A She obviously did not -- she should have consulted CRM.
10 What those these folks do is they --

11 Q Let me just -- by "CRM" you mean the contact database
12 you were just looking at?

13 A The Enterprise database. "CRM" is sales lingo for the
14 sales part of it.

15 Q Go on. I didn't mean to interrupt.

16 A These folks, what they do on a quarterly basis is
17 usually they will download all the users in their book of
18 business. Each rep is assigned a book of business; and so,
19 you know, it's -- candidly it's foolish for her to be
20 calling somebody that was disengaged from the service, but
21 nonetheless she did. He was no longer a client, but she did
22 not consult us obviously, or it wouldn't have made sense for
23 her to do what she was doing here.

24 BY MR. GIBSON:

25 Q Did CoStar know in February of 2007 that Bell had left

1 Coldwell Banker?

2 A In February of 2007, no.

3 Q And why do you say that?

4 A If Miss -- if we had known -- either Fulfillment,
5 Sales, certainly Legal -- anyone in regards to the product
6 itself would have shut him off immediately, except -- well,
7 if he had left and gone to another client, we would have
8 shut him off. Oftentimes clients will go to another shop
9 that is a licensed shop, a licensed firm. If that's the
10 case, we just reassign that user. So, you know, in that --

11 Q Let me just clarify. You said "if clients leave." Do
12 you mean an authorized user? So, if an authorized user is
13 working for a client, a licensed client --

14 A Yes.

15 Q -- and they leave and go to another licensed client, is
16 that the situation you're talking about?

17 A Yes. We'd still want to know; but if -- if Mr. Bell
18 had gone from -- there's a couple of scenarios, if you'd
19 like me to explain a little bit.

20 Q Sure.

21 A One, Mr. Bell could have gone to another CBNRT office,
22 which frankly under the cap of the limit, the users that
23 they had, he was already under that. Wouldn't have been
24 much of a need to say anything as long as it was in north
25 Florida here.

1 Q So, let me just stop you here. So, that's if he had
2 transferred from one office of Coldwell to another?

3 A Correct, which happens in a big firm like that. The
4 second scenario would be he leaves -- you know, brokers move
5 firms. They stay in the business. They move firms often --
6 not often, but periodically.

7 If he went from CBNRT where he was a client over to,
8 say, Cushman, Wakefield, we'd want to update his information
9 at that firm, but we wouldn't necessarily disconnect him if
10 there was a cap in the Cushman, Wakefield license there for
11 another user.

12 Q What would you do with his user name and password if
13 that were the case?

14 A We would keep it the same.

15 Q So, you wouldn't revoke it, terminate it, disable it,
16 nothing like that?

17 A No. As long as the firm he was going to had the cap
18 amount of users we talked about earlier at that site, we
19 would not disconnect and give him a new user name and
20 password, no.

21 Q What if you don't know where he's going to?

22 A If we don't know where he's going and we know he left,
23 we would terminate his -- his service.

24 Q Is there any record that you're aware of that
25 Miss Alvarenga contacted Customer Service to cut off or

1 terminate Mr. Bell's service?

2 A No.

3 Q I should say Mr. Bell's access?

4 A No.

5 Q And did Coldwell Banker have multiple offices?

6 A Yes.

7 Q In Tampa?

8 A Nine or ten in this vicinity, yes.

9 Q And how many of those -- how many of those offices were
10 authorized sites under the -- under the CoStar license?

11 A My understanding when the license was written is we
12 would have required that all the sites were licensed similar
13 to all the agents in a particular site. So, it would have
14 been -- I think there were nine, as I said, in the initial
15 agreement.

16 Q Under the Coldwell license, did Coldwell have an
17 obligation to notify CoStar if Bell had transferred from one
18 of its offices to another of its offices?

19 A Not necessarily, no.

20 Q And how -- how many researchers are there again at
21 CoStar?

22 A Eight hundred.

23 Q And do those researchers have any job responsibilities
24 with respect to licensing users or authorization issues
25 or -- or the technology management?

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1 A No.

2 Q So, what was a researcher doing calling Mr. Bell?

3 A He was part of her universe. So, he was attached to
4 the universe of buildings that she was tasked with updating.
5 So, on that periodic update cycle every 30 to 45 days, she
6 would reach out to him or vice versa. Frankly, half the
7 communications come from them to us to update the listings.
8 So, that's what it appears she was doing here, standard
9 updating of some product that he was controlling.

10 Q Was the researcher calling him in his capacity as an
11 authorized user?

12 A No. You know, a vast amount of folks that we call are
13 not clients, not users. All right. So, the business model
14 again is that it's free to list. So, we're going to call
15 mom-and-pop operations that might have one little location
16 and try to get that information all the way up to
17 institutions, anyone who controls real estate, client and
18 non-client.

19 Q When the researcher is calling a user, does the
20 researcher know that the person they're calling is the user?
21 So, for instance in February of 2007, would Sylvia Alvarenga
22 had known that Scott Bell was a user?

23 A She could have found that out. I don't believe at that
24 point in time that the Enterprise system lit him up as a
25 user. It does today. So, she would have known that today.

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1 I honestly don't know in 2007 -- this is not a system that I
2 am expert on the research component of it, so I am not sure.

3 Q Would a researcher who's calling a user treat them
4 differently than a researcher who's calling a commercial
5 real-estate broker who's not a user?

6 A No. The researchers are metrics. They're compensated.
7 They're bonused on the updates that they complete in
8 their -- their book of business, which is listings and
9 billings and so forth. So, her goal is to update the space
10 on that cycle.

11 Q I want to turn to the February 2008 entry for a moment
12 and ask you a question about that. You said that that was
13 an entry related to the issuance of a new password. Why
14 would CoStar have issued a new password to Mr. Bell in
15 February of 2008?

16 A Well, for a few reasons. I'm assuming here that
17 Mr. Bell had reached out to Customer Service either by phone
18 or e-mail, probably e-mail, and requested a new user name
19 and password. At that point, Deborah, who does work in the
20 Fulfillment group, she would check. She would definitely
21 check and make sure that he's still a licensed user. She
22 did that, and then she issued him another password.

23 The reason why -- I think I mentioned before he could
24 have forgotten his password. He could have -- I talked
25 about certificates before where you go in. They bought a

1 new laptop, okay. It's a new laptop. The certificate will
2 read that new laptop. So, we need a new password and new
3 user name to read the computer. So, that could be another
4 reason.

5 Q Or you're reformatting your hard drive or --

6 A Any number of things. Something has changed on how
7 you're accessing the product.

8 Q Would Customer Service have issued a new password if
9 they knew that Mr. Bell had left Coldwell?

10 A No, absolutely not.

11 MR. GIBSON: Just a moment, Your Honor.

12 (Pause.)

13 MR. OPPENHEIM: We have no further questions at
14 this time.

15 THE COURT: All right. Cross on this document.

16 *CONTINUED CROSS-EXAMINATION*

17 BY MR. GIBSON:

18 Q I want to make sure I understood something you
19 testified regarding. If an authorized user is leaving a
20 broker that has a license agreement and CoStar doesn't know
21 where he's going, CoStar shuts him off?

22 A If it's an unknown, we shut him off, yes.

23 Q Counsel asked about the entry on February 1st.

24 A Yes.

25 THE COURT: What year?

1 MR. GIBSON: 2007, excuse me.

2 BY MR. GIBSON:

3 Q I'm trying to look. Sylvia --

4 A Yes.

5 Q Sylvia is an employee of CoStar?

6 A Yes.

7 Q An employee of CoStar on February 1st on 2007 knew that
8 Scott Bell was no longer with Coldwell, or at least
9 documented that in the system; correct?

10 A No.

11 Q Well, what did Sylvia document on February 1st of 2007?

12 A She documented that -- the way I read this is,
13 "Receptionist said that he was no longer with Coldwell. Did
14 not give further info as to where he was transferred to."

15 So, two things lead me to believe that she didn't know
16 he left. Remember she's a researcher. She's not in
17 Fulfillment or Customer Support or sales. Could have
18 transferred to another Coldwell Banker office, but we did
19 not take action. So, if we had known for sure, we would
20 have taken some sort of action if he was not a licensed
21 site.

22 Q You indicated there were nine or ten Coldwell offices
23 in the Tampa Bay area; is that correct?

24 A That are on the license agreement, yes.

25 Q Okay. Isn't it true that if Mr. Bell had transferred

1 to a different Coldwell office, he likely would have kept
2 the listings that he had?

3 A I can't answer that. Maybe. Maybe not.

4 Q Realtors are licensed to practice anywhere in the state
5 of Florida; is that correct?

6 A They are.

7 Q So, if he had transferred to another office within the
8 same region, he certainly was capable of maintaining his
9 listings even working out of a different Coldwell office?

10 A He was capable of it, sure.

11 Q I would like to go back to the very first entry --

12 A Can I add one thing to that?

13 Q No.

14 A Okay.

15 Q The very first entry, which actually begins on the
16 second-to-last page, is the entry on November 13th, 2006
17 (changing overhead exhibit).

18 A Yes.

19 Q And I believe you testified that that is word for word
20 the e-mail that was sent to Mr. Bell when he was assigned
21 his user name and password; is that correct?

22 A Yes.

23 Q And counsel asked you to read under Important Notes
24 Number 1; is that correct?

25 A Yes.

1 Q The next sentence, could you read that one for me, too,
2 that starts "you may"?

3 A "You may not access or use the CoStar services if you
4 are a non-subscriber."

5 Q This e-mail doesn't define what a subscriber or
6 non-subscriber is, does it?

7 A Define, no.

8 Q This e-mail doesn't say that in order to use CoStar you
9 must be affiliated with Coldwell Banker?

10 A I don't believe so, no.

11 Q This e-mail doesn't say that once you leave Coldwell
12 Banker you are not authorized to access CoStar?

13 A This e-mail, no.

14 Q Counsel asked you about the entry in the Enterprise
15 system on February 27th regarding the user name and
16 password. You recall that, and that's on the second page of
17 the document?

18 A Yes.

19 Q February 27, 2008. You have no knowledge of why that
20 e-mail was sent?

21 A I have as much knowledge as I know about the other
22 one -- no, why he prompted the new password, no.

23 Q You don't even know if he prompted a new password?

24 A We would not send out a password unless it was prompted
25 from a client.

1 Q But it doesn't indicate so in this entry?

2 A No. No reason to do it. Additionally, like the other
3 e-mail, it does say you cannot use it unless you're --

4 Q A non-subscriber?

5 A Correct.

6 MR. GIBSON: Thank you.

7 THE COURT: Thank you, sir. You may step down.

8 Call your next witness, please.

9 MR. OPPENHEIM: Your Honor, may I ask one
10 follow-up?

11 THE COURT: All right.

12 *REDIRECT EXAMINATION*

13 BY MR. OPPENHEIM:

14 Q What does it mean to you, that entry that
15 Mr. Bell's listings were reassigned?

16 A Being a broker myself, the listings are owned by the
17 broker. They're not owed by -- fees are paid to the broker.
18 They're not paid to the salesperson, the associate.
19 Everything is controlled by the broker of record. I can
20 tell you for a fact when I ran my own business that often
21 listings were taken from one broker and given to another
22 broker because he wasn't performing or the client who is
23 ultimately paying the fee is unhappy with your
24 representation of that building.

