

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
CHRISTOPHER SCOTT BELL 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 CHRISTOPHER SCOTT BELL (without exhibits) which was taken on August 20, 2009 in support of Plaintiff's Response to Defendants Motion for Summary Judgment.

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

/s/ Jeffrey W. Gibson

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IN THE UNITED STATES DISTRICT COURT
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TAMPA DIVISION
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vs. :
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INC., and COSTAR GROUP, :
INC., :
:
Defendants/ :
Counterclaim-Plaintiffs, :
:
vs. :
:
SCOTT BELL and :
KLEIN & HEUCHAN, INC., :
:
Counterclaim-Defendants. :
:
- - - - -x

CERTIFIED
COPY

VIDEOTAPED
DEPOSITION OF: CHRISTOPHER SCOTT BELL

DATE: August 20, 2009

TIME: 9:07 a.m. to 2:14 p.m.

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1 MR. GIBSON: Jeff -- Jeffrey Gibson with
2 -- from Macfarlane Ferguson & McMullen here on
3 behalf of Klein & Heuchan.

4 THE VIDEOGRAPHER: There will be a
5 microphone for you there, sir, somewhere.

6 MR. GIBSON: Did I steal yours?

7 MR. LOVE: I don't see one.

8 MR. GIBSON: Here's one for you right
9 there.

10 MR. LOVE: Oh. Right.

11 MR. GIBSON: Here we go.

12 THE VIDEOGRAPHER: Will the court
13 reporter swear the witness, please.

14 THE COURT REPORTER: Would you raise your
15 right hand?

16 CHRISTOPHER SCOTT BELL,
17 being first duly sworn to testify the truth, the
18 whole truth, and nothing but the truth, was examined
19 and testified as follows:

20 THE WITNESS: Yes.

21 EXAMINATION

22 BY MR. SAUERS:

23 Q. Good morning.

24 A. Good morning.

25 Q. Can you please state your full name and

1 address for the record?

2 A. It's Christopher Scott Bell,
3 2725 Big Pine Drive. That's Holiday, Florida,
4 34691.

5 MR. SAUERS: Thank you. I'd like to just
6 go ahead and mark the first exhibit, which is the
7 Amended Notice of Deposition for today.

8 (The document was marked as Bell Exhibit
9 Number 1 for identification.)

10 BY MR. SAUERS:

11 Q. Have you seen this document before?

12 A. Yes.

13 Q. Okay. And are you here to testify
14 pursuant to this deposition notice?

15 A. Yes.

16 Q. Great. Thank you.

17 Mr. Bell, where are you currently
18 employed?

19 A. I am a full-time stay-at-home father.

20 Q. Since when?

21 A. Since August of 2008. Yeah.

22 Q. And where were you employed prior to that?

23 A. Klein & Heuchan.

24 Q. And during what time period were you
25 employed with Klein & Heuchan?

1 A. Approximately somewhere between, like, the
2 latter part of December, early part of January, of
3 '06/'07 through -- until now. I'm still -- I still
4 have my license under their -- with their firm,
5 still. But I'm, for the most part, just -- you have
6 to park your license there to maintain an active
7 status should I ever do come back.

8 Q. Could you go back?

9 A. It doesn't look -- probably not as
10 probable because I am a -- I like my job that I have
11 now and it's --

12 Q. Right.

13 A. -- it's fantastic, so -- the market is not
14 very well and --

15 Q. Sure. I guess I meant market issues aside
16 and employment preference aside, if you decided
17 tomorrow you wanted to go back, could you?

18 A. I'm not -- I'm not sure. I'm not sure.

19 Q. But your license is still parked, you
20 said, with them?

21 A. Yeah. It's still parked with Klein, yeah.

22 Q. So what does that mean, that it's parked
23 there?

24 A. It remains active within the Florida Real
25 Estate Department.

1 Q. Okay.

2 A. So if you go inactive, then you have to
3 come back and find a new place or whatever and --
4 you have to kind of start all over again.

5 Q. Okay.

6 A. So most people try and stay active even
7 though they might not be actively practicing.

8 Q. Is there a cost -- are you aware of a cost
9 to Klein and -- are you aware of a cost associated
10 with parking your license?

11 A. No.

12 Q. Where were you employed -- did you say
13 December, January -- December '06, January '07 --
14 where were you employed prior to that?

15 A. It was for Coldwell Banker Commercial NRT.

16 Q. And when did you start with them?

17 A. It seems like it was probably September of
18 '05 through, let's say, November of 2006.

19 Q. So there was a break between when you were
20 employed by Coldwell Banker and when you moved over?

21 A. For a short period of time -- I guess
22 it was sort of a break. I was at -- I went up to
23 F.I. Grey & Son, which is in New Port Richey. And
24 I hadn't completely made a transition yet, and he --
25 he asked me if I might be interested.

1 I went up there and checked out the
2 office a few times and I kind of made my decision
3 to go with Klein & Heuchan.

4 Q. And prior to Coldwell Banker where were
5 you employed?

6 A. I worked for a company called Ecolab,
7 E-c-o-l-a-b.

8 Q. Okay. When did you start with them?

9 A. February 1998 through -- it seems like it
10 was probably about June of -- what is that? '95.
11 June, July-ish of '95.

12 Q. June '05?

13 A. '05, yeah. Did I say '95? Yeah.

14 Q. And what sort of job did you have with
15 Ecolab?

16 A. I was a territory manager for them.

17 Q. What does that mean? What were your job
18 responsibilities?

19 A. I sold new business to restaurants,
20 hotels, the hospitality time industry. Ecolab is
21 an institutional supplier of chemicals, sanitizers.

22 Q. So it was not in the real estate industry?

23 A. No.

24 Q. Okay. So Coldwell Banker was your first
25 job in the real estate industry?

1 A. Yes.

2 Q. Okay. When did you get your real estate
3 license?

4 A. It was about June/July of 2005. Or 1995.
5 I'm sorry. No, no. 2005.

6 Q. Okay.

7 A. I get the -- it's shortly after I left
8 Ecolab. I get it confused.

9 Q. Okay. Do you have a college degree?

10 A. Yes.

11 Q. Where from?

12 A. Florida State University.

13 Q. What year?

14 A. 1995.

15 Q. Bachelors of Science, B.A.?

16 A. Bachelor of Science, B.S.

17 Q. In what area?

18 A. Marketing.

19 Q. Marketing.

20 A. Um-hum.

21 Q. Any other degrees?

22 A. That's it.

23 Q. Okay. How about associations,
24 affiliations?

25 A. Florida Gulfcoast Association of Realtors.

1 Its acronym is FGCAR.

2 Q. Thank you. Much faster. And when did you
3 join them? In '05?

4 A. Yes. Yeah.

5 Q. Okay. Any others?

6 A. What?

7 Q. Any other associations?

8 A. That I was associated with or I am
9 associated with? I'm not sure I understand your
10 question.

11 Q. How about currently -- that you currently
12 are?

13 A. That's it.

14 Q. That's it. How about that you were from
15 September of 2005 through August 2008?

16 A. It would be the Pinellas Realtor
17 Organization.

18 Q. All right. Anything else?

19 A. No.

20 Q. Okay. Have you ever been deposed before?

21 A. No.

22 Q. Are you aware of generally how the process
23 works? Have you gone over all of that --

24 A. Familiar.

25 Q. Okay. You can take a break whenever you

1 want to. I would just ask if you -- there's a
2 question pending, you would give us an answer to
3 that question and then we can take a break.

4 A. Okay.

5 Q. If you're -- if I'm unclear in a question
6 -- you've already done it once --

7 A. Okay.

8 Q. -- let me know and I'll try and clarify
9 the question so that -- so that I get it right.

10 A. Okay.

11 Q. Thank you.

12 What was your position with
13 Klein & Heuchan?

14 A. I --

15 Q. What was your title?

16 A. Salesperson, commercial salesperson, sales
17 associate.

18 Q. Okay. Is that the -- sales associate,
19 is that the only title or job description that
20 you had during the time period you were with
21 Klein & Heuchan?

22 A. Correct.

23 Q. Okay. What were your job responsibilities
24 in that position?

25 A. To get listings and sell our listings and

1 assist the company with being helpful.

2 Q. Can you expand on that a little bit?

3 A. What do you mean?

4 Q. Well, I guess my question is: What do you
5 mean by "being helpful"?

6 A. Answer telephones, take floor calls, maybe
7 show another associate's listing if they're not
8 there.

9 Q. Right. How many agents were in the office
10 when you were there, approximately?

11 A. I would say 14, 15, possibly. Some came,
12 some went.

13 Q. Were they all in the same area -- did they
14 all handle commercial realty?

15 A. Yes.

16 Q. Okay. Who are the owners of
17 Klein & Heuchan?

18 A. Mark Klein and Steve Klein.

19 Q. Were you aware -- you said you left
20 Klein & Heuchan in -- effectively in August 2008.
21 Is that correct?

22 A. Yes.

23 Q. Okay. Are you aware -- were you aware of
24 the existence of this lawsuit at that time?

25 A. Yes.

1 Q. Did you discuss the lawsuit with anyone at
2 Klein & Heuchan?

3 A. We got the -- we got a notice from --
4 the guy's name is Curtis Ricketts indicating that he
5 believed there was somebody using CoStar's database
6 at Klein & Heuchan --

7 Q. Um-hum.

8 A. -- and didn't comply with the -- paying
9 for the past use and future license use; that they
10 would -- they would take -- they would -- they would
11 be suing them, Klein & Heuchan.

12 I didn't -- never was -- myself was
13 ever -- was my name ever brought into that.

14 Q. Did you discuss it with anyone at
15 Klein & Heuchan?

16 A. We discussed the implications that the
17 lawsuit could have if I was involved in it and that
18 I should seek counsel and talk to somebody.

19 Q. Who is "we"?

20 A. It would be Mark and Steve.

21 Q. When was that discussion?

22 A. Must have been right around the early part
23 of June when the letter came around.

24 Q. And they advised that you should get
25 counsel?

1 A. I should consider getting counsel if
2 we don't get this -- if we can't bring it to a
3 resolution, which was what was in the letter. They
4 wanted to try and resolve it and get it over with so
5 it wouldn't escalate into this.

6 Q. How did they bring it to your -- how
7 did they bring the lawsuit to your attention?
8 Did they call you, come to your desk? Was there
9 a companywide meeting?

10 A. No. Mark called me on the telephone when
11 I was out in the field one day and said, "We got a
12 letter from CoStar. Can you come and we need to
13 sit down and discuss it and see what's going on?
14 Because they're calling me. We need to call them
15 back get on a conference call and discuss that with
16 them."

17 Q. Were you ever on a conference call with
18 CoStar?

19 A. Yes, I was, with Ricketts and Mark and
20 Steve. We all were on the phone with them. Um-hum.

21 Q. And what were -- what was discussed during
22 that call?

23 A. Mr. Ricketts indicated that Klein and --
24 somebody at Klein & Heuchan was using it. It was
25 me. That -- and he asked "Why?"

1 And I said, "Well, Coldwell Banker, at
2 a meeting that they had, kicked it off and said we
3 purchased everybody here a subscription to CoStar's
4 database."

5 And after I -- they -- you know, when
6 I think in terms of a subscription, it's like a
7 -- perhaps a magazine subscription, a newspaper
8 subscription. And they put it in my laptop and it
9 went with me, and I -- at some time I would expect
10 the subscription would run out. And that's pretty
11 much what we told Ricketts.

12 And he got very pushy, kind of -- almost
13 in kind of a threatening way, that he didn't really
14 -- he wasn't buying what we were telling him. And
15 that's exactly what it was, so -- and . . .

16 Q. When you accessed the CoStar database, you
17 were aware that there were terms of use that you had
18 to accept. Is that correct?

19 A. I believe so, yes.

20 Q. Did you have any other discussions with
21 CoStar?

22 A. Other than the folks that would call from
23 the marketing department about listings and things
24 like that, that was it.

25 Q. And what were those calls?

1 A. What were --

2 Q. The folks that would call from the
3 marketing departments for listings.

4 A. Megan Meyer, something like that, the
5 people from --

6 Q. I'm not under -- I guess -- I'm sorry.
7 I'm not understanding. Was that related to the
8 litigation?

9 A. No.

10 Q. Okay.

11 A. No. They would call -- other than that,
12 they would call and -- they'd call up every real
13 estate company and -- probably in the metropolitan
14 area to ask them about their listings and things
15 like that, so --

16 Q. Ah. Information gathering?

17 A. Yes.

18 Q. Okay. I understand.

19 Did you have any other discussions with
20 anyone at Klein & Heuchan other than the one call in
21 the field that you had and then the group call with
22 CoStar?

23 A. Just -- just my attorneys.

24 Q. Okay.

25 A. Jim Astrachan and Marilyn.

1 Q. Um-hum.

2 A. Another attorney, Steven P. Ross.
3 He's in Hackensack, New Jersey. And Randall Love.
4 Steven Dupre at --

5 THE WITNESS: What's the company he works
6 for? Do you know?

7 MR. LOVE: I do, but it's your
8 deposition.

9 THE WITNESS: Okay. I can't remember.

10 A. Steven Dupre is -- he's over by the
11 International Mall and --

12 Q. Is he an individual -- a sole
13 practitioner?

14 A. No. He's with -- I can't remember.

15 Q. Is it a law firm?

16 A. Yes, a law firm.

17 Q. Oh, okay.

18 MR. LOVE: For the record, it's
19 Carlton Fields.

20 THE WITNESS: Carlton Fields. Yes.

21 MR. SAUERS: Okay. Thanks.

22 A. And there's some other ones I talked to,
23 but it was just kind of information gathering, other
24 firms in the metropolitan area, just to see what
25 their rates were and things like that. Never --

1 never really went any further than that.

