

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

KLEIN & HEUCHAN, INC.,

Plaintiff,

v.

Civil Action No. 8:08-cv-01227-JSM-MSS

COSTAR REALTY INFORMATION, INC.,
and COSTAR GROUP, INC.,

Defendants / Counter-Plaintiffs

v.

SCOTT BELL and KLEIN & HEUCHAN,
INC.

Counter-Defendants

**NOTICE OF FILING DEPOSITION TRANSCRIPT (WITHOUT EXHIBITS) OF
MARK S. KLEIN IN SUPPORT OF PLAINTIFF'S RESPONSE TO
DEFENDANTS MOTION FOR SUMMARY JUDGMENT**

Plaintiff, KLEIN & HEUCHAN, INC., by and through their undersigned counsel hereby files the deposition transcript of MARK S. KLEIN (without exhibits) which was taken on August 27, 2009 in support of Plaintiff's Response to Defendants Motion for Summary Judgment.

[Remainder of Page Intentionally Left Blank]

RESPECTFULLY SUBMITTED on this 16th day of October, 2009.

/s/ Jeffrey W. Gibson
J. PAUL RAYMOND, ESQ.
Florida Bar No. 0169268
jpr@macfar.com
JEFFREY W. GIBSON, ESQ.
Florida Bar No. 0568074
jg@macfar.com
Macfarlane Ferguson & McMullen
P.O. Box 1669
Clearwater, FL 33757
(727) 441-8966 – Phone
(727) 442-8470 – Facsimile
Attorneys for Plaintiff
Klein & Heuchan, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 16, 2009, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send notice of electronic filing to the following participants:

William J. Sauers, Esq.
Shari Ross Lahlou, Esq.
Sanja Sarich Kerksiek, Esq.
Crowell & Moring, LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004

William Cooper Geurrant, Jr.
Hill Ward Henderson
101 E. Kennedy Blvd, Suite 3700
Tampa, FL 33601
*Counsel for Defendants-Counter-Plaintiffs
CoStar Realty Information, Inc. and CoStar
Group, Inc.*

Nicholas Louis Ottaviano, Esq.
Florin Roebig, PA
777 Alderman Road
Palm Harbor, FL 34683

Randall J. Love, Esq.
Randall J. Love & Associates, P.A.
5647 Gulf Drive
New Port Richey, FL 34652-4019
Counsel for Counter-Defendant, Scott Bell

/s/ Jeffrey W. Gibson
JEFFREY W. GIBSON, ESQ.
Florida Bar No.: 0568074

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
Civil Action No. 8:08-cv-01227-JSM-MSS

- - - - -x
: KLEIN & HEUCHAN, INC., :
: Plaintiff, :
: vs. :
: COSTAR REALTY INFORMATION, :
: INC., and COSTAR GROUP, :
: INC., :
: Defendants/ :
: Counterclaim-Plaintiffs, :
: vs. :
: SCOTT BELL and :
: KLEIN & HEUCHAN, INC., :
: Counterclaim-Defendants. :
: - - - - -x

CERTIFIED
COPY

VIDEOTAPED
DEPOSITION
OF:

MARK S. KLEIN, CCIM

DATE:

August 27, 2009

TIME:

9:25 a.m. to 1:10 p.m.

PLACE:

Macfarlane Ferguson & McMullen, P.A.
Interinvest Bank Building
625 Court Street, Suite 200
Clearwater, Florida 33756

REPORTED BY:

Jean M. Wilkes, RPR-CP
Notary Public
State of Florida at Large

WILKES PROFESSIONAL REPORTING, INC.
100 North Tampa Street, Suite 2140
Tampa, Florida 33602
(813) 222-8155

APPEARANCES:

JEFFREY W. GIBSON, ESQUIRE
 Macfarlane Ferguson & McMullen, P.A.
 Intervest Bank Building
 625 Court Street, Suite 200
 Clearwater, Florida 33756
 (727) 441-8966 phone
 (727) 442-8470 fax
 JG@macfar.com E-MAIL
 Attorney for Plaintiff

WILLIAM J. SAUERS, ESQUIRE
 - and -
 SANYA KERKSIEK, ESQUIRE
 Crowell & Moring, LLP
 1001 Pennsylvania Avenue
 Washington, D.C. 20004
 (202) 624-2746 PHONE
 (202) 628-8844 FAX
 wsauers@crowell.com E-MAIL
 SKerksiek@crowell.com E-MAIL
 Attorneys for Defendants/
 Counterclaim Plaintiffs
 COSTAR REALTY INFORMATION, INC.
 and COSTAR GROUP, INC.

ALSO PRESENT:

BILL WATSON - Videographer
 Watson Legal Video

STEVEN KLEIN

I N D E X

PAGE

Examination by Ms. Kerksiek 7

<u>NO.</u>	<u>EXHIBITS</u> <u>DESCRIPTION</u>	<u>PAGE</u>
1	Defendants/Counterclaim-Plaintiffs CoStar Realty Information, Inc. and CoStar Group Inc.'s Amended Notice of Deposition to Mark Klein Pursuant to Rule 30 of the Federal Rules of Civil Procedure	7
2	Defendants/Counterclaim-Plaintiffs CoStar Realty Information, Inc. and CoStar Group Inc.'s Amended Notice of Deposition to Plaintiff/Counterclaim- Defendant Klein & Heuchan, Inc. Pursuant to Rule 30 of the Federal Rules of Civil Procedure	8
3	Klein & Heuchan, Inc. Realtors Office Policy and Commission Schedule For Employees and Independent Contractors	43
4	The CoStar Office Report Year-End 2007 Tampa/St. Petersburg Office Market	45
5	The CoStar Office Report First Quarter 2007 Tampa/St. Petersburg Office Market	47
6	The CoStar Industrial Report Year-End 2007 Tampa/St. Petersburg Industrial Market	49
7	Printout from CoStar COMPS database for mini storage site in Pasco County	50
8	E-mail dated 6/14/07 from Scott Bell to Gus	51

EXHIBITS (Continued)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
9	E-mail dated 6/5/08 from Scott Bell to 'msk'	53
10	E-mail dated 8/16./07 from Scott Bell to 'msk'; subject: CoStar Report	57
11	E-mail dated 8/4/07 from Scott Bell to Steven Klein with attachment, The CoStar Office Report, Year-End 2006, Tampa/ St. Petersburg Office Market	59
12	E-mail dated 1/31/07 from Scott Bell to Tracy McMurray, Subject: 5216 Lois Avenue, Tampa Warehouse	62
13	E-mail dated 5/23/07 from Scott Bell to Carol Duncan	63
14	E-mail chain dated 4/4/07 and 4/5/07 from Scott Bell to Steven Klein; Office report document	64
15	Spreadsheet for self-storage units from CoStar's database	65
16	Excel spreadsheet from CoStar's database containing list of office buildings in the metropolitan area with mailing addresses	65
17	List with different owners and addresses of property	66

EXHIBITS (Continued)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
18	Spreadsheet for industrial warehouses in the Holiday, Florida, area	68
19	Spreadsheet with office buildings in Clearwater and Tampa metropolitan area	69
20	Spreadsheet obtained from the CoStar database pertaining to developers, property managers and some brokers	70
21	Spreadsheet	71-72
22	E-mail chain dated 5/27/08 from C. Scott Bell to Fadi Malki; e-mail dated 2/23/08 from Fadi Malki to Scott Bell	72
23	Composite letters dated 4/16/08 from Curtis Ricketts to Mark Klein; CoStar License Agreement Subscription Form	74
24	Scott Bell Commissions 2007, dated 1/22/2009	78
25	Plaintiff Klein & Heuchan, Inc.'s Response to Defendant's First Set of Interrogatories	80
26	Plaintiff's Response to Defendant, CoStar Realty Information, Inc.'s First Request For Production of Documents	111
27	Defendant CoStar Realty Information, Inc.'s Second Request For Production of Documents to Plaintiff-Counterclaim Defendant Klein & Heuchan, Inc.	130
28	List of K&H Associates in 2007 and 2008	131

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - - - -

MARK KLEIN,

being first duly sworn to testify the truth, the whole truth, and nothing but the truth, was examined testified as follows:

THE WITNESS: I do.

EXAMINATION

BY MS. KERKSIEK:

Q. Will you please state your name, home address and work address for the record?

A. Sure. Mark S. Klein, K-l-e-i-n. 2736 Burning Tree Lane, Clearwater, Florida, 33761.

MS. KERKSIEK: And we can go ahead and mark the notices right away. Number 1.

Oh, actually, let me -- yeah, that's fine.

(The document was marked as Klein Exhibit Number 1 for identification.)

THE WITNESS: I got me a little screwed up with this microphone, so give me a second.

MS. KERKSIEK: Okay.

THE WITNESS: When you get a little older, you need glasses and hearing aids.

BY MS. KERKSIEK:

Q. Will you take a look at the document?

1 A. Okay.

2 Q. Have you seen that before?

3 A. No. I don't think I have.

4 Q. Can you tell me what it is?

5 A. It's -- it says it's a civil action
6 between CoStar, Plaintiff -- Klein & Heuchan, Inc.,
7 as Plaintiff, versus CoStar Realty Information,
8 Inc., and CoStar Group, Inc., versus Scott Bell and
9 Klein & Heuchan.

10 Q. And the title below that in all caps and
11 bold?

12 A. Defendants/Counterclaim-Plaintiffs CoStar
13 Realty Information, Inc. and CoStar Group, Inc.'s
14 Amended Notice of Deposition to Mark Klein Pursuant
15 to Rule 30 of the Federal Rules of Civil Procedure.

16 Q. Is it your understanding that you're here
17 to testify pursuant to this notice?

18 A. Yes.

19 MS. KERKSIEK: I'm going to mark this one
20 as Exhibit 2.

21 (The document was marked as Klein Exhibit
22 Number 2 for identification.)

23 THE WITNESS: Okay.

24 BY MS. KERKSIEK:

25 Q. Have you had a chance to look at it?

1 A. Just now, yeah.

2 Q. Yeah. Can you tell me what it is?

3 A. Again, it's a civil action,

4 Klein & Heuchan --

5 Q. I'm sorry to interrupt. You can read the
6 -- just the bold caption or -- I'm sorry -- the bold
7 in all caps title.

8 A. Defendants/Counterclaim-Plaintiffs
9 CoStar Realty Information, Inc. and CoStar Group,
10 Inc.'s Amended Notice of Deposition to Plaintiff/
11 Counterclaim-Defendant Klein & Heuchan, Inc.
12 Pursuant to Rule 30(b)(6) of the Federal Rules
13 of Civil Procedure.

14 Q. And is it also your understanding that you
15 are here to testify on behalf of Klein & Heuchan
16 pursuant to this notice?

17 A. Yes, it is.

18 Q. Thank you.

19 A. You're welcome.

20 Q. Have you ever been deposed before?

21 A. Yes.

22 Q. When was that?

23 A. I have -- I have no -- I can't remember.

24 Q. How many times have you been deposed
25 before?

1 A. I can't remember exactly but a number of
2 times. Two or three.

3 Q. Is it more than five?

4 A. I can't say with certainty.

5 Q. So is it more than ten?

6 A. I doubt that it was more than ten.

7 Q. Okay. Somewhere between two and three and
8 ten, possibly?

9 A. Yes.

10 Q. Do you remember any of the matters that
11 you were deposed in?

12 A. No. No, I do not.

13 Q. Do you remember anything about the cases
14 at all?

15 A. No.

16 Q. Were you named as a party in any of those
17 cases?

18 A. Well, if I was deposed, I assume I was
19 named as a party, yes.

20 Q. That's not necessarily the case, but --

21 A. Well, I believe any of the depositions
22 were as a witness.

23 Q. But you don't remember whether you were
24 named as a party in any of those cases?

25 A. I'm pretty certain I was not.

1 Q. Okay. Did they involve personal matters
2 or business matters?

3 A. Business matters.

4 Q. Business matters relating to
5 Klein & Heuchan?

6 A. I don't remember any -- yes, I think they
7 were. Yes.

8 Q. And do you remember what the nature of the
9 dispute was?

10 A. No.

11 Q. Did you testify in your individual
12 capacity or on behalf of Klein & Heuchan?

13 A. I can't remember.

14 Q. Do you remember what the subject matter of
15 your testimony was about?

16 A. No. I really --

17 MR. GIBSON: Object to form. Asked and
18 answered.

19 A. I really don't.

20 Q. Have you ever testified in court as a
21 witness?

22 A. Yes, I have.

23 Q. Do you remember what those matters were?

24 A. Real estate related.

25 Q. Related to Klein & Heuchan?

1 A. No.

2 Q. Were the matters in which you were deposed
3 the same as the matters in which you were a witness?

4 A. Yes. I believe they were.

5 Q. And you -- I thought you testified that
6 some of the matters in which you were deposed did
7 relate to Klein & Heuchan.

8 A. I really can't recall.

9 Q. Do you remember the subject matter of your
10 testimony in court?

11 A. Which testimony in court?

12 Q. Any of it.

13 A. One case I do as an expert witness, yes.

14 Q. What did the subject -- what -- what
15 subject matter were you testifying as an expert?

16 A. It was about the value of a hotel.

17 Q. And what was the nature of the dispute in
18 that case?

19 A. It was between a buyer and a seller.

20 Q. And did you offer your opinion as to what
21 the value of the hotel was?

22 A. If that was the nature of my expert
23 witness -- reason for being a witness -- expert
24 witness. It was quite a long time ago and I really
25 don't recall.

1 Q. Do you remember how long ago?

2 A. At least 10 years.

3 Q. When was the last time that you were
4 deposed -- deposed in a case?

5 A. It would have been -- you know, as -- I
6 was not deposed in that case, as I think about it,
7 so --

8 Q. When was the last time that you were
9 deposed in any case?

10 A. I don't know. It must have been
11 20, 25 years ago.

12 Q. And you -- but you had been a witness
13 in a case approximately 10 years ago?

14 A. Yes.

15 Q. Okay. Is that the last time you testified
16 as a witness in a case?

17 A. I believe so, yes.

18 Q. What court was that case in?

19 A. It was in -- I guess here in Pinellas
20 County Court.

21 Q. Were all of the cases in which you
22 testified as a deponent and a witness here in
23 Florida?

24 A. Yes.

25 Q. If you need a break at any time today, let

1 me know. And, likewise, please let me know if you
2 don't understand any of my questions.

3 A. I certainly will.

4 Q. Okay. Did you prepare for this
5 deposition?

6 A. Yes.

7 Q. What did you do to prepare for it?

8 A. I read my file.

9 Q. Did you do anything else?

10 A. No.

11 Q. Did you meet with your attorney?

12 A. Briefly.

13 Q. Did you discuss this deposition with him?

14 A. Yes.

15 Q. What files did you read?

16 A. The file that I had relating to this case.

17 Q. Did you read any other files?

18 A. No.

19 Q. What -- what documents are in the file
20 that you have relating to this case?

21 MR. GIBSON: Let me just object.

22 First of all, if -- and I don't know -- but if that
23 document contains communications between us, don't
24 say anything about those communications.

25 A. No. Really, the -- that file contains a

1 letter from Mr. Ricketts at CoStar and, you know,
2 the interrogatories and all that stuff, so . . .