25 So, you could be at the same firm -- and I did it

1 myself where I removed listings from a broker because he
2 wasn't performing and gave it to another broker in the same
3 shop.

4 MR. OPPENHEIM: Thank you, Mr. Alliegro. Nothing
5 further.

6 THE COURT: You may step down.

7 MR. OPPENHEIM: Your Honor, we're going to call
8 Mr. Scott Bell, please.

9 (The witness was duly sworn or affirmed and
10 responded as follows:)

11 THE WITNESS: I do.

12 THE CLERK: Sir, would you please state your name
13 and spell your first and last name for the record.

14 THE WITNESS: Christopher Bell. Did you say spell
15 my name? C-H-R-I-S-T-O-P-H-E-R B-E-L-L.

16 MR. OPPENHEIM: Your Honor, if I may just approach
17 the witness. Mr. Alliegro handed me this new 69, and I just
18 want to put it with the other exhibits, if I could, and keep
19 this with the notebooks.

20 THE COURT: All right.

21 **CHRISTOPHER BELL,**

22 the witness, being sworn or affirmed, testified as follows:

23 *DIRECT EXAMINATION*

24 BY MR. OPPENHEIM:

25 Q Good afternoon, Mr. Bell.

1 A Good afternoon.

2 Q Where do you live?

3 A I live in Holiday, Florida, in Pasco County.

4 Q What was your last job?

5 A My last job, I worked at Klein & Heuchan.

6 Q And during what period of time?

7 A From -- approximately it was December/January somewhere
8 in between in there of 2006. January would be 2007 through
9 August -- the last day of August of 2008.

10 Q So, you began somewhere between December 2006,
11 January --

12 A With the holidays -- I'm sorry, with the holidays, I
13 mean, I -- I went there and met with them, and I joined them
14 in December; but officially I think it might have been
15 somewhere after Christmas or the new year. I don't recall
16 precisely.

17 Q That's fine. And you -- you were there until August of
18 2008; is that correct?

19 A Correct.

20 Q And do you hold any professional licenses?

21 A Sales -- a salesperson's license for the state of
22 Florida.

23 Q As a --

24 A Real estate.

25 Q Real-estate salesperson's license?

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1 A Yes.

2 Q What type of business is Coldwell Banker NRT?

3 A NRT has -- I believe at the time I was there -- I don't
4 know if they split it up since then, but NRT consisted of a
5 residential phase, and they had a commercial division as
6 well. And some time thereafter, they split off, and it was
7 called Realogy or Realogy. I don't know how to pronounce
8 the term.

9 Q So, Coldwell Banker NRT had a commercial real-estate
10 brokerage?

11 A Yeah. They had a commercial presence, correct.

12 Q Okay. And which Coldwell Banker office did you work?

13 A The Clearwater office on Gulf to Bay.

14 Q And roughly how many sales agents were at that office?

15 A I would say somewhere around 15, as I remember. I
16 mean, it could vary.

17 Q And what were your job duties at that office?

18 A To prospect for listings and leasing activity,
19 listings, and to sell commercial property.

20 Q I just want to make sure I capture it all. So, you
21 were involved in leasing commercial properties; is that
22 correct?

23 A Yes.

24 MR. GIBSON: Objection, leading.

25 THE COURT: Overruled. He's still a party

1 opponent.

2 MR. OPPENHEIM: I'm sorry, Your Honor?

3 THE COURT: I said, he is still a party opponent.

4 BY MR. OPPENHEIM:

5 Q Beyond leasing activities -- and you said you were also
6 involved in selling activities?

7 A Sales, yeah.

8 Q Any other activities that you were involved in at
9 Coldwell?

10 A I guess we participate in some meetings. We would go
11 to -- from time to time, they would have maybe some sort of
12 event that you had to be present at. I remember we went to
13 a Zig Ziglar event down at the St. Pete Times Forum.

14 Q When was the first time you saw CoStar's online
15 services?

16 A Shortly after I had started there, I -- John Skicewics
17 took me through -- he introduced me to all the agents. We
18 took me through and showed me the -- a computer room that
19 had -- I believe it's three, if not four, computers, and
20 each computer had its own system that you could do research
21 on.

22 I think one had -- it was called Win2Data. The other
23 one was CoStar, and I don't know -- I'm not sure if there
24 was another one. I don't remember. But I know there was at
25 least those two.

1 Q My question was when. So, roughly when was that?

2 A Well, like -- I started in -- I am a little nervous.
3 That's all. I would say I -- my mom had open-heart
4 surgery in -- it was -- I left Ecolab in June -- June, July
5 of 2005; and my mom had surgery in October. And shortly
6 thereafter is probably November that I really got cranking
7 and going there. So, it could have somewhere in November,
8 maybe December.

9 Q Of 2005?

10 A Correct.

11 Q And did you like CoStar in terms of being a service or
12 a tool?

13 A I did, yes.

14 Q And why was that?

15 A It seemed like it was easy to use. You could type in
16 an address and it would spit out kinds of different -- it
17 would spit out information about the property and the --
18 the -- like the sales and things like that.

19 Q Did Coldwell ultimately license CoStar access to all of
20 its sales associates?

21 A Yes, it did.

22 Q Okay. And do you know why Coldwell provided its
23 brokers or its sales agents with access to CoStar?

24 A Could you repeat the question, please?

25 Q Sure. Do you know why?

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1 A Why did they --

2 Q Coldwell --

3 A -- license everybody?

4 Q Yeah.

5 A They had -- there was a meeting that they had set up
6 and kicked off. At that time, you could only use CoStar at
7 that -- only at that terminal, and you couldn't get any --
8 you couldn't access it from anywhere else. And so, when
9 they kicked off the meeting when John Skicewicz was
10 leaving -- he wasn't leaving the company; he was leaving his
11 position as a manager and going back into the sales field
12 out of a different office. He --

13 Q Let me try to redirect you. I was asking you why.

14 A Oh, why?

15 Q Yes.

16 A So, it could be portable. You could take it with you.
17 You could use it if you were at home or maybe at a client's
18 place or something like that. You weren't restricted to
19 being in the office.

20 Q And did you find that CoStar -- the CoStar service was
21 a useful service when you were at Coldwell?

22 A I did, yes.

23 Q And what is it that the CoStar service enabled you to
24 do?

25 A I could search -- I could search for different

1 properties. You could see who had listings for -- maybe for
2 something you're looking for. It had the public information
3 about -- you -- in other words, you wouldn't have to go to the
4 Property Appraiser necessarily to get all the information.
5 It was all bundled into one. So, you had a lot of different
6 sources that the information was just packed into one page
7 or maybe a -- a different page or two. You could expand and
8 open within it.

9 Q Did you use it to educate yourself about what was
10 happening in the marketplace?

11 A Yes.

12 Q And did you use it to prospect specific clients?

13 A Yes.

14 Q And did you use it in attempting to facilitate specific
15 deals that you were trying to do?

16 A From time to time, yes.

17 Q When you received access to CoStar, did anyone at
18 Coldwell say to you that you could continue to access CoStar
19 even after you left Coldwell?

20 A They did not.

21 Q And when you received access to CoStar, did CoStar
22 indicate to you you could continue to use the service even
23 after you left Coldwell?

24 A There was no indication.

25 Q Okay. So, when is it that you left Coldwell?

1 A I left Coldwell --

2 THE COURT: Asked and answered.

3 THE WITNESS: Pardon me?

4 THE COURT: He's already asked that question. You
5 already answered it.

6 THE WITNESS: Okay.

7 BY MR. OPPENHEIM:

8 Q Mr. Bell, why is it that you left Coldwell and joined
9 Klein & Heuchan?

10 A Couple of reasons. Coldwell Banker was a -- they were
11 having -- they were having a tough time. They were
12 struggling. John was leaving. They brought -- they
13 introduced -- Jay Love introduced Jerry Lamb as the new
14 director, and he was -- he was located -- he was brought in
15 from outside the area -- from outside the area of Florida.
16 I believe it was Texas. And my understanding or my -- the
17 way I perceived Jerry was he had very limited brokerage
18 experience within the sphere of where we do business, which
19 is Pinellas, Hillsborough, the tri-county area.

20 So, he didn't have a lot of knowledge about it; and
21 with John gone, who was, you know -- who helped overseeing
22 me, there wasn't really anybody you could go to get help
23 with understanding the market to help you consummate a deal,
24 like he may not know a broker as well as somebody else
25 might.

1 Q So, one of the reasons you joined Klein & Heuchan was
2 to get better training and support?

3 A Yes.

4 Q What kind -- what type of business is Klein & Heuchan
5 as compared to Coldwell Banker?

6 A I would say pretty much the same.

7 Q What was -- how many office locations were there for
8 Klein & Heuchan?

9 A They had the executive center on U.S. 19, and they have
10 the one on Belcher, their main office.

11 Q So, two offices?

12 A Yeah.

13 Q Okay. And which one did you work at?

14 A I worked out of the one on Belcher.

15 Q That was the main office?

16 A Yes.

17 Q And what was your position at --

18 A I was a salesperson, associate.

19 Q Okay. While you were working for Klein & Heuchan, did
20 you simultaneously work for any other commercial real-estate
21 firm?

22 A No, I didn't.

23 Q After you began working at Klein & Heuchan, did
24 Coldwell continue to keep you listed as a sales associate on
25 its Website?

1 A They did.

2 Q When did you become aware that that -- that they were
3 doing that?

4 A Shortly after I left, I knew a couple of the guys that
5 were -- that were there. I know Jonathan Kim had left, and
6 I heard he was leaving, but I wasn't sure, and he was much
7 younger than me. He was probably in his mid to early 20s,
8 and he was going to -- I heard he was leaving.

9 So, I had checked the Website to see if he was there
10 and pulled up all the bios, and I saw myself on there, but
11 Jonathan Kim was gone.

12 Q And when was that?

13 A I want to say probably the first part of 2007.

14 Q So, sometime in the first part --

15 A I would say the first quarter of 2007.

16 Q So, in the first quarter of 2007, Coldwell Banker still
17 listed you as one of its sales associate on its Website?

18 A It did.

19 Q And what did you did when you learned that?

20 A I phoned and left a few voice mails and messages. I
21 did talk to Linda Barringer, who was John's administrative
22 assistant, which is now Jerry's. He had taken over. And
23 I'd spoken to her, and she said, "We need to talk to Jerry."