2 Q. Did you use CoStar's services as part
3 of your work while employed at Klein & Heuchan?

4 A. Yes.

5 Q. In what ways? What ways?

6 A. I would say primarily, the -- most of what
7 I used CoStar was to perform some informative
8 research to learn about the market.

9 Q. Comparative properties? Would you
10 look at comparative -- if you were trying to sell
11 a property, would you try to find comps?

12 A. Yes, I -- I would look at them, yeah.

13 Um-hum.

14 Q. Would you run reports to do that?

15 A. Yes. There was -- I believe there was a
16 report you could run on that.

17 Q. Would that include images of the property?

18 A. We do -- we have some documents for you.
19 They're very small images.

20 Q. Right. I'm just asking generally.

21 A. Yeah. I mean, they're fairly small
22 images. Yeah. Um-hum.

23 Q. When did you -- do you recall when you
24 first began using CoStar while you were employed
25 with Klein & Heuchan?

1 A. December or January of last -- '06-'07.

2 Somewhere --

3 Q. Right when you started?

4 A. -- somewhere in there.

5 Q. So pretty much when you -- when you
6 started?

7 A. Yeah.

8 Q. When did you stop using CoStar?

9 A. When we got the letter from Mr. Ricketts.

10 Q. Do you have any affiliation with Coldwell
11 Banker now?

12 A. No. Unh-unh.

13 Q. Okay. Did you at the time that you went
14 to Klein & Heuchan?

15 A. No.

16 Q. Did you obtain market -- CoStar market
17 reports while you were logged into CoStar's
18 database?

19 A. Yes. Yes.

20 Q. Did you download information from CoStar's
21 database?

22 A. Yes. The market reports, yes.

23 Q. Anything else?

24 A. I printed a few properties, yes.

25 Q. Did you ever send those to other people?

1 A. I sent them -- I sent a few to some people
2 that I know over here in Tampa, yes, clients of
3 mine.

4 Q. Prospective clients --

5 A. Yeah.

6 Q. -- or clients for prospective properties?

7 A. Clients that I've worked with for years,
8 yes.

9 Q. And what would you send them?

10 A. I sent -- actually, I sent one -- one
11 person some comps on a property that he was perhaps
12 interested in. It wasn't that property. It was
13 what the surrounding area, what -- some things that
14 had sold, and I verified those with the Hillsborough
15 County Property Appraiser as well to make sure that
16 the numbers were accurate.

17 Q. You verified the information obtained from
18 the CoStar database against the Hill County
19 appraisal records?

20 A. Hillsborough County, yes.

21 Q. Hillsborough. I'm sorry. Hillsborough
22 County --

23 A. Yes.

24 Q. -- appraisal records.

25 Is that standard practice?

1 A. For the most -- yeah. For the most
2 part when you get -- you go to Hillsborough County
3 web site, and you can get the information based on
4 what's sold and -- I'm guessing that's where CoStar
5 probably gets that information from as well.

6 Q. So did you make it a practice to use
7 CoStar as part of your research when evaluating
8 properties for sale and prospective -- which ones
9 might be appropriate for certain customers?

10 A. No. I would say most of the time when I
11 used CoStar, I was just kind of browsing, looking
12 around, not particularly at any one point of
13 interest. It was more or less learning how to use
14 the database and just seeing what was actually out
15 there, things that I wasn't even involved in or
16 anything. You look at hotels and things like
17 that. We don't sell hotels. It was more of an
18 informative-type thing.

19 Q. But, of course, you would use that
20 knowledge in your business. Correct?

21 A. Well, it's more of a -- kind of like you
22 wish you could play in the NFL one day. It's kind
23 of like -- you know, I don't sell hotels. We don't
24 do any business with hotels. So it's just kind of
25 like, gee, you know, you just want to see what --

1 what's going on out there, what -- you know, what's
2 selling.

3 Q. But you did do research in the markets in
4 the areas in which you were active?

5 A. I did -- I did research out of the market
6 that -- some in and some out, outside of the market
7 that I did work in.

8 Q. So, yes, you used CoStar to perform
9 research in the market where you were active?

10 A. Yes.

11 Q. Thank you. Did you ever receive
12 authorization from CoStar to use CoStar's services
13 while you were at Klein & Heuchan?

14 A. I received authorization from Coldwell
15 Banker. They -- when they -- they purchased the
16 license for me and put it on my laptop and said,
17 "Here you go. Here's your subscription -- it's
18 yours -- and use it."

19 So it's kind of -- never did any -- never
20 had any contact with CoStar when they signed me up,
21 so I -- no.

22 Q. Prior to the lawsuit, this lawsuit,
23 did you ever discuss CoStar with anyone at
24 Klein & Heuchan?

25 A. Mark and Steve were the guys we spoke

1 with, yes.

2 Q. And when did you speak with them about
3 CoStar, excluding a lawsuit?

4 A. That's when we --

5 Q. Other than --

6 A. Oh. I'm sorry. I don't understand your
7 question.

8 Q. Other than -- prior to the lawsuit being
9 filed, did you ever --

10 A. Prior to that?

11 Q. Yes.

12 A. On a few occasions we looked -- had
13 some reports. I would -- like, the Market Report
14 for Office. I believe I gave Mark and Steve a copy.
15 And I also gave Judi Healey next to me, an associate
16 that's there. She does a lot of Office. I gave her
17 a report.

18 And I gave -- I think I had sent Mark
19 and Steve, maybe, some -- some space availabilities
20 that were in a building -- a couple buildings in
21 Tampa. I don't recall exactly which ones they are.

22 Q. Did you ever discuss -- and all these
23 questions are excluding the lawsuit time period.

24 A. Okay.

25 Q. Did you ever discuss CoStar with

1 anyone at --

2 A. No.

3 Q. Never mentioned that you were using CoStar
4 to anyone?

5 A. I mean, Mark and Steve were the only --
6 the only folks. I think Judi Healey, I -- I think
7 I'd shown her maybe once or twice, you know, like,
8 what a -- what the -- you know, I showed her the
9 database. Because she had used it before at --
10 where she used to work, too.

11 Q. Did she use -- did you let her use the
12 database at all while she was with Klein & Heuchan?

13 A. No.

14 Q. You said that you may have talked about
15 it. Well, maybe I didn't understand your answer.

16 A. Yeah.

17 Q. What discussions did you have with
18 Mark Klein or Steve Klein about CoStar prior to the
19 institution of a lawsuit?

20 A. I -- we just -- if there was property.
21 Or sometimes they would say, "Hey, could you look
22 something up? You know, what does your thing say
23 about this?"

24 They're doing -- they've done their own
25 research. And they would say, you know, "What does

1 your thing say?" -- dah, dah, dah.

2 Q. "Your thing" being CoStar?

3 A. Yes.

4 Q. So they would ask you to perform searches
5 on CoStar's --

6 A. On a few occasions, yes.

7 Q. So they knew you had access to CoStar?

8 A. Yes.

9 Q. Do you know when they became aware that
10 you had access to CoStar?

11 A. I want to say it was probably a couple of
12 months after I joined, a few months after.

13 Q. How did they become aware?

14 A. I had shown them an office report, and
15 that's -- that's how.

16 Q. And then they -- did they ask you if you
17 had access?

18 A. Yeah, they -- they -- he did ask me. He
19 said, you know, "Where -- how are you using that?"
20 And I said, "Well, they -- we got a subscription
21 from -- I had a subscription bought from -- while I
22 was at Coldwell Banker."

23 Q. Do you know if Mark -- was that discussion
24 with Mark Klein or with Scott Klein or with both?

25 A. It was with Mark and Steve.

1 Q. Or Steve. Sorry.

2 A. Yeah.

3 Q. Did they -- either of them tell you if
4 they were aware of what CoStar was at that time?

5 A. I think they had used maybe some trial
6 times and that they weren't exactly thrilled with
7 the database.

8 Q. Did they tell you that -- when did they
9 tell you they weren't thrilled with the database?

10 A. I don't remember.

11 Q. Was it during these initial discussions
12 when you were first showing them your CoStar --

13 A. Yeah. They -- it didn't seem to -- it
14 wasn't a big deal to them. It didn't seem like --
15 it didn't really fit the shoe. I mean, most of what
16 we do is not what CoStar does. So we -- most of
17 what we used it for was to research and just gain an
18 understanding of the market as an educational tool.

19 Q. You said that Mark and Steve had had some
20 -- did you say "a test use"?

21 A. I think -- as I recall it, they had -- I
22 guess CoStar salespeople would come in all the time
23 trying to get them to buy the database, and they
24 just were never interested in it.

25 They -- I think they might have tried it

1 a few times and just weren't -- they didn't -- they
2 didn't see a value in it, I think is exactly what
3 Mark's words were.

4 Q. But they did ask you to run reports on
5 occasion and to conduct research?

6 A. They would ask me to -- yes. They would
7 ask me to look at a property or something like that
8 and see if there -- the information that was there.

9 Q. Did you use the CoStar services --
10 did you access the CoStar services during your
11 employment with Klein & Heuchan on the premises
12 of Klein & Heuchan with their internet access?

13 A. Yes. I used their internet access there.
14 Right.

15 Q. Did you pay for the internet access?

16 A. No.

17 Q. Who paid for the internet access?

18 A. I'm assuming it would be Klein & Heuchan,
19 but I -- I'm not . . .

20 Q. Did you have a Klein & Heuchan e-mail
21 account?

22 A. Yes.

23 Q. Who provided you with that e-mail account?

24 A. Klein & Heuchan.

25 Q. Tell me if you don't follow this. What

1 sort of e-mail account was it from a technical
2 standpoint? Internet? Server-based? Do you know?

3 A. I don't know.

4 Q. Okay. When you wanted to find your
5 e-mails, where were they? What sort of program did
6 you log into?

7 A. It would be Outlook.

8 Q. It was Outlook. Okay.

9 A. Yeah.

10 Q. Is that your copy of Outlook?

11 A. Is what copy?

12 Q. The Outlook that -- the Outlook that you
13 logged into. Would you log into the network at
14 Klein & Heuchan and get your e-mails, or how did
15 you get your e-mails?

16 A. We would have to go in the office and plug
17 in or we could do it remotely.

18 Q. Okay. So there was a -- to your
19 understanding, there would be a server or something
20 like that that had all of your e-mails?

21 A. Yeah.

22 MR. GIBSON: Object to form.

23 Q. Were there any other sorts of computer
24 programs or databases that were provided to you by
25 Klein & Heuchan?

1 A. There was -- there's one. It was the
2 IMAP, which was another real estate -- it's kind of
3 a -- more of a residential/a little bit commercial.
4 That's -- I just remember it being IMAP.

5 Q. Was the Microsoft Outlook part of an
6 office suite? Did you have Word and PowerPoint?

7 A. Did I?

8 Q. Um-hum.

9 A. Yeah. I believe so.

10 Q. And when you -- did you have the ability
11 to save documents and images and things like that to
12 somewhere other than your hard drive?

13 A. There was a -- at Klein & Heuchan there
14 was a place -- it was called, I think, the EDrive or
15 the IDrive or something -- where people could store,
16 like, proposals and things like that, or whatever,
17 on the server. Yeah.

18 Q. Did you ever use that drive?

19 A. Very rarely.

20 Q. You could log into that drive remotely or
21 on --

22 A. No. You had --

23 Q. Only on site?

24 A. -- you had to be on the property.

25 Q. When you wanted to -- could you make photo

1 copies on -- did Klein & Heuchan have a photocopier?

2 A. Yes.

3 Q. They provided it for your use?

4 A. For everyone's use.

5 Q. For everyone's use.

6 A. Yeah.

7 Q. Did it have any notices on it or anything
8 like that?

9 A. Not that I recall seeing.

10 Q. Did you ever use it to make copies of
11 CoStar information?

12 A. I think I printed -- because the reports
13 are so long, I put it -- I think I had made some
14 copies and used it on the copier, yeah.

15 Q. So you would -- you could e-mail it
16 directly to that copier? Was it a copier printer?

17 A. No. You'd have to print them out and then
18 put it through the copier.

19 Q. Okay. Was there a Klein & Heuchan copier
20 as well?

21 A. Copier, yeah.

22 Q. And a printer?

23 A. They had print -- they had their printers.
24 We had -- everybody had their own -- everybody had
25 their own printers, and they had their own printers

1 as well.

2 So every associate had their printer.
3 And then, like, the staff, the administrative people
4 had their printers separately.

5 Q. Okay. And all those printers were
6 provided by Klein & Heuchan?

7 A. No. I provided my printer.

8 Q. Okay.

9 A. Each associate bought their own printers.

10 Q. Understood. So you would -- you would get
11 something from the CoStar database, print it out on
12 your printer, walk over to the Klein & Heuchan
13 copier and make a copy?