3 Q. Your interrogatory responses. Right?

4 A. Yes.

5 Q. And the document request responses?

6 A. Right. But I didn't -- I didn't
7 review those. I just reviewed the letter from
8 Mr. Ricketts.

9 Q. Is the complaint to this case in that
10 file?

11 A. No. I don't believe it is.

12 MR. GIBSON: I'm also going to object
13 because there's two complaints.

14 BY MS. KERKSIEK:

15 Q. Is -- well, are either of the complaints
16 in the file?

17 A. I'm not sure. I can't remember.

18 Q. Do you recall reading either of the
19 complaints related to this case?

20 A. I did not. When you say, "did I recall,"
21 in preparation for this deposition, I did not.

22 Q. But you have read them previously?

23 A. Yes.

24 Q. Mr. Klein, where are you currently
25 employed?

1 A. Klein & Heuchan, Inc.

2 Q. And what is your position there?

3 A. I'm the President and CEO.

4 Q. How long have you held that position?

5 A. 30 -- since 1983.

6 Q. What did you do before you were the

7 President and CEO of Klein & Heuchan?

8 A. I was a commercial real estate broker
9 for a company that was then known as Merrill Lynch
10 Realty.

11 Q. Where was that?

12 A. Clearwater, Florida.

13 Q. How long were you --

14 A. Seven years.

15 Q. And before -- before that, what did you
16 do?

17 A. I was a hotel -- in hotel management.

18 Q. For how long?

19 A. Seven years.

20 Q. For what hotel?

21 A. Safety Harbor Spa.

22 Q. And before that?

23 A. I had a business of my own.

24 Q. What was that?

25 A. It was a model car racing center.

1 Q. How long did you own that business?

2 A. About two years.

3 Q. What did you do before that?

4 A. I sold meat to hotels, restaurants and
5 institutions.

6 Q. For about how long?

7 A. About six years.

8 Q. What did you do before that?

9 A. I went to college.

10 Q. Where did you attend college?

11 A. Fairleigh Dickinson University,
12 New Jersey.

13 Q. Where did you -- what did you get your
14 degree in?

15 A. Business management.

16 Q. Do you have any graduate degrees?

17 A. No.

18 Q. Do you have any certifications or --

19 A. Yes.

20 Q. What are those?

21 A. CCIM. It's a commercial investment
22 member.

23 Q. And did you have to take a test in order
24 to get that certification?

25 A. Yes.

1 Q. When did you receive that certification?

2 A. 1981, I believe. In 1981 or 1982.

3 Q. And what kind of test did you have to
4 take?

5 A. I -- the -- well, the test was a
6 culmination of a number of week-long courses, and
7 then it was a six-hour test.

8 Q. And what was the subject matter of the
9 courses?

10 A. Commercial real estate.

11 Q. Do you have any other certification?

12 A. No.

13 Q. Do you have a broker's license?

14 A. Yes.

15 Q. When did you receive that?

16 A. 1974. It was '74 or '75. I had my
17 salesman's license in '74. It may have been 1975.

18 Q. Did you have to take a test in order to
19 receive your broker's license?

20 A. A test and some schooling.

21 Q. And what was the -- how long was the
22 schooling?

23 A. It was a long time ago. There was
24 mandatory hours, so I can't recall what they were.

25 Q. And what was the subject matter of the

1 schooling?

2 A. Real estate.

3 Q. Okay. Who are the owners of
4 Klein & Heuchan?

5 A. I am.

6 Q. Are there any other owners?

7 A. No.

8 Q. And who are the other corporate officers
9 of Klein & Heuchan?

10 A. Steve Klein.

11 Q. What is his position?

12 A. He's executive vice president and also a
13 broker of record there.

14 Q. Does Klein & Heuchan have any
15 subsidiaries?

16 A. No. Well, you know, what. Let me change
17 that. We have a -- basically, a management LLC.
18 That's a subsidiary.

19 Q. What's the name of that?

20 A. K&H Management Services, I believe.

21 Q. And who are the corporate officers of that
22 entity?

23 A. Oh, it's an LLC, so I -- I'm the managing
24 member.

25 Q. Are there any other managing members?

1 A. I can't recall.

2 Q. Does that LLC have any employees?

3 A. No.

4 Q. What is the function or purpose of
5 that LLC?

6 A. As part of our practice, we manage
7 properties for -- for clients.

8 Q. Um-hum.

9 A. And that would be the entity that we use
10 to do the management.

11 Q. Does Klein & Heuchan have any subsidiary
12 affiliations or companies other than K&H Management
13 Services?

14 A. No.

15 Q. Who are the employees of K&H -- or of
16 Klein & Heuchan?

17 A. Myself and Steve Klein, Diane Sorrentino
18 who is the bookkeeper, Carol Sue Duncan, who is my
19 assistant, and Mary Wolf, who is another assistant
20 of ours.

21 Q. Do you receive a salary from
22 Klein & Heuchan?

23 A. No, I do not.

24 Q. How are you compensated?

25 A. Just like our independent contractors, on

1 the same commission schedule.

2 Q. How is Mr. Steven Klein compensated?

3 A. The same way.

4 Q. How does the commission structure work? --
5 I'm sorry -- commission schedule work?

6 A. There is a -- I believe you have access
7 to our company manual, and it's in there. It's a
8 benchmark of percentages of commission received on
9 an annual basis, starting with 50/50, going up
10 to 90.

11 Q. How did you first come to know Scott Bell?

12 A. Scott Bell actually was the younger
13 brother of someone who lived -- was a friend of
14 Steve's that lived in our neighborhood when Steve
15 was growing up. Steve is my son.

16 And we found that he was working for
17 Coldwell Banker as a realtor associate. And he
18 arrived at our office with another sales associate
19 from Coldwell Banker talking about one of our
20 listings, I guess, and that's when I first met him.

21 Q. Do you remember approximately what year
22 and month that was?

23 A. I would assume that was about a year
24 before -- somewhere within the year before he
25 brought his license to us.

1 Q. And what was the purpose of his visit that
2 day?

3 A. Realtors co-broke all the time on
4 different listings. And he and this other associate
5 were working on one of our listings, and they came
6 to our office to pick up some information.

7 Q. How did Scott Bell come to work for
8 Klein & Heuchan?

9 A. I believe he was unhappy with what he
10 was doing at Coldwell Banker, and he contacted us
11 and see if we would be interested in him joining us.
12 And we met with him, interviewed with him, and
13 decided that he might be a good candidate for us.

14 Q. And, approximately, when did he start
15 working for you -- or for Klein & Heuchan?

16 A. The dates are there someplace, but it's --
17 what? -- December '06 or something like that.

18 Q. Is he still working for Klein & Heuchan?

19 A. He is kind of a suspended leave. His
20 license is with us. He's a stay-at-home dad. He
21 had two children and decided to do that and make a
22 decision whether he would want to come back to work
23 for us when that -- when the kids were old enough,
24 I guess, or he has a nanny. So he asked if we would
25 hold his license for that period of time and we

1 agreed to.

2 Q. And the suspended leave was his choice?

3 A. Yes.

4 Q. And you agreed to that?

5 A. Yes.

6 Q. And what does it mean when you say you're
7 holding his license?

8 A. All the independent contractors work under
9 my broker's license and Steve's, I believe, also.
10 So his -- excuse me -- I have to have a drink.

11 Although Klein & Heuchan is the entity, there is a
12 broker of record, and we are the brokers of record
13 and those associates work under our brokerage.

14 Q. And he -- if he wanted to come back and
15 work for you, then he could do that easily.

16 A. Um-hum.

17 Q. Holding his license facilitates that,
18 I'm assuming?

19 A. Yes, if we decided we wanted to have him
20 back.

21 Q. Um-hum. Is there any cost to K&H
22 associated with holding his license?

23 A. Very minimal. Most of the costs are
24 paid by him. He must be a member of the Florida
25 Gulfcoast Association of Realtors to be a member and

1 he pays for that himself, and that's -- that is part
2 and parcel of what he has do if he wants to keep his
3 license active with us.

4 Q. Does Klein & Heuchan pay any cost
5 associated with holding his license?

6 A. The City of -- City of Clearwater charges
7 us a fee for every licensed associate, and it's
8 about \$30 a year or something like that.

9 Q. And Klein & Heuchan pays that?

10 A. Yes. We -- it's mandated that we have to
11 pay that.

12 Q. What were Scott Bell's responsibilities at
13 Klein & Heuchan while he worked there?

14 A. Well, he's an independent contractor and
15 we hope that he would bring in money for himself and
16 the company.

17 Q. What exactly did he do day-to-day?

18 A. He contacted -- I assume that he contacted
19 people to list their properties and prospects to
20 sell properties to.

21 Q. Who oversaw his work there?

22 A. I did.

23 Q. What types of interactions did you have
24 with him?

25 A. Well, we have meetings twice a week.

1 They're sales meetings. So he's always at those
2 sales meetings. And we talked to him about what
3 he's doing, how he's progressing and working on
4 getting listings and making sales.

5 Q. Did you ever assign listings to him?

6 A. Yes.

7 Q. About how often?

8 A. I gave him one listing.

9 Q. And, otherwise, how were listings assigned
10 to him?

11 A. He would -- he would be able to get --
12 they were not assigned to him. He would either have
13 another agent in the office who might want to work
14 with him on a listing and share a listing or he
15 would develop those listings by himself. He would
16 go out and find people that wanted to sell or lease
17 property.

18 Q. What else was discussed at your weekly
19 meetings?

20 A. We discussed -- on our Monday morning
21 meetings, we discussed all our deals that are in
22 progress, the calls that come into the company,
23 anything new that affects our industry. We discuss
24 what's happening in the marketplace so that we have
25 a better idea together, all of the associates, as

1 to, is the market getting better? Are rates going
2 up, down, values going up and down? General stuff
3 like that.

4 Q. Who else attended the meetings?

5 A. All the associates attend most of the
6 meetings.

7 Q. Were associates required to attend those
8 meetings?

9 A. We make it a provision that they -- when
10 we hire them, that they have to be -- we require
11 that they be at the meetings. It's not mandatory
12 that they're there. But if they don't participate,
13 then we'll sever the relationship.

14 Q. Did you provide -- what kind of office
15 space -- what kind of office space did you provide
16 for Scott Bell?

17 A. Our company has private offices and it has
18 cubicles, and he had a cubicle in one of the areas
19 that we have three cubicles in, I believe.

20 Q. Did you provide him with internet access?

21 A. Yes.

22 Q. Did you provide him with an e-mail
23 account?

24 A. Yes, we did.

25 Q. So, in terms of Scott Bell's -- the

1 properties that he was listing -- that he was
2 working on, how did Klein & Heuchan keep track of
3 what he was working on?

4 A. The listings that he obtained had to be
5 accepted by me or Steve, and we signed the listing
6 agreements, and then we discussed with him how he's
7 going to market them.

8 Q. Did you keep any records of the particular
9 listings that he was working on?

10 A. All -- we keep all our listings --
11 all the company listing in a master file, and we
12 require that the associates put any of the germane
13 information into that file.

14 Q. And do -- does that file associate
15 particular listings with particular -- the
16 particular associates that are working on them?

17 A. Yes.

18 Q. Can there be more than one associate that
19 is associated with a listing?

20 A. Yes.

21 Q. When you go through that file, are
22 you able to search -- are you able to search by
23 associate to obtain a list of all the listings that
24 they're assigned to?

25 A. I'm not sure I understand the question.

1 So would you please repeat it?

2 Q. Certainly. If you -- if you wanted to
3 know at any particular point in time which listings
4 Mark -- Scott Bell was working on how, would you go
5 about figuring that out based on your file system?

6 A. We have a list. We have a list that
7 details -- each listing -- listing has a listing
8 number and an address and the associate that's
9 involved. So I can go to that master list and pull
10 the file.

11 Q. And do you keep historical records of that
12 list? In other words, if you wanted to know in, you
13 know, May of 2007 which listings Scott Bell was
14 working on, would you be able to find those records
15 today?

16 A. Yes, I would. It's mandatory that we keep
17 all listing files for five years by the Florida Real
18 Estate Commission.

19 Q. Have you ever used CoStar?

20 A. No.

21 Q. Do you know --

22 A. Well, let me rephrase that answer. Okay?
23 I was given a license to use CoStar by CCIM and I
24 accessed it one time.

25 Q. Okay. And what did you do when you

1 accessed it that one time?

2 A. I found it so frustrating that I never
3 even bothered working through it.

4 Q. What -- do you remember approximately what
5 year that was?

6 A. What's this? This is '09. I don't know.
7 '06, '07, something like that.

8 Q. A couple years ago?

9 A. Yeah.

10 Q. And what kind of license did you obtain
11 from CCIM?

12 A. I don't -- I don't understand that
13 question.

14 Q. Well, was it --

15 A. Well, the -- CCIM is a designation given
16 by the institute -- an institute, which is a
17 division of the Florida -- of the National
18 Association of Realtors.

19 CCIM -- all the CCIM members are -- are
20 designees, and there are -- there are candidates for
21 designations.

22 CCIM cut a deal, as I understand it --
23 that's what they told us -- with CoStar, so that
24 every CCIM member and candidate could access CoStar.

25 Q. Were there any limitations on the access?

1 A. I have no idea.

2 Q. Was it a temporary access or an indefinite
3 access?

4 A. When it was -- when they sent us notice
5 of it, they indicated -- I thought that it was, you
6 know, on forever, but I have no idea. I wasn't
7 interested in it.

8 MS. KERKSIEK: Could we go off the record
9 for a second?

10 THE VIDEOGRAPHER: The time is 9:54 a.m.
11 We're now off the record.

12 (Discussion off the record.)

13 THE VIDEOGRAPHER: The time is 9:55 a.m.
14 We're now back on the record.

15 MS. KERKSIEK: Was there a question
16 pending?

17 THE WITNESS: Are you asking me?

18 MS. KERKSIEK: No. I'm asking the court
19 reporter.

20 THE COURT REPORTER: She's asking me.

21 "I wasn't interested in it."

22 There is no question pending.

23 MS. KERKSIEK: Okay. Thank you. Just
24 making sure.

25 THE WITNESS: I'm the one with the gray

1 hair, you know.

2 BY MS. KERKSIEK:

3 Q. When you used the CCIM license, did you
4 need a password in order to access CoStar?

5 A. I can't remember.

6 Q. Do you remember seeing or reading any
7 terms of use?

8 A. No.

9 Q. Is it something that you logged on with
10 the -- that you used a computer to access?

11 A. Yeah.

12 Q. Yeah. Do you remember anything more about
13 logging on or what you saw once you logged on?

14 A. I don't believe I ever got into the
15 system. I think that the log-on was frustrating.
16 And I wasn't that interested in it, so I just
17 didn't.

18 Q. Did -- so the part of it that was
19 frustrating about it was not being able to access
20 the database?

21 A. I guess. I mean, I was -- it was given to
22 us, you know, I thought, "Well, I'll look at it."
23 You must understand that I knew what CoStar was.
24 We'd been -- your salespeople had been calling on me
25 for years, so, you know, I really didn't think it

1 was something for us.

2 Q. Did you search the database?

3 A. No.

4 Q. Did you see -- do you remember looking
5 at any photographs of any commercial real estate
6 properties?

7 A. No. I mean, I remember that I did not.

8 Q. You remember that you did not?

9 A. That's correct.

10 Q. Did you use CoStar at any other time?

11 A. I was given access to CoStar but never
12 opened it.

13 Q. When were you given access?

14 A. A number of years before. The salesman
15 gave me about a three-month access and I never used
16 it.

17 (Cell phone rings.)

18 THE WITNESS: Excuse me. I'll just close
19 it -- shut this off.

20 BY MS. KERKSIEK:

21 Q. You -- did they -- did CoStar provide you
22 with a user name and password when they -- when they
23 gave you the trial period?

24 A. I guess they did. I never opened it.

25 Q. Do you remember receiving a license or

1 terms of use from them?

2 A. No.

3 Q. How did CoStar go about providing you with
4 the trial?

5 A. The salesman, Tom Bible, stopped by and
6 said, "We're giving you the right to use CoStar."
7 I think it was for three months.

8 Q. Had you requested that?

9 A. No.

10 Q. Did that CoStar salesman or any other
11 CoStar salesman ever provide you with any written
12 materials regarding CoStar?

13 A. They showed them and demonstrated them to
14 us when they -- when they called on me.

15 Q. Did they leave you with any brochures or
16 any other write-ups?

17 A. I can't remember.

18 Q. Did they ever send you any e-mails
19 regarding CoStar and the services?

20 A. We're always bombarded with your
21 researchers. They drive us crazy asking us for
22 information.

23 Q. What type of information do you receive
24 from them?

25 A. From their researchers?

1 Q. Well -- oh, okay. I think we're talking
2 about two different things. There's the researchers
3 and then offers to provide service -- to provide the
4 CoStar service or offers to give a subscription.
5 I'm talking about the latter.