24 So, I called Jerry, and I never was successful with
25 talking to him, but I left him a message to please have me

1 taken down from the Website; and I didn't get any response.
2 So, from time to time I would check back, and I think it was
3 probably not too long after that I called again.

4 I talked to Jim Parker, and I mentioned the problem I
5 was having, to get me taken off the Website; and Jim says,
6 "I'm not in charge here. Maybe you should call somebody in
7 Sarasota and talk to them down there, and maybe they can
8 help you."

9 Q Let me see if I can cut this short. Did they
10 ultimately take you off the Website?

11 A They did. I talked to Peggy Kronos down in Sarasota,
12 and she took me off that day.

13 Q Do you know roughly when that was?

14 A I think it might have been around March or April.

15 Q Of 2007?

16 A Yes.

17 Q Mr. Bell, could I ask you to look at Exhibit 48. There
18 should be some binders at your feet with that exhibit.

19 A Forty-eight?

20 Q Do you recognize this document, Mr. Bell?

21 A I do.

22 Q On this first page there, Mr. Bell, do you see your
23 signature?

24 A Yes.

25 Q (Changes overhead exhibit.) Is that a true and

1 accurate copy of your signature?

2 A Yes.

3 Q That's a signature acknowledging that you had received
4 a copy of the Klein & Heuchan office-policy manual and
5 commission schedule, that you understood it and completely
6 agreed to abide by it in every respect?

7 A Yes, uh-huh.

8 Q And the subsequent document that follows your signature
9 page is, in fact, that Klein & Heuchan office policy and
10 commission schedule to employees and independent
11 contractors; is that correct?

12 A Yes.

13 Q And that's the policy that you were agreeing to; right?

14 A Uh-huh.

15 MR. OPPENHEIM: We would move Exhibit 48 in
16 evidence, Your Honor.

17 MR. GIBSON: No objection.

18 THE COURT: Be admitted.

19 (Plaintiff Exhibit 48 was received in evidence.)

20 BY MR. OPPENHEIM:

21 Q I'd ask you to turn to Exhibit 55, please (changing
22 overhead exhibit). Do you recognize this document?

23 A Yes.

24 Q Is that your signature on the bottom of the document?

25 A Mm-hmm -- I mean, yes. Sorry.

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1 Q And you were agreeing to this independent-contractor
2 agreement with Klein & Heuchan; is that correct?

3 A Yes.

4 MR. OPPENHEIM: We'd move Exhibit 55 in evidence,
5 Your Honor.

6 MR. GIBSON: No objection.

7 THE COURT: Be admitted.

8 (Plaintiff Exhibit 55 was received in evidence.)

9 BY MR. OPPENHEIM:

10 Q Did Klein & Heuchan provide you with any policies other
11 than those in the office policy and commission schedule, the
12 first exhibit we looked at, Exhibit 48, and the independent
13 contractor agreement, which was Exhibit 55?

14 A No. These were the -- these were the documents that I
15 had when I started.

16 Q And as far as you're aware, there was no policy at
17 Klein & Heuchan regarding intellectual property, was there?

18 A No.

19 Q Was there a policy regarding copyright?

20 A No.

21 Q During the period you worked at Klein & Heuchan, how
22 many sales associates were there?

23 A I would say between 14 and 16 at any time.

24 Q And was -- did the Klein & Heuchan Website list
25 those -- those sales agents?

1 A Yes.

2 Q And did it have a picture of you on the Website?

3 A Mm-hmm -- I mean, yes. Sorry.

4 Q And were your duties at Klein & Heuchan the same or
5 different than they were at Coldwell?

6 A We were required to attend -- Coldwell Banker didn't
7 have a firm policy that you had to -- they -- they didn't
8 have sales meetings very often; but at Klein & Heuchan they
9 had a sales meeting every Monday and Wednesday, as I recall.
10 I think it started at 8:00.

11 Q So, one of the differences between the two was the --
12 the mandatory attendance at these meetings?

13 A Right.

14 Q Were there other differences in your job duties?

15 A From time to time we were asked -- we took floor calls
16 at Coldwell Banker. Linda took all the floor calls and
17 dispensed them out; but from time to time we would take
18 floor calls as they came in. They would be shuffled around
19 and given to us; and then on -- it was optional where you
20 could take what they would term "weekend calls." It wasn't
21 mandatory, but you could take weekend calls where you could
22 pick up messages that people would leave on the weekend.

23 Maybe they wanted to see a property or they were
24 looking for something. Most of the time it was somebody
25 who's -- one of the agents in the office that might have

1 been one of their listings that somebody was calling that
2 they had already worked with or done something like that.
3 So, then we would pass the information along to them on the
4 next business day for them to follow up on.

5 Q Other than the kind of details of how it happened, were
6 your duties at Klein & Heuchan the same as Coldwell such as
7 being involved in leasing and sales of commercial real
8 estate?

9 A Yes.

10 Q And were Coldwell and Klein & Heuchan competitors in
11 the Tampa-St. Pete market?

12 A I would you say they were friendly competitors, yes.

13 Q But they were competing for the same business; is that
14 correct?

15 A Right. Right.

16 Q I didn't mean to suggest they were enemies.

17 A Well, they were -- I didn't want to suggest they're
18 adversarial. In the business we always try and work as --
19 as -- in the real-estate industry, nobody's really your
20 adversary, because you're always trying to get a deal done,
21 and you don't want to have an adversarial relationship with
22 them.

23 Q So, while you were collegial, you were still
24 competitors for the business?

25 A Right.

1 Q And did Klein & Heuchan have a license with CoStar?

2 A Could you repeat the question?

3 Q I'm sorry. I'll slow down. Did Klein & Heuchan have a
4 license to access CoStar services?

5 A They did not, no.

6 Q Did Klein & Heuchan have access to the Pinellas Realtor
7 Association Residential MLS service?

8 A Yes, they did.

9 Q And how did that license work?

10 A The way I recall is when you sign up for the Pinellas
11 Realtor organization, you go through a training class, and
12 you utilize -- they tell you how to put the listings in.
13 It's very regimented. You have to update every so often,
14 and there's -- there's rules that apply.

15 You can't put certain things in the public field that
16 the public could see. It can only be under Realtor marks.
17 If you print it for a client, you didn't want to have maybe
18 like a key code or something like that. So, it was
19 regimented in the way that they could see -- they would
20 track to see if you were -- if there were MLS violations
21 from time to time.

22 Q Apart from the substantive aspect of what the service
23 provided, could individual sales associates on their own
24 license access to the Pinellas Realtor Association
25 Residential MLS Service?

1 A My understanding is they would not let one person --
2 because I was in the real estate, but I did a little bit of
3 residential when I started at Coldwell. I went down there
4 and met some of those people, and then I immediately decided
5 that I wanted to go up to the commercial. I always thought
6 I did, but I just went down and checked out the residential;
7 and when you sign up for it -- everybody in the office is
8 required to be signed up for it.

9 Q So, the Pinellas Realtor Association Residential MLS
10 Service is not available to individuals within an office;
11 you have to have an entire office licensed?

12 A Right.

13 Q And was it the case that everybody at the office that
14 you were at at Klein & Heuchan was, in fact, licensed for
15 that service?

16 A I know -- I know Marty Slavney wasn't. He didn't use
17 it for -- he had mentioned it a few times, because we'd
18 talked about different things that would work. He would
19 talk about what marketing might work for you on a specific
20 level, whether it be a -- a -- the premium membership to
21 LoopNet or just the basic; and we would talk about that, and
22 he never -- he never liked it, and he just didn't belong to
23 it.

24 Q When you say "it," you mean the Pinellas Realtor?

25 A Right, the Pinellas Realtor.

1 Q And so, he wasn't licensed individually?

2 A No.

3 Q And did there come a point in time when you didn't want
4 to be licensed individually?

5 A I would say towards the end of the year it was up for
6 renewal in 2008 --

7 Q 2008 or 2007?

8 A 2008 I was a -- a member for the year of 2007, and I
9 didn't get a lot of activity out of it. So, I -- having
10 known that Marty didn't subscribe to it, I decided that I
11 didn't want to renew as well.

12 Q And what happened then with respect to the availability
13 of the service in the Klein & Heuchan office if the policy
14 was that the service was only available if everybody was
15 licensed?

16 A Please repeat the question.

17 Q I am trying to understand. You said earlier that
18 everybody in the office had to be licensed?

19 A They -- yes.

20 Q But now you're telling me that you had a colleague who
21 wasn't licensed and you didn't want to renew your license.
22 What if -- how did Klein & Heuchan deal with that in terms
23 of that service?

24 A Mark --

25 THE COURT: Just a minute. The Pinellas County

1 Multiple Listing Service?

2 MR. OPPENHEIM: Yes. I am sorry. Would you like
3 me to restate the question?

4 THE COURT: No. You're just asking an awful lot
5 of questions about a different service that doesn't have
6 anything to do with CoStar, and I wanted to be sure that you
7 were still on the multiple listing service and not CoStar.

8 MR. OPPENHEIM: Yes, I am, Your Honor, and --

9 THE COURT: When you use the word "license," which
10 could be his real-state license, which is not the Pinellas
11 County Multiple Listing Service.

12 MR. OPPENHEIM: Your point is well-taken. I will
13 try to be a little clearer in my questions, and I am driving
14 to a point here, and hopefully we'll get there soon.

15 BY MR. OPPENHEIM:

16 Q Let me rephrase here.

17 You indicated that the Pinellas Real Estate Association
18 MLS service, was only available if everybody within an
19 office entered into a license agreement to get that MLS
20 service; is that correct?

21 A They had to be a member of the organization, yes.

22 Q And you also indicated that you had a colleague within
23 Klein & Heuchan who chose not to get a license from the
24 Pinellas Realtor Association MLS?

25 A Yes.

1 Q And you also indicated that there came a point in time
2 when you didn't want to renew your license because you
3 didn't see much value in it; is that correct?

4 A Yes.

5 Q Well, given that the Pinellas Realtor Association MLS
6 Service required everybody to be licensed and there were at
7 least two of you that weren't going to be licensed, one who
8 already wasn't licensed for the service, what did Klein &
9 Heuchan do to address that problem?

10 A Mark had gotten an e-mail from the accounting
11 department that I hadn't paid my dues and there would be --
12 they would be turning off the office's MLS until that was
13 taken care of.

14 Q Let me pause a minute. You're saying that the Pinellas
15 Realtors Association sent a note to Mark Klein saying that
16 the entire office would lose its access?

17 A Yeah.

18 Q All right. Go on. So, what happened?

19 A He asked me about it, and I told him I didn't see a
20 value to it and Marty didn't have it. So, he said he would
21 take care of it and would place me as being an agent out of
22 the office up on -- at the Executive Center on 19.

23 Q What do you mean by that, that he said he would place
24 you as an agent at a different office?

25 A He would -- I believe the way I recall he said it is

1 that by putting me over there, since they didn't have it
2 over there, that I wouldn't have to pay it and that I
3 could -- then the MLS wouldn't be turned off.