14 A. Right.

15 Q. Okay. Do you know if your e-mails were
16 archived on Klein & Heuchan's servers?

17 A. Almost all the information I provided for
18 the deposition for you was from archived e-mails,
19 yes.

20 Q. When did you obtain them?

21 A. When did I obtain them?

22 Q. When did you obtain the information you
23 provided to us?

24 A. I just -- maybe about a month or two ago
25 when I thought we were having the deposition, I had

1 gone through all my archives and printed off
2 everything to provide to you.

3 Q. So you were still able to access
4 Klein & Heuchan's servers to get this information?

5 A. No. I have -- when you send and receive
6 things, it archives on my computer.

7 Q. Right. I'm sorry. Yes. That's exactly
8 right. I meant -- I wasn't clear enough.

9 Do you know if Klein & Heuchan saves a
10 backup copy of e-mails and things like that?

11 A. I wouldn't have any idea. I don't know.

12 Q. That's fine. I just --

13 So the copies of the documents that you
14 provided were on your personal computer?

15 A. Right.

16 Q. Okay. Would you have additional hard
17 copy files at the offices of Klein & Heuchan?

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

19 Q. For properties -- excuse me -- for
20 properties that were listed through Klein & Heuchan,
21 would there be a file, a hard copy file?

22 A. For Klein and -- all of Klein & Heuchan
23 would have, yeah.

24 Q. And would you keep information -- what
25 sort of information would you keep in those files?

1 A. Contracts and listing agreements and
2 correspondence between the client.

3 Q. Okay. Anything else? Notes, research,
4 that sort of thing?

5 A. No.

6 Q. Were you required to put correspondence in
7 -- with clients -- into that file?

8 A. Only if it was about a contract. Any
9 legal-type document, that was basically all that was
10 in those files. Like a legal contract, a listing
11 agreement, any earnest money, check information,
12 closing, most -- that would be what I recall as
13 being what would be in there.

14 Q. Okay. How would you know which properties
15 were associated with you?

16 A. How would I know?

17 (Cell phone ringing.)

18 MR. SAUERS: Excuse me. I thought I
19 turned that off. The screen was off.

20 BY MR. SAUERS:

21 Q. Yeah. How would you know -- you know, all
22 of -- I'm sure you had a database of your listings
23 that were with you. But how was the -- how were the
24 records organized so that you could know, in hard
25 copied, which ones were associated with you?

1 A. They assigned -- I don't know that -- I
2 don't think the way they filed them wasn't in my
3 name or anything like that.

4 They -- they would give them -- each
5 property would be assigned an "SI," which is sale
6 improved, or "LO," which is lease, and they would
7 -- maybe 123 or 611 or something like that.

8 And that's how it -- and then they --
9 there was -- I think there was a list -- I'm sure
10 there was -- that would give the associate's name of
11 what listing, who had the listing so you know whose
12 it was and you could reference -- if you were shown
13 somebody else's listing, you could ask them who it
14 was.

15 Q. Right. Did anyone -- other than Judi
16 Healey, did anyone at CoStar ever see you using the
17 CoStar database at Klein & Heuchan's offices?

18 A. I had shown Mark -- on one Saturday
19 afternoon when we were doing a report, I had shown
20 him the -- whatever -- I was showing him the CoStar,
21 how you could type in an address and all that. That
22 was basically it. Nobody else in the office, no.

23 Q. I'm sorry. You said that was Mark Klein?

24 A. Yes.

25 Q. On a Saturday. Do you know -- do you

1 recall roughly when that was?

2 A. I have no idea.

3 Q. The beginning --

4 A. That's been two years ago.

5 Q. No. I understand. And I'm not looking
6 for an exact date.

7 Within the first couple months you were
8 there?

9 A. I'd say --

10 Q. Right before you left? You know.

11 A. -- mid part of the year after I was there,
12 probably.

13 Q. Okay. How were commissions handled by
14 Klein & Heuchan? What was the process when you
15 would make a sale? What would happen? You got
16 a signed contract. Money goes into escrow. What
17 happens?

18 A. Signed contract; money goes into escrow.

19 Q. Um-hum. Whose escrow account is it?

20 A. Well, it depends. If the buyer -- the
21 buyer or the seller can --

22 Q. Sure. You are a seller. So it goes
23 into --

24 A. It could be -- it could be Klein & Heuchan
25 sometimes, and most of the time it might be their

1 attorneys or maybe some other -- maybe they kept it
2 at one -- I don't know.

3 Q. And then the proceeds -- the commission
4 off of the sale, would that go directly to you?

5 A. Sometimes --

6 Q. Would it go to --

7 A. Sometimes it would; sometimes it wouldn't.
8 It would go -- I can't collect a commission.

9 Q. Okay.

10 A. A broker can only pay a commission to
11 a salesperson. A salesperson is not entitled to
12 collect a commission unless it's paid through his
13 broker to him.

14 Q. Okay. So the money would go to
15 Klein & Heuchan and then they would pay you?

16 A. Yes.

17 Q. Okay. And what was the percentage that
18 you received on -- what was your commission
19 percentage?

20 A. It's -- there's a -- there's a scale.

21 Q. Um-hum.

22 A. And you start at 50-50 and you work your
23 way from there.

24 Q. And is it based on the value of the
25 property?

1 A. No. It's based on how much you sell in a
2 calendar year.

3 Q. Ah, I see. So total sales volume --

4 A. Right.

5 Q. -- would adjust the percentage that you
6 would get? And the higher your volume, the greater
7 the percentage you would get?

8 A. Correct.

9 Q. Okay. So, of course, the -- there's an
10 incentive to sell as many properties as you can?

11 A. Um-hum.

12 THE COURT REPORTER: That's a yes?

13 THE WITNESS: Yes.

14 MR. SAUERS: I'll mark the next exhibit.

15 (The document was marked as Bell Exhibit
16 Number 2 for identification.)

17 MR. SAUERS: We're up to 2?

18 THE COURT REPORTER: Um-hum.

19 ~~BY MR. SAUERS:~~

20 Q. Take a minute and look through this
21 document and tell me when you're ready.

22 A. Is there anything you want me to look at?

23 Q. No, no. Just familiarize yourself with
24 it see if you recognize it I'll ask you some

1 attorneys or maybe some other -- maybe they kept it
2 at one -- I don't know.

3 Q. And then the proceeds -- the commission
4 off of the sale, would that go directly to you?

5 A. Sometimes --

6 Q. Would it go to --

7 A. Sometimes it would; sometimes it wouldn't.
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11 a salesperson. A salesperson is not entitled to
12 collect a commission unless it's paid through his
13 broker to him.

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15 Klein & Heuchan and then they would pay you?

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18 you received on -- what was your commission
19 percentage?

20 A. It's -- there's a -- there's a scale.

21 Q. Um-hum.

22 A. And you start at 50-50 and you work your
23 way from there.

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25 property?

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2 calendar year.

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4 A. Right.

5 Q. -- would adjust the percentage that you
6 would get? And the higher your volume, the greater
7 the percentage you would get?

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10 incentive to sell as many properties as you can?

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12 THE COURT REPORTER: That's a yes?

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15 (The document was marked as Bell Exhibit
16 Number 2 for identification.)

17 MR. SAUERS: We're up to 2?

18 THE COURT REPORTER: Um-hum.

19 BY MR. SAUERS:

20 Q. Take a minute and look through this
21 document and tell me when you're ready.

22 A. Is there anything you want me to look at?

23 Q. No, no. Just familiarize yourself with
24 it, see if you recognize it. I'll ask you some
25 questions about it after you flip through it.

1 A. Okay.

2 Q. Have you seen this document before?

3 A. Yes.

4 Q. Can you tell me what it is?

5 A. It looks like it's the Office Policy and
6 Commission Schedule for Employees and Independent
7 Contractors.

8 Q. And did you -- was your employment
9 pursuant to the terms of this policy?

10 A. Yes.

11 MR. SAUERS: Okay. I'll mark the next
12 three exhibits. Let's see. Let me make sure I get
13 this right. This will be Exhibit 3.

14 (The document was marked as Bell Exhibit
15 Number 3 for identification.)

16 MR. SAUERS: And this will be Exhibit 4.

17 (The document was marked as Bell Exhibit
18 Number 4 for identification.)

19 MR. SAUERS: And this will be Exhibit 5.

20 (The document was marked as Bell Exhibit
21 Number 5 for identification.)

22 BY MR. SAUERS:

23 Q. Okay. Got them all?

24 All right. Take a minute and
25 look through those documents. And when you're --

1 familiarize yourself with them and let me know when
2 you're ready.

3 A. Okay.

4 Q. Do you recognize these documents?

5 A. Yes.

6 Q. Can you tell me what each of them are?

7 A. Year-End CoStar Industrial Reports,
8 the Year-End Office Report for 2007 and the
9 First Quarter Office Report, 2007.

10 Q. Are these documents that you obtained
11 from your computer and produced in this litigation?

12 A. Yes.

13 Q. Did you obtain these reports from the
14 CoStar database pursuant to your password access?

15 A. Yes.

16 Q. And did you give copies of any of these
17 three reports to anyone at Klein & Heuchan?

18 A. Yes.

19 Q. Whom?

20 A. Mark Klein, Steve Klein and Judi Healey.

21 Q. All three of them? All three reports to
22 all three people?

23 A. No. I don't -- I gave Judi one of the
24 office reports. I don't recall which one it was
25 because there's two here. And then --

1 Q. So that would -- you're talking about
2 Exhibit 3 or Exhibit 4?

3 A. Yeah. Right.

4 Q. Okay. And which ones did you give to
5 Mark or -- Mark Klein?

6 A. Probably -- most likely, that I can
7 remember, it would probably be the office report for
8 first quarter and -- I don't know. Maybe -- maybe
9 both of them. I don't know. I don't remember.

10 Q. So that's, again -- that's 3 and 4 again?

11 A. Yes.

12 Q. And how about -- which ones did you give
13 to Steve Klein?

14 A. Probably the industrial and then the
15 office report.

16 Q. So all three exhibits, 3, 4 and 5?

17 A. I --

18 Q. Possibly?

19 A. I don't know.

20 Q. Okay. Why would you have given
21 Steve Klein the industrial report but everyone
22 else only the office market reports?

23 A. Steve does a lot with the industrial.

24 Q. Ah. Okay. So the Industrial Market
25 Report would have been more relevant for him?

1 A. I assume so.

2 Q. Did you ever discuss any of these reports
3 with anyone at Klein & Heuchan?

4 A. I don't understand.

5 Q. Did you go over -- ever sit down and go
6 over one of them with anybody?

7 A. No. I mean, they're pretty
8 self-explanatory. I don't . . .

9 Q. Okay. And how did you come to give these
10 reports to the various people in the office? Did
11 anyone ask for them?

12 A. I had given them one and then -- I would
13 say primarily I would offer them to them, yes.

14 Q. Okay. So you gave them the first one.
15 And then after that you would say, "I've got the new
16 one" or --

17 A. I don't remember if they asked me for
18 office report or not. I, more or less -- it was --
19 it was a learning experience for everybody, so . . .

20 Q. Okay.

21 MR. SAUERS: I'll mark the next exhibit
22 as Exhibit 6.

23 (The document was marked as Bell Exhibit
24 Number 6 for identification.)

25 BY MR. SAUERS:

1 Q. Have you had a chance to take a look at
2 that?

3 A. Yes.

4 Q. Is this a document that you obtained from
5 your computer --

6 A. Yes.

7 Q. -- and produced in this litigation?

8 A. Yes.

9 Q. Can you tell me what it is?

10 A. It is a mini storage site in Pasco County.

11 Q. Okay. And is it a -- is this a printout
12 from CoStar Comps database?

13 A. Yes.

14 Q. And would you have needed to use your
15 password to obtain this information?

16 A. Yes.

17 Q. And I see on the bottom right it says what
18 appears to be a date of January 17th, 2007. Is that
19 correct?

20 A. Um-hum.

21 Q. Is that the date you would have printed
22 this out from the database?

23 A. Yep.

24 Q. And that's just shortly after you started
25 with Klein & Heuchan. Correct?

1 A. Correct.

2 Q. Did you ever provide this to anyone at
3 Klein & Heuchan?

4 A. No.

5 Q. Anyone else?

6 A. Unh-unh.

7 Q. Okay. Why did you save this particular
8 document?

9 A. This was a -- I had done a -- when I first
10 got to Klein & Heuchan, I did a large mail-out for
11 the Pasco County industrial market.

12 Q. Um-hum.

13 A. And this gentleman called and was in a --
14 in a mode to possibly list his property.

15 Q. So this gentleman -- the owner of this --
16 the listed property here?

17 A. Right.

18 Q. Okay. And so after you discussed the
19 property with him, you went and obtained this
20 report?

21 A. After?

22 Q. Or before.

23 A. I -- most of what I obtained was from the
24 -- either the Pinellas Realtor Organization or the
25 West Pasco -- they have a co-op. And then I used

1 this as a tool to -- it was just another tool to
2 validate the sales price in the past that was going
3 -- what it had sold for. Right.