6 What types of information do the
7 CoStar representatives give you when they are --

8 A. They'll come in with a laptop and show us
9 -- try to show us what we can do. I believe they've
10 offered to give us a report, if we wanted a report
11 at any time, to show how good the system is, that
12 type of stuff.

13 Q. Do you think you --

14 A. We get e-mails from them to buy their
15 service. We -- you know, I mean, they do a good job
16 of marketing.

17 Q. Have you saved any of those marketing
18 materials?

19 A. No. I never saved any of them.

20 Q. Do you have an e-mail archive where some
21 of the e-mails might be saved?

22 A. No.

23 Q. Are any K&H e-mails archived or saved?

24 MR. GIBSON: Object to form.

25 THE WITNESS: We don't --

1 MR. GIBSON: On K&H?

2 THE WITNESS: Yeah. Answer the
3 question --

4 Q. You can answer the question.

5 A. Answer the question -- or ask the question
6 again.

7 Q. Okay. Does K&H have a server in its
8 offices?

9 A. We have a server and we do not archive any
10 e-mails on the server.

11 Q. Do you know whether -- do you know whether
12 your e-mail is a web-based e-mail?

13 A. Do I -- well, I know we use Road Runner
14 and we have a -- I guess it is web-based. I'm not
15 sure.

16 Q. Who is your internet service provider?

17 A. Road Runner and Web Services. We have
18 two of them.

19 Q. And do you know -- sorry.

20 Do you know whether either Road Runner or
21 Web Services archives any of your e-mails?

22 A. I do not.

23 Q. Did you attempt to contact them to find
24 out?

25 A. No.

1 Q. Does Klein & Heuchan have a document
2 retention policy?

3 A. I'm not sure I understand what you mean by
4 that.

5 Q. Do you have a policy in place where --
6 you know, you had mentioned earlier that certain --
7 you're required to keep certain listings for five
8 years.

9 A. (Witness nods head.)

10 Q. Do you have any other such policies in
11 place?

12 A. Sure, contracts -- contracts, failed
13 contracts. Anything that has to do with that we
14 retain for at least five years.

15 Q. And do you have any policies regarding
16 retaining e-mails?

17 A. No.

18 Q. What is your practice regarding saving
19 e-mails?

20 A. Mine?

21 Q. Yes.

22 A. I save them on my -- my hard drive.

23 Q. And do you organize them into folders?

24 A. Sometimes.

25 Q. How --

1 A. I'm not really a great technocrat, so --
2 you know, I'm kind of old, so . . .

3 Q. How long do you usually save e-mails for?

4 A. Too long.

5 Q. Do you know whether your system
6 automatically deletes e-mails after a certain period
7 of time?

8 A. It can ask me if I want to archive them or
9 delete them.

10 Q. And then do you ever archive them?

11 A. Sometimes.

12 Q. So you do have an e-mail archive
13 somewhere?

14 A. No -- on my computer, yes.

15 Q. Okay. Did you search that archive for any
16 documents related to CoStar?

17 A. No.

18 Q. Did you or anyone at Klein & Heuchan ever
19 ask Mr. Bell to provide you with information from
20 CoStar?

21 A. No.

22 Q. Did you ever receive any CoStar-related
23 information from Mr. Bell?

24 A. No, I did not.

25 Q. Did you ever talk about this lawsuit with

1 Mr. Bell?

2 A. Yes, I did.

3 Q. How many occasions did you talk about this
4 lawsuit with him?

5 A. You know, I didn't file it. But, you
6 know, we -- when we first were threatened with a
7 lawsuit, I called him in and then we talked about
8 it. We talked about it a number of times.

9 Q. What did you talk about?

10 A. We talked about -- we reiterated how he
11 had access. We reiterated what -- what CoStar was
12 alleging in their lawsuit. We told him that he
13 needed to get his own counsel if we got that far
14 because we would probably be adversarial.

15 Q. What did you mean -- what do you mean
16 by you reiterated how he got access to CoStar?

17 A. He told us that he was given a
18 subscription to CoStar when he was at Coldwell
19 Banker, and he still had access to that, even though
20 he asked his previous company, Coldwell Banker, to
21 take him off of all of their information. He still
22 had the access. He believed he had the access and
23 so I believed he had the access.

24 Q. Did he tell you why he was unhappy at
25 Coldwell Banker?

1 A. He wasn't learning. You know, he was
2 fairly new to the business and they really didn't
3 bring him along and help him very much, and he
4 wasn't making any money.

5 Q. Did you ever investigate whether there was
6 a way to create a log of the IP addresses visited by
7 Klein & Heuchan employees?

8 A. You're over my head.

9 Q. So -- do you know what an IP address is?

10 A. I think I do.

11 Q. Okay. Do you know if there's a way to
12 figure out what IP addresses Klein & Heuchan
13 employees were visiting?

14 A. No.

15 Q. Did you contact your service providers in
16 order -- your internet service providers in order to
17 figure that out?

18 A. No.

19 MS. KERKSIEK: Let's take a ten-minute
20 break.

21 THE VIDEOGRAPHER: The time is 10:07 a.m.
22 We're now off the record.

23 (There was a recess.)

24 THE VIDEOGRAPHER: The time is 10:19 a.m.
25 We're now back on the record.

1 BY MS. KERKSIEK:

2 Q. Okay. A couple of follow-up questions and
3 then we'll get into the some documents.

4 You testified earlier about a list that
5 you're required to keep for, I think, five years
6 that documents which listings Scott Bell was
7 responsible for or worked on. Is that right?

8 A. Almost.

9 Q. Almost.

10 A. We're required to keep all listing files
11 and contract files for five years, not necessarily a
12 list.

13 Q. But you testified that you do have such a
14 list?

15 A. Yeah, because it's easier to find out
16 where the file is.

17 Q. Did you ever provide that list to your
18 attorney?

19 A. I don't remember.

20 Q. Did you ever file -- provide the files to
21 the attorney -- to your attorney?

22 A. The listing files?

23 Q. Um-hum.

24 A. I gave -- I gave him four files this
25 morning.

1 Q. You did. Which files were those?

2 A. Files on 1250 Rogers Street. There were
3 three files on 1250 Rogers Street and one file on
4 another transaction that Scott had completed.

5 Q. Are those the files related to the
6 commissions that --

7 A. Yes. Yes.

8 Q. -- Scott earned while he was at K&H?

9 A. Yes.

10 MR. GIBSON: They're being copied as we
11 speak.

12 MS. KERKSIEK: Okay.

13 THE WITNESS: Yeah. I'm taking those
14 files back.

15 MS. KERKSIEK: Okay. Very good.

16 BY MS. KERKSIEK:

17 Q. Now, you had also said that Scott had
18 called Coldwell to ask them to take him off of
19 everything that he was associated with over there.

20 A. Yes.

21 Q. Do you know whether Bell ever asked
22 Coldwell if he was still allowed to use CoStar --

23 A. No.

24 Q. -- while he worked for K&H?

25 A. No.

1 Q. You also said that -- that you'd never
2 received anything -- any CoStar information from
3 Bell. Do you know if anyone at K&H had ever
4 received any CoStar information or printouts
5 from Bell?

6 A. At Bell's deposition he said that he
7 sent a market report to Steve, Judi Healey and
8 myself. I frankly never met -- the first time I
9 ever saw a CoStar market report, to my recollection,
10 was at that -- at his deposition.

11 Q. But do you know whether Bell ever gave
12 -- do you know personally whether Bell ever gave
13 anybody at K&H something from CoStar?

14 A. I believe he did not.

15 Q. Other than the e-mails that you saw on
16 that day. You're not aware of anything else?

17 A. Which e-mails?

18 Q. I'm sorry. Other than the reports --

19 A. The market report.

20 Q. -- the market reports that were referenced
21 during the Bell deposition --

22 A. Right. And I asked him --

23 Q. -- you know of no other instances?

24 A. And I asked him specifically if he did,
25 and he told me no.

1 Q. And you're not aware of any other -- of
2 any other --

3 A. Yes. I am not aware.

4 Q. You're not aware. Okay.

5 You said you asked him specifically if he
6 ever -- who were you referring to? Who did you ask
7 specifically if Bell had ever provided --

8 A. The question was, did I -- I assume the
9 question was: Did I ask him if he ever provided
10 information to anybody else? And "he" is the --
11 that's the pronoun for Bell.

12 Q. Scott Bell?

13 A. Yeah.

14 Q. Okay. And, last, did -- are you -- did
15 you or anybody at K&H ever ask Scott Bell for any
16 CoStar materials?

17 A. No, we did not.

18 MS. KERKSIEK: Okay. Let's mark as
19 Exhibit 3 or -- yeah, 3 -- this document.

20 (The document was marked as Klein Exhibit
21 Number 3 for identification.)

22 THE WITNESS: Okay.

23 BY MS. KERKSIEK:

24 Q. Have you had a chance to review Exhibit 3?

25 A. I'm sorry?

1 Q. Have you had a chance to review Exhibit 3?

2 A. Yes.

3 Q. Do you recognize this document?

4 A. I do.

5 Q. What is it?

6 A. It is the Klein & Heuchan Policy Manual
7 and Commission Schedule.

8 Q. And is there a signature on the front
9 page?

10 A. Yes, there is.

11 Q. And whose signature does that appear to
12 be?

13 A. Scott Bell.

14 Q. Was Scott Bell's affiliation with K&H
15 pursuant to this policy?

16 A. This policy manual was -- was given to him
17 to be signed by him when we -- when we associated
18 with him --

19 Q. Was he --

20 A. -- when he became an associate.

21 Q. Was he required to sign this --

22 A. Yes.

23 Q. -- policy as a condition of his
24 employment?

25 A. Yes, he was.

1 Q. Do all of the associates at K&H sign this
2 manual?

3 A. Yes, they do.

4 Q. What happens when an -- when an employee
5 violates a provision of this policy manual?

6 A. I mean, if -- if it's a severe violation
7 of the manual, we'll sever our relationship with
8 them.

9 Q. Are there any other less severe
10 consequences that could occur?

11 A. I can't remember really having, you know,
12 any severe violations.

13 Q. All right.

14 MS. KERKSIEK: This is Number 4.

15 (The document was marked as Klein Exhibit
16 Number 4 for identification.)

17 BY MS. KERKSIEK:

18 Q. Have you ever seen Exhibit Number 4
19 before?

20 A. Yes.

21 Q. When did you see this?

22 A. At Scott Bell's deposition.

23 Q. Did you ever see this before that day?

24 A. I never -- I never recall ever seeing
25 this.

1 Q. Do you recognize what this is?

2 A. Yes.

3 Q. What is it?

4 A. It's an office report for the Tampa Bay
5 market, very similar to the ones that we get from
6 Cushman & Wakefield, the Maddux Report, and a host
7 of other service providers in the Tampa Bay area.

8 Q. And what do you use these types of reports
9 for?

10 A. Well, I've never used this report. I've
11 never seen this report before the --

12 Q. But reports -- office reports similar to
13 this one, what are they used for?

14 A. It clarifies what we think we found out
15 about the market, what the vacancy factor is, what
16 the occupancy factor is, and whether they're
17 trending up and trending down.

18 Q. Do you use it -- so you use it to verify
19 research you've already done?

20 A. No. You asked me if I use this report.
21 I've never -- I never use this report.

22 Q. No. I understand. But reports like --
23 I'm just trying to understand what this -- what
24 these types of reports -- what their purpose is and
25 function is.

1 A. It helps me understand the marketplace and
2 make sure that what I understand has -- has actually
3 been quantified, you know, by -- by other
4 researchers.

5 Q. You use it, in other words -- you use
6 reports like this to verify research that you've
7 already conducted?

8 A. That's correct.

9 Q. What sources of information do you use for
10 your initial research?

11 A. We're in the marketplace constantly, so we
12 know what's happening on a one-to-one basis. These
13 reports are provided by researchers who talk to
14 people like us and many brokers to get an idea --
15 and properties owners -- to gather their research.
16 Many times their research is flawed.

17 Q. Do you know if anyone at K&H has ever seen
18 this report, Exhibit 4?

19 A. I have no idea.

20 Q. Do you know if anyone at K&H ever asked
21 Scott Bell for -- to provide them with this report?

22 A. No.

23 MS. KERKSIEK: This is Number 5.

24 (The document was marked as Klein Exhibit
25 Number 5 for identification.)

1 THE WITNESS: Okay.

2 BY MS. KERKSIEK:

3 Q. Have you had a chance to review it?

4 A. Yes.

5 Q. Do you recognize this document?

6 A. No.

7 Q. Do you know generally what it is?

8 A. Yes.

9 Q. What is it?

10 A. It's -- as it says, this is Year-End 2007
11 report. The other one was a First Quarter Office
12 Report.

13 Q. Can you tell me which Bell exhibit number
14 that is?

15 MR. GIBSON: Let me swap -- there.

16 MS. KERKSIEK: Oh, there we go.

17 BY MS. KERKSIEK:

18 Q. Okay. Now you're looking at Exhibit --
19 your Exhibit 5 --

20 MR. GIBSON: 5. Right.

21 Q. -- Klein Exhibit 5?

22 A. I'm looking at -- okay.

23 Q. Is that right? You're looking at
24 Klein Exhibit 5?

25 A. Yes.

1 Q. Do you see the court reporter's marking?

2 A. Yes.

3 Q. Okay. What is that?

4 A. First Quarter 2007.

5 Q. And have you ever seen this before?

6 A. No.

7 Q. Do you know whether anyone at K&H has ever
8 seen this before?

9 A. No.

10 Q. Did you or anyone at K&H ever ask Bell for
11 this report?

12 A. No.

13 (The document was marked as Klein Exhibit
14 Number 6 for identification.)

15 BY MS. KERKSIEK:

16 Q. Okay. Same questions. Have you ever seen
17 this before?

18 A. No.

19 Q. Do you know what this is?

20 A. It says it's The CoStar Industrial Report,
21 Year-End 2007.

22 Q. Do you know if --

23 A. I'll qualify that answer and say that I
24 saw it at the deposition.

25 Q. Okay. Is that the same answer for --

1 A. Yes.

2 Q. -- Exhibit Number 5?

3 A. Right. Yes.

4 Q. But before the deposition, you've --

5 A. I've never seen it.

6 Q. -- you've never seen these?

7 MR. GIBSON: And just so we're clear,
8 what deposition? I mean --

9 THE WITNESS: Scott Bell's deposition.

10 MS. KERKSIEK: Scott Bell's deposition.

11 THE WITNESS: On the 20th.

12 BY MS. KERKSIEK:

13 Q. Do you know if anyone at K&H ever used
14 this report?

15 A. No.

16 Q. Do you know if anyone at -- you or anyone
17 at K&H asked Scott Bell to provide them with this
18 report?

19 A. No.

20 Q. Do you know whether Scott Bell used either
21 Exhibit 4, Exhibit 5 or Exhibit 6?

22 A. No.

23 (The document was marked as Klein Exhibit
24 Number 7 for identification.)

25 THE WITNESS: Okay.

1 BY MS. KERKSIEK:

2 Q. Have you ever seen this document before?

3 A. No.

4 Q. Did you see it at Scott Bell's deposition?

5 A. I don't recall seeing it.

6 Q. Do you know what this is?

7 A. It says that it's a comp report on a mini
8 storage facility in Pasco County.

9 Q. Do you know if Scott Bell ever used this
10 while he was at Klein & Heuchan?

11 A. No.

12 Q. Do you know if anyone at Klein & Heuchan
13 ever used this information?

14 A. No.

15 Q. Do you know if anyone at Klein & Heuchan
16 ever asked Scott Bell for this information?

17 A. No.

18 (The document was marked as Klein Exhibit
19 Number 8 for identification.)