4 Q So, did he transfer you to another office and you had
5 to start working out of the other office?

6 A No. I continued to work out of Belcher.

7 Q Did you ever go work at that other office?

8 A No.

9 Q So, all he was doing was telling the Pinellas Real
10 Estate Association MLS Service that you actually weren't
11 located in the main office in order to avoid having the
12 license terminated; is that correct?

13 A Yes.

14 Q And did he do the same with your colleague?

15 A I believe so. I'm not exactly certain, but I -- that
16 would be my idea, yes.

17 Q And when you left Coldwell, you continued using the
18 CoStar service that you received access to through Coldwell;
19 correct?

20 A Yes.

21 Q And for how long did you continue to use the CoStar
22 service that you had access from Coldwell? How long into
23 your period of time at Klein & Heuchan did you continue to
24 use it?

25 A Up until we received the letter from CoStar's legal

1 department, which I believe was in April or May, somewhere
2 in there.

3 Q Of 2008?

4 A Right.

5 Q Were you using CoStar for the purposes of your job at
6 Klein & Heuchan?

7 A Yes. It -- a lot of the job is to gain the knowledge
8 and look up listings and try and get listings, yes.

9 Q And the information that you obtained was not only for
10 your own benefit but for the benefit of Klein & Heuchan; is
11 that correct?

12 A I believe my knowledge would transfer, yes.

13 Q Did you ever stop to consider whether or not you were
14 still authorized to use the service even though you had left
15 Coldwell?

16 A I didn't give it a thought.

17 Q Why not?

18 A I just -- I just never -- I didn't give it a thought.

19 Q Is that what you said in your deposition?

20 A I -- can you ask me the question again? I'm not sure.

21 Q I asked you whether you ever stopped to consider
22 whether or not you were still authorized to use the service,
23 and you said you never gave it a thought.

24 A Okay.

25 Q So, what I'm asking you now is, in your deposition, did

1 you give similar testimony or did you give different
2 testimony?

3 A I don't recall.

4 THE COURT: Sustained.

5 BY MR. OPPENHEIM:

6 Q Did you want to think that you had access to CoStar?

7 A Yes, I did.

8 Q Why?

9 A Because I liked -- I liked the service.

10 Q Was Klein & Heuchan aware you were using the CoStar
11 service?

12 A They were.

13 Q Who at Klein & Heuchan was aware?

14 A The -- I know Mark and Steve and Judy Healey sat next
15 to me, those three individuals.

16 Q I'm sorry. I didn't mean to interrupt you.

17 A No. It would be those three individuals.

18 Q When you say "Mark and Steve," you're referring to Mark
19 Klein?

20 A And Steve Klein.

21 Q When did Mark Klein and Steve Klein become aware that
22 you were continuing to access and use the CoStar service?

23 A Shortly after I was there the first quarter of '07.

24 Q And were they aware that you were using your password
25 from Coldwell to gain that access to CoStar?

1 A Yes.

2 Q When you were working at Klein & Heuchan, did there
3 ever come an occasion when you showed somebody at Klein &
4 Heuchan the CoStar service?

5 A Yeah. One -- I was working on a -- a Saturday
6 afternoon in the office, and I was doing some research in
7 the Westshore market; and Mark from time to time would come
8 in on Saturdays to catch up on his things, and he came back
9 just to see what I was doing, and I said, "I am doing some
10 research on the office -- the Westshore market office area,"
11 and I had -- I don't recall. I don't know what the property
12 was, but I had -- I was in CoStar's Website, and I showed it
13 to him, and he said, "Fantastic," and he just -- "That was
14 great" or something to that effect, and that was basically
15 it.

16 Q And he looked at -- he looked over your shoulder at
17 what you were doing on CoStar?

18 A Right.

19 Q And the research you were doing on the Westshore market
20 was for the -- was in the context of your job at Klein &
21 Heuchan?

22 A Yes.

23 Q Did you ever have an occasion to show Judy Healey
24 CoStar?

25 A I think I showed her once or twice the system, yes.

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1 Q And she was never one of your -- another sales
2 associate at Klein & Heuchan?

3 A Yes.

4 Q Can you walk through the mechanics of how you accessed
5 the CoStar service while you were at Klein & Heuchan?

6 A I had saved CoStar in my bookmarks on my computer. I
7 would go through the bookmark and hit the tab, and it
8 would -- the Website would pop up, and then I would just log
9 in because -- it remembered who I was and my user name, and
10 then my password would show up just in asterisks, and then I
11 would just hit "login," and it would take me right in.

12 Q And this was on your laptop computer?

13 A Right.

14 Q And did you have to be connected to the Internet?

15 A Yes.

16 Q Where did you get that Internet connectivity from?

17 A At the office.

18 Q So, it was provided by Klein & Heuchan?

19 A Right.

20 Q They provided Internet access so you could access the
21 CoStar service?

22 A Correct.

23 Q When you -- when you first -- the first time you
24 accessed the service, did CoStar's terms of use pop up that
25 you had to accept?

1 A I don't recall if it popped up. I remember it saying
2 "Terms Of Use," and I just clicked "Accept" to enter.

3 Q And did those terms of use that you accepted, did they
4 reappear from time to time?

5 A From time to time, yes (nodding head).

6 Q And did you accept them every time they appeared?

7 A Yes.

8 Q And while you were logged onto the CoStar service, did
9 the screen -- screen have your name on it?

10 A It did.

11 Q And where did your name appear?

12 A I don't remember what side of the screen. Is that what
13 you're asking for, what -- on the screen, the right? The
14 center?

15 Q Yeah.

16 A I don't remember.

17 Q Okay. Do you remember whether there was anything that
18 appeared next to your name?

19 A The Coldwell Banker insignia did, yes.

20 Q Okay. So, on the screen when you were using CoStar, it
21 would have said Scott Bell; is that correct?

22 A Yes.

23 Q And then next to "Scott Bell," it would have "Coldwell
24 Banker NRT"?

25 A Yes.

1 Q And that appeared on the screen when you were using the
2 service?

3 A Yes.

4 Q When you joined Klein & Heuchan, did that change at
5 all?

6 A I lost -- I --

7 Q Fair enough. Let me ask the question a little more
8 clearly. My apologies. When you joined Klein & Heuchan and
9 you were accessing the CoStar service, did the Coldwell
10 Banker NRT logo continue to appear next to your name?

11 A Yes.

12 Q While you were at Klein & Heuchan, how frequently would
13 you say you used the CoStar service?

14 A I -- I don't -- I wouldn't even know how to quantify
15 that. Are you asking me as far as hours per week or --

16 Q Let's try something less detailed. Did you use it
17 daily? Frequently? Regularly? Not so often? How would
18 you quantify how frequently you used the service?

19 A I would just from time to time.

20 Q If you could turn to Exhibit 30, please (changing
21 overhead exhibit).

22 A Okay.

23 Q Mr. Bell, this document lists instances -- this log
24 file lists the instances in which --

25 MR. GIBSON: Objection, Your Honor. He's

1 testifying.

2 THE COURT: Sustained.

3 BY MR. OPPENHEIM:

4 Q Mr. Bell, when you printed -- when you would print out
5 something from the CoStar service, would that printout also
6 include a reference to your name and to Coldwell Banker NRT?

7 A Yes.

8 Q And that would appear on the document you printed out?

9 A Sometimes. I don't believe I recall it being on the
10 office reports, but it would on the other documents.

11 Q Exhibit 19, please.

12 A Is it possible for me -- do I have to go into the book,
13 or can I look on the screen, or can I have both?

14 Q If you want to look on the screen, that's fine, I will
15 put it up for you.

16 A Okay.

17 Q Did you produce this document in discovery, Mr. Bell?

18 A Yes.

19 Q Was this a document that had been in your files?

20 A Yes.

21 Q And this is a document that you had printed out from
22 the -- from CoStar's service, and then you -- you scanned
23 into your hard drive; is that correct?

24 A No. I didn't scan it to my hard drive. I just printed
25 it off the Website.

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1 Q Okay. So, you printed it off your website, and then
2 you maintained a hard copy of it?

3 A Right (nodding head).

4 Q And was this a document you maintained as part of your
5 business?

6 A Yeah.

7 MR. OPPENHEIM: We would move this into evidence,
8 Exhibit 19.

9 MR. GIBSON: No objection.

10 THE COURT: Be admitted.

11 (Defense Exhibit 19 was received in evidence.)

12 BY MR. OPPENHEIM:

13 Q Mr. Bell, do you see the lower portion of this document
14 has a date on it?

15 A Yeah. You want me to read it?

16 Q Sure.

17 A It's January 17 of 2007.

18 Q Is that the date on which you printed this document
19 out?

20 A Yes.

21 Q And this is a document you obtained from CoStar;
22 correct?

23 A That's correct.

24 Q And earlier you were describing that when you printed
25 out a document it would have your name on it; is that

1 correct?

2 A That's correct.

3 Q And does this document have your name on it as you
4 described?

5 A Yes.

6 Q And that's what's here on the upper left-hand side of
7 the document?

8 A That's right.

9 Q And next to your name it says "Coldwell Banker
10 Commercial NRT"; is that correct?

11 A That's correct.

12 Q At the time that you printed this document out, you
13 weren't working for Coldwell Banker NRT, were you?

14 A No, I wasn't.

15 Q But it's because Coldwell Banker Commercial NRT is the
16 licensee for the CoStar product that their name is on here;
17 is that right?

18 A That's right.

19 Q And this document has a copyright notice on it, doesn't
20 it?

21 A Yep.

22 Q And that copyright notice on the lower left-hand corner
23 of the document indicates that it is a copyright owned by
24 CoStar Realty; is that correct?

25 A That's correct.

1 Q And the document indicates that by using the Website --
2 and by "Website" it means the place where you downloaded
3 this document -- you were agreeing to the terms of use;
4 isn't that right?

5 A That's right.

6 Q And you understood that that -- that language there,
7 "Terms Of Use," that's underlined, that's a click-through, a
8 link, to the CoStar terms of use; isn't that correct?

9 A I believe so, yes.

10 Q Let's turn to Exhibit 20, please.

11 A You say 20?

12 Q Yes, please.

13 A I am on 21, I'm sorry. Let me go to 20. Okay, I got
14 it.

15 Q Is this another document that you produced in
16 discovery?

17 A Yes.

18 Q And is this a document that had been on your computer?

19 A That's correct.

20 Q And is this a true and accurate copy of both an e-mail
21 and the attachment to the e-mail that you had maintained in
22 the regular course of your business activities?

23 A Yes.

24 MR. OPPENHEIM: We would move Exhibit 20 into
25 evidence.

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1 MR. GIBSON: No objection.

2 THE COURT: Be admitted.

3 (Defense Exhibit 20 was received in evidence.)