4 Q. And so was that -- you went and did this
5 after you were contacted or you contacted the owner
6 of this property?

7 A. Correct.

8 Q. Okay.

9 A. No. He contacted -- we did a mail-out and
10 then he contacted us.

11 Q. And then you performed this research?

12 A. Yes.

13 Q. Thanks. And where -- where was this saved
14 on your computer?

15 A. This --

16 Q. What file folder?

17 A. I don't know.

18 Q. It wasn't attached to an e-mail?

19 A. I don't -- no. I don't believe so because
20 the guy didn't have e-mail. I would never have sent
21 him this.

22 Q. Okay. The copies of -- I think you said
23 there's an E or an IDrive that was available at
24 Klein & Heuchan.

25 A. Um-hum.

1 Q. And then you would, I guess, separately
2 also save lots of things to your hard drive. Is
3 that correct?

4 A. What's the question again?

5 Q. Would you save things -- strike the
6 question.

7 Would you ever save documents to both
8 the hard drive on your computer and on the "I" or
9 EDrive server?

10 A. No. Unh-unh.

11 Q. How did you decide when to save things in
12 one place or the other?

13 A. How did I decide to save it?

14 Q. In which place. A particular document,
15 how did you decide whether you would save it on the
16 hard drive of your computer or on the network at
17 Klein & Heuchan?

18 A. Almost -- I saved it on my hard drive
19 almost all the time. It would go into My Documents,
20 I think. Yeah.

21 Q. Okay. Why would you ever save something
22 onto the network drive at Klein & Heuchan?

23 A. It was like a legal contract or a -- like,
24 a letter or something or a mail-out or something
25 like that. That would be the only reason why. Or

1 if you took -- if you went out and took pictures of
2 the property or something to -- to make a flier --

3 Q. Sure.

4 A. -- or something like that. That way --

5 Q. What's a mail-out?

6 A. A mail-out?

7 Q. Um-hum.

8 A. Is a letter. You make a general letter.

9 You send it out to a use code or a property that
10 fits -- in this case I believe that is 4400 use
11 code, and it's for all industrial properties in a
12 county. Or it can be divided down into Zip Code or
13 something like that.

14 Q. Okay. So it would be an advertisement
15 for a property that was available that you were
16 promoting?

17 A. No. It would be for a property you're
18 trying to get a listing for.

19 Q. Ah. Okay. I see.

20 A. I guess you could do it -- you could do it
21 that way, too, if you were promoting a property.

22 Q. Right. Did you ever do that, promote a
23 property?

24 A. Yeah. We would do post cards. Right.

25 Q. Anything else?

1 A. I don't know -- I don't remember if we --
2 letters weren't very effective, so most of it was
3 post cards.

4 Q. Okay. And you see on the bottom left of
5 the page there, there's a copyright notice.

6 A. Um-hum.

7 Q. And does that say that it's "Copyright
8 2002 through 2007, CoStar Realty Information. All
9 rights reserved"?

10 A. Um-hum.

11 Q. And then can you read to me what's --
12 what's the line underneath that?

13 A. Oh. "By using this site, you agree to the
14 Terms of Our Use."

15 Q. And you see there that "Terms of Use" is
16 sort of in a -- maybe a slightly bolder font with an
17 underline?

18 A. I can't see that here.

19 Q. Okay. Do you see that it's underlined?

20 A. I see it's underlined.

21 Q. Okay. Do you understand that to mean that
22 that was an active link that you could click on?

23 MR. GIBSON: Object to form.

24 Q. You can answer.

25 A. What is it?

1 Q. Do you understand --

2 THE WITNESS: Somebody just said
3 something. I'm sorry?

4 MR. SAUERS: He objected to form.

5 MR. LOVE: Go ahead and answer.

6 MR. SAUERS: There will be --
7 occasionally counsel -- or maybe not -- will object
8 at times. Unless your lawyer specifically tells you
9 not to answer the question --

10 THE WITNESS: Oh. Did he object? I
11 didn't even hear him.

12 MR. SAUERS: Yeah. Yeah. No, no. He --
13 your lawyer did not object.

14 THE WITNESS: Oh, okay.

15 MR. SAUERS: But unless he specifically
16 -- even if he objects, unless he specifically tells
17 you not to answer on the advice of counsel, you can
18 still answer --

19 THE WITNESS: Oh, okay.

20 MR. SAUERS: -- even if there's an
21 objection.

22 MR. GIBSON: Just so you know, I'm
23 putting something on the record that we may deal
24 with later.

25 THE WITNESS: Okay.

1 MR. GIBSON: I'm preserving something, is
2 all I'm doing.

3 THE WITNESS: No, that's fine. I didn't
4 even --

5 MR. SAUERS: It's part of the games we
6 all play.

7 THE WITNESS: Okay.

8 THE VIDEOGRAPHER: One minute.

9 MR. SAUERS: One minute? Okay. Well, I
10 think we'll have to -- we'll have to -- let me just
11 ask this one last question here.

12 BY MR. SAUERS:

13 Q. "Terms of Use" is underlined. Correct?

14 A. It's underlined on this, yes.

15 Q. Yeah. And would that be a -- could you
16 click on "Terms of Use" to go and read the Terms of
17 Use?

18 MR. GIBSON: Object to form.

19 A. I don't know.

20 Q. Okay. Did you ever read the Terms of Use?

21 A. Never.

22 Q. Even when you first signed onto the CoStar
23 database?

24 A. When you sign on, it just says "Click here
25 to 'I agree.'"

1 The document, as I recall, never came up.

2 Q. But you had to scroll through it to get to
3 "Click on 'I agree'?"

4 A. I don't remember.

5 THE VIDEOGRAPHER: Counsel, we'll have to
6 change tapes.

7 MR. SAUERS: That's fine. Let's take a
8 break.

9 THE VIDEOGRAPHER: We're off the record
10 at 10:06 a.m.

11 (There was a recess.)

12 THE VIDEOGRAPHER: We're on the record at
13 10:22 a.m.

14 MR. SAUERS: I'd like to mark the next
15 exhibit.

16 (The document was marked as Bell Exhibit
17 Number 7 for identification.)

18 BY MR. SAUERS:

19 Q. Have you had a chance to take a look at
20 that document?

21 A. Yes. Um-hum.

22 Q. Can you tell me what this is?

23 A. This -- I -- when I found this in the
24 e-mails, I don't remember who "bmistak" is. Most of
25 the time when we -- we get a lot of floor calls,

1 of people looking for something or they'll inquire
2 about a listing. And I had -- I sent this -- I
3 sent him the wrong attachment.

4 Actually, I believe this is a report --
5 I can't even read this. Is it -- it looks like it's
6 the Office Report for Metropolitan Area. I think
7 this guy was looking for -- he was looking for some
8 information about what's going on in the office
9 market. He was considering, I believe -- I think he
10 was considering moving or something like that. He
11 was inquiring about what was going on out there.

12 Q. And on the second -- let me back up
13 for one second. You obtained this e-mail and the
14 attachment from your computer?

15 A. Yes.

16 Q. Okay. And on the second page at the
17 bottom --

18 A. Okay.

19 Q. -- do you see where it says, on the left,
20 "CoStar Property"? It's in small print under
21 "Vacancy Rate."

22 A. Um-hum.

23 Q. Is that the database from which you would
24 obtain this -- have obtained this particular report?

25 A. No. I believe this was taken out of the

1 -- one of these CoStar Office Reports that you
2 provided previously. It was a page out of one of
3 these.

4 Q. I see. It's a selected page.

5 And then turning to the front page of the
6 document --

7 A. As a matter of fact, if you go to Office
8 Market, page 17 on the Year-End 2000 CoStar Office
9 Report, it looks like page 17 --

10 Q. That's Exhibit 3?

11 A. Yeah, Exhibit 3.

12 Q. Okay.

13 A. It appears that this was taken from the
14 CoStar Office Report on page 17.

15 Q. Okay. And turning to the front page --

16 A. Yes.

17 Q. -- the original message underneath that,
18 there's --

19 A. What front page are we talking about?

20 Q. The front page of Exhibit 7. I'm sorry.

21 A. Okay.

22 Q. There's a -- the bottom half of the
23 e-mails has something that says "Original Message."

24 A. "Original Message."

25 Q. Do you see that?

1 A. Okay. What are we looking at?

2 Q. Underneath -- underneath that it says,

3 "From: printer@kh.com."

4 A. Right.

5 Q. What is that?

6 A. What we do is when we print something out,
7 I can actually take this and scan it through the
8 copier and it wraps it into a PDF and it e-mails it
9 to me.

10 Q. Ah.

11 A. It sends it to me and then --

12 Q. So that's the e-mail address for the --
13 for the copier?

14 A. It looks -- yeah. It looks that way.

15 Q. Okay. So you would -- you would scan it
16 through the system and then it would e-mail it to
17 your Outlook?

18 A. Right.

19 Q. Okay. And then you could forward it,
20 which is what you did on top?

21 A. Right.

22 MR. SAUERS: Okay. I'll mark the next
23 exhibit. I think it's 8.

24 (The document was marked as Bell Exhibit
25 Number 8 for identification.)

1 BY MR. SAUERS:

2 Q. Take a look at that and let me know when
3 you're ready.

4 A. Okay. I'm ready.

5 Q. Okay. Great.

6 A. Um-hum.

7 Q. Is this an e-mail that you obtained from
8 your computer?

9 A. Yes.

10 Q. Okay. And the "To" line in the e-mail is
11 "msk." Who is that?

12 A. That's Mark Klein.

13 Q. Okay. And the e-mail -- the text of the
14 last string of the e-mail is that "You have probably
15 -- you probably have already seen this" --

16 A. Um-hum.

17 Q. -- to Mark.

18 What is it that you're forwarding to him?

19 A. This was -- I had received an e-mail from
20 CoStar that they were -- they offered -- looked like
21 they were offering that you could search their
22 database for no charge or something like -- no cost.
23 "Find a commercial property now, no cost, no
24 registration."

25 Q. And that's useful because normally you had

1 to have a registration?

2 A. I don't -- I thought they had offered this
3 a while ago. This was just kind of -- this was
4 informative.

5 Q. And why did you send this on to
6 Mark Klein?

7 A. This looks like -- let's see -- I think he
8 -- I think everybody in the office had gotten
9 something like this and I was just showing -- I was
10 showing Mark that you guys are offering a "No Cost,
11 No Registration" -- or not you -- but CoStar was
12 offering a -- you could find commercial property.

13 Q. And why would you have sent this on to
14 Mark?

15 A. For his view -- just for him to check
16 it out and see if he might be interested in it.

17 Q. Did you think he would be?

18 A. Probably not.

19 Q. And why not?

20 A. He -- he's never -- he just never has seen
21 a value -- he always had told me, "I" -- he had
22 never seen a value in it.

23 Q. In what?

24 A. In CoStar.

25 Q. And --

1 A. Their database.

2 Q. And that's based on his prior interaction
3 with the CoStar database?

4 A. I think when he -- when the salespeople
5 had come out and would do a demonstration, and they
6 showed him all the bells and whistles, it -- it
7 didn't do anything -- he said -- it didn't do any --
8 it didn't really serve our market. It didn't do
9 anything.

10 MR. SAUERS: Okay. Let's mark the next
11 exhibit.

12 (The document was marked as Bell Exhibit
13 Number 9 for identification.)

14 BY MR. SAUERS:

15 Q. And, again, take a minute, take a look
16 through that and let me know when you're ready.
17 All set?

18 A. Yeah.

19 Q. Did you obtain this e-mail and attachment
20 from your computer?

21 A. Yes.

22 Q. And the "from" address is from you. Is
23 that your e-mail address, "scottbell@kleinand" --

24 A. Yeah. Uh-huh.

25 Q. Okay. And, again, "msk" is Mark Klein?

1 A. Yes.

2 Q. And the subject matter is CoStar report.

3 Is that correct?

4 A. Yes.

5 Q. Okay. And it has a Follow Up Flag of

6 "Follow up." Is that correct?

7 A. Yes.

8 Q. Okay. And then the text of the e-mail
9 says, "Here it is. C. Scott Bell."

10 A. Um-hum.

11 Q. What is "it"?

12 A. It looks like it's a number of office
13 buildings that are in the -- down in this corridor
14 where we're at here, downtown Tampa.

15 Q. Okay. Is this a report that you would
16 have obtained from the CoStar database?

17 A. Yes.

18 Q. And the text of your e-mail is, "Here it
19 is." Is that in response to something? Is your
20 statement in response to a prior statement?

21 A. Well, this is about the time -- I was -- I
22 was gathering a lot of data on my own. And at this
23 time of the year is around August of '07. I was
24 doing a lot of research in the office market in
25 Tampa. And Mark had -- Mark, and I think Steve,

1 were working on some project where they were trying
2 -- they were assisting a group. They were acting as
3 a -- not a broker but as an information-type -- they
4 were providing help to somebody else that was
5 looking to maybe buy an office building in the
6 metropolitan area.

7 Q. So consulting?

8 A. Consulting. That's the word.

9 Q. And so your e-mail stating "Here it is" --

10 A. Um-hum.

11 Q. -- is this in response to a request from
12 Mark Klein to work as part of that consulting work?

13 A. Mark was -- had asked me what he -- what
14 -- based on all the research I was doing, what kind
15 of rents were we really seeing out there because
16 that drives the property value. So these -- I just
17 sent him this and he could take a look at it. I
18 didn't know if it helped him or not.

19 Q. Okay. And then you have it marked as
20 "Follow Up Flag: Follow up."

21 A. Uh-huh.

22 Q. Why would you have done that?

23 A. When I was going through all my archived
24 e-mails, I flagged all the ones that I needed to
25 prepare for the deposition.

1 Q. Ah. So that has been added. That was not
2 -- that "Follow Up Flag" and "Flag Status" was not
3 related to the time that the e-mail was created?