20 BY MS. KERKSIEK:

21 Q. Have you had ever seen this -- Exhibit 8
22 before?

23 A. I may have seen it at Scott's deposition.

24 Q. Did you ever see it before that?

25 A. No.

1 Q. What does this appear to be?

2 A. It appears to be an e-mail to somebody.

3 Q. And who is the e-mail from?

4 A. Scott Bell.

5 Q. And do you see where at the top it says
6 "scott@kh.com"?

7 A. Um-hum.

8 Q. Is that a Klein & Heuchan e-mail address?

9 A. It may be an abbreviated address.

10 Q. What makes you say that?

11 A. Because we don't have a "kh.com" address.

12 Q. What is K&H -- Klein & Heuchan's e-mail
13 address?

14 A. I don't know what -- I can't remember
15 what Scott's would be, but it would have been
16 "scottbell@kleinand" -- no ampersand --
17 "heuchan.com."

18 Q. Okay. Do you know who "bmistak@gmail.com"
19 is?

20 A. No. I have no idea.

21 Q. When you go down and there is -- it says,
22 about a quarter of the way down the page, "Original
23 Message," it says from "printer@kh.com."

24 A. Um-hum.

25 Q. Is that K&H's printer -- Klein & Heuchan's

1 printer?

2 A. Yes. I believe it is.

3 Q. Can you look at the attachment to the
4 e-mail?

5 A. Sure.

6 Q. Have you ever seen this before?

7 A. At Scott's deposition.

8 Q. And before that?

9 A. No.

10 Q. Did you or anyone at K&H ask Scott Bell to
11 provide this information?

12 A. No.

13 Q. Did you or anyone at K&H ever receive this
14 printout from Scott Bell?

15 A. I don't believe we did.

16 (The document was marked as Klein Exhibit
17 Number 9 for identification.)

18 THE WITNESS: Okay.

19 BY MS. KERKSIEK:

20 Q. Do you recognize Exhibit 9?

21 A. Yes.

22 Q. What does this appear to be?

23 A. It's an e-mail from Scott Bell.

24 Q. And do you see his e-mail address as
25 scottbell@kleinandheuchan.com?

1 A. Yes.

2 Q. Is that the e-mail address that you were
3 referring to earlier?

4 A. That's correct. Yes.

5 Q. And that is Klein & Heuchan's e-mail --

6 A. That's correct.

7 Q. -- provided account?

8 A. That's correct.

9 Q. Who is MSK?

10 A. That's my -- the -- that's the e-mail
11 I use, which msk@tampabay.rr.com.

12 I don't use the -- I use the Klein &
13 Heuchan e-mail address, but I prefer to use the
14 Road Runner e-mail that I use. Easier to spell.

15 Q. And what is tampabay.rr.com?

16 A. That's a Road Runner e-mail address.

17 Q. And is the Klein & Heuchan e-mail account
18 provided by Road Runner or by a different ISP?

19 A. A different ISP.

20 Q. Which one?

21 A. Web Services.

22 Q. Why do you prefer to use the Road Runner
23 account?

24 MR. GIBSON: Object to form.

25 A. If I ask you to spell "Heuchan," how would

1 you spell it, without looking? That's why.

2 Q. Okay.

3 A. It's too -- it's too easy to make a
4 mistake.

5 Q. Is that why you -- Klein & Heuchan
6 obtained this e-mail account, Tampa Bay, for --
7 because it's easier to spell?

8 A. I can't recall which came first.

9 Q. Okay. Is tampabay.rr, is that a separate
10 company? What does that refer to?

11 A. Road Runner -- Road Runner is a company,
12 and we get them through Bright Star, which is Bright
13 House Network.

14 Q. And is Bright House Network the ISP?

15 A. Got me.

16 Q. It's the company?

17 Is -- what is Tampa Bay? What does that
18 refer to?

19 A. It's a name. It's -- we're in the Tampa
20 Bay area.

21 Q. Okay.

22 A. And that is the address that Road Runner
23 uses for our area, so it's one word. There's no
24 space.

25 Q. And do you see the text of the first

1 e-mail says, "You probably have already seen this"?

2 A. Yes.

3 Q. Do you recall seeing this e-mail?

4 A. I don't know. I get a lot of e-mails.

5 MR. GIBSON: Prior to the depo?

6 Q. Prior to the deposition, do you recall
7 seeing this?

8 A. I don't recall it.

9 Q. Do you see that the forwarded
10 message comes from CoStar Group
11 [mailto:announcements@costar.com]?

12 A. Yes.

13 Q. Were you at any -- or anyone at
14 Klein & Heuchan aware that Scott Bell received
15 e-mails like this from CoStar?

16 A. Everybody -- everybody at Klein & Heuchan
17 receives these offers from CoStar.

18 Q. What kind of offer is this?

19 A. I don't know. I didn't look at it.

20 Q. Will you take a look and then let me know
21 what it is?

22 A. Sure.

23 "NEW: Free Property Search."

24 "Looking for commercial properties to buy
25 or lease? Visit CoStar."

1 "Coverage. Listings to all 50 states.
2 All property types including office, industrial,
3 retail, land and multifamily. Convenience.
4 Unlimited searches. No cost. No registration
5 required.

6 "Confidence. Researched, verified,
7 continuously updated listings."

8 I guess I received this also and I had no
9 interest.

10 Q. So this is something that one -- that you
11 would have received without having a CoStar account?

12 A. I believe it's a marketing tool of CoStar.

13 Q. Um-hum. And it's not something that you
14 would have required a password to look at?

15 MR. GIBSON: Object to form.

16 A. No.

17 Q. So when Scott Bell says you probably have
18 already seen this, you believe that what he means is
19 that you had -- you had already received this
20 identical e-mail?

21 MR. GIBSON: Object to form.

22 A. I don't know what he had.

23 Q. Okay.

24 (The document was marked as Klein Exhibit
25 Number 10 for identification.)

1 BY MS. KERKSIEK:

2 Q. Can you tell me what Exhibit 10 is?

3 A. It looks like an Excel spreadsheet.

4 Well, that's the attachment. It's an e-mail from
5 Scott Bell.

6 Q. And who is the e-mail to?

7 A. It's to me.

8 Q. And the subject -- and do you recall
9 having received this e-mail on August 16, 2007?

10 A. No. I really don't.

11 Q. Do you recall seeing the Excel
12 spreadsheets similar to the one attached to the
13 e-mail?

14 A. No, I don't.

15 Q. Do you have any reason to believe that you
16 did not receive this e-mail?

17 A. No, I don't.

18 Q. Or any e-mails addressed to MSK?

19 A. No.

20 Q. Are you -- did you or anyone at K&H ask
21 Scott Bell to provide you with the Excel spreadsheet
22 that's attached to Exhibit 10?

23 A. Absolutely not.

24 Q. Do you know if anybody else at K&H ever
25 saw the attachment that's attached -- other than

1 you --

2 A. No.

3 Q. -- that's attached?

4 A. No.

5 MR. GIBSON: Object to form.

6 THE WITNESS: We're killing a lot of
7 trees here, aren't we?

8 MS. KERKSIEK: No. That's what lawyers
9 do, unfortunately. We've got to create the record.

10 (The document was marked as Klein Exhibit
11 Number 11 for identification.)

12 THE WITNESS: Okay.

13 BY MS. KERKSIEK:

14 Q. What is Exhibit Number 11?

15 A. It is another copy of an office --
16 CoStar Office Report.

17 Q. And what is the first page of Exhibit
18 Number 11?

19 A. The first page of the exhibit? The
20 CoStar Office Report, Year-End 2006.

21 Q. No. I'm referring to the e-mail.

22 A. Oh, the e-mail? Okay, Scott -- it's
23 from Scott Bell to Steve Klein. Attachment is
24 "officeReport.pdf."

25 "Steve, Office report document."

1 Q. And are you -- is that
2 "stevenklein@kleinandheuchan.com," that is
3 Steven Klein, the Executive Vice President of K&H?

4 A. That's correct.

5 Q. Did you or Steve Klein or anyone
6 at K&H ask Scott Bell to provide this report?

7 A. I don't know. I mean, I didn't.

8 Q. Do you -- are you -- do you know whether
9 Steve Klein asked him to provide --

10 A. I doubt -- I doubt that he did.

11 Q. But you don't know for sure?

12 A. No.

13 Q. Do you know if anyone at K&H ever --
14 including Steve Klein -- ever read or used this
15 report?

16 A. No.

17 Q. So, again, Number -- Exhibit Number 11,
18 did you see this document at Scott Bell's
19 deposition?

20 A. I believe I did.

21 Q. And since that time did you ask anybody at
22 K&H or did ask you Steven Klein whether they asked
23 Scott Bell to provide this document to them?

24 A. No. I mean, I know that Steve did not
25 ask for it. We had no reason to ask for it, but I

1 didn't ask him if he did that.

2 Q. And how do you know, then, that
3 Steve Klein didn't ask for it?

4 A. We have four or five office reports
5 from -- from Marcus & Millichap, from Cushman &
6 Wakefield, from the Maddux report, from Advantis
7 Real Estate. They all provide them. C.B. Richard
8 Ellis. We have them all. There's nothing
9 proprietary about this.

10 Q. Those other reports, do you have to pay
11 for them?

12 A. No.

13 Q. Those other companies provide office
14 reports free of charge?

15 A. Yes. Yes.

16 Q. Do you know whether CoStar provides office
17 reports free of charge?

18 A. I have no idea. I have no idea.

19 Q. And just to be clear on Exhibit Number 11,
20 you never did ask Mr. Steven Klein whether he asked
21 Scott Bell for this report?

22 MR. GIBSON: Object to form. Asked and
23 answered.

24 THE WITNESS: I'm sorry? Oh, okay.

25 MR. GIBSON: Go ahead.

1 THE WITNESS: No, I did not.

2 MS. KERKSIEK: Okay. We're on -- where
3 is 12? Okay.

4 (The document was marked as Klein Exhibit
5 Number 12 for identification.)

6 THE WITNESS: Okay.

7 BY MS. KERKSIEK:

8 Q. Can you tell me what Exhibit 12 is?

9 A. I'm looking at 11.

10 Q. The yellow one.

11 A. Oh, I'm sorry.

12 Q. I know. They're a number off, so it makes
13 it confusing.

14 A. Right. It's an e-mail from Scott Bell
15 to somebody named Tracy McMurray.

16 Q. Do you know who Tracy McMurray is?

17 A. No, I do not.

18 Q. Will you take a look at the attachment?

19 A. Okay.

20 Q. And will you take a look at the last four
21 pages of the attachment?

22 A. Okay.

23 Q. Can you tell me what those pages look
24 like?

25 A. The pages are property listings. One of

1 them that I see here is a -- these are CoStar
2 property listings. And the one in the front is --
3 the first exhibit is a Colliers Arnold listing,
4 which is the same as page number -- I don't know --
5 one of the pages here on CoStar. It's one of the
6 four pages.

7 Q. Did you or anyone at K&H ask Scott Bell to
8 provide them with this information?

9 A. No, I did not.

10 Q. Did you or anyone at K&H ever receive this
11 information from Scott Bell?

12 A. No, we did not.

13 MS. KERKSIEK: We're going to go off the
14 record for two minutes and take a quick break.

15 MR. GIBSON: Sure.

16 THE VIDEOGRAPHER: The time is 10:53 a.m.
17 We're now off the record.

18 (Discussion off the record.)

19 THE VIDEOGRAPHER: The time is 10:58 a.m.
20 We're now back on the record.

21 (The document was marked as Klein Exhibit
22 Number 13 for identification.)

23 BY MS. KERKSIEK:

24 Q. Can you tell me what Exhibit Number 13 is?

25 A. It's an e-mail from Scott Bell to

1 Carol Duncan in my office.

2 Q. Carol Duncan is the --

3 A. Administrative assistant.

4 Q. Administrative assistant, okay. Have you
5 ever seen this before?

6 A. I think I may have seen this at the
7 deposition, at Scott's deposition.

8 Q. Did you ask Ms. Duncan whether she asked
9 Mr. Bell to provide her with this link?

10 A. No.

11 Q. Do you know whether Ms. Duncan asked to --
12 Scott Bell to provide her with this link?

13 A. She wouldn't have any reason to, but I
14 don't know.

15 Q. Do you know if Ms. Duncan or anyone at K&H
16 used this link for any purpose?

17 A. No.

18 MS. KERKSIEK: Number 14.

19 (The document was marked as Klein Exhibit
20 Number 14 for identification.)

21 THE WITNESS: Okay.

22 BY MS. KERKSIEK:

23 Q. Can you tell me what Exhibit 14 is?

24 A. It's an e-mail from Scott Bell to
25 Steve Klein.

1 Q. Do you know whether Steve Klein asked
2 Scott Bell to provide him with this information?

3 A. No, I do not.

4 Q. Did you ever ask Mr. Klein if -- well,
5 Steven Klein -- if he asked Scott Bell to provide
6 him with this information?

7 A. No, I did not.

8 Q. And do you know if --

9 A. 14.

10 Q. Did you or anyone at K&H ask Mr. Bell
11 to provide Steven Klein with this information?

12 A. No.

13 (The document was marked as Klein Exhibit
14 Number 15 for identification.)

15 THE WITNESS: Okay.

16 BY MS. KERKSIEK:

17 Q. Do you know what this -- what Exhibit
18 Number 15 is?

19 A. I have no idea.

20 Q. Have you ever seen it before?

21 A. At Scott Bell's deposition.

22 Q. Are you aware that this is something
23 that was obtained from CoStar by Scott Bell?

24 A. No.

25 (The document was marked as Klein Exhibit

1 Number 16 for identification.)

2 THE WITNESS: Okay.

3 BY MS. KERKSIEK:

4 Q. Do you know what Exhibit Number 16 is?

5 A. It's an Excel spreadsheet.

6 Q. Do you know whether this is something that
7 was obtained from CoStar's database?

8 A. I have no idea.

9 Q. Have you ever seen this before?

10 A. At Scott Bell's deposition.

11 Q. Did you ever see it before that?

12 A. No.

13 Q. Do you know if anyone at K&H had ever seen
14 this before that?

15 A. No.

16 Q. Did you ask anyone at K&H whether they had
17 ever seen this document?

18 A. No.

19 MS. KERKSIEK: 17.

20 (The document was marked as Klein Exhibit
21 Number 17 for identification.)

22 BY MS. KERKSIEK:

23 Q. Do you recognize Exhibit Number 17?

24 A. No.

25 Q. Have you ever seen it before?

1 A. At Scott Bell's deposition.

2 Q. Are you aware that this is something that
3 Scott Bell obtained from CoStar's databases?

4 A. No, I am not.

5 Q. Did you ask anyone at K&H whether they had
6 ever seen this?

7 A. No.

8 Q. Did you ask K&H -- anyone at K&H whether
9 they had asked Scott Bell to provide them with this
10 information?

11 A. No, I did not.

12 Q. No -- Mr. Klein, the court reporter --
13 it's hard for her to take down when we talk over
14 each other. So if you could wait until I finish my
15 question and then answer, I would appreciate it.

16 A. Are you finished? I'll try.

17 Q. Thank you. I appreciate it.

18 A. But this court reporter is pretty good.
19 She can do that.

20 Q. But she's supposed to take everything down
21 exactly as she hears it, so --

22 A. Okay.

23 Q. If she hears that we're talking over each
24 other, then she tries to do that, too.

25 A. I understand. I'll try and comply.

1 Q. Thank you. Thanks.

2 THE COURT REPORTER: 18?

3 MS. KERKSIEK: 18, yes.

4 (The document was marked as Klein Exhibit
5 Number 18 for identification.)

6 BY MS. KERKSIEK:

7 Q. Have you ever seen Exhibit Number 18
8 before?

9 A. At Scott Bell's deposition.

10 Q. And do you recognize this document?

11 A. No.

12 Q. Are you aware that this is a document that
13 Scott Bell received from CoStar's databases?

14 A. No, I am not.

15 Q. Do you know if anyone at K&H asked
16 Scott Bell to provide them with this information?

17 A. No, I do not.

18 Q. Do you know if anyone at K&H had ever seen
19 this -- the information contained in here -- or,
20 really, had ever seen Exhibit Number 18?

21 A. No.

22 Q. Did you ask anyone at K&H whether they
23 had seen or asked Bell to provide them with the
24 information in Exhibit 18?

25 A. No.

1 MS. KERKSIEK: 19.

2 (The document was marked as Klein Exhibit
3 Number 19 for identification.)