4 BY MR. OPPENHEIM:

5 Q Mr. Bell, who is Tracy McMurray?

6 A He's a gentleman I have known for quite some time
7 dating back to when I worked at Ecolab. He owns a
8 water-softening company in Tampa.

9 Q And this is an e-mail you were sending to him; is that
10 correct?

11 A That's right.

12 Q And why were you sending this e-mail to him?

13 A He had -- he had called me up, and he had been driving
14 around, and he saw this warehouse, which used to be the old
15 Fisher Buggies on Lois, and he was wanting to know more
16 about it because he wasn't -- it was empty, and he thought
17 he might -- maybe it might be a fit for him.

18 Q So, he had contacted you in your capacity as a sales
19 associate at Klein & Heuchan?

20 A Yes.

21 Q And you were responding to his commercial real-estate
22 interests --

23 A Yes.

24 Q -- as a sales associate at Klein & Heuchan?

25 A Yes. I was responding to his inquiry.

1 Q And you were -- you sent him in this e-mail some
2 reports about the warehouses that you saw with him that day;
3 is that correct?

4 A The -- okay, let's see. What page are you looking at?
5 Because I only showed him the one warehouse. It was the
6 Fisher Buggies, and I gave him some ideas of what the
7 warehouses were -- warehouses in the surrounding area were
8 and that they might expect to be a value of.

9 Q Right. And the attachments that you sent were
10 regarding the warehouses that you had seen, and you were
11 trying to send him information?

12 A Right.

13 Q And I would ask you to turn to the page that is
14 numbered CoStar 734, please, which I have up now. This was
15 part of the -- part of what you sent him; is that correct?

16 A Yes.

17 Q And where did you get this document from?

18 A I had this -- this was in my e-mail archives.

19 Q Let me rephrase that.

20 Not -- not where did you get it from when you produced
21 it; but, rather, where did you get this document in order to
22 send it to Mr. McMurray?

23 A From CoStar.

24 Q You downloaded it off the CoStar service?

25 A Right.

1 Q And I notice here in the upper left-hand corner there's
2 a pen mark; is that correct?

3 A That's right.

4 Q And what is it that that pen mark is crossing out?

5 A My name and "Coldwell Banker NRT." That's what --
6 yeah, that's what I would believe.

7 Q And why did you cross that out?

8 A I didn't want my client to have the impression that I
9 was working for another real-estate company. I represent
10 myself as a Klein & Heuchan employee.

11 Q Right. You wanted him to understand that you work for
12 Klein & Heuchan?

13 A Right.

14 Q Not Coldwell Banker?

15 A Right.

16 Q And after you printed this out and you marked through
17 it in order to e-mail it to him, you had to digitize it,
18 didn't you?

19 A Right.

20 Q And so, did you scan this document?

21 A I did.

22 Q Where did you scan it?

23 A Klein & Heuchan has a printer that acts as a copier and
24 a scanner, and it sends you -- wraps it up into a PDF and
25 e-mails it to you.

1 Q So, you used that printer/copier at Klein -- that Klein
2 & Heuchan provides in order to do that?

3 A Right, scanner/copier.

4 Q Thank you. At Klein & Heuchan did you use the CoStar
5 service to conduct research and learn about the commercial
6 real-estate market?

7 A Yes.

8 Q And did you use the CoStar service to review specific
9 properties?

10 A Yes.

11 Q And did you customize searches on the CoStar database
12 for properties or market trends or market statistics based
13 on user-inputted criteria?

14 A Yeah. I guess what you're asking me would be maybe
15 like maybe the Westshore area with a certain parameter like
16 maybe the -- I did, that's correct.

17 Q You put in new criteria into CoStar and asked for it to
18 give you back information --

19 A Right.

20 Q -- and reports?

21 A Yes.

22 Q Did you download -- in addition to that, did you
23 download quarterly market reports to understand the office
24 segment in the Tampa-St. Petersburg market?

25 A Yes, I did.

1 Q And did you download market reports -- quarterly market
2 reports with respect to the industrial sector for the
3 Tampa-St. Petersburg market?

4 A Yes.

5 Q And those were reports that were prepared by CoStar and
6 available on the CoStar service?

7 A Correct.

8 Q Did anyone at Klein & Heuchan ever ask you to download
9 something from CoStar for them?

10 A Yes.

11 Q Who?

12 A I remember Mark had been working on a project over
13 in -- in the downtown Tampa area. It was -- I believe he
14 was acting as a consultant, and he had -- he knew I'd been
15 doing a lot of research in the Tampa market on rates and so
16 on for -- for leasing, and he had already -- I believe he'd
17 already done his research, but he'd asked me what my opinion
18 was for what the rates might be over there, because that
19 would be an indicator of the value of the building, what
20 potential rates might be.

21 Q Let me break that down for a minute. When you say
22 "Mark," are you referring to Mark Klein?

23 A Right.

24 Q And you -- when I asked you the question, I asked you
25 who had asked you to get information from CoStar for them.

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1 Did Mark Klein specifically ask you to get information from
2 the CoStar service for him?

3 A Yeah.

4 Q So, when he asked you for your opinion, he -- he --
5 what you really meant to say is he asked you go get
6 information from CoStar?

7 A I believe so, yes.

8 Q And you said that this was for a -- a project that he
9 was doing in the Tampa market?

10 A Right.

11 Q Can you describe that project, please?

12 A I believe he -- I don't know the -- like a hundred
13 percent of the details. The best I can recall, it was -- he
14 was acting as a consultant for a group of people that were
15 considering buying an office building in the downtown market
16 area, and they were -- they were trying to figure out what
17 the -- what the rates -- what might be the value of the
18 building, because it's based on the -- what the going rates
19 might be and what the actual leases are.

20 Q So, he wanted to get information from CoStar so he'd
21 have more information regarding -- to assist him in his
22 consulting capacity?

23 A Well, I mean -- yeah.

24 Q Did Mark Klein ever ask you on any other -- in any
25 other instances to get information from the CoStar service

1 for him?

2 A I'm trying -- I'm not sure I -- I can't recall. I know
3 it was that one. I don't know if there were any other ones.
4 I can't recall.

5 Q Did Mr. Klein -- and by that, I mean Mark Klein -- ever
6 have a client who was interested in a property that had
7 formerly been an Eckerd Drugs?

8 A Oh, yeah, that's right. It was a client of his. It
9 was Lynn Levin.

10 Q Lynn Levin was the client?

11 A Yeah. He had been looking. He was -- he had sold --
12 he had -- he was always looking to buy something, and I
13 think he was out driving around, and he asked Mark about
14 that, and Mark had -- I believe he had done a search for it.
15 He couldn't find any of the agent information or who the
16 company was that had it or the representative. Maybe -- I
17 think they had a sign on it, so maybe he did know, but he
18 didn't know who the associate was. So, he asked me could I
19 look it up and see if I could find that.

20 Q So, he wanted you to look up information in CoStar to
21 assist him with helping Mr. Levinson (sic); is that correct?

22 A Right.

23 THE COURT: How much longer do you have on direct?

24 MR. OPPENHEIM: We've got a little bit,

25 Your Honor.

1 THE COURT: When you reach a convenient stopping
2 place, then we'll take a break.

3 MR. OPPENHEIM: One more question set, and then
4 maybe that could be a good stopping place.

5 BY MR. OPPENHEIM:

6 Q Mr. Bell, did Judy Healey ever ask you to get
7 information for her regarding -- from CoStar?

8 A As far as I could remember, I know I offered her an
9 office report, and I -- I don't remember if -- I did show
10 her some stuff on there, but I don't recall if she asked me
11 formally.

12 Q So, you know you provided it to her, but you don't know
13 whether she formally asked for it? You just can't recall?

14 A Right.

15 MR. OPPENHEIM: Your Honor, why don't we take a
16 break at this point?

17 THE COURT: All right. We'll take a 15-minute
18 break.

19 COURT SECURITY OFFICER: All rise.

20 (Recess from 3:03 p.m. until 3:30 p.m.)

21 THE COURT: Proceed.

22 BY MR. OPPENHEIM:

23 Q Mr. Bell, before our break, I had asked you whether or
24 not anyone at Klein & Heuchan had ever asked you to download
25 something from CoStar for them, and you had described two

1 instances with Mark -- Mr. Mark Klein and one instance with
2 Judy Healey.

3 THE COURT: Sustained. There's no testimony that
4 Judy Healey asked him to download something for her. He
5 said he may have showed her -- he may have shown her
6 something.

7 BY MR. OPPENHEIM:

8 Q You testified that you couldn't recall whether or not
9 she had asked you, but you provided her with information?

10 A Right.

11 Q Was there ever an instance with respect to Mr. Steven
12 Klein with where he may have asked you for information --

13 A Yes. He was --

14 Q -- from CoStar?

15 A Yes. He was working on -- he had a client that was
16 looking to buy an office condo in Tampa.

17 Q And what did he ask you for with respect to that?

18 A He was -- he had been doing a lot of research, and he
19 looked -- he had been looking around for him. I don't
20 remember the client's name, and he asked if there was
21 anything that perhaps there might be a -- a gap or something
22 he might have missed, and I -- and I looked it up for him.

23 Q And you looked it up on CoStar?

24 A Right.

25 Q And did you provide that information to him?

1 A I did.

2 Q And did -- did the -- did the customer ultimately buy a
3 property?

4 A I don't recall if this is the one that I sent him or
5 not, but I do think the guy did buy something over here in
6 Tampa. I don't know if it was the one that I gave him,
7 because I gave him a spreadsheet.

8 Q You gave him a spreadsheet of a variety of information.
9 My question is, did Mr. Steven Klein's customer ultimately
10 buy an office -- office space?

11 A Yeah, I think he did, yes.

12 Q And he did it through Klein & Heuchan with Mr. Steven
13 Klein?

14 A Right.

15 Q Mr. Bell, could you please look at Exhibits 11, 12, and
16 13. These have already been admitted in evidence. Let's
17 start with Exhibit 11. This is a document that you produced
18 in discovery, is it not?

19 A Yes.

20 Q And this is a copy of CoStar's office report for
21 year-end 2007 for the Tampa-St. Petersburg office market?

22 A Yep. That's what I see here.

23 Q And this is a document that you downloaded off of
24 CoStar while you were at Klein & Heuchan; is that correct?

25 A That's correct.

1 Q Turning to Exhibit 12 (changing overhead exhibit), this
2 is the CoStar office report for the first quarter of 2007 to
3 the Tampa-St. Petersburg office market, is it not?

4 A First quarter, 2007, yeah.

5 Q And this is a document you produced in discovery?

6 A Yes.

7 Q And it is a document that you had downloaded off the
8 CoStar system while you were at Klein & Heuchan; is that
9 correct?

10 A Yes.

11 Q Let's turn to Exhibit 13. This is the CoStar
12 industrial report as opposed to office report, which is what
13 the other two were, for year-end 2007 for the Tampa-
14 St. Petersburg industrial market, is it not?