4 A. No, it wasn't. So I marked each one,
5 so I -- because there's so many e-mails. I had
6 to go through them one by one. And when I found
7 something, I would flag it. Then I could go -- I
8 could go to each one of those and then print them
9 out for you.

10 Q. Understood.

11 MR. SAUERS: Okay. Let's go to the next
12 exhibit. Okay. 10.

13 (The document was marked as Bell Exhibit
14 Number 10 for identification.)

15 BY MR. SAUERS:

16 Q. All set?

17 A. Yes.

18 Q. Is this -- was this e-mail and attachment
19 obtained from your computer?

20 A. Yes.

21 Q. And this is an e-mail from you,
22 Scott Bell -- from your e-mail account,
23 scottbell@kleinandheuchan.com?

24 A. Yes.

25 Q. To stevenklein@kleinandheuchan.com?

1 A. Yes.

2 Q. And is that Steven Klein, one of the
3 principals?

4 A. Yes.

5 Q. And the text of the e-mail is "Office
6 report document."

7 A. Um-hum.

8 Q. And is that referring to the attachment
9 here?

10 A. Yes.

11 Q. Okay. Did you obtain this attachment from
12 the CoStar database pursuant to your password?

13 A. Yes.

14 Q. Okay. And this office report is different
15 than the other ones. Am I correct?

16 A. I don't know. We'll have to see.

17 Q. Let's see. I believe the others were all
18 from 2007.

19 A. Yes. The other ones were from '07. This
20 is from '06.

21 Q. Okay. So this is a fourth CoStar report.
22 Okay.

23 And do you recall the circumstances
24 surrounding why you gave this report to Mr. Klein?

25 A. I offered this to Steve as a tool to

1 research and provide information to them.

2 Q. And what did -- what did Mr. Klein say
3 when you offered it to him?

4 A. "Thanks."

5 Q. Did he say, "Yes, I'd like you to send it
6 to me" or --

7 A. I don't recall.

8 Q. Just "thanks"? So how did you know to
9 send it to him?

10 A. Like I'd stated earlier, I offered it
11 to him. Because I -- I would get these and review
12 them myself. And I said, "I have an office report.
13 Would you like to take a look?" He said "Thanks."

14 Q. And that's because you thought the reports
15 might be informative to him?

16 A. Yes. They have a lot of data in them.

17 Q. Okay.

18 MR. SAUERS: Let's mark the next exhibit.

19 (The document was marked as Bell Exhibit
20 Number 11 for identification.)

21 BY MR. SAUERS:

22 Q. All set?

23 A. Yes.

24 Q. Great. And is this an e-mail and an
25 attachment that you obtained from your computer?

1 A. Yes.

2 Q. Okay. And is this an e-mail from your
3 Klein & Heuchan account?

4 A. Yes.

5 Q. Okay. And who -- is it sent to somebody
6 named Tracy McMurray. Is that correct?

7 A. Correct.

8 Q. Who's Tracy McMurray?

9 A. He is somebody that I've known for about
10 10 years, a client of mine.

11 Q. Okay. And the subject matter of the text
12 of the e-mail states, "I have attached a few reports
13 for the warehouse we saw today. The timing may
14 provide an opportunity for you."

15 A. Um-hum.

16 Q. Had you shown him the property that's
17 described in the following attachment earlier that
18 day?

19 A. He -- he was driving around looking for a
20 -- perhaps a new location for them to move into. He
21 found this and asked me if I could show it to him.

22 Q. Okay. You said "for them to move into."
23 Was he a business owner?

24 A. Yes.

25 Q. Okay. What kind of business did he have?

1 A. A water-softening business.

2 Q. Ah. So he was looking for a new office
3 for his water-softening business?

4 A. Warehouse.

5 Q. A new warehouse?

6 A. Yeah.

7 Q. Okay. And so you provided him the
8 attachment as a follow-up to your earlier visit
9 to a property that day?

10 A. Yes.

11 Q. Okay. And turning to the attachment,
12 is the first page the property that you visited?

13 A. Yes.

14 Q. Okay. And then the second page is showing
15 the location of that property on a map?

16 A. Yes.

17 Q. And then what is the third page of the
18 attachment?

19 A. It looks like it's a pull from the public
20 records from CoStar, and it contains all of the
21 sales value and what the building is.

22 Q. You said "the public record." You did not
23 need to -- did you need to log into the CoStar
24 database with your password to obtain this
25 information?

1 A. Yes. I was just looking up here on the
2 page. It says, "Public record." On the --

3 Q. Understood.

4 A. -- middle line here it says, "Public
5 record."

6 Q. Okay. And then at the bottom of the page
7 there's another copyright notice for CoStar. Is
8 that correct?

9 A. Yes.

10 Q. And then, again, it also says, "By using
11 this site, you agree to our Terms of Use."

12 A. Yes. I see that.

13 Q. Okay. And then the date on the bottom
14 right appears to be the same date as the e-mail.
15 Is that January 31, '07?

16 A. Yes.

17 Q. Great. And that's the first or maybe
18 second month that you were with Klein & Heuchan.
19 Correct?

20 A. Correct.

21 Q. Let's turn to the next page of the
22 attachment.

23 A. Um-hum. Okay.

24 Q. What is -- what is that page?

25 A. Let's see. It looks like -- it lists

1 buildings that are in Tampa, the year they're built,
2 the date it was sold, and the square footage it was
3 sold for, and it's the type of building, industrial.

4 Q. Okay. And is this something that you
5 obtained from the CoStar database with your
6 password?

7 A. Yes.

8 Q. Okay. Turning to the -- and, again,
9 that's -- I'm sorry. That also has a copyright
10 notice, as we have discussed, and it's from the same
11 date.

12 A. Okay.

13 Q. Is that correct?

14 A. Yep.

15 Q. Let's turn to the next page.

16 Is this a duplicate page? No. This --
17 can you describe what this page is?

18 A. This looks like it is a -- the -- it
19 kind of looks like it's a -- provides the same
20 information as the -- maybe some of the previous
21 pages. It gives you the square footage and the
22 price it's selling for and that it's industrial and
23 the year it was built and some of the square footage
24 information.

25 Q. Okay. And this was obtained from the

1 CoStar database with your password?

2 A. Yes.

3 Q. And then turning to the last page --

4 A. Um-hum.

5 Q. -- can you describe what that page is,
6 please?

7 A. Okay. It looks -- I see the "public
8 record" highlighted. It lists all of the -- what
9 the property appraiser would have, his total value
10 assessed, and the land value and the improved, the
11 parcel ID number, township, range and section, and
12 the roof. Yes. Okay.

13 Q. And this page was also obtained from the
14 CoStar database with your password?

15 A. Yes.

16 Q. And I guess we can know that if we look at
17 the top of that page by the picture, for example, it
18 says, "Log out." Does that indicate to you that you
19 were logged in at the time you did this?

20 A. Where do you see that?

21 Q. If you look at the last page, for example.
22 It's on each of the pages, CoStar pages.

23 A. Oh, okay. I see "log out."

24 Q. Yes. Does that indicate to you that you
25 were logged in at the time you did this?

1 A. It looks that way.

2 MR. SAUERS: Okay. Let's move on to the
3 next exhibit.

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

6 BY MR. SAUERS:

7 Q. Have you had a chance to take a look?

8 A. Yes.

9 Q. Is this an e-mail from your
10 Klein & Heuchan e-mail account?

11 A. Yes.

12 Q. And it's to csduncan@tampabay.rr.com.
13 Is that correct?

14 A. Yes.

15 Q. Do you know who that is?

16 A. That is Carol Duncan, works for
17 Klein & Heuchan. She's an administrative assistant.

18 Q. Not an agent?

19 A. No.

20 Q. And is her office at Klein & Heuchan's
21 offices?

22 A. Yes.

23 Q. And the subject is "OneClick.aspx floor
24 plan." And then there's a link below.

25 A. Um-hum.

1 Q. What is that link?

2 A. That is a link that CoStar -- I don't
3 know if it originated from the database or if it was
4 from CoStar. It was a floor plan for a property.

5 Q. Okay. Are the floor plans from properties
6 generally available on -- as part of -- when you
7 had to log in? Could you get pass -- could you get
8 floor plans for properties from the CoStar database
9 unless you logged in?

10 A. I don't know.

11 Q. Did you ever get property floor plans
12 from the CoStar database without logging in?

13 A. I never tried.

14 Q. Okay. Did you get floor plans from the
15 CoStar database by logging in?

16 A. One time, yeah.

17 Q. Is that this one?

18 A. Yeah. Well, this one actually -- I sent
19 her the link and she wasn't able to -- it didn't
20 recognize this link, so it didn't work.

21 Q. Do you have any idea why that might have
22 been?

23 A. It's -- aspx is OneClick.aspx.

24 Q. Is it possible that Ms. Duncan couldn't
25 access -- couldn't access the link because she

1 wasn't logged into the CoStar database?

2 MR. GIBSON: Object to form. Calls for
3 speculation.

4 A. What was the question again?

5 Q. Is it possible that Ms. Duncan wasn't able
6 to access the link because she was not logged into
7 the CoStar database?

8 MR. GIBSON: Same objection.

9 A. I still don't understand your question.

10 Q. You said that --

11 A. I don't know if that's because --

12 Q. You said Ms. Duncan wasn't able to access
13 the link. She clicked on it and it didn't work.

14 A. Right.

15 Q. Is it possible that the reason it did not
16 work was because Ms. Duncan was not logged into the
17 CoStar database?

18 MR. GIBSON: Form.

19 A. I'm not sure.

20 Q. Why did you send this e-mail to
21 Ms. Duncan?

22 A. To see if she could open it up and the
23 image that was -- that I had saw a line was -- you
24 couldn't even hardly see it -- to see if she could
25 use, like, a photo shop or something like that to

1 make it to where you could read it -- readable,
2 visible. It was very blurry.

3 Q. Why did you need her to do that?

4 A. Because it was blurry.

5 Q. Were you going to use it as part of a
6 flier or materials or you just needed to read it?

7 A. I needed to read it.

8 Q. Okay. Did you ever use this particular
9 floor plan as part of anything else?

10 A. Did I?

11 Q. Yes.

12 A. I think I sent it in one e-mail, yes.

13 Q. To a client?

14 A. No. Actually, I think I printed it out
15 myself. I did not send it to a client.

16 Wait. I'm not exactly sure. I think I
17 -- I either e-mailed it and I think I printed it for
18 my -- I probably did both, e-mailed it and printed
19 it for myself.

20 Q. Okay. And you did that after Ms. Duncan
21 wasn't able to access it?

22 A. Right.

23 Q. And is Ms. Duncan an employee of
24 Klein & Heuchan?

25 A. Yes.

1 Q. Why is her e-mail tampabay.rr.com, do you
2 know?

3 A. I don't know.

4 Q. Why doesn't -- you don't know why she
5 doesn't have a Klein & Heuchan e-mail address?

6 A. No.

7 Q. Did you make a practice or did you
8 regularly send information to Ms. Duncan to print
9 out for you?

10 A. Very -- very few occasions.

11 Q. Do you recall if any of those other
12 occasions involved CoStar information?

13 A. I don't remember.

14 Q. Were you attempting to obtain this floor
15 plan that's attached with this link pursuant to an
16 earlier discussion with a client?

17 A. We had -- this -- this particular floor
18 plan, as I recall, we got a call from a client that
19 is -- this was for 2120 Range Road, which is an
20 office building.

21 They called in and wanted to list their
22 property. They were unable to find a floor plan for
23 their property.

24 Q. Um-hum.

25 A. So I tried to find it for them. Ends up,

1 I had -- they actually ended up getting a copy --
2 because this was -- this was already listed by
3 somebody a couple years ago -- this property --
4 and it sold to these people that had bought it.

5 They asked me to look it up to see if
6 I could find it. And I found this, and it was a
7 poor image.

8 So we were going to try and fix it
9 for them so that we could come up with an accurate
10 measurement.

11 There's a disparity between what the
12 actual -- the property appraiser had it assessed for
13 -- like, the square footage. We seemed to think it
14 was more than what it was, so --

15 Q. More square footage?

16 A. -- consequently, they ended up finding a
17 floor plan, and it was almost identical to this one
18 here. It was actually the same one, but it had been
19 uploaded in the CoStar's database and it was -- it
20 had belonged to the architect that had actually
21 drawn the property that -- so it was actually the
22 architect's rendition that had appeared on here, but
23 we couldn't find it. So we tried to make use of
24 this one.

25 Q. And did you eventually have a listing for

1 this property?

2 A. We already had this listed.

3 Q. You already had the listing?

4 A. Yes.

5 MR. SAUERS: Okay. Let's mark the next
6 document. It's 12?

7 THE COURT REPORTER: That is 13.

8 MR. SAUERS: It sure is.

9 (The document was marked as Bell Exhibit
10 Number 13 for identification.)

11 THE WITNESS: Okay.

12 BY MR. SAUERS:

13 Q. Okay?

14 A. Yeah.

15 Q. Is this an e-mail from your
16 Klein & Heuchan account to Steven Klein, a principal
17 at Klein & Heuchan?

18 A. Yes. Excuse me.

19 Q. It's dated April 5th, 2007. Is that
20 correct?

21 A. Correct.

22 Q. Okay. And it says, "Categories: Red
23 Category." Can you describe what that means?

24 A. That was a marked category when I was
25 printing these off.

1 Q. Why is it a red category as opposed to a
2 follow-up that you were using it for?

3 A. For some reason, I had installed -- we had
4 upgraded our computer to a newer Office. In 2007 or
5 2008 we went up, because I had an older version.