4 BY MS. KERKSIEK:

5 Q. Have you ever seen Exhibit Number 19
6 before?

7 A. At Scott Bell's deposition.

8 Q. Had you ever seen it before that?

9 A. No, I did not.

10 Q. Do you know what Exhibit Number 19 is?

11 A. No.

12 Q. I'm sorry?

13 A. No.

14 Q. Are you aware that Exhibit Number 19 was
15 obtained from CoStar's databases?

16 A. No, I am not.

17 Q. Did you -- or do you know whether anyone
18 at K&H asked Scott Bell to provide them with this
19 information?

20 A. No, I do not.

21 Q. Do you know whether anyone at K&H ever saw
22 or used this information?

23 A. No, I do not.

24 Q. Did you ever ask anyone at K&H whether
25 they had seen or used this information?

1 A. Exhibit 19?

2 Q. Yes.

3 A. No.

4 The second one's "Ted Kennedy."

5 You might as well cross that off.

6 MS. KERKSIEK: Oh.

7 MR. STEVEN KLEIN: That's interesting.

8 MS. KERKSIEK: That says "Ted Kennedy,"

9 the second entry.

10 MR. GIBSON: Yours is just the line.

11 MS. KERKSIEK: I think there probably are.

12 (The document was marked as Klein Exhibit
13 Number 20 for identification.)

14 BY MS. KERKSIEK:

15 Q. Do you recognize this document?

16 A. From Scott's -- Scott Bell's deposition,
17 I've seen it. That's where I recognize it from.

18 Q. Are you aware that Exhibit Number 20 is --
19 was obtained from CoStar's databases?

20 A. No, I am not.

21 Q. Do you know if anyone at Klein & Heuchan
22 asked Scott Bell to provide them with the
23 information in Exhibit 20?

24 A. No, I do not.

25 Q. Do you know whether anyone at K&H ever

1 saw or used the information contained in Exhibit 20?

2 A. No, I do not.

3 Q. And did you ever ask anyone whether
4 they used or asked Bell for the information in
5 Exhibit 20?

6 A. No, I did not.

7 MS. KERKSIEK: 21.

8 MR. GIBSON: Is this Exhibit 21?

9 MS. KERKSIEK: 21.

10 (The document was marked as Klein Exhibit
11 Number 21 for identification.)

12 BY MS. KERKSIEK:

13 Q. Have you ever seen Exhibit Number 21
14 before?

15 A. At the deposition -- at Scott Bell's
16 deposition.

17 Q. Had you ever seen it before that?

18 A. No, I have not.

19 Q. Do you know what Exhibit 21 is?

20 A. No.

21 Q. Do you know whether anyone at K&H
22 ever asked Scott Bell to provide them with this
23 information?

24 A. No, I do not.

25 THE WITNESS: I'm sorry. I talked over

1 you.

2 BY MS. KERKSIEK:

3 Q. Are you aware that the information in
4 Exhibit Number 21 is information obtained from
5 CoStar?

6 A. No, I'm not.

7 Q. Do you know whether anyone at K&H ever
8 saw or used the information in Exhibit Number 21?

9 A. No, I do not.

10 Q. Did you ever ask anyone at K&H whether
11 they ever saw or used this -- the information in
12 Exhibit Number 21?

13 A. No, I did not.

14 (The document was marked as Klein
15 Exhibit Number 22 for identification.)

16 BY MS. KERKSIEK:

17 Q. Have you ever seen Exhibit Number 22
18 before?

19 A. I don't think I saw it at Scott Bell's
20 deposition either. I may have.

21 Q. Okay. Can you tell me what this is?

22 A. It's an e-mail from Scott Bell to
23 FMALK175@aol.com.

24 Q. Do you know whose e-mail address that is?

25 A. No.

1 Q. Can you turn to the attachment?

2 A. Yes.

3 Q. Can you tell me what the attachment is?

4 A. It is a marketing flier on a town home
5 apartment complex.

6 Q. Is this a Klein & Heuchan flier?

7 A. Yes, it is.

8 Q. How does Klein & Heuchan create these
9 fliers?

10 A. We created them -- we create them
11 in-house.

12 Q. What are the sources of information that
13 you use to create these fliers?

14 MR. GIBSON: Object to form.

15 A. We -- we -- let's go to the back of the
16 flier, the overview. We get the zoning and the land
17 use from the municipality. We get the floodplain
18 from the -- usually the municipality or wherever
19 it's available from. The utilities -- we check the
20 utilities and then --

21 Q. With the utility companies?

22 A. With the utility companies to make sure
23 that we have the right one. And then we get the
24 appraiser's -- the tax assessor's information.

25 Q. What about things like improvements,

1 land area, year built?

2 A. We get them from the tax assessor, but we
3 -- we request that our associates go out and check
4 them themselves because they're frequently wrong.

5 Q. And when you say "we get this
6 information," do you mean the associates are
7 responsible for filling in this information.

8 A. That is correct.

9 THE COURT REPORTER: 23.

10 (The document was marked as Klein Exhibit
11 Number 23 for identification.)

12 BY MS. KERKSIEK:

13 Q. Do you recognize Exhibit Number 23?

14 A. I sure do.

15 Q. What is it?

16 A. It's a threatening letter from your
17 client, CoStar.

18 Q. Do you remember receiving this letter?

19 A. I do.

20 Q. What did you do when you received it?

21 A. I got PO'd and I called CoStar, according
22 to the -- according to the instructions on the back.

23 Q. What did you say to CoStar when you called
24 them?

25 A. If I recall correctly, I did not

1 get Mr. Ricketts, but I got Steve Williams, who
2 informed me that he -- his question was: "Do you
3 have anybody that ever worked for Coldwell Banker
4 working for you or, you know, as an associate?"

5 I said, "Yes, I have three of them."

6 And he said, "Do" -- does Scott Bell --
7 is Scott Bell one of them?"

8 I said, "Yes."

9 And he said, "He's using our information
10 illegally, so we're" -- you know, this letter tells
11 us what they're going to do, that they want to
12 extort a license from me, and it really -- extortion
13 -- it really pissed me off.

14 Q. What did Steve Williams say in response to
15 you?

16 A. The conversation was, "Well, you know, we
17 can -- we can -- you owe us \$69,000. But we'll make
18 a deal from you if you take a license from us."
19 And I said, you know, "I'm not interested."

20 And he said, "Well, if you -- we might
21 treat you as a two-member association and do this
22 for \$10,000."

23 And then the very next day -- I ended
24 the conversation because I still was not interested.
25 And the very next day somebody else called -- and I

1 don't know if it was Ricketts or somebody else --
2 to say, "He wasn't authorized to make that deal for
3 you."

4 Q. Hmm.

5 A. And said, "I don't care. You're not
6 going to use extortion and hold me hostage to buy a
7 license from CoStar."

8 Q. Did you have any other conversations with
9 CoStar after that?

10 A. I don't think I did. I think I received
11 -- the next thing I received was the other letter
12 that said, "If you -- you haven't worked with us on
13 this. So if you -- if you don't do that by Tuesday,
14 we're going to file a suit against you."

15 Q. Did the second -- was -- you -- so you
16 received a -- you received a second letter from
17 CoStar?

18 A. Yes.

19 Q. And it was dated several days after
20 the letter --

21 A. No. It was dated about a month later.

22 Q. A month later?

23 A. Yeah.

24 Q. Okay. And what did you do after you
25 received that letter?

1 A. Called my attorney and told him to file
2 suit.

3 Q. Is your attorney Mr. Gibson?

4 A. Yes.

5 Q. Who else did you -- no. Let's come back
6 to the first letter, Exhibit Number 23.

7 Did you have any conversations with
8 anybody at Klein & Heuchan about this letter?

9 A. Scott Bell and Steve Klein.

10 Q. Did you -- did you speak with them at
11 once, in one conversation, or were there several
12 conversations?

13 A. I can't recall.

14 Q. Do you remember what you talked about?

15 A. Yeah. I -- we talked about the letter and
16 I discussed it with Scott Bell.

17 Q. What did you tell or ask Scott? What did
18 you say to Scott Bell?

19 A. "Tell me again how you happen to have this
20 CoStar information."

21 Q. What did he say?

22 A. He said, "They gave it to me. It was a
23 subscription. They called us all into a room and
24 said, "We are giving you a subscription to CoStar."

25 Q. And what else did he say?

1 A. That was it. I mean, I --

2 Q. What did --

3 A. I can't recall.

4 Q. What did you say to him?

5 A. I said, "Fine. Come here. We're going to
6 call them." So he was in the room when I called.

7 Q. Okay.

8 A. But he was not in the room when they
9 returned the call.

10 Q. Okay. What did you -- and you said you
11 discussed this letter with Steven Klein as well?

12 A. Um-hum. Yes.

13 Q. What did you talk about with him?

14 A. The letter, the extortion attempt.

15 And it is an extortion attempt. You know that.

16 Would you admit that CoStar is a pretty
17 highly technical company?

18 Q. I'm the one asking the questions here.

19 A. Oh. All right.

20 Just so that you know, when this subject
21 comes up, I still get excited, and not in a good
22 way.

23 (The document was marked as Klein Exhibit
24 Number 24 for identification.)

25 BY MS. KERKSIEK:

1 Q. Do you recognize Exhibit Number 24?

2 A. Yes, I do.

3 Q. What is it?

4 A. I'm sorry.

5 Q. That's okay.

6 A. Yes, I do.

7 Q. What is it?

8 A. It is a commission spreadsheet that we
9 give out to the associates when we give them a
10 commission.

11 Q. And are these Scott Bell's commissions?

12 A. All of them, yes.

13 Q. He had no other commissions other than the
14 -- other than the ones reflected in these two pages?

15 A. That's correct.

16 Q. And do you know whether these are -- these
17 numbers are an accurate record of the commissions
18 that he received?

19 A. Yes, they are.

20 Q. And if you go to the column that says,
21 "Gross commissions" --

22 A. Um-hum.

23 Q. -- and then at the bottom it says,
24 "\$1,749.56."

25 A. Um-hum.

1 Q. Is that the total commissions earned on
2 this -- on these sales?

3 A. That's correct.

4 Q. And then the two columns that says
5 "Commission Earned" and "Commission Paid," what
6 are those?

7 A. Okay. The commission earned is the
8 associate's split of the commission that we
9 received, which is the gross commission.
10 Commission paid is all of the money he received.
11 Because if you read our policy manual, we do give a
12 bonus at the end of the year based on the percentage
13 that they put into the fund, and he got this \$43.74.

14 Q. And what is the column that says
15 "K&H Net"?

16 A. That shows what we have net after paying
17 out the salesman's portion of the commission.

18 Q. In other words, the --

19 A. So it -- so that would be, column one,
20 Gross Commission, 1749; Commission Earned, 874.78;
21 K&H Net, 874.78.

22 (The document was marked as Klein
23 Exhibit Number 25 for identification.)

24 THE WITNESS: Yes, Sanya.

25 BY MS. KERKSIEK:

1 Q. Do you recognize Exhibit Number 25?

2 A. I guess I do, yes.

3 Q. Have you ever seen this before?

4 A. Yes.

5 Q. Can you tell me what it is?

6 A. It's a First Set of Interrogatories.

7 Q. Is it Klein & Heuchan's Response?

8 A. It's Klein & Heuchan's Response to

9 Defendant's First Set of Interrogatories.

10 Q. Can you turn to the last page?

11 A. Okay.

12 Q. Do you see that's a certification?

13 A. Yes.

14 Q. And it's signed Klein & Heuchan, Inc.,

15 by President?

16 A. Yes.

17 Q. And there's a signature there?

18 A. Yes.

19 Q. Is that your signature?

20 A. Yes, it is.

21 Q. Do you remember reading these responses --

22 A. Yes, I do.

23 Q. -- when you signed them?

24 A. Yes.

25 Q. Were they true and accurate, to the best

1 of your knowledge, at the time?

2 A. Yes. Okay. This -- yeah. This includes
3 the commissions not only in this year. It's total
4 commissions earned.

5 Q. For 2007 and 2008?

6 A. Yes. Yes.

7 Q. Yes.

8 A. Yes. That's correct.

9 Q. Okay. Can you read, just to yourself,
10 Interrogatory Number 5?

11 A. Okay.

12 Q. Now, earlier you had testified that you
13 oversaw Scott Bell's work. Is that right?

14 A. Yes.

15 Q. So in response to this interrogatory --

16 A. I'm answering corporately.

17 Q. -- your name could be included?

18 A. It could be, but I'm answering
19 corporately.

20 Q. What do you mean by that?

21 A. Klein & Heuchan. Remember, we talked
22 about -- we're talking about my answers as
23 Klein & Heuchan or my answers individually?

24 Q. Um-hum. So you -- Klein & Heuchan
25 supervised and oversaw?

1 A. That's correct.

2 Q. Did you ever review Scott Bell's work
3 personally?

4 A. I'm going to have to answer "no" because
5 I'm not sure what you mean by "review his work."

6 Q. Well, what did you -- in your capacity as
7 the President and CEO of Klein & Heuchan, what were
8 your interactions with Scott Klein (sic) regarding
9 the work that he did for you?

10 A. I wanted to know what he was doing and
11 what progress he was making on getting listings,
12 what -- who he was calling on to -- or what he was
13 doing to find buyers. We talked about different
14 mailings he was doing to get listings or to find
15 buyers.

16 Q. What would you do if he wasn't making
17 satisfactory progress in finding buyers?

18 A. Well, you know, that's -- that's kind of a
19 question that has a time frame involved in it. When
20 we hire a new associate, we figure it takes them at
21 least about a year to get up to speed, even if they
22 had some prior experience, as Scott had.

23 But after a few years if they don't make
24 it, depending on market conditions, we'd probably
25 sever our relationships.

1 Q. And did you provide him with constructive
2 feedback regarding the jobs he was working on?

3 A. Yes.

4 Q. What kind of feedback would you give him?

5 A. I would tell him to get his nose out of
6 the computer and get out on the street and start
7 talking to people.

8 Q. Did he take your advice?

9 A. Not really.

10 Q. Back to Interrogatory Number 5, other than
11 yourself, was there anybody else at Klein & Heuchan
12 who supervised, oversaw, reviewed or provided any
13 kind of feedback to Scott Bell regarding his work?

14 A. Steve Klein.

15 Q. What kind of oversight did Steve Klein
16 provide?

17 MR. GIBSON: Object to the form.

18 A. I guess the same.

19 MR. GIBSON: Object to form.

20 Q. You mean the same -- the same type of
21 oversight that you provide?

22 A. Sales management oversight.

23 Q. Can you turn to the next page to
24 Interrogatory Number 6?

25 A. Okay.

1 Q. And the question states, "Identify all
2 persons affiliated with Klein & Heuchan who have
3 used CoStar's products or services."

4 A. Chris Howell, CCIM.

5 Q. Is that -- that's Chris Howell --

6 A. That's a designation.

7 Q. That's a designation?

8 A. Right.

9 Q. Okay. And would Scott Bell be included in
10 that response as well?

11 A. Yes.

12 Q. Anyone else?

13 A. No.

14 Q. Who is Scott Howell -- or Chris Howell?

15 Sorry.

16 A. Chris Howell is an associate, an
17 independent contractor; previously worked at
18 Coldwell Banker; told me that he had used CoStar
19 at Coldwell Banker.

20 Q. Did he use CoStar while he was at
21 Klein & Heuchan?

22 A. No, he did not.

23 Q. Why not?

24 A. Because he didn't have any need for it and
25 he wasn't licensed.

1 Q. How do you know he wasn't licensed?

2 A. He didn't have an access and he didn't
3 want one. He didn't use it when CCIM gave it to him
4 either. He didn't see the value in it.

5 Q. Did you ever ask him whether he would have
6 been allowed to use the access provided to him at
7 Coldwell?

8 A. No.

9 Q. How did you know that Chris Howell did not
10 have access to CoStar?

11 A. He told me.

12 Q. Did he tell you he didn't have access or
13 did he tell you that he wasn't allowed -- he wasn't
14 licensed to use it?