15 A Yes.

16 Q And this is a document that you downloaded from CoStar
17 while you were at Klein & Heuchan; is that correct?

18 A Yes.

19 Q And this is -- strike that.

20 When you downloaded the reports, Mr. Bell, were they
21 actually in color?

22 A I didn't print them as color; but from the Website,
23 they were in color, sure.

24 Q The way CoStar created them was as color reports; is
25 that correct?

1 A Right.

2 Q Did you often download and review CoStar's quarterly
3 reports?

4 A Yes.

5 Q How frequently?

6 A I would say every quarter.

7 Q And why did you do that?

8 A It had -- it gave a good snapshot of all the things
9 that were going on with the office market in respect to the
10 geographical area that we're in. It told you what was
11 already out there, what was proposed to be built, and maybe
12 when the time it might be finished when it was built.

13 Q Did you give copies of these quarterly reports that you
14 downloaded or the annual reports that you downloaded to
15 anyone at Klein & Heuchan?

16 A Yes.

17 Q Who is that?

18 A I gave one to Mark, Steve, and I gave Judy a office
19 report. I remember it.

20 Q Let me break that down.

21 Did you give hard copies of the reports or electronic
22 reports -- copies?

23 A I believe I gave hard copies and, as I can recall, in
24 one or two instances an electronic copy.

25 Q Okay. And how many copies did you give of quarterly

1 reports -- market reports did you give to Judy Healey that
2 you recall?

3 A Just the one.

4 Q Okay. And how many market reports do you recall giving
5 to Mr. Steven Klein?

6 A I believe I gave him two.

7 Q Okay. In hard copy or an electronic copy?

8 A It could be either/or. I don't recall exactly.

9 Q Okay. And how many market reports did you give to
10 Mr. Mark Klein?

11 A I believe I give him one.

12 Q Can you please turn to Exhibit 22 (changing overhead
13 exhibit).

14 A (Complies.)

15 Q This is the first page of Exhibit 22. Do you recognize
16 that, Mr. Bell?

17 A Yes.

18 Q It is an e-mail that you sent to Mr. Steven Klein on
19 April 4th, 2007?

20 A Yep.

21 Q At the top it says "scottbell@klein&heuchan.com." That
22 was your e-mail address?

23 A Correct.

24 Q And stevenklein@klein&heuchan.com was Mr. Steve Klein's
25 e-mail address; is that correct?

1 A Right.

2 Q Is it says it had an attachment to it, "office
3 report.pdf"; is that right?

4 A Uh-huh.

5 Q Did you attach a document to this e-mail when you sent
6 it?

7 A Yep.

8 Q And it says, "Steve office report document," signed "C.
9 Scott Bell"; is that right?

10 A Uh-huh.

11 THE COURT: You have to answer "yes."

12 THE WITNESS: Oh, yes. I'm sorry. Pardon me.

13 BY MR. OPPENHEIM:

14 Q And it attaches a document which is labeled as the
15 CoStar office report year-end 2006, Tampa-St. Petersburg
16 office market report; is that correct?

17 A Right.

18 Q And this is -- this year-end 2006 office report is a
19 report that you had downloaded from the CoStar service; is
20 that correct?

21 A Right.

22 Q And you had downloaded it from the CoStar service while
23 you were at Klein & Heuchan; is that right?

24 A Right.

25 Q And you attached it to an e-mail that you sent to

1 Mr. Steve Klein; correct?

2 A Yep -- yes. Sorry.

3 Q And so, you were distributing this report to Mr. Steven
4 Klein, the report that you had obtained from --

5 THE COURT: Asked and answered.

6 BY MR. OPPENHEIM:

7 Q Why is it that you sent this e-mail to Steven Klein?

8 A I thought he would be interested in seeing it. I had
9 shown him one before, and it's -- I passed it along just
10 like it might be reading material like he might use in the
11 bathroom -- pardon my expression -- you know, like you would
12 just read something about the business.

13 Q You had previously provided him with a market report;
14 is that correct?

15 A I had shown him one that I had, yeah, right. That I
16 downloaded and looked at it and --

17 Q So, you were you following up and giving him another
18 one to look at?

19 A Right.

20 Q Why did you get this report for Mr. Steven Klein
21 instead of his downloading it from CoStar himself?

22 A Because Steve was not -- was not a CoStar member, a
23 subscriber.

24 Q You mean he didn't have access to CoStar?

25 A Right.

1 Q Did Steven Klein ever have any reaction to this report?

2 A Not that I recall. It wasn't like -- he didn't like
3 jump up and down. He wasn't excited about it. I mean, it
4 was just --

5 Q Did he ever tell you not to provide the report -- a
6 report like that again?

7 A No.

8 Q In fact, did either Mr. Mark Klein, Mr. Steven Klein,
9 or Judy Healey ever tell you, "Don't provide us with market
10 reports anymore"?

11 A No.

12 Q Please turn to Exhibit 18. This is another document
13 that you produced in discovery, is it not?

14 A Yes.

15 Q And this is an e-mail that -- that you had sent to
16 Steven -- another e-mail that you had sent to Steven Klein;
17 is that correct?

18 A Yes.

19 Q And it's an e-mail you sent on April 5th, 2007?

20 A Uh-huh -- I mean, yes. Sorry.

21 Q And this is -- this e-mail shows an e-mail chain below
22 it, because it's a -- it's a reply to a prior e-mail; is
23 that correct?

24 A Yes.

25 Q So, if we start actually at the bottom of the first

1 e-mail, it shows the April 4th, 2007, e-mail that we looked
2 at a minute ago on Exhibit 22 where you were sending to
3 Mr. Steven Klein the office report; is that correct?

4 A Right.

5 Q And then if you look above that at the second e-mail,
6 it shows that Mr. Steven Klein was responding to your prior
7 e-mail; isn't that correct?

8 A Yes.

9 Q And, specifically, Mr. Steven Klein responded by
10 saying, "Thanks"? Is that correct?

11 A Yes.

12 Q And he was saying thanks for the office-report document
13 that (indicating) you had provided him; is that correct?

14 A That's the way I see it.

15 Q Yep. And then the top e-mail is a follow-up e-mail
16 that you sent then on April 5th at 1:24 p.m.; is that
17 correct?

18 A Yes.

19 Q And you were attaching another document, weren't you?

20 A Yep -- I mean yes. Sorry.

21 Q And that document is titled "export040507"; is that
22 correct?

23 A Correct.

24 Q And that means it was a document that you had created
25 on April 5th, 2007; is that correct?

1 A It was a -- I believe it was a document that I had
2 downloaded from CoStar, yes.

3 Q It's a document that is attached to this e-mail and the
4 pages that follow?

5 A Yep.

6 Q Is that a yes?

7 A Yes.

8 Q And by virtue of the title of the document, that
9 indicates that the -- the document you had downloaded and
10 saved to your computer, which is titled "export040507.xls,"
11 is a document that you exported on April 5th, 2007, the day
12 that you sent the e-mail?

13 A Yes.

14 Q Is that correct?

15 A (Nods head.)

16 Q And turning to what that (changing overhead exhibit)
17 document is that you exported from -- you exported it from
18 CoStar; right?

19 A Yes.

20 Q And you -- this is a document -- the document you sent
21 to Steven Klein; is that correct?

22 A Yes.

23 Q Can you describe what this document is, please?

24 A This list -- I am just going to kind of peruse --
25 browse through it and --

1 Q Take your time.

2 A It -- it gives a building address, the name, if it --
3 there's a name of the office park, and it gives the status
4 of whether it's proposed or existing. I even see "under
5 construction in Pinellas and Hillsborough Counties," and it
6 gives the -- what might be the year it was built, parking
7 ratios, stories, and floor -- floor-plate sizes, the square
8 footage of each floor.

9 Q Well, we can read what the categories are, but
10 generally what was it that you had downloaded from CoStar?
11 What is this document?

12 A This is a -- I don't know if it's a -- I imagine -- I'm
13 not sure if it's everything that's in the Pinellas,
14 Hillsborough market, but it's -- it just gives you the name
15 of the office park, and it just tells you what buildings are
16 in the market, the office buildings that might be for rent
17 or -- I'd imagine it's for rent.

18 Q You obtained this document by inputting criteria into
19 the CoStar database and asking for it to give you a response
20 to the search query; isn't that the case?

21 A I believe so, yes.

22 Q In particular, you would ask for information regarding
23 new and proposed buildings in Hillsborough County; is that
24 correct?

25 A And I believe there was existing as well.

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1 Q Right. New and proposed buildings. Existing and new
2 and proposed. Is that what you're saying?

3 A Well, I think "new" and "proposed" would be synonymous,
4 wouldn't it?

5 Q Just let me understand what it is that was exported
6 here. It's existing and new buildings in Hillsborough
7 County?

8 A Yes.

9 Q Okay. And why is it that you, on -- on April 5th, the
10 day after you had sent the market report, did you do this
11 query on CoStar and send this report to Steven Klein?

12 A I believed this would assist him in -- in looking for
13 his client that was looking for an office condo; or if he
14 wanted to maybe lease a building instead of buying like an
15 office condo, this could be helpful.

16 Q So, you were trying to assist him in his activities on
17 behalf of Klein & Heuchan?

18 A Right.

19 MR. OPPENHEIM: We'd move this into evidence,
20 Your Honor, if it's not already.

21 MR. GIBSON: No objection.

22 THE COURT: Be admitted.

23 (Defense Exhibit 18 was received in evidence.)

24 BY MR. OPPENHEIM:

25 Q Apart from the spreadsheet of information attached to

1 Exhibit 18, which we just reviewed, were there other
2 instances where you ran searches of information from CoStar
3 that are downloaded to your hard drive and provided to
4 others at Klein & Heuchan?

5 A As far as I can remember, it was the -- the -- the
6 office reports, the -- I had no -- I tried to download -- or
7 I did download a floor plan for a building -- but that was
8 for me -- and the office reports.

9 Q But not for you personally, for you in your capacity as
10 a Klein & Heuchan sales associate?

11 A Yeah.

12 Q Could you please turn to Exhibit 21 (changing overhead
13 exhibit). Do you recognize this document?

14 A Yes.

15 Q Is this an e-mail that you sent to MSK on August 16th,
16 2007 --

17 A Yes.

18 Q -- with an attachment titled "cbdofficemsk.xls"?

19 A Right.

20 Q And who is "MSK"?

21 A That would be Mark Klein.

22 Q And is this a document you produced in discovery from
23 your files?

24 A Yes.

25 MR. OPPENHEIM: We would move this into evidence,

1 Exhibit 21.

2 MR. GIBSON: No objection.

3 THE COURT: Be admitted.

4 (Defense Exhibit 21 was received in evidence.)