6 When I upgraded it, if you clicked on it,
7 it would put it in a red category. And sometimes I
8 couldn't figure out how to get it off.

9 And then there's a -- when you -- you can
10 -- you can hit the flag. But if you clicked on the
11 e-mail, for some reason it would come up as a red
12 category.

13 Q. Okay. So this was something you did,
14 again --

15 A. This was during -- when I was gathering
16 archived information.

17 Q. Okay. And the text of that -- your e-mail
18 to Mr. Klein is, "Excel file attached." Is that
19 referring to the attachment here?

20 A. Yes.

21 Q. And both this e-mail chain and this
22 attachment came from your computer. Is that
23 correct?

24 A. Yes.

25 Q. Okay. And what is this attachment?

1 A. This is a -- looks like an Excel
2 spreadsheet of proposed and existing office
3 buildings in Hillsborough County.

4 Q. And is this a spreadsheet that you
5 obtained from the CoStar database?

6 A. Yes.

7 Q. Okay. And then looking down -- and you
8 obtained it from the CoStar database using your
9 password. Is that correct?

10 A. Yes.

11 Q. And then looking down below that, there's
12 an earlier e-mail from Steven Klein to you saying
13 "Thanks."

14 A. Um-hum.

15 Q. And then another e-mail below that that is
16 from you to Mr. Klein saying, "Steve, Office report
17 document."

18 Is that the same chain of e-mails that
19 are in Exhibit 10, the cover e-mail of Exhibit 10?
20 Or at least the bottom e-mail is.

21 A. Yes, it appears so. The times and the
22 date match.

23 Q. And so Mr. Klein responded to Exhibit 10
24 with a follow-up e-mail that said "Thanks." Is that
25 correct then?

1 A. You're on Exhibit -- what number now?

2 Q. Now, I'm back to 13. I'm sort of
3 jumping --

4 A. Okay. You're on 13?

5 Q. Yes.

6 A. Yeah. I didn't follow you there.

7 Q. Sorry.

8 A. Where are we?

9 Q. We're back on 13, and I'm looking at the
10 middle e-mail on 13. And it says, "Thanks," and
11 it's from Steven Klein to you. Is that him saying
12 "thanks" in response to your sending him the office
13 report document that is in Exhibit 10?

14 A. That appears to be, yes.

15 Q. Okay. And then the most recent, if you
16 will, of the e-mails says, "Excel file attached,"
17 and it's this Excel CoStar spreadsheet.

18 A. Spreadsheet. Um-hum.

19 Q. Why did you send this spreadsheet to
20 Mr. Klein?

21 A. He was looking for information on office
22 -- what appears -- it's pretty much in the report
23 here. He was looking for new and proposed buildings
24 that were available in Hillsborough County. I'm not
25 sure what project he was working on. He just asked

1 me for this information.

2 Q. And that was after he sent an -- was that
3 after he sent you the e-mail saying "Thanks" that he
4 asked for that information?

5 A. Okay. Could you rephrase that again?

6 Q. Sure. Sure. The e-mail from Steven Klein
7 to you on April 4, 2007, saying "Thanks" in response
8 to your sending him the market report, do you see
9 that?

10 A. Okay. Let's --

11 Q. It's the middle of the three e-mails,
12 three-part chain on --

13 A. It may have been for both because it looks
14 like I sent him the spread --

15 Q. That's the next day.

16 A. -- the spreadsheet -- it looks like that
17 went first and then the report followed behind it.

18 Q. Well, I think actually it's a different
19 day. Right? It's maybe the next day, April 5th as
20 opposed to April 4th.

21 A. Oh, okay. Yeah. Okay.

22 Q. Okay.

23 A. That's how it is. I went the other way.
24 Okay.

25 Q. So the chain was: You sent the office.

1 report document on April 4 at 3:39. Mr. Klein said
2 "Thank you" at 6:23.

3 A. Um-hum.

4 Q. And then the next day you sent him the
5 Excel sheet. Correct?

6 A. Right.

7 Q. Okay. Did the request for the Excel
8 spreadsheet come after Mr. Klein had said "Thanks"
9 to you for the office report document?

10 A. I can't -- I don't remember. If I were
11 looking at this e-mail, that looks -- that could be
12 it, but I'm not sure.

13 Q. Okay. But he did specifically ask you for
14 that report?

15 MR. GIBSON: Object to form.

16 Q. The -- I'm sorry -- the Excel file.

17 A. The Excel file?

18 Q. Yes.

19 A. Yes.

20 Q. Do you know if you had used the CoStar
21 database in connection with any of the properties
22 that you sold during your time with Klein & Heuchan?

23 A. The only properties that we -- I sold
24 during the time at Klein & Heuchan was, we sold
25 1250 Rogers Street, which is a listing we've

1 had for a long time, and it wasn't a result of
2 CoStar's database. It was a drag off of the
3 Pinellas Realtor Organization. A residential
4 realtor saw it in that database and she --

5 Q. What -- and I'm sorry. What was --
6 1250 --

7 A. Rogers Street.

8 Q. Thank you. Did you look at that property
9 in the CoStar database while it was still available
10 for sale?

11 A. Yes.

12 Q. Why did you do that?

13 A. To compare to see how the data that you
14 had in the computer versus what we had in the
15 computer, see if they were accurate.

16 Q. So to see if Klein & Heuchan's listing
17 was -- to check the accuracy of Klein & Heuchan's
18 listing?

19 A. Right.

20 Q. And you said there was another -- is there
21 another -- another property that you sold during the
22 time you were with Klein & Heuchan?

23 A. No. That's the only property I sold.

24 Q. Okay. Did you lease any other properties?

25 A. I leased two units in the 1250 Rogers

1 building.

2 Q. Okay.

3 A. One was from -- an associate in the office
4 had a company called Home Helpers.

5 Q. Um-hum.

6 A. And they're -- they're somebody he'd
7 worked with for years and already had placed, and
8 he moved them in -- he got them into one of our
9 buildings.

10 And the other one was a Mary Kay cosmetic
11 lady that drove by and called on the sign and she
12 leased it out.

13 Q. Did you use the CoStar database in
14 connection with securing either of those leases?

15 A. Neither.

16 Q. Did you have any other activity during the
17 time you were with Klein & Heuchan that resulted in
18 commissions or payments to you?

19 A. There was -- I did one transaction in
20 two thousand -- this is nine.

21 The early part of 2008 I had a friend of
22 mine that was seeking new office space. He was over
23 in the Pinellas market, and he wanted to move to the
24 Westshore market.

25 He did -- we showed him a lot of

1 properties, and the property ended up going into --
2 he had started the communication with them, and then
3 he brought us in to -- more or less to help me in
4 the business so I could learn from the transaction.
5 It was -- he was being very nice. He was helping me
6 out.

7 So he brought me into the -- and we tried
8 to -- we went through the whole negotiating and --
9 he did all the negotiating, but -- he wanted to make
10 sure that I was involved in it and I could learn
11 from it.

12 Q. And that resulted in a commission?

13 A. Yes.

14 Q. Okay. Did you use the CoStar database to
15 look at that property at all?

16 A. We -- I did use the CoStar database to
17 look at it. It was Eola Capital, but he -- he
18 actually -- prior to that we never even saw that
19 building. And he went driving around. He found
20 the building. The young -- the lady that worked
21 there, she actually showed him the building and we
22 didn't -- we weren't even present. So he found the
23 building on his own and then we -- I think I had
24 used the CoStar database just to look at the
25 Eola Capital building.

1 Q. Okay. To look at -- you mean floor plans
2 or just --

3 A. There's -- I don't believe there's any
4 floor plans. It was just the square footage, the
5 kind of building it was, and --

6 Q. Did you look at comparables?

7 A. I don't believe there are any comparables
8 for office -- the office buildings.

9 Q. Okay. And you received a commission for
10 the 1250 Rogers Street property as well. Is that
11 correct?

12 A. Right.

13 Q. Okay.

14 A. So the 1250 Rogers Street, we leased --
15 I leased in 2007. That was the only thing I did in
16 2007.

17 And in 2008 we sold Rogers Street, 1250,
18 and then we leased that building over there and --
19 I actually had an associate in the office that was
20 helping me with it, too, so . . .

21 Q. Okay. When was -- you said you sold
22 the 1250 Rogers Street address property in '08.

23 A. Yeah.

24 Q. And when -- do you recall when in
25 '08 that was?

1 A. I . . .

2 Q. Approximately. First quarter, second
3 quarter?

4 A. It had to have been the -- probably
5 between the first and -- between the first and
6 second quarter, probably right towards where they
7 meet, somewhere in there.

8 Q. Okay. Could you find out when that
9 property sold?

10 A. I'm sure we could look in the property
11 appraiser and it would tell you instantly.

12 Q. Okay. Would Klein & Heuchan have records
13 related to that sale?

14 A. Yes.

15 Q. How about the early '08 sale of the
16 office --

17 A. Lease.

18 Q. Oh, the one --

19 A. We didn't sell the office. We leased it.

20 Q. In '08? I'm confused.

21 A. In '08 we leased office space in the
22 Westshore area.

23 Q. Okay. The second -- yes.

24 A. In '07 we leased office space in
25 Rogers Street.

1 Q. The '08 lease on --

2 A. Um-hum.

3 Q. -- would records of that be in y
4 Klein & Heuchan?

5 A. Yes.

6 Q. Okay. And how about the leases for the
7 two units in the Rogers building? Would records of
8 that be at Klein & Heuchan?

9 A. Yes.

10 MR. SAUERS: Let's go ahead and mark the
11 next exhibit.

12 THE COURT REPORTER: 14.

13 MR. SAUERS: 14.

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

16 THE WITNESS: Okay.

17 BY MR. SAUERS:

18 Q. Okay. Can you tell me what this document
19 is?

20 A. It is a spreadsheet on what appears to be
21 self storage units.

22 Q. Do you know where you obtained this
23 spreadsheet?

24 A. It looks like it's from CoStar's database.

25 Q. How can you tell it's from the CoStar

1 database? The format?

2 A. Well, it says, "Research Completed Date"
3 on it.

4 Q. Where --

5 A. About the middle end of the document --
6 middle end of the document, the best I can tell.

7 Q. Okay. What else is on that page?

8 A. Is that it? Wait, wait, wait. I think
9 you went past it. Back up one.

10 Q. Okay.

11 A. Is that it?

12 Q. Ah. Here we go. Okay.

13 A. Yeah.

14 Q. And that indicates to you that it was from
15 the CoStar database?

16 A. I'm believing so. It has a publication
17 date and a research completed date.

18 Q. Okay. Now, these dates are all from
19 prior to your time with Klein and -- these Research
20 Completed Dates are all from prior to your start
21 with Klein & Heuchan. Is that correct?

22 A. No. The way I'm reading this is, it's --
23 this is when CoStar completed this research, not me.

24 Q. Ah. Thank you. Do you know when you
25 would have obtained this report, approximately?

1 A. I'm not exactly sure.

2 Q. During your time --

3 A. I noticed here on one page Stan Newmark
4 from Klein & Heuchan has a listing on one of these
5 buildings.

6 Q. Um-hum.

7 A. It looks like it's the first one. I don't
8 know if it was -- I'm not sure which one. He had
9 sold one up there and -- up in -- I believe it was
10 New Port Richey or -- he had sold one up there, and
11 I was trying to find which one he had sold. It's on
12 Grand -- Grand Boulevard -- to get an idea of what
13 the values might be up there.

14 Q. I see. And so the remainder of this
15 report lists all the other facilities up in that
16 area?

17 A. Right.

18 Q. And you obtained this report through use
19 of your password?

20 A. Yes.

21 Q. And this was during the time you were with
22 Klein & Heuchan?

23 A. Right.

24 Q. Did you ever provide a copy of this report
25 to anybody?

1 A. No.

2 MR. SAUERS: Okay. Let's go to the next
3 exhibit.

4 (The document was marked as Bell Exhibit
5 Number 15 for identification.)

6 BY MR. SAUERS:

7 Q. Okay. It's Exhibit 15.

8 A. Okay.

9 Q. Okay. Can you tell me what this document
10 is?

11 A. An Excel spreadsheet.

12 Q. Was this obtained from your computer?

13 A. Yes.

14 Q. Is this a CoStar -- is this a printout of
15 information from the CoStar database?

16 A. Yes.

17 Q. Did you use your password to obtain this
18 information?

19 A. Yes.

20 Q. And what -- what sort of report is this?

21 A. It doesn't look like a report. It looks
22 like a -- just a list of office buildings in the
23 metropolitan area with mailing addresses.

24 Q. And then turning back a few pages, it
25 looks like there's some more information, parking

1 ratios and --

2 A. Building, taxes.

3 Q. Why would you have downloaded this
4 information from the CoStar database?

5 A. To learn about the buildings that are
6 available in our metropolitan area, to educate
7 myself.

8 Q. And then would you use a report like this
9 to target and follow up on particular properties?

10 A. No. As you'll see, almost all these
11 buildings are represented by national firms.

12 Q. Okay.

13 A. And that's -- we don't -- we don't -- we
14 don't serve a market like that -- or I never have,
15 never had any intention and --

16 Q. We have five minutes left on the tape.
17 I'm going to try and do one more exhibit before we
18 take a break.

19 (The document was marked as Bell Exhibit
20 Number 16 for identification.)