15 A. He told me that he used it when he was at
16 Coldwell Banker. He didn't see the value in it. He
17 gave them the opinion that they shouldn't buy the
18 system. And he didn't use it at Klein & Heuchan
19 because he used another service.

20 Q. Which service did he use?

21 A. Microbase. He liked Microbase.

22 Q. Could he have used CoStar if he had wanted
23 to --

24 A. I guess so.

25 Q. -- at Klein & Heuchan?

1 A. I have had no idea.

2 Q. Did you ever ask him?

3 A. I mean, could he have -- could he have
4 bought a license for CoStar? I guess he could have.

5 Q. Could he have used the access -- the user
6 name and password that he obtained through Coldwell
7 Banker at CoStar?

8 A. How would I know?

9 Q. Let's move on to Interrogatory Number 8.
10 Identify all persons affiliated with Klein & Heuchan
11 who, during their affiliation with Klein & Heuchan,
12 have observed or received information or products
13 derived from CoStar's services, such as CoStar
14 market reports, printouts of search results,
15 property details, or other such information.

16 A. Scott Bell.

17 Q. Did the marketing e-mails that you and
18 other associates at Klein & Heuchan received contain
19 any information like property details or more
20 substantive information about properties?

21 A. No. I think they -- they indicated that
22 one could that find that -- or could get that from
23 CoStar.

24 Q. When did Chris Howell start working for
25 Klein & Heuchan?

1 A. Oh, I believe it was 2004 or 2005. I'm
2 not sure exactly when.

3 Q. Does he still work for Klein & Heuchan?

4 A. Yes.

5 Q. What's his position there?

6 A. He is a licensed associate, sales
7 associate, independent contractor.

8 Q. And the service that he uses that he
9 prefers, does he need to use a user name and
10 password to access that?

11 A. I have no idea.

12 Q. Did you ever ask him whether was required
13 to use a user name and password?

14 A. No, I did not.

15 Q. Do you or anyone at Klein & Heuchan
16 subscribe to any paid service where a user name and
17 password is necessary?

18 A. Yes.

19 Q. What are those services?

20 A. IMAP.

21 Q. What else?

22 A. Some of the associates purchase the
23 premium membership to LoopNet.

24 Q. Does Klein & Heuchan pay the IMAP
25 subscription fee?

1 A. I'm going to answer "no" but explain.

2 IMAP is a company that provides two services.

3 One of them is their previous, called
4 IRIS service, which is a mapping and database
5 service that comes from the Property Appraiser's
6 Office, Property Assessor's Office -- Appraiser's
7 Office, actually. That's provided by Klein &
8 Heuchan for them.

9 The IMAP service, which is much more
10 detailed, is they buy through their membership with
11 the Florida Gulfcoast Commercial Association of
12 Realtors. They can opt to buy that or not buy that.

13 Q. And who is "they"?

14 A. The associates.

15 Q. And the associates pay that -- for that
16 service out of their own pocket?

17 A. They pay out of their own pocket.

18 Q. Do you pay for that service?

19 A. Yes, I do.

20 Q. And do you use a user name and password to
21 gain access to it?

22 A. Yes, I do. Yeah.

23 Q. What about the premium LoopNet service;
24 who pays for that?

25 A. An associate if they feel they want it.

1 Q. Do you pay for that?

2 A. No.

3 Q. Does Klein & Heuchan pay for any portion
4 of the LoopNet subscription?

5 A. No.

6 Q. So regarding Number 8, the question
7 is, "Identify all persons affiliated with
8 Klein & Heuchan who have observed or received
9 information or products from CoStar's."

10 Based on the e-mails that we reviewed
11 earlier today, would you include your -- that were
12 addressed to you and Steven Klein, would you include
13 your names in the response -- in that response?

14 A. I would include Steven's. I don't recall
15 ever getting it.

16 Q. Why would you include Steven's and not
17 yours?

18 A. Because you -- Scott said that he gave
19 it to him, and I think there was an e-mail to him
20 saying that. There may have been one to me also,
21 but I don't ever remember seeing it.

22 Q. Did you ask Steve Klein whether he ever
23 remembered receiving . . .

24 A. No.

25 MR. GIBSON: Object to form. Asked and

1 answered.

2 BY MS. KERKSIEK:

3 Q. Moving on to Number 9, "Identify all
4 persons affiliated with Klein & Heuchan who were
5 in a position to physically observe Scott Bell's
6 actions during his affiliation with Klein & Heuchan"
7 -- I'm sorry -- "Klein & Heuchan."

8 I'm going to just ask a narrower
9 question --

10 A. Thank you.

11 Q. -- which is: Who were the associates
12 who sat next to or near Scott Bell in your office?

13 A. Judi Healey sat next to him. She was
14 the only one sitting in that room that he was in.

15 Q. Did you ever ask Judi Healey whether she
16 talked to Scott Bell about his CoStar subscription?

17 A. Yes.

18 Q. What did she say?

19 A. No.

20 Q. Going to Interrogatory Number 11,
21 "Identify all persons who you believe have evidence
22 supporting the allegations made in your declaratory
23 judgment complaint." And there are a number of
24 names listed there.

25 Chris Howell's name is listed there.

1 What information would he have that supports the
2 allegations in your declaratory judgment complaint?

3 A. What are my allegations?

4 Q. Do you know what your allegations are?

5 A. Well, I'm -- you know, this thing has been
6 going on for a long time, so I'm not sure exactly
7 what you're asking for here.

8 Q. Well -- let's go back to -- I think it
9 was Exhibit Number 2.

10 As we had discussed before, Exhibit
11 Number 2 is the deposition notice to Klein &
12 Heuchan.

13 A. Um-hum.

14 Q. Did you review this notice before --
15 well, have you ever reviewed this notice?

16 A. Yeah. I think I have.

17 Q. Is that a yes or a no?

18 A. The answer would be yes.

19 Q. You have reviewed it?

20 A. Yes.

21 Q. When did you review this?

22 A. I can't tell you. I don't remember.

23 Q. So when you -- earlier when you were
24 talking about how you prepared for this deposition,
25 you went through a file. This notice was not

1 contained in that file?

2 A. It may have been, but I didn't read it.

3 Q. Can you turn to Topic Number 27? It's on
4 the last page.

5 A. Okay.

6 Q. So are you aware that these are the topics
7 about which Klein & Heuchan was noticed to testify
8 today?

9 A. Okay. Yes.

10 Q. And what is the basis of Klein & Heuchan's
11 allegation in paragraph 11 of its declaratory
12 judgment complaint that Scott Bell is a licensed
13 agent and independent contractor of K&H?

14 A. Repeat that question, please.

15 MS. KERKSIEK: Will the court reporter
16 read the question back?

17 (Discussion off the record.)

18 MS. KERKSIEK: I'll read the topic back.

19 BY MS. KERKSIEK:

20 Q. What is Klein -- what is the basis of --
21 what is Klein & Heuchan's basis for its allegation
22 in paragraph 11 of its declaratory judgment
23 complaint that Scott Bell is a licensed agent
24 and independent contractor of K&H?

25 A. What is the basis of that?

1 Q. Yes.

2 A. All right. He had his license with us and
3 we're -- he was part of our chain.

4 Q. And what is the basis of Klein & Heuchan's
5 position that he's an independent contractor of K&H?

6 A. Because he signed an independent
7 contractor agreement and -- which was part of our
8 company policy, policy manual.

9 Q. What is the basis -- turning to Topic
10 Number 28, so you can read along as I read.

11 What is the basis for Klein & Heuchan's
12 allegation in paragraph 12 of its declaratory
13 judgment complaint that 'At all times material,
14 Scott Bell was an authorized user of the CoStar
15 database"?

16 A. He told us he was and he had access
17 to your database -- or your client's database.

18 Q. And what about his having access to the
19 database made Klein & Heuchan believe that he was an
20 authorized user?

21 A. If he wasn't, why wouldn't you cut him
22 off? You're a highly technical company. 13 months,
23 you knew that he was using it, in your allegation.

24 Q. Did you ever ask Scott Bell whether he
25 contacted Coldwell Banker regarding his access?

1 MR. GIBSON: Object to the form. Asked
2 and answered.

3 A. No.

4 Q. Topic Number 29. What is the basis for
5 Klein & Heuchan's allegation in paragraph 14 of its
6 declaratory judgment complaint that K&H did not
7 obtain access to the CoStar database by obtaining
8 authorized user names and passwords and did not
9 access the CoStar database for its own commercial
10 purpose without a valid license or any other
11 authorization from CoStar?

12 A. I'm going to have to ask you to repeat
13 that question because you're saying Topic Number 14?

14 MR. GIBSON: 29.

15 Q. It's topic -- oh, I -- it's Topic Number
16 29 referring to paragraph 14 --

17 A. Okay.

18 Q. -- of the complaint and -- which quotes
19 directly from the complaint -- your complaint or
20 Klein & Heuchan's complaint.

21 A. Okay.

22 MR. GIBSON: Do you mind if I show him the
23 complaint?

24 MS. KERKSIEK: I mean, it should be --

25 MR. SAUERS: He should have, in

1 preparation for the deposition -- I mean, this is a
2 topic that's been noticed.

3 MR. GIBSON: So you don't -- you don't
4 want me to show him the complaint? I think it gives
5 context of the allegations, both before and after
6 it. It's up to you.

7 THE WITNESS: Yeah. I'm having a problem
8 understanding your question, but we can get to it.

9 MR. SAUERS: That's fine.

10 MS. KERKSIEK: That's fine. Yeah. That's
11 okay.

12 THE WITNESS: Okay. Ask the question
13 again, please.

14 BY MS. KERKSIEK:

15 Q. You were just reviewing the complaint
16 filed this action.

17 A. Right. Yeah.

18 Q. Did you review that in preparation for
19 your deposition today?

20 A. You know what, I don't think I did.

21 MR. GIBSON: Just so we're clear, one of
22 the complaints that's part of this action.

23 MS. KERKSIEK: Well, K&H's declaratory
24 judgment complaint. That's the one I'm referring to

25 THE WITNESS: Okay. I did not.

1 MR. GIBSON: But there is two complaints
2 in this consolidated action, though.

3 BY MS. KERKSIEK:

4 Q. Did you review the other complaint that's
5 filed --

6 A. I did not.

7 Q. -- in preparation for your deposition
8 today?

9 A. I did not.

10 Q. So back to the pending question
11 from a few moments ago. What is the basis for
12 Klein & Heuchan's allegations in paragraph 14 as
13 quoted in Topic Number 29 of the deposition notice
14 to K&H?

15 A. The answer is, we didn't. We didn't have
16 access to it. Mr. Bell had access to it, but we
17 didn't. And we were told that he had access, legal
18 access to it. And it was prima facie evidence that
19 he did because you didn't shut him off -- or your
20 client didn't shut him off.

21 Q. Topic Number 30, what is the basis for
22 Klein & Heuchan's allegation in paragraph -- oh,
23 sorry. I'll let you find it.

24 A. Thank you.

25 Q. Did you find it?

1 A. Yeah.

2 Q. Okay. Topic Number 30. What is the basis
3 for Klein & Heuchan's allegation in paragraph 18 of
4 its declaratory judgment complaint that Plaintiff
5 K&H is in doubt as to his rights and obligations?

6 A. CoStar's allegation is that we were part
7 of a phantom agreement. We were not. And I was
8 unsure about that, and I wanted the Court to decide
9 since you were threatening to sue me -- your client
10 was threatening to sue me.

11 Q. Topic Number 31. What is the basis for
12 Klein & Heuchan's allegation in paragraph 19 of its
13 declaratory judgment complaint that Plaintiff K&H is
14 in further doubt as to the existence or nonexistence
15 of any legal relationship between CoStar and K&H?

16 MR. GIBSON: I'm just going to object to
17 the question, as it -- to as much as it calls for a
18 legal conclusion as an element of the claim for a
19 declaratory judgment. But he certainly can answer
20 as to the factual basis.

21 BY MS. KERKSIEK:

22 Q. You can answer.

23 A. All right. I'm going to answer and tell
24 you that I wanted -- you were -- I was threatened
25 with a lawsuit by CoStar; threatened. And it was my

1 way of getting -- I knew we couldn't make you say
2 that I was not a licensed user. So I asked the
3 Court to decide.

4 I mean, in your allegations you talk about
5 agreements I had with CoStar. I had no agreements
6 with CoStar. Never did.

7 MS. KERKSIEK: Why don't we take a lunch
8 break? Is now a good time? I think it's around
9 noon.

10 MR. GIBSON: Well, how much longer do
11 you have? Because if there isn't much longer, I'd
12 prefer that we take a break and finish up. And I
13 think Mr. Klein would --

14 MR. SAUERS: Do you have questions?

15 MR. GIBSON: Of Mr. Klein? No. I have
16 one question.

17 MS. KERKSIEK: Okay. Well, why don't we
18 take a five- to ten-minute break and then decide?

19 THE WITNESS: Sure.

20 THE VIDEOGRAPHER: The time is 11:55 a.m.
21 We're now off the record.

22 (There was a recess.)

23 THE VIDEOGRAPHER: The time is 12:14 p.m.
24 We're now back on the record.

25 BY MS. KERKSIEK:

1 Q. Before the break we were talking about the
2 deposition notice to Klein & Heuchan. I want to
3 back up and go back over how you prepared for this
4 deposition.

5 When did -- when did you prepare for this
6 deposition?

7 A. Last night.

8 MR. GIBSON: Object to form.

9 Q. Did you prepare -- did you do any other
10 preparation other than the preparation you did last
11 night?

12 A. I read through Scott Bell's deposition.
13 No. Other than last night, no.

14 Q. And what did you read?

15 A. I read his deposition.

16 Q. What else?

17 A. I read the Rickett's letter.

18 Q. Um-hum.

19 A. I should have read it this morning instead
20 of last night because I had a hard time sleeping.
21 I was so angry.

22 Q. So you read the Ricketts letter --

23 A. Right.

24 Q. -- which is one of the exhibits here,
25 Exhibit Number 23. Right?

1 A. Do you want me to check?

2 Q. If you -- yeah, if you would like to.

3 A. Yes.

4 Q. Okay. What else did you read?

5 MR. GIBSON: That wasn't drafted by an
6 attorney or communicated by an attorney. Correct?

7 THE WITNESS: I don't --

8 MR. GIBSON: I don't want him to answer
9 that if it includes communications that came from
10 me.

11 A. No. I didn't -- I didn't review any of
12 those.

13 Q. How long did you spend reading those --
14 the materials that you referred to?

15 A. Half hour, hour.

16 Q. Did you read Exhibit Number 2, the
17 deposition notice to Klein & Heuchan?

18 A. I don't know. Let me take a look at it
19 and see if I did.

20 MR. GIBSON: It's the one we've --

21 A. No, I did not.

22 Q. Have you ever read this?

23 A. Yes.

24 Q. When?

25 A. You know, whenever it was drafted. I

1 mean, I can't recall how long that was -- ago that
2 was.

3 Q. Did your attorney provide this to you?

4 A. He provided -- let me see what we're
5 looking at here. Are these the interrogatories
6 or --

7 Q. No. This is the deposition notice. If
8 you look, actually, at the second page, it says it's
9 dated July 22nd, 2009.

10 A. Yes.

11 Q. Does that jog your memory as to when you
12 might have read this before?

13 A. I guess July 23rd or July 22nd. I can't
14 -- you know, I can't recall.

15 Q. Do you remember reading these?

16 MR. GIBSON: Object to form. Asked and
17 answered several times.

18 Q. Go ahead.

19 A. I said yes.

20 Q. And other than the hour or half hour
21 that you spent last night, did you do any other
22 preparation for the deposition today?

23 A. No.

24 Q. Did you discuss this deposition with your
25 attorney at all?

1 A. Yes.

2 MR. GIBSON: Object to form. Asked and
3 answered.

4 Q. When did you discuss it with him?

5 A. I can't recall.

6 Q. Did you discuss it with him yesterday?

7 A. I did. I did. We had a brief
8 conversation yesterday.

9 Q. On the telephone or in person?

10 A. On the phone.

11 Q. How long was the conversation?

12 A. About three minutes.

13 Q. Did you discuss the deposition with him
14 this morning --

15 A. No.

16 Q. -- before the deposition began?

17 A. No.

18 Q. Did you discuss the deposition with him
19 at any time other than yesterday during your
20 three-minute phone call?