5 BY MR. OPPENHEIM:

6 Q What is the subject of this e-mail?

7 A It says "CoStar report."

8 Q And what is it that you said in the text of the e-mail
9 to Mark Klein?

10 A "Here it is."

11 Q So, you were providing him with a document that you had
12 previously discussed with him?

13 A That is correct.

14 Q What is the document that is attached?

15 A This is the (changing overhead exhibit) central
16 business district. This is the office buildings that are in
17 the downtown area that we're looking at right here, a select
18 of 'em, with building Classes A and B, and their existing
19 buildings.

20 Q So, this is a spreadsheet of information regarding
21 downtown office buildings in Tampa?

22 A Right.

23 Q And where did you obtain the information contained in
24 the spreadsheet?

25 A From CoStar.

1 Q And did you obtain it while you were working for Klein
2 & Heuchan?

3 A Yes.

4 Q And what prompted you to send this e-mail with this
5 attachment to Mark Klein in August of 2007?

6 A This is -- Mark had asked me what the -- what I thought
7 the rates were in the downtown area, and this is what I sent
8 to him in response to that.

9 Q Did he ask you for what you thought the rates were or
10 what CoStar said the rates were?

11 A I don't remember specifically. I think he might have
12 asked me.

13 Q And you downloaded this information from CoStar in
14 order to provide him with the information that he was
15 looking for?

16 A Yes.

17 Q After you received this e-mail, did Mr. Klein tell you
18 not to send him information like this again?

19 A No. I don't recall him saying that.

20 Q Could you please turn to Exhibit 16.

21 A You said 16?

22 Q Yes, please.

23 A I am looking under Tab 16, and I have a stamp that says
24 "Exhibit 15" listed under 16.

25 Q All right. You are both observant and correct. The

1 stamp relates to a deposition exhibit stamp with the --
2 you're looking at the correct exhibit for our purposes.

3 A Okay.

4 Q Do recognize -- apart from the stamp, do you recognize
5 the document?

6 A Yes. It's looks like another office document that
7 lists the offices in Pinellas and Hillsborough as similar as
8 the previous one that we looked at.

9 Q And was this a document that you produced in discovery?

10 A Yes.

11 Q And this is the document that you downloaded from
12 CoStar while you were at Klein & Heuchan; is that correct?

13 A Yes.

14 Q And this was a document that you maintained on your
15 computer as a part of your regular business conduct; is that
16 right?

17 A Right.

18 MR. OPPENHEIM: We'd move this into evidence,
19 Your Honor.

20 MR. GIBSON: No objection.

21 MR. OPPENHEIM: This is Exhibit 16.

22 THE COURT: Admitted.

23 (Defense Exhibit 16 was received in evidence.)

24 BY MR. OPPENHEIM:

25 Q Can you describe how you used this document, Mr. Bell?

1 A Well, it's a -- I'm trying to remember. I'm looking at
2 the document to see if I can recall.

3 Q Does this document have anything to do with searches
4 you did regarding mini storage buildings in Pasco County?

5 A I don't believe so. It looks like it's -- these are
6 office buildings, and -- in Tampa, St. Pete, Clearwater. I
7 guess this is -- the best I can recall, it's a document I
8 brought up that would give me -- that would tell me where
9 all these buildings -- how many were out there and where
10 they were located, and it would give the leasing company's
11 name and the address of where the -- the building's located.

12 Q And did you use this document in connection with your
13 work as a broker for Klein & Heuchan?

14 A Yes. For knowledge purpose, yes.

15 Q And by "knowledge purpose" you mean for your general
16 information?

17 A Right, for research, correct.

18 Q Okay. Could you please turn to Exhibit 17. Do you
19 recognize this document, Mr. Bell?

20 A Yes.

21 Q What is it?

22 A This is a -- it lists the owners of the -- of buildings
23 and/or developers that own buildings, and I'm trying to --
24 I'm just going through and looking at the rest. It gives
25 their addresses and contact phone numbers.

1 Q And is this a document that you produced in litigation?

2 A Yes.

3 Q And is this a document that you had downloaded from
4 CoStar while you were at Klein & Heuchan?

5 A Yes. It appears that, yes.

6 Q And is this a document that you maintained on your
7 computer as part of your regular business activities?

8 A Yes.

9 MR. OPPENHEIM: We would move Exhibit 17 in
10 evidence.

11 MR. GIBSON: No objection.

12 THE COURT: Be admitted.

13 (Defense Exhibit 17 was received in evidence.)

14 BY MR. OPPENHEIM:

15 Q Was this -- this document that you downloaded the
16 information -- containing the information that you used in
17 connection with your work for Klein & Heuchan?

18 A Yes.

19 Q Please turn to Exhibit 23 (changing overhead exhibit).
20 Do you recognize this document, Mr. Bell?

21 A Yes.

22 Q Is this an e-mail that you sent to an individual with
23 the user name "emissdata@gmail.com" (phonetic) --

24 A Yes.

25 Q -- whose name it appears is "Gus"; is that correct?

1 A Yes.

2 Q Who is Gus?

3 A That's a good question. I never met Gus. I believe he
4 was a guy that called in on a -- it was a floor call. He
5 was looking to move his business somewhere to a -- to an
6 office, and he -- he didn't seem like he was very sure of
7 himself, and he didn't know what -- what the -- he didn't
8 know much about the market. So, I -- I sent him a copy of
9 page 17 of the CoStar office report that gives average rent
10 prices as best I could -- the document's a little hard to
11 read -- and the -- the different areas of the county. It
12 looks like Pinellas, northern Hillsborough, east and west
13 and central.

14 Q And you're referring to the attachment right now;
15 correct?

16 A That's correct.

17 Q And the attachment is a page out of a CoStar market
18 report; is that correct?

19 A That's right.

20 Q And the e-mail indicates that you sent this (changing
21 overhead exhibit) page from the CoStar report with the image
22 contained from the CoStar market report on June 14th, 2007?

23 A Correct.

24 Q And when you said that Gus was somebody who came in on
25 a floor call, it was somebody who was a prospective client

1 who had called Klein & Heuchan interested in possibly
2 working with Klein & Heuchan; is that correct?

3 A That could be true, or he may have just been inquiring
4 as --

5 Q He was inquiring of Klein & Heuchan to get information?

6 A Okay, yes.

7 Q Is this a document that you had retained on your
8 computer hard drive?

9 A I don't recall.

10 Q You produced this in discovery; is that correct?

11 A Yes.

12 Q And is this a document that you had maintained in the
13 regular course of your business activities?

14 A Uh, yes.

15 MR. OPPENHEIM: We would move its admission.
16 Defendant's Exhibit 23.

17 MR. GIBSON: No objection.

18 THE COURT: Be admitted.

19 (Defense Exhibit 23 was received in evidence.)

20 BY MR. OPPENHEIM:

21 Q Let me turn to Exhibit 15, please. Do you recognize
22 this document, Mr. Bell?

23 A Give me a couple of seconds and I will look it over.

24 Q Sure. Absolutely. Take as much time as you need.

25 (Pause.)

1 A Okay.

2 Q Is this a document you produced in discovery?

3 A Yes.

4 Q A document that you had downloaded from CoStar while
5 you were at Klein & Heuchan; correct?

6 A Yes.

7 Q And it's a document you maintained on your hard drive?

8 A I believe so. I could have printed it as well, so I'm
9 not sure.

10 Q You either maintained it on your hard drive or in your
11 physical files?

12 A Right.

13 Q And you maintained it as part of your regular business
14 activities?

15 A Correct.

16 MR. OPPENHEIM: We would move into evidence
17 Defendant's Exhibit 15.

18 MR. GIBSON: No objection.

19 THE COURT: Be admitted.

20 (Defense Exhibit 15 was received in evidence.)

21 BY MR. OPPENHEIM:

22 Q Earlier I asked you whether this was a document related
23 to mini storage facilities in Pasco County. Is this a
24 document that's related to mini storage facilities in Pasco
25 County?

1 A Yes.

2 Q And why did you download this information from CoStar?

3 A Earlier in the year I had gotten a -- a call from a --
4 I did a mail-out, and I had -- to mini storage units or
5 warehouses in Pasco County, and I had gotten a call from --
6 I can't remember the guy's name. He's since passed away,
7 but he -- he was thinking about listing his property, but he
8 wasn't sure. So, I had pulled this up as -- as a reference
9 to -- I believe his unit does show up in here.

10 Q You had done searches on CoStar for -- to gather
11 information relating to that prospective client; is that
12 correct?

13 A Correct. His name's Charles T. Wynthunt.

14 Q And how do you know that?

15 A Because I just see it on -- well, let's see. It's the
16 second page, 8619 New York Avenue.

17 Q Did you use this information in the course of your
18 working for Klein & Heuchan?

19 A Yes.

20 MR. OPPENHEIM: Move Exhibit 24, please.

21 THE COURT: Be admitted.

22 (Defense Exhibit 24 was received in evidence.)

23 BY MR. OPPENHEIM:

24 Q Do you recognize this e-mail, Mr. Bell?

25 A Yes.

1 Q And this was an e-mail you sent to
2 csduncan@tampabay.rr.com; is that correct?

3 A That's correct.

4 Q And C.S. Duncan is an administrative assistant that
5 works at Klein & Heuchan; is that correct?

6 A Yes.

7 Q And you were sending her this e-mail on May 23rd, 2007?

8 A Correct.

9 Q And the -- the -- the link there is intended to go to a
10 CoStar floor plan; is that correct? I will circle the link.

11 A Yes. It looks -- that appears to be, yes.

12 Q And you were attempting to send to Miss Duncan a link
13 to a CoStar -- a floor plan on CoStar?

14 A Yes.

15 Q And this is a document you produced in litigation,
16 correct --

17 A Correct.

18 Q -- that you had maintained in the regular course of
19 your business activities?

20 A Yes.

21 MR. OPPENHEIM: We'd move into evidence,
22 Your Honor, Exhibit 15.

23 THE COURT: Be admitted.

24 MR. GIBSON: Fifteen or 24?

25 MR. OPPENHEIM: Twenty-four.

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Middle District of Florida, Tampa Division

1 MR. GIBSON: No objection.

2 (Defense Exhibit 24 was received in evidence.)

3 BY MR. OPPENHEIM:

4 Q Mr. Bell, we've just been reviewing a handful of
5 e-mails and other documents that you had produced in the
6 course of litigation from your computer. Were those e-mails
7 and those documents that you produced the only e-mails that
8 you sent relating to CoStar and the only documents that you
9 downloaded from CoStar during the course of time when you
10 were at Klein & Heuchan?

11 A I lost you there. Could you repeat that, please?

12 Q Sure. What I'm trying to understand is whether the
13 documents we just reviewed, the e-mails and the search
14 results, constituted everything you ever e-mailed about
15 CoStar and everything you ever downloaded about CoStar, or
16 was it simply just, say, a tip of the iceberg because it's
17 what was on your hard drive?