21 BY MR. SAUERS:

22 Q. Okay?

23 A. Okay.

24 Q. Was this a document obtained from your
25 computer?

1 A. Yes.

2 Q. And what is this document?

3 A. This is a list we -- that was generated
4 from a mailing service that we have or software.
5 Type in SIC code numbers and it'll punch out the
6 different owners and addresses of the property and
7 where they live.

8 Q. And did you obtain -- I'm sorry.
9 Did you obtain this from the CoStar database?

10 A. No.

11 Q. Did not.

12 A. No.

13 MR. SAUERS: Let's go ahead and take a
14 break.

15 THE VIDEOGRAPHER: We're off the record
16 at 11:18 a.m.

17 (There was a recess from 11:18 a.m. to
18 12:34 p.m.)

19 THE VIDEOGRAPHER: We're on the record at
20 12:34 p.m.

21 MR. SAUERS: Okay. I'll go ahead and
22 mark the next exhibit.

23 (The document was marked as Bell Exhibit
24 Number 17 for identification.)

25 BY MR. SAUERS:

1 Q. All set?

2 A. All set.

3 Q. All right. Can you tell me what this
4 document is?

5 A. This is a -- a spreadsheet for industrial
6 warehouses in the Holiday area; Holiday, Florida.

7 Q. Is this a spreadsheet obtained from the
8 CoStar database?

9 A. No.

10 Q. From where did you get this database?

11 A. This is a IMAP program that we use
12 and we're able to plug in use codes for certain
13 geographical areas and it will bring up all of the
14 information you see here as the heated square feet,
15 house number, street address, and who the actual
16 owners of the property are, and give you dates of
17 last transactions.

18 Q. Would you have gone and looked up any of
19 these properties on the CoStar database?

20 A. I'm not sure. It's possible, but I'm not
21 sure.

22 Q. Okay. How about with respect to --
23 turning to Exhibit 16, would you have --

24 A. 16?

25 Q. Yeah. Same question. Would you have

1 looked up any of these properties on the CoStar
2 database?

3 A. I mean, it would take me a couple minutes
4 to go through this to actually look. I'm not sure.
5 It's been a long time ago.

6 Q. Do you think if you went through you could
7 tell at least some of them that you may -- may have?

8 A. Possibly.

9 Q. Well, why don't we take a minute with
10 Exhibit 16 and see if you can't identify a few where
11 you --

12 A. This one here looks like it's the Pasco
13 Industrial Park, West Pasco Industrial Park.

14 Q. Is that on the -- which page are you on?

15 A. This Exhibit 16, I believe, is the West
16 Pasco Industrial Park off of State Road 54.

17 Q. Okay.

18 A. I believe that's what all these --
19 actually, it's not. Well, I can't tell.

20 I mean, I'm having to go by addresses.
21 I just don't know.

22 Q. Okay.

23 A. I don't know.

24 Q. That's fine. You mentioned you might be
25 able to tell, so I figured --

1 A. Yeah. I mean, looking at it, it's --
2 they're just addresses. There's no names of
3 buildings or anything like that. It's just an
4 address, so -- I mean, I've researched, like, tens
5 of thousands of addresses. I just can't remember.

6 Q. Sure. What about on Exhibit 17? It looks
7 like there's a little more identifying information
8 associated with that, subdivision and address and
9 use descriptions and -- does that provide enough
10 information to know whether you might have looked
11 any of them up on CoStar?

12 A. Not really. It's -- I mean, I just -- I
13 know all these properties because I just live in the
14 area. Nothing stands out, like, special to me.

15 Q. Okay. That's fine.

16 A. I don't see it.

17 MR. SAUERS: Okay. I'll mark the next
18 three exhibits.

19 That's 18. I'm sorry. Which one is --
20 what's the first line on that one? Thank you.

21 (The documents were marked as Bell
22 Exhibit Numbers 18, 19 and 20 for identification.)

23 THE WITNESS: Okay.

24 BY MR. SAUERS:

25 Q. Are all of these documents obtained --

1 were all of these documents obtained from your
2 computer?

3 A. Yes.

4 Q. Okay. Are any of these documents reports
5 that were obtained from the CoStar database?

6 A. No.

7 MR. SAUERS: I'll mark the next set of
8 exhibits. 21.

9 (The document was marked as Bell Exhibit
10 Number 21 for identification.)

11 MR. SAUERS: 22.

12 (The document was marked as Bell Exhibit
13 Number 22 for identification.)

14 MR. SAUERS: And 23.

15 (The document was marked as Bell Exhibit
16 Number 23 for identification.)

17 MR. LOVE: Do you have Exhibit 22 there?

18 THE WITNESS: 22? Yes.

19 MR. LOVE: What's the first -- okay.

20 THE WITNESS: It's Pat Clark.

21 BY MR. SAUERS:

22 Q. Are any of those --

23 A. All set.

24 Q. All right. Great. Thanks.

25 Are any of those documents from the

1 CoStar database?

2 A. Let's see. What exhibits are we looking
3 at here? What are the numbers again?

4 Q. 21, 22, 23.

5 A. 21, 22 -- 21 and 22, yes.

6 Q. Okay. Great. You can put 23 aside.

7 Was Exhibit 21 obtained from your computer?

8 A. Yes.

9 Q. And did you use the CoStar -- your CoStar
10 password to access the information that you printed
11 out?

12 A. Yes.

13 Q. And were you -- do you recall where you
14 did that? Would that have been at the CoStar -- or
15 the Klein & Heuchan offices?

16 A. I believe so, yes.

17 Q. Okay. And what is Exhibit 21?

18 A. Exhibit 21 looks like a spreadsheet
19 with office buildings in Clearwater and Tampa,
20 the metropolitan area.

21 Q. Okay. And why would you have obtained
22 this database?

23 A. You can look at the -- the actual square
24 footage of the building -- let's see.

25 What else is on here? Look at who --

1 who the leasing company is and the address, yeah.

2 Q. And the types of properties that
3 are listed on this report, are they the types of
4 properties that you would have sought to list or
5 lease?

6 A. The -- most of the -- most of these
7 properties are a lease by national companies. Most
8 likely not. These don't fit -- didn't fit my type
9 of -- what I would pursue as a listing. They're way
10 out of our -- our ball game as far as -- you need a
11 huge staff, like C.B. Richard Ellis would. They're
12 more fit for something like this. We couldn't
13 handle something like that and --

14 Q. So this was more, again, to just inform
15 yourself and become educated about the -- about the
16 market?

17 A. Correct.

18 Q. And, of course, you would use that
19 knowledge in your -- in your job?

20 A. Yes.

21 Q. Okay. And you said Bell twenty -- or you
22 said Exhibit 22 was also from the CoStar database?

23 A. Yes.

24 Q. And was Exhibit 22 obtained from your
25 computer?

1 A. Yes.

2 Q. And what is Exhibit 22?

3 A. It's a -- same thing as Exhibit 21.

4 This has different -- this pertains to developers
5 and property managers and some brokers.

6 Q. And for what purpose would you use this
7 list?

8 A. Again, to see which -- who the -- who
9 might be the contact person at a particular
10 property.

11 Q. Did you ever contact any of these folks
12 as a result of finding them on this list?

13 A. Pardon me?

14 Q. Did you ever -- sorry. Did you ever
15 contact any of the people identified on this list?

16 A. I'm not -- I'm not sure. These are people
17 that we work with and we network with at functions.
18 Some of those names appear on here. Most likely
19 not. I mean, most of these people we have seen
20 at meetings or interacted with them at one time or
21 another.

22 MR. SAUERS: I'll mark the next exhibit.

23 THE COURT REPORTER: Number 24.

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

1 MR. SAUERS: Oh-oh. That's only three.
2 Hang on a second. I need a copy for --

3 I apologize. I may be short a copy
4 of this particular e-mail. In fact, I am.

5 BY MR. SAUERS:

6 Q. Have you had a chance to look at this?

7 A. Yes.

8 Q. Can you tell me why you chose this to
9 produce in this litigation?

10 A. You asked to see all the potential clients
11 and people that I've had contact with.

12 Q. Okay. Did --

13 A. And this is -- as far as what I had in my
14 archives, some of these things fell into it. So I
15 wanted to try and make sure I didn't leave anything
16 out and give you everything that I had.

17 Q. Understood. So in all of the various
18 e-mails you provided, do you know whether you used
19 CoStar in reviewing the properties that were listed
20 in these e-mails?

21 And I can get a whole stack of them,
22 but I'm just looking for --

23 A. If you're asking me to recall from direct
24 memory, I can't do that.

25 Q. Okay.

1 A. We'd have to -- I'd have to look.

2 Q. At each individual one. Well, for
3 example, this property, did you -- would you have
4 used CoStar in connection with this one?

5 A. I'm not sure.

6 MR. SAUERS: We can go off the record for
7 one minute.

8 THE VIDEOGRAPHER: We're off the record
9 at 12:52 p.m.

10 (Discussion off the record.)

11 MR. SAUERS: Okay. We can go back on.

12 THE VIDEOGRAPHER: We are on the record
13 at 12:54 p.m.

14 MR. SAUERS: I'll mark the next exhibit.

15 THE COURT REPORTER: 25.

16 (The document was marked as Bell Exhibit
17 Number 25 for identification.)

18 MR. SAUERS: And I apologize. I only
19 have three of these, but --

20 THE WITNESS: Okay.

21 BY MR. SAUERS:

22 Q. Have you seen this document before?

23 A. I saw a little bit of it. I haven't seen
24 the whole thing.

25 Q. Which part did you see?

1 A. Let's see. I'd say probably just the
2 first part from Curtis Ricketts here, the first
3 three pages.

4 Q. Okay. And when did you see it?

5 A. When he had called and -- called the
6 Klein & Heuchan office.

7 Q. Did someone bring it to you or was it sent
8 to you from CoStar?

9 A. Did somebody bring it to me?

10 Q. Yes.

11 A. No.

12 Q. Well, how did you become aware of
13 this document?

14 A. When we talked to Mr. Ricketts --
15 Mark Klein -- we reviewed this document.

16 Q. Prior to that phone call?

17 A. Yes.

18 Q. Okay. And what did Mr. Klein say
19 to you about this document?

20 A. He felt as if he was being extorted for
21 money.

22 Q. Did he say anything else?

23 A. No. That was about it.

24 Q. Did you discuss your use of the
25 CoStar database?

1 A. We knew -- he -- we knew we'd been using
2 it for some time.

3 Q. Well -- right. I understand that he knew
4 that you were using the CoStar database for some
5 time.

6 A. Yeah. I mean, we just -- we did use the
7 database. Correct.

8 Q. Right.

9 A. Right.

10 Q. Did you discuss that use of the database
11 in the context of this letter?

12 A. I'm not sure I understand your question.

13 Q. Did you discuss whether your -- whether
14 you thought it was authorized or whether the two of
15 you thought the use was authorized or not?

16 A. We discussed the authorized and we
17 recounted when Coldwell Banker -- they had rolled
18 this out in front of a large number of people
19 that --

20 Q. Um-hum.

21 A. -- just a few months before I left
22 there, and that they had bought us a subscription to
23 CoStar's database. And that came from Jay Love, the
24 Director of Coldwell Banker at that time. She was
25 the Director of Florida Operations.

1 Q. Okay. And that's -- that's your basis for
2 a belief that you were -- your use was authorized?

3 A. Correct.

4 Q. Anything else?

5 A. No.

6 Q. Did you ever get any e-mails telling you
7 you were authorized?

8 A. Never.

9 Q. Phone calls?

10 A. Never.

11 Q. Written letters telling you?

12 A. Never.

13 Q. Did you ever discuss whether you
14 were authorized -- prior to your -- prior to
15 Klein & Heuchan's receipt of this letter, did you
16 ever discuss whether you were authorized with
17 anyone at Klein & Heuchan?

18 A. Repeat that, please.

19 Q. Sure. Prior to Klein & Heuchan's receipt
20 of this letter --

21 A. Okay.

22 Q. -- had you ever discussed whether or not
23 your of the CoStar database was authorized with
24 anyone at Klein & Heuchan?

25 A. Mark had asked me -- he said, "How did --

1 how did you get -- how do you have access?"

2 And I told him Coldwell Banker Commercial
3 had -- had bought a license for me while I was
4 there, and they put it on -- it was installed on my
5 laptop with the security certificate and that --
6 and I -- it went -- it went with -- it was my
7 computer, so I took it.

8 They didn't say I couldn't use it. They
9 didn't turn it off or change the password or
10 anything. It -- I -- I believe that was -- you
11 know, they said they had bought us one and I --
12 they bought us a subscription.

13 Q. Well, do you know if you are listed on that
14 subscription as part of Coldwell Banker?

15 MR. GIBSON: Object to the form.

16 A. Do I --

17 Q. Do you know if you are listed on that
18 subscription as associated with Coldwell Banker?

19 MR. GIBSON: Object to form. Calls for
20 speculation.

21 Q. You can answer.

22 A. I don't understand the question.

23 Q. Do you know if your use of the CoStar
24 database --

25 A. Okay.

1 Q. -- was pursuant to your association with
2 Coldwell Banker?

3 A. They bought it for me, so --

4 Q. Um-hum. And do you know if your access to
5 the CoStar database base was pursuant to being
6 identified as associated with Coldwell Banker?