21 A. I can't remember.

22 Q. Last night on the phone -- well, never
23 mind. Strike that.

24 Did Klein & Heuchan ever have a contract
25 with CoStar?

1 A. No.

2 Q. Did Klein & Heuchan ever have a
3 subscription to any CoStar service?

4 A. No.

5 Q. Did Klein & Heuchan ever pay for any
6 CoStar service?

7 A. No.

8 Q. When Scott Bell started working for
9 Klein & Heuchan, did you have a conversation -- did
10 you ever have a conversation with him regarding his
11 position and his responsibilities and the
12 expectations that you had for him?

13 A. Yes. I guess so.

14 Q. Do you recall that conversation?

15 A. Not really.

16 Q. Do you recall what was -- what you told
17 him during that conversation?

18 A. No.

19 MR. GIBSON: Object to form.

20 Q. I'll rephrase the question.

21 Do you recall what you told Scott Bell
22 at any point in time about what you expected from
23 him as a sales associate?

24 A. I really can't recall specifically what I
25 told him.

1 Q. Do you recall generally?

2 A. Generally, we expected him to work
3 diligently, to interface with our people, to be out
4 in the marketplace, to find listings and find people
5 to buy properties. I mean, it wasn't like he was
6 naive.

7 Q. What kind of records does Klein & Heuchan
8 keep regarding the revenues -- regarding the
9 revenues it earns?

10 A. Well, we have a partner called Uncle Sam,
11 so we keep -- we have an outside CPA firm that --
12 that does our -- all our monthly bookkeeping and
13 prepares all our returns, our corporate returns.

14 Q. Do you -- you mentioned a bookkeeper
15 earlier.

16 A. We have a bookkeeper in-house.

17 Q. And does she maintain any financial or
18 accounting records internally in your office?

19 A. Which she passes on to our CPA. But, yes,
20 she's in charge of what we have. She is the one who
21 pays out the commissions and prepares the commission
22 spreadsheet that you saw.

23 Q. Okay. What are her other job
24 responsibilities?

25 A. She pays sales tax for properties. In

1 Florida, all leases are subject to sales tax. So
2 she does all the sales tax. She does reports on,
3 you know, what the salesman's revenue is and what
4 our desk costs are, and she does any report I will
5 ask her to do.

6 Q. What is the name of your CPA firm?

7 A. Crown & Company.

8 Q. And are they located here in Clearwater?

9 A. Yes, they are.

10 Q. Would you also provide them with records
11 regarding Klein & Heuchan's expenses?

12 A. Yes.

13 Q. Backing up again to a number of the
14 exhibits that we looked at earlier, Exhibit Numbers
15 4, 5, 6, 15, 16, 17, 18 --

16 A. You're going too fast. 4, 5, 6 --

17 Q. 4, 5, 6. And then I believe it's all the
18 way from 15 through 19.

19 A. Did you say 15?

20 Q. Correct.

21 A. 15. And I'm going by the yellow numbers.
22 Correct?

23 Q. Yes.

24 A. So you want 15, 16 -- I don't think I
25 have a 16. Yeah, I do. 16, 17, 18 -- did you say

1 through 19? Did you say through 19?

2 Q. Yes. Um-hum.

3 A. Okay. Do you want them in any particular
4 order?

5 Q. And 21 as well. No. They don't need to
6 be.

7 A. Okay. Good.

8 Q. Earlier we went through these sort of one
9 by one. And the follow-up question is: Have -- did
10 you ever -- did you ever -- I'm sorry. Strike that.

11 You saw some or all of these for the first
12 time at Scott Bell's deposition. Correct?

13 A. That's correct.

14 Q. Since that time -- before this deposition,
15 did you ask anyone at K&H whether they had seen or
16 used any of these reports?

17 MR. GIBSON: Object to form.

18 A. I believe that when the lawsuit was
19 started, I walked around to the associates and
20 asked them if they ever got anything from -- from
21 Scott Bell on -- from CoStar or if they've ever
22 seen any CoStar reports and --

23 Q. Do you remember who you asked
24 specifically?

25 A. Yeah. I asked Linda Gardiner. I

1 asked Chris Howell. I asked Bud Lytle. I asked
2 Joe Santolucito and Sherri Strazz, Marty Slavney and
3 Larry Gilbert.

4 Q. And what did they say?

5 A. No.

6 Q. That they had never asked --

7 A. They'd never asked, never knew, never ever
8 had any . . .

9 Q. Never saw these reports?

10 A. No.

11 Q. And that was when the lawsuit was filed.

12 Now, what about these reports in particular,

13 Exhibits, as we had discussed --

14 A. Okay.

15 Q. -- Exhibits 4, 5, 6, 15 through 19, and 21

16 -- did you ask anyone at K&H whether they had ever

17 seen these or used these or asked Scott Bell to

18 provide them with them?

19 A. No.

20 By the way, some of those reports, those
21 spreadsheets --

22 Q. Uh-huh.

23 A. -- are available from any one of the
24 services we have, including Black's Guide.

25 Q. Which ones?

1 A. All of those Excel spreadsheets you have.

2 Q. Can you refer me to a specific exhibit?

3 A. Sure. 19.

4 Q. And where would this -- where else would
5 this be available?

6 A. Black's Guide, IMAP, Microbase.

7 Q. And how do you know that?

8 A. Well, because we use IMAP. We get
9 Black's Guide and --

10 Q. Well, I guess, just so I can understand,
11 you know, what is this? What is Exhibit Number 19
12 and how do you know that it would be available
13 from IMAP? Is it based on the information that's
14 contained here or on the format or on something
15 else?

16 A. 19 is a compilation of office buildings in
17 the Tampa Bay market. It's a free publication that
18 comes from Black's Guide because it's the very, very
19 same information.

20 Q. The same information but not necessarily
21 the same format?

22 A. No. I mean, it comes in a nice book with
23 pictures. It's much better than that.

24 Q. Okay. Is it -- is it the same exact
25 information?

1 A. Oh, come on. I mean, I can't tell you if
2 it's exactly the same. The information about the
3 buildings and their occupancies are the same.
4 They're published quarterly.

5 Q. Well -- so on the first page it says
6 "Building Address," "Building Name," "Building
7 Park."

8 And then because this is an Excel
9 spreadsheet, you have to kind of turn several pages
10 in to get to the next column or columns?

11 And at the top, about -- maybe seven pages
12 in -- it says "Building Status, Building Class,
13 Submarket Cluster." Do you see that page?

14 A. Yes.

15 Q. "Building Status, Building Class,
16 Submarket Cluster, Submarket Name" --

17 A. Um-hum.

18 Q. -- are those things that can be found in
19 these other databases?

20 A. Yes.

21 How do you know that this is a CoStar --

22 MR. GIBSON: Just wait for a question.

23 MS. KERKSIEK: Okay.

24 THE COURT REPORTER: 26.

25 THE WITNESS: Can I put these back in my

1 stack now, Sanya, or --

2 MS. KERKSIEK: Yes.

3 MR. GIBSON: This is Exhibit 26?

4 THE COURT REPORTER: Yes, it is.

5 (The document was marked as Klein Exhibit
6 Number 26 for identification.)

7 BY MS. KERKSIEK:

8 Q. Have you ever seen Exhibit Number 26
9 before?

10 A. Yes.

11 Q. When was that?

12 A. Let me see if we can find the date on here
13 and I might be able to be more specific.

14 I don't recall.

15 Q. Can you tell me what Exhibit Number 26 is?

16 A. It's Plaintiff's Response to Defendant,
17 CoStar Realty Information, Inc.'s First Request For
18 Production of Documents.

19 Q. What did you or Klein & Heuchan do to find
20 documents in response to CoStar's document requests?

21 A. Repeat the question, please.

22 Q. What type of search for documents did you
23 conduct in order to -- in order to prepare this
24 response or allow your attorney to prepare it?

25 A. Any documents I would have needed. I

1 don't know.

2 Q. Do you recall the steps that you've
3 taken --

4 A. I mean, I'm not reading this now.
5 I don't --

6 Q. No. I understand. I'm not talking in
7 response to any specific request.

8 A. Right.

9 Q. I'm just talking in general. When the
10 requests came in, what did -- what did -- what steps
11 did you or Klein & Heuchan take to look for
12 documents related to this lawsuit?

13 MR. GIBSON: Object to form. Not related
14 to any specific request? That was your question?

15 MS. KERKSIEK: In response to all of
16 them.

17 MR. GIBSON: Okay. And don't answer the
18 question if it involves any communication with your
19 attorney.

20 A. I don't think I can answer the question.
21 I'm just not sure I understand it.

22 Q. Did you ask someone at Klein & Heuchan to
23 search through your hard copy files that are kept in
24 your office, for example?

25 A. If I had to research a hard copy, I got it

1 myself.

2 Q. And did you look for hard copy documents
3 yourself?

4 A. I can't remember.

5 Q. Did you or anyone at Klein & Heuchan
6 search through the -- actually, let me rephrase
7 that.

8 Did you search through your personal --
9 not personal e-mails but your Klein & Heuchan
10 e-mails for documents that were responsive to any
11 of these requests?

12 A. I don't think so.

13 Q. Did you ask anyone at Klein & Heuchan to
14 search through their e-mail accounts?

15 A. I can't recall doing that.

16 Q. Is that a yes or a no?

17 A. That's a no.

18 Q. Did you or anyone at K&H contact your --
19 either of your internet service providers in order
20 to obtain e-mails or search for e-mails that were
21 responsive to these requests?

22 A. No.

23 Q. And then regarding your e-mails, earlier
24 we talked about this Road Runner and then the Web
25 Service, I think it was called, and that -- the fact

1 that Klein & Heuchan has two e-mail addresses.

2 One is kleinandheuchan.com. The other one
3 is tampabay.rr.com.

4 How -- just so I understand, how do you
5 decide which e-mail account to use? How do you
6 decide which e-mail account to use?

7 A. How do I, you said?

8 Q. Yes.

9 A. I made a decision to use MSK because there
10 are less -- there are less mistakes in the spelling
11 of kleinandheuchan.

12 Q. Did --

13 A. Yeah.

14 Q. Sorry. Were you -- are you done?

15 A. That's good. That's fine.

16 Q. If you receive an e-mail that's addressed
17 to your kleinandheuchan.com address, how do you --
18 how do you receive it?

19 A. It comes into my computer. They both come
20 into my computer.

21 Q. Do they come into the -- like, do you have
22 Outlook, for example?

23 A. We have Outlook.

24 Q. Okay.

25 A. It comes in through Outlook and we send --

1 we send -- now I send through MSK.

2 Q. You send through MSK?

3 A. Yeah.

4 Q. Okay. And so --

5 A. At one time I was sending through
6 kleinandheuchan.

7 Q. Is there a function in your Outlook, then,
8 that allows you to choose --

9 A. Yeah.

10 Q. -- which e-mail you send it from?

11 A. Yeah.

12 Q. Does everybody at Klein & Heuchan have
13 e-mail addresses at both of those addresses?

14 A. No. We give a Klein & Heuchan e-mail
15 address to all our associates. Many of the
16 associates use their own e-mails. They prefer them.

17 Q. Their personal e-mail?

18 A. Yeah. They prefer them as I prefer using
19 MSK.

20 Q. Did you ask any of your associates to
21 search through their personal e-mail accounts, their
22 non-kleinandheuchan e-mail accounts, for documents
23 responsive to CoStar's requests?

24 A. No.

25 MR. GIBSON: Object to form.

1 Q. Do you assign tampabay e-mail addresses to
2 any of your associates?

3 A. I don't believe so. But I think my
4 employees may have a tampabay e-mail address.

5 Q. The employees but not the sales
6 associates?

7 A. That's correct.

8 Q. Do you know if Scott Bell has a tampabay
9 e-mail address?

10 A. I have no idea.

11 Q. All right. So going to -- back to
12 Exhibit Number 26, Request Number 1 or Response
13 Number 1, "All employment records created or
14 maintained by Klein & Heuchan relating to
15 Scott Bell."

16 What did you do to search for Scott Bell's
17 employment records?

18 A. I went to his personnel file.

19 Q. Did you personally or did you ask someone
20 at Klein & Heuchan to do it?

21 A. I went in to my bookkeeper who keeps them,
22 and she pulled it out of the rack while I was there.

23 Q. And then -- and then did you take them and
24 then provide them to your attorney?

25 A. No. I can't remember.

1 Q. Okay. And regarding Request Number 2,
2 tax forms relating to Scott Bell, what did you do
3 to respond to that request?

4 MR. GIBSON: Just so that we're on
5 the same page, I'm going to assume that all the
6 questions regarding Exhibit 26 are being directed to
7 Mr. Klein individually -- not to Klein & Heuchan --
8 as it's not a subject of the request that was made.

9 MS. KERKSIEK: What?

10 MR. GIBSON: It's not a topic on the
11 Notice of Deposition. The actual steps taken by
12 Klein & Heuchan in responding to CoStar's Request
13 For Production is not a topic upon which -- that
14 is listed on the deposition notice directed to
15 Klein & Heuchan.

16 So these questions you're asking -- are
17 you asking Mr. Klein individually what he did to
18 comply with the request?

19 MS. KERKSIEK: So I think there was a
20 pending question regarding Number 2, "All tax forms
21 created, issued or maintained by Klein & Heuchan
22 relating to Scott Bell."

23 MR. GIBSON: Yes.

24 BY MS. KERKSIEK:

25 Q. What did you do to respond to that

1 request?

2 A. We got them out of our file.

3 Q. Who is "we"?

4 A. My bookkeeper and I.

5 Q. Did she get them from the same place
6 that she got the documents responsive to Number 1?

7 A. No. They're not in -- they're not in
8 his personnel file. They're in our corporate file.
9 I mean, we have a tax file and they would be in the
10 tax file.

11 Q. Are there any -- other than the corporate
12 file and the tax file, are there any other files
13 where you keep documents -- hard copy documents
14 related to Scott Bell?

15 A. No.

16 MR. GIBSON: Object to the form.

17 Q. Do you know of any other files that
18 Klein & Heuchan keeps relating to Scott Bell?

19 A. No.

20 MR. GIBSON: Object to form.

21 A. The answer should be there are none.

22 MS. KERKSIEK: Okay. I'm missing a page.

23 BY MS. KERKSIEK:

24 Q. Getting to Number 3 --

25 A. Okay.

1 Q. -- "Documents sufficient to identify
2 each and every client or potential client that
3 Scott Bell contacted during his affiliation with
4 Klein & Heuchan."

5 A. I can't --

6 MR. GIBSON: We -- we objected to that
7 interrogatory, and it was the subject of a 3.01(g)
8 conference with counsel. No documents were produced
9 pursuant to that request.

10 MR. SAUERS: We can ask if he looked.

11 MS. KERKSIEK: Yeah. I think that was
12 the question that's pending.

13 MR. GIBSON: That wasn't asked.

14 MS. KERKSIEK: Did you --

15 MR. SAUERS: Well, nothing has been asked
16 yet. We just turned to it and you noted there was
17 an objection.

18 BY MS. KERKSIEK:

19 Q. Did you look for documents responsive to
20 this request?

21 A. I wouldn't have any.

22 Q. Did you look for any documents?

23 A. No.

24 MS. KERKSIEK: Can we go off the record
25 for two minutes?

1 THE VIDEOGRAPHER: The time is 12:42.
2 We're now off the record.

3 (There was a recess.)

4 THE VIDEOGRAPHER: The time is 12:48 p.m.
5 We're now back on the record.

6 BY MS. KERKSIEK:

7 Q. Regarding -- back to page 2 of Exhibit --

8 A. 26.

9 Q. -- 26. Request Number 3, "Documents
10 sufficient to identify each and every client or
11 potential client that Scott Bell contacted during
12 his affiliation with Klein & Heuchan."