18 A I -- I can't -- I can't remember. This was what I had
19 in my -- this is -- this is what I had in my records. I
20 don't -- I couldn't say for sure that there was much more
21 than this.

22 Q But you don't know?

23 A I don't know.

24 Q Were there other e-mails over the course of time when
25 you were working at Klein & Heuchan that you would send to

1 Mark and Steve Klein other than the ones we saw today?

2 A Yes. We would definitely talk about contracts; and if
3 I couldn't show up for a meeting or something like that, I'd
4 let Mark know ahead of time. I'd e-mail him. Sometimes I
5 would call him on the phone. Maybe I had a customer --

6 THE COURT: I don't think that was the question.

7 BY MR. OPPENHEIM:

8 Q Let me -- let's try to focus this in a little bit.

9 A Sorry.

10 Q That's all right, Mr. Bell.

11 Did you -- did you e-mail frequently with Mr. Mark
12 Klein and Steve Klein as part of your regular business?

13 A What do you call -- I mean, I don't what you mean by
14 "frequently."

15 Q At least every week?

16 A Maybe a couple of times a week.

17 Q A couple of times a week; is that right?

18 A Yes.

19 Q Who provided you with the Klein & Heuchan e-mail
20 account?

21 A Klein & Heuchan.

22 Q When you worked at Klein & Heuchan, you indicated that
23 you had staff meetings; is that right?

24 A Correct.

25 Q How frequent were those staff meetings?

1 MR. GIBSON: Objection, asked and answered.

2 THE COURT: Sustained.

3 BY MR. OPPENHEIM:

4 Q At a high level, can you describe -- Mr. Bell, please
5 describe what happened at the staff meetings that you
6 attended.

7 A We would talk about a -- a lot of stuff. We would talk
8 about contracts, who had earnest money, and who had critical
9 dates to -- to comply with if they had a -- a deal pending.
10 We would brainstorm, ask what we saw out there in the --
11 what we saw going on in the market and see if there were any
12 opportunities we could identify, or maybe we saw some trends
13 going down or something like that.

14 Q So, you -- among the things you would discuss were
15 specific deals you were working on; is that right?

16 A Right.

17 Q But you would also discuss market trends and generally
18 what you saw happening in the Tampa-St. Petersburg market?

19 A Correct.

20 Q And you were asked to share what you knew about the
21 market at those meetings; is that correct?

22 A Yeah. Sometimes, yeah.

23 Q And did -- among the information that you would
24 regularly share at those meetings was information that you
25 may have obtained from reading reports and information from

1 CoStar; is that correct?

2 MR. GIBSON: Objection, calls for speculation.

3 THE COURT: Overruled. Answer, if you can. Of
4 course, he said he may have. I don't know.

5 THE WITNESS: Please repeat the question.

6 MR. OPPENHEIM: I'll rephrase.

7 THE COURT: I don't know if that question and
8 answer gets you very far, but answer if you can.

9 MR. OPPENHEIM: I will strike it, and I'll
10 rephrase the question.

11 BY MR. OPPENHEIM:

12 Q While you were at the staff meetings, did you ever
13 offer information based on what you had learned off of
14 CoStar?

15 A Yes.

16 Q When you worked at Klein & Heuchan, were you paid a
17 salary?

18 A No.

19 Q You were paid a commission; is that correct?

20 A Correct.

21 Q And you were paid a 50-50 split with Klein & Heuchan on
22 any commissions you earned; is that correct?

23 A Yeah. It was a sliding scale. So, you'd start at 50,
24 and then it was set at that for a calendar year, and then
25 you achieved different plateaus depending on how much you --

1 how much commission dollars you earned.

2 Q But while you were there, it was a 50-50 -- for your
3 purposes, it was always 50-50; is that right?

4 A Right.

5 Q And that meant that Klein & Heuchan would get
6 50 percent of any commissions you earned?

7 A Correct.

8 Q If -- if -- if you provided somebody else in the office
9 with information that helped them to close a deal, would you
10 get any portion of that commission?

11 A None.

12 Q Did the Kleins -- did Mark and Steve Klein oversee your
13 work at Klein & Heuchan?

14 A Yes.

15 Q Did they have to approve any listings you had?

16 A They had to approve all the listings. It had to be
17 accepted by them.

18 Q And when you wanted to send out a flier, did they have
19 to approve it?

20 A You had to be -- you had to create the flier yourself,
21 but it had to be an approved flier. So, in other words, you
22 would fill -- you would fill out the templates; they would
23 build the flier; and then it would be reviewed to make sure
24 it -- it was -- it was done correctly; and then they would
25 approve it, and we would have it then.

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Federal Official Court Reporter, U.S. District Court
Middle District of Florida, Tampa Division

1 Q And could the Kleins have terminated you at will?

2 A I imagine so, yes.

3 Q Did the Kleins have the ability to tell you to stop
4 accessing CoStar?

5 A Yes.

6 Q Did they tell you to stop accessing CoStar?

7 A No.

8 Q When you worked at Klein & Heuchan, did anybody ever
9 ask Mark or Steve Klein to purchase a license to CoStar?

10 A I believe Judy had asked, inquired -- asked Mark about
11 CoStar Tenant, because she had done a lot of -- because she
12 had used it at another -- at a position at another place;
13 and I think she had gone and asked him if he was -- if he
14 was -- if he could do that, because that -- that's really
15 what she did, was tenant representation, and --

16 Q And he didn't -- he didn't agree to license CoStar, did
17 he?

18 A I don't know what -- I don't know exactly what he said,
19 but I --

20 Q Well, you didn't get a license, did you?

21 A No.

22 Q And Judy didn't get a license, did she?

23 A I don't believe so, no.

24 Q Did either Mark or Steve Klein ever indicate to you why
25 they didn't want to license CoStar?

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1 A They didn't see -- they always -- Mark's contention all
2 along was he -- he didn't like -- his -- why he didn't like
3 it is he felt that it was the -- CoStar would actually call
4 everybody up, all the real-estate brokers in the area, and
5 they would collect information from it and turn around and
6 resell it to 'em. He didn't really see a value in that.

7 Q Did he ever complain about the cost?

8 A He did say it was very expensive.

9 Q Prior to this dispute arising in April 2008, did Mark
10 or Steve Klein ever ask you anything about how you had
11 access to the CoStar products?

12 A When I first started and I showed them one of the
13 CoStar reports, they asked, you know, "How did you get
14 that?" and I said I had used my -- my -- my listing -- not
15 my listing, but my CoStar access when I was at Coldwell
16 Banker -- that I had at Coldwell Banker.

17 Q So, you said early on. Roughly when?

18 A It must have been shortly after I got there. The first
19 quarter of '07.

20 Q And you told them that you were accessing CoStar with
21 your Coldwell user name and password?

22 A Yeah.

23 Q Did either of them at the time ask you whether you were
24 allowed to do that?

25 A They did not.

1 Q Did either of them ever ask you whether the password
2 would expire?

3 A No, they didn't.

4 Q Did either of them tell you you shouldn't do that?

5 A No.

6 Q If they had told you to stop doing it, would you have
7 stopped?

8 A Yes.

9 Q Did either of them tell you that you should check with
10 CoStar to see whether or not you could continue to do this?

11 A No.

12 Q Did either of them tell you you should check with
13 Coldwell Banker to see whether you could continue to do
14 this?

15 A No.

16 Q Did either of them tell you you should check the CoStar
17 Website to determine whether or not you were allowed to do
18 that?

19 THE COURT: Are these 20 questions in lieu of the
20 one question, "What did they tell you about the use of
21 CoStar?"

22 BY MR. OPPENHEIM:

23 Q What did they tell you about the use of CoStar? I will
24 take the judge's guidance.

25 A I am sorry. I lost my train of thought.

SHERRILL L. JACKSON, RPR
Federal Official Court Reporter, U.S. District Court
Middle District of Florida, Tampa Division

1 THE COURT: What did they tell you about the use
2 of CoStar, if anything?

3 THE WITNESS: Nothing.

4 BY MR. OPPENHEIM:

5 Q Mr. Bell, you were -- you were a defendant in this
6 case -- strike that. Let me rephrase that.

7 CoStar originally sued you for copyright infringement;
8 correct?

9 A Correct.

10 Q And you've recently settled those claims with CoStar;
11 is that correct?

12 A Yes.

13 Q And as part of that settlement, you agreed to appear
14 voluntarily today; is that correct?

15 A Yes.

16 Q Is your testimony today here fully truthful and
17 accurate?

18 A Yes.

19 MR. OPPENHEIM: Just one moment, Your Honor.

20 THE COURT: All right.

21 (Pause.)

22 MR. OPPENHEIM: Thank you, Mr. Bell.

23 At this time, we're done with this witness.

24 THE COURT: All right.

25 How long do you expect your cross to be?

1 MR. GIBSON: An hour, an hour and a half.

2 THE COURT: You prefer to get started and then
3 we'll stop at a convenient time, or do you prefer --

4 MR. GIBSON: I prefer to stop now.

5 MR. OPPENHEIM: Your Honor, if -- Your Honor, I --
6 I know that Mr. Bell is responsible for his -- the childcare
7 in his house, and I don't know what his schedule is. I
8 don't know whether the Court would be interested in -- in
9 finding out in order to try to accommodate him on that
10 issue.

11 THE COURT: What's your schedule, Mr. Bell?

12 THE WITNESS: Well, I was hoping to be done today;
13 otherwise, I have to make more arrangements for tomorrow.

14 THE COURT: Sounds like you'll have to make more
15 arrangements for tomorrow.

16 THE WITNESS: I'm sorry, I can't hear you.

17 THE COURT: You will have to make arrangements for
18 tomorrow. Would 9:00 tomorrow be convenient?

19 THE WITNESS: Okay.

20 THE COURT: All right. We're in recess until 9:00
21 tomorrow morning.

22 MR. OPPENHEIM: Thank you, Your Honor.

23 THE CLERK: All rise.

24 (Recess at 4:10 p.m.)

25 - - - - -

1 CERTIFICATE OF REPORTER

2
3
4 I, SHERRILL L. JACKSON, Federal Official Court
5 Reporter for the United States District Court, Middle
6 District of Florida, Tampa Division,

7 DO HEREBY CERTIFY, that I was authorized to and
8 did, through use of Computer-Aided Transcription, report in
9 shorthand the proceedings and evidence in this cause, as
10 stated in the caption on page 1 of this transcript, and that
11 the foregoing pages numbered 1 to 205, inclusive,
12 constitute a true and correct transcription of my
13 shorthand report of said proceedings and evidence.

14 IN WITNESS WHEREOF I have hereunto set my hand
15 this 16th day of March, 2010.

16 *s/Sherrill L. Jackson*

17 _____
18 SHERRILL L. JACKSON, RPR
19 Federal Official Court Reporter
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Middle District of Florida, Tampa Division