13 Earlier you testified that there --
14 that you keep a list of all the properties on which
15 Scott Bell was the listing agent. Is that right?

16 A. Yes.

17 Q. So documents responsive to this request
18 would include that list and also the files that you
19 referred to earlier?

20 A. That's correct.

21 Q. Did your ever provide those files or that
22 list to your attorney?

23 A. You know, I don't think so. You're asking
24 me -- this question is everything and every client
25 he. . . I wouldn't have any way of knowing that.

1 If it was in the file, then I would have given it to
2 him.

3 Q. But the -- but, you know, properties
4 for which he's the listing agent are -- contain
5 information regarding the clients or potential
6 clients that Scott Bell contacted while he was
7 at Klein & Heuchan. Correct?

8 A. That's correct.

9 Q. And, likewise, for Request Number 4,
10 "Documents sufficient to identify each and every
11 client or potential client that Klein & Heuchan had
12 contact with during the period in which Scott Bell
13 was affiliated with Klein & Heuchan."

14 That information regarding Klein &
15 Heuchan's contacts with clients would be contained
16 in the property files and in the lists of properties
17 on which the associates were listing agents. Right?

18 MR. GIBSON: Object to form.

19 A. It might be.

20 Q. But that information, just as with -- I
21 mean, you responded that that information was in --
22 with respect to Scott Bell and clients that he
23 contacted, it could be in those files.

24 Likewise, it would be for the other
25 associates at Klein & Heuchan. Right?

1 A. They might be if they retain (sic)
2 to that file. But if he or any other associate
3 received a call --

4 Q. Um-hum.

5 A. -- a floor call from one of our signs,
6 that might not be in there.

7 Q. Would that be recorded anywhere?

8 A. Not -- the associate would be able --
9 might record it on his -- you know, in his book of
10 information, but I'm not a document person. I mean,
11 I don't have to, you know, spread documents for
12 everybody I talk to. This is not the CIA.

13 Q. So associates sometimes keep their own
14 logs of contacts?

15 A. They always keep their own logs.

16 Q. They always do. Do you know if Scott Bell
17 kept such a log?

18 A. I don't know.

19 Q. Do you know which associates at K&H keep
20 such logs?

21 A. No.

22 Q. But if they always do, you can generally
23 assume that they have such logs -- that most of them
24 have such logs and someone who doesn't is an
25 anomaly?

1 A. No. That's not correct.

2 Q. What -- then what is correct?

3 A. That some are very fastidious at what they
4 do and some are not.

5 Q. Did you ever ask any of the associates if
6 they kept -- if they kept such logs?

7 A. No.

8 MR. GIBSON: Object to the form.

9 Q. Regarding Request Number 6, "Copies of
10 all documents, data, or other tangible or intangible
11 computer records that were printed, copied from, or
12 otherwise derived from CoStar."

13 Did you search for any such documents?

14 A. We don't have any.

15 Q. Did you search for any?

16 A. I searched my computer for them, but I,
17 don't have any.

18 Q. Did you ask anyone else at Klein & Heuchan
19 to search for such documents?

20 A. No.

21 Q. And same question for Number 7,
22 "All documents comprising, reflecting or relating
23 to communications between Klein & Heuchan and
24 Scott Bell relating to this lawsuit or the
25 lawsuit filed by CoStar against Klein & Heuchan in

1 Maryland, including all internal Klein & Heuchan
2 communications concerning either lawsuit."

3 MR. GIBSON: Object to form.

4 Q. Did you search for documents responsive to
5 Request Number 7?

6 A. No. I didn't have any.

7 Q. And when you said, in response to Question
8 6, that you had searched your own computer for
9 documents that were printed, copied, or derived from
10 CoStar, what steps did you take in that search?

11 A. Get a mouse and you click and you get
12 "find."

13 Q. What did you -- what did you --

14 A. And you find CoStar.

15 Q. Find CoStar?

16 A. Right.

17 Q. And you did a "find CoStar" using the
18 interface?

19 A. Right.

20 Q. And did you get any hits?

21 A. None.

22 Q. And what did -- what directories did your
23 "find search" search?

24 A. What directories?

25 MR. GIBSON: Object to form.

1 A. My Outlook directory.

2 Q. Your find --

3 A. My e-mails. My e-mails.

4 Q. Your e-mails. Did you -- well, okay.

5 You searched your e-mails for CoStar. You did a
6 "control find" in Outlook to search your e-mails for
7 CoStar-related documents --

8 A. That's right.

9 Q. -- and found nothing?

10 A. Right.

11 Q. Did you do a similar search of the -- of
12 your hard drive for other user created documents
13 such as Word?

14 A. That is my hard drive.

15 Q. Did you search for MicroSoft -- actually
16 -- well, what type of word processing software do
17 you use?

18 A. Word.

19 Q. Did you search your Word documents for
20 CoStar-related materials?

21 A. I may have. Yeah.

22 Q. You may have or you did?

23 A. I did.

24 Q. Was that the same search that you did from
25 within Outlook?

1 A. Yes. We use MicroSoft Office.

2 Q. Okay.

3 A. So Word, and they're all together.

4 Q. They're all together. All right.

5

6 Did you ask any other Klein & Heuchan
7 employees or associates to conduct a similar search?

8 A. No.

9 Q. Are you aware that any of them conducted
10 such a search?

11 A. No.

12 Q. And regarding your e-mails, how -- how old
13 -- how far back do your saved e-mails go in time?

14 A. I have no idea.

15 Q. Do they go back five years?

16 A. I don't know.

17 Q. Do they go back more than one year?

18 MR. GIBSON: Object to the form.

19 A. Let me see if I can answer the question.
20 I don't know.

21 Q. I understand. I'm just trying to get a
22 sense of if they go back a year. Do they go back
23 20 years? To get an estimate.

24 A. I don't know.

25 MR. GIBSON: And he's now answered the

1 question five times.

2 A. How many times do I have to answer it?

3 Q. I asked a different question every time.

4 Thank you for your answer.

5 Who would know at Klein & Heuchan?

6 A. No one.

7 Q. No one would know how far back the e-mails
8 go in time?

9 A. (Witness shakes head.)

10 Q. No one would be able to find that out?

11 MR. GIBSON: On his personal computer?

12 Is that what you're asking?

13 MS. KERKSIEK: On -- well, I'll ask --

14 BY MS. KERKSIEK:

15 Q. On your personal computer, would anyone
16 know?

17 A. No.

18 Q. On the Klein & Heuchan server, would
19 anyone know?

20 MR. GIBSON: Object to form. Lack
21 of predicate. Assumes facts that have not been
22 testified to.

23 Q. You can answer the question.

24 A. I don't know.

25 Q. And did anyone ever contact the service --

1 your internet service provider to find out how far
2 back in time the e-mails go?

3 MR. GIBSON: Where?

4 MR. SAUERS: Is that an objection?

5 MR. GIBSON: It is an objection. It's a
6 vague question.

7 MR. SAUERS: Okay. You can answer it.

8 THE WITNESS: No.

9 BY MS. KERKSIEK:

10 Q. Turning to Page Number 4, Request Number
11 16, "All electronic records of the IP addresses or
12 web site addresses visited by persons affiliated
13 with Klein & Heuchan using computers or internet
14 connectivity provided by Klein & Heuchan during
15 Scott Bell's affiliation with Klein & Heuchan."
16 What did you do to find -- or did you search
17 for such documents responsive to Number 16?

18 MR. GIBSON: Object to form.

19 A. I wouldn't know where to search for them.

20 Q. Is that a no?

21 A. That's a no.

22 Q. Did you ask -- did you or anyone at
23 Klein & Heuchan ask Klein & Heuchan's internet
24 service provider to -- whether they could --
25 whether they would be able to obtain such IP address

1 records.

2 A. No.

3 Q. Regarding Topic Number 17, "Copies
4 of any document retention policies in place."

5 Do you -- I know we had talked about this
6 briefly before, but does Klein & Heuchan have a
7 written document retention policy?

8 A. No.

9 Q. Regarding Number 18, "All documents
10 relating to the destruction of documents by
11 Klein & Heuchan."

12 Do you -- are you aware of any such
13 documents?

14 A. No.

15 Q. Did anyone at Klein & Heuchan contact the
16 internet service provider to determine whether there
17 is an automatic archiving or deletion process that
18 occurs --

19 A. No.

20 Q. -- with Klein & Heuchan's e-mails?

21 A. No.

22 Q. And the last question about Number 26.
23 Did -- has Steve -- Steven Klein ever searched his
24 e-mail or hard drive for documents responsive to
25 these requests?

1 MR. GIBSON: Object to form. Calls for
2 speculation.

3 A. I have no idea. No. I don't know.

4 Q. Did you ever ask him to search for
5 anything?

6 A. No.

7 Q. Did you ever ask him if he did search for
8 anything?

9 A. No.

10 (The document was marked as Klein Exhibit
11 Number 27 for identification.)

12 BY MS. KERKSIEK:

13 Q. Have you ever seen Exhibit Number 27
14 before?

15 A. I think I have, yes.

16 Q. Do you remember when?

17 A. No.

18 Q. Turning to page 7 of the Document Requests
19 or -- of Exhibit 27?

20 Regarding Request Number 26, "Documents
21 sufficient to show the revenues earned by Klein &
22 Heuchan during the time of Bell's affiliation with
23 Klein & Heuchan," did you search for documents
24 responsive to that request?

25 A. Yes.

1 Q. And what did you do to conduct that
2 search?

3 A. I went with my bookkeeper and I got the --
4 excuse me -- the revenue that he earned and what his
5 -- what the Klein & Heuchan share was and his, the
6 same document we talked about before, the same
7 thing.

8 Q. The commissions document?

9 A. Right. That's the only revenue he had.

10 Q. And you're referring to revenue relating
11 to Scott Bell only. Correct?

12 A. That's correct.

13 Q. Did you search for documents relating to
14 the revenues of Klein & Heuchan?

15 A. I don't think so. Why would I?

16 Q. Did you -- regarding Request Number 27,
17 did you search for documents relating to
18 Klein & Heuchan's expenses?

19 A. Not specifically.

20 Q. But those records, I think, as you
21 testified earlier, would be in the possession of
22 your outside CPA firm?

23 A. That's correct.

24 (The document was marked as Klein Exhibit
25 Number 28 for identification.)

1 BY MS. KERKSIEK:

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. What is it?

5 A. It's a 2007 and 2008 compendium of the
6 associates that -- the independent contractors that
7 work in our company.

8 Q. Who prepared this document?

9 A. I have no idea. I mean, it probably came
10 from -- my bookkeeper pulled it off of -- one of my
11 assistants.

12 Q. Do you know why this document was created?

13 A. No. I can't recall.

14 Q. Was it created for this litigation?

15 A. I believe so, yes.

16 Q. And is this an accurate list of the
17 associates that were employed by Klein & Heuchan in
18 2007 and 2008?

19 MR. GIBSON: Object to form.

20 A. Yes.

21 Q. So earlier you testified that you never
22 received any CoStar information from Scott Bell.
23 Correct?

24 A. Correct.

25 Q. Later we looked at a number of e-mails

1 that were addressed to you at your MSK e-mail
2 account, which were Exhibits 8 -- no, I'm sorry --
3 this one I didn't mark -- 9 -- 8, 9 and 10, I
4 believe.

5 THE WITNESS: I mixed these up.

6 MR. GIBSON: Well, 8 is not correct.

7 THE WITNESS: Huh?

8 MS. KERKSIEK: 8 is not correct? Which --
9 oh. Yeah -- no. You're right. This is a different
10 -- okay.

11 BY MS. KERKSIEK:

12 Q. 8 -- oh, I'm sorry. 9 -- Exhibits 9
13 and 10.

14 MR. GIBSON: And what's the question?

15 THE WITNESS: Well, let me find it.

16 MS. KERKSIEK: Just that we had looked at
17 these earlier.

18 MR. GIBSON: Okay.

19 THE WITNESS: Okay. I got 9. I got 12.
20 Bear with me. I got these mixed up, so. . .
21 We're looking for 9 and 10?

22 MS. KERKSIEK: Just 9 and 10. Um-hum.

23 THE WITNESS: All right. Well, I've
24 got 9, but I can't find 10.

25 MR. GIBSON: Here it is. Here it is.

1 THE WITNESS: Oh. Why would I see it?
2 It's right in front of me.

3 MR. SAUERS: Right in plain sight.

4 MR. GIBSON: 9 and 10.

5 THE WITNESS: Yeah. Go ahead.

6 BY MS. KERKSIEK:

7 Q. Okay. So earlier you testified that
8 you never received any CoStar information from
9 Scott Bell.

10 A. That's correct.

11 Q. But you did -- you also testified that
12 you had no reason to believe that you didn't receive
13 these e-mails. Right?

14 A. That's correct.

15 Q. So, to clarify, your testimony is that you
16 don't recall receiving any CoStar material from
17 Scott Bell.

18 A. Exhibit Number 9 was a copy of an offer to
19 all associates. I don't consider that proprietary
20 information.

21 I do not -- oh, wait a minute.
22 Exhibit Number 10. I don't recall receiving it.

23 Q. Okay. When you did your e-mail search of
24 your Outlook, did you search for e-mails to or from
25 Scott Bell?

1 A. Yeah, I think I did.

2 Q. And what did you find?

3 A. Nothing. I mean, I don't -- you know,
4 I don't recall finding any.

5 Q. Any what? Do you recall any -- do you
6 recall finding --

7 A. Any e-mails from him.

8 Q. Any e-mails from him?

9 A. I don't recall finding any.

10 Q. And you -- neither you nor anyone at
11 K&H ever contacted your internet service providers
12 regarding your correspondence with Scott Bell --
13 regarding your e-mail correspondence with
14 Scott Bell?

15 A. That's correct.

16 Q. So there could have been e-mails from
17 Scott Bell with CoStar information to you and others
18 at K&H; you just don't know whether there are or
19 not?

20 MR. GIBSON: Object to form.

21 A. That's correct.

22 Q. Are you aware that CoStar is a
23 subscription-based service?

24 A. Yes.

25 Q. Are you aware that CoStar is a service

1 that requires a user name and password?

2 A. Yes.

3 MS. KERKSIEK: No more questions.

4 MR. GIBSON: We'll read.

5 THE VIDEOGRAPHER: The time is 1:10 p.m.

6 We're now off the record.

7 (The deposition was adjourned at

8 1:10 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

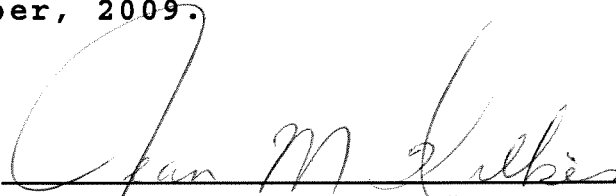
25

CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, the undersigned authority, certify that
MARK S. KLEIN personally appeared before me
and was duly sworn.

WITNESS my hand and official seal this
5th day of September, 2009.



JEAN M. WILKES, RPR-CP
Notary Public - State of Florida
My Commission No. DD 752848
Expires: Januray 28, 2012

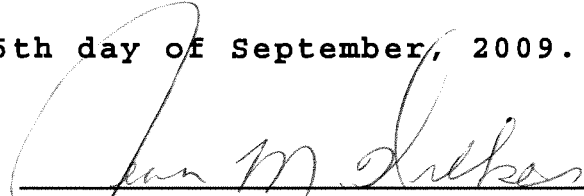
REPORTER'S DEPOSITION CERTIFICATE WITH ACKNOWLEDGMENT

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, JEAN M. WILKES, RPR-CP, Certified Shorthand
Reporter, certify that I was authorized to and did
stenographically report the foregoing deposition; and
that the transcript is a true record of the testimony
given by the witness.

I FURTHER CERTIFY that I am not a relative,
employee, attorney, or counsel of any of the parties,
nor am I a relative or employee of the parties'
attorneys or counsel connected with the action, nor
am I financially interested in the action.

DATED this 5th day of September, 2009.



JEAN M. WILKES, RPR-CP
Notary Public - State of Florida
My Commission No. DD 752848
Expires: January 28, 2012