7 MR. GIBSON: Object to form.

8 MR. LOVE: Object to form. Calls for
9 speculation.

10 MR. GIBSON: Asked and answered.

11 MR. SAUERS: I'm asking if he knows.

12 BY MR. SAUERS:

13 Q. Do you know? Did --

14 MR. LOVE: My objection is to form. Go
15 ahead and answer.

16 BY MR. SAUERS:

17 Q. Did CoStar -- did CoStar think you were
18 part of Coldwell Banker?

19 MR. LOVE: Object to form.

20 A. I don't know what they thought.

21 Q. When you received your access e-mail from
22 Coldwell Banker, did it include with it terms of
23 use?

24 MR. GIBSON: Object to form. Lack of
25 predicate.

1 A. I don't recall.

2 Q. Did you have a key token access to CoStar's
3 database?

4 A. No.

5 Q. When you left Coldwell Banker, did you have
6 access to any other databases?

7 A. Such as?

8 Q. Any other databases, proprietary databases.

9 A. No.

10 Q. Did you ever contact CoStar for customer
11 service support?

12 A. I think I called them one time and asked
13 them how much the CoStar tenant -- the CoStar
14 tenant package is. Never called for support.

15 Q. Never called for support.

16 A. Simple inquiry about how much it would cost
17 to add.

18 Q. And when you called to ask about how much
19 it would cost to add that, did you -- what did they
20 ask you?

21 A. There was a -- they asked me what markets I
22 was looking for. It was Tampa. And they said, "We
23 could send somebody out."

24 Q. Did you tell them what services you already
25 had?

1 A. No.

2 Q. Did they ask you if you were already a
3 subscriber to CoStar's services?

4 A. I don't recall them asking.

5 Q. Did CoStar ever approach you about -- make
6 a sales call to you?

7 A. Never.

8 Q. But you know they made sales calls
9 to Klein & Heuchan?

10 A. I -- Mark had told me in the past they had
11 made sales calls on them. I imagine they've made
12 sales calls on every commercial real estate company
13 in the metropolitan area.

14 Q. Why would they be contacting the real
15 estate companies, real estate agencies?

16 MR. GIBSON: Object to form.

17 A. I don't know.

18 Q. Why wouldn't they contact individual
19 agents?

20 MR. GIBSON: Object to form.

21 A. Because I'm not a -- I'm not a broker.

22 Q. Is it your understanding that CoStar gets
23 -- enters into contracts with the brokers?

24 MR. GIBSON: Object to form.

25 A. I don't know.

1 Q. Did you have a contract with CoStar?

2 A. Not -- I didn't have a contract with it.
3 Coldwell Banker Commercial bought me a
4 subscription.

5 Q. When you say they -- when you say "they
6 bought you a subscription," how --

7 A. And everybody that was in the organization
8 they bought a subscription to. They rolled it out
9 at a meeting.

10 Q. Did they buy them access or individual
11 subscriptions?

12 MR. GIBSON: Object to form.

13 A. I didn't -- I don't know.

14 Q. But did you sign a --

15 A. I wouldn't --

16 Q. Did you sign a contract?

17 A. I didn't sign a contract, no.

18 Q. So you didn't have a subscription?

19 MR. GIBSON: Object to form.

20 Q. Did you have a subscription?

21 MR. GIBSON: Object to form.

22 A. They bought me a subscription. Did I have
23 a subscription? They assigned a subscription to
24 me.

25 Q. They assigned a subscription to you? So

1 they --

2 A. They bought it and said, "Here you go.
3 It's yours to use."

4 Q. And they didn't say anything about your use
5 of that database?

6 A. Nope. No.

7 Q. Did they e-mail you your password?

8 A. Yes.

9 Q. Do you have that e-mail?

10 A. No.

11 Q. Do you recall when you received that e-mail
12 from Coldwell Banker?

13 A. I do not.

14 Q. Do you know when you first had access to
15 CoStar's services?

16 A. I don't remember.

17 Q. Approximately?

18 A. I don't --

19 Q. A year before you left? Six months before
20 you left?

21 A. I don't know.

22 Q. Was it the first thing when you walked in
23 the door? It happened after you were there?

24 A. Again, I don't remember. It's been over
25 two, two-and-a-half years now. I don't remember.

1 Q. Well, you said --

2 A. I know Coldwell Banker sent me an e-mail,
3 and I don't recall when I got it. We used to -- I
4 don't know when I started using it or not. When
5 they sent it to me, that's when I -- which is
6 when -- it could have been shortly thereafter.

7 Q. The e-mail with the password came from
8 Coldwell Banker and not from CoStar?

9 A. I believe it came from Coldwell Banker,
10 yes.

11 Q. Was it a forwarded e-mail with the password
12 and user name attached?

13 A. I don't recall.

14 Q. You said there was a -- they told
15 everyone in the office, "We've got subscriptions
16 for everybody and you can use it." When was that?

17 MR. LOVE: Object to form. Go ahead and
18 answer.

19 A. Probably somewhere around --
20 John Skicewicz was the director and he stepped
21 down -- it must have been somewhere around July
22 or August they announced that.

23 Q. Of what year? I'm sorry.

24 A. '06.

25 Q. '06. And how long after that was it that

1 you got your password?

2 A. I don't recall.

3 Q. Months?

4 A. Maybe a month. I don't know.

5 MR. GIBSON: Do you mind if we take a
6 break?

7 MR. SAUERS: Yeah. That's fine.

8 THE VIDEOGRAPHER: We're off the record at
9 1:07 p.m.

10 (There was a recess.)

11 THE VIDEOGRAPHER: We're on the record at
12 1:14 p.m.

13 BY MR. SAUERS:

14 Q. When did you discuss your belief that you
15 were authorized to use the CoStar database with
16 Mr. Klein?

17 A. Shortly after I joined the firm when I had
18 showed him the database.

19 Q. When was that?

20 A. The first quarter of '07.

21 Q. Okay. Did you ever have such a discussion
22 with Steven Klein?

23 A. I don't -- I don't recall, no. I'm not
24 sure.

25 Q. How about anybody else in the office?

1 A. No.

2 Q. Not -- not Judi -- is it Healey?

3 A. No. Judi Healey is the name.

4 Q. Yes.

5 A. But I didn't, no.

6 Q. Do you know if at the time you had your
7 discussion regarding your belief that you were
8 authorized with Mr. Klein, Mr. Klein had already --
9 had received sales presentations from CoStar?

10 A. No, I was not. No.

11 Q. No, you don't know?

12 A. I don't -- I don't know if he had or not,
13 no.

14 Q. Okay. How did you store your CoStar
15 password?

16 A. It was automatically recalled when you
17 clicked on a web site. All the information was
18 there. You just --

19 Q. You didn't keep it written anywhere or
20 anything like that?

21 A. No.

22 Q. So if you had lost that, what would you
23 have done?

24 A. I don't know.

25 MR. SAUERS: I'll mark the next exhibit.

1 This is twenty --

2 THE COURT REPORTER: 26.

3 MR. SAUERS: Thank you.

4 (The document was marked as Bell Exhibit
5 Number 26 for identification.)

6 BY MR. SAUERS:

7 Q. Can you -- is this -- this is a document
8 that was produced by Klein & Heuchan to us as a
9 summary of your commissions in 2007 and 2008?

10 A. Yes.

11 Q. Is this an accurate summation of all the
12 commissions you received during your time with
13 Klein & Heuchan?

14 A. Yes. Yes.

15 Q. Okay. And on the second page there's a
16 reference to 1250 Rogers.

17 A. Um-hum.

18 Q. And that's the property for which you
19 testified earlier, I believe, that you used the
20 CoStar database to conduct research?

21 MR. LOVE: Object to form. Go ahead and
22 answer.

23 A. Which property? I'm sorry.

24 Q. 1250 -- the 29-Feb-'08,
25 1250 Rogers/Entrust entry.

1 A. What's the question?

2 Q. Is that the one for which you used the
3 CoStar database to conduct research?

4 A. No. I did not conduct research on that
5 property. I compared the information of the
6 property to what we had on ours.

7 Q. Okay. So in the process of consummating
8 that deal, you used the CoStar --

9 A. It was not a result of CoStar, no.

10 Q. No, no, no. I'm just asking: In the
11 process of consummating that deal, you used the
12 CoStar database --

13 MR. LOVE: Object to form.

14 MR. GIBSON: Object to form.

15 Q. -- to conduct research?

16 MR. GIBSON: Object to form.

17 Mischaracterizes his testimony.

18 THE WITNESS: Yeah.

19 Q. I'm asking you the question.

20 Is that true?

21 MR. GIBSON: And he's answered it.

22 Q. You can answer it.

23 MR. GIBSON: He already has. He said no.

24 THE WITNESS: No.

25 MR. SAUERS: He said he didn't understand

1 the question.

2 MR. GIBSON: No. He said "no." We can
3 have the court reporter read it back.

4 MR. SAUERS: Can you read the question
5 back? I couldn't hear over all the objecting.

6 THE COURT REPORTER: He said, "It was not a
7 result of CoStar, no."

8 MR. SAUERS: Right. And that's different
9 than the question I asked.

10 MR. GIBSON: Then there was another
11 question after that.

12 THE COURT REPORTER: And I don't see an
13 answer to the next question.

14 MR. GIBSON: I guess the court reporter
15 didn't hear it.

16 MR. SAUERS: Because of all the objecting.

17 THE COURT REPORTER: Well, there were four
18 people talking at once, so --

19 MR. GIBSON: And I -- there's a reason you
20 may not have heard it, but --

21 MR. SAUERS: Can you read back the
22 question, the last question, the one -- the
23 disputed question?

24 THE COURT REPORTER: "No, no. I'm just
25 asking: In the process of consummating that deal,

1 you used the CoStar database" --

2 THE WITNESS: In the process of --

3 MR. LOVE: Is that the question?

4 MR. SAUERS: Well, that's as far as I got
5 before everyone objected.

6 MR. LOVE: Objection to form. Go ahead and
7 answer.

8 MR. SAUERS: Okay.

9 THE WITNESS: No.

10 BY MR. SAUERS:

11 Q. You did not use the CoStar database at all
12 during the process of negotiating that deal for any
13 purpose?

14 A. No.

15 MR. GIBSON: Object to form.

16 Q. What did you use it for during the process
17 of that deal?

18 A. To compare the information that we had on
19 our -- in our data, in our flier.

20 Q. Okay. And why would you do that?

21 A. To see how accurate CoStar's reporting was.
22 They would call and ask about the different
23 listings we would have and they would gather the
24 information. Sometimes we might be under a belief
25 that might be wrong or misleading.

1 Q. What data?

2 A. That CoStar collects from Klein & Heuchan
3 about their listing.

4 Q. I see. So you were checking to make
5 sure that CoStar was properly listing your -- was
6 accurately reflecting your listing?

7 A. Klein & Heuchan's listing.

8 Q. Klein & Heuchan's listing?

9 A. Right.

10 Q. I see. To what end?

11 A. To what end?

12 Q. Why were you checking to see if it was
13 accurate?

14 A. To see if there's any inconsistencies, the
15 square footage.

16 Q. What if it was inconsistent?

17 A. The next time she would call, I'd correct
18 her.

19 Q. Did you conduct any other research using
20 the CoStar database in connection with any of these
21 listings on either of these pages --

22 MR. LOVE: Objection --

23 Q. -- or commissions earned on either of these
24 pages?

25 MR. LOVE: Objection to form. Go ahead and

1 answer.

2 A. I used the CoStar database to access
3 and look at office buildings. As a result of these
4 transactions, my client discovered the office and
5 negotiated the deal himself, and merely as a -- to
6 help me understand the business, brought me into
7 the deal.

8 Q. Okay. And which -- which entries are you
9 referring to? Which seller/buyer?

10 A. The CAT-Florida/Intellect Technical.

11 Q. Okay.

12 A. Page 2.

13 Q. Both of those?

14 A. Items 1 and 2. They're one transaction,
15 paid on two dates.

16 Q. I see in -- on the first page you received
17 a bonus.

18 A. Um-hum.

19 Q. What was that for?

20 A. I can't -- I can't explain it precisely.
21 But if we -- if we have the company manual, it's a
22 -- when you are a full-time associate or when you
23 work there and you take floor calls, help other
24 people out, it's like a -- almost like a
25 revenue-sharing pool.

1 Q. I see.

2 A. So however much you pay in or how much is
3 in the pool, depending on what you contributed, you
4 get a little bit back.

5 Q. Okay. And so why wasn't there one -- why
6 didn't you receive a commission -- or, I'm sorry --
7 a bonus in 2008?

8 A. I was not -- I left shortly -- like, midway
9 through the year. I was no longer a full-time
10 associate.

11 Q. And they don't prorate. I see.

12 A. Right.

13 MR. SAUERS: Okay. I'll mark the next
14 exhibit.

15 (The document was marked as Bell Exhibit
16 Number 27 for identification.)

17 BY MR. SAUERS:

18 Q. This is a document produced to us from
19 Klein & Heuchan providing a list of associates,
20 K&H associates, in -- well, I believe providing
21 a list of K&H associates in 2007 and 2008.

22 Can you please identify any person or
23 persons on here to whom you provided information
24 from the CoStar database?

25 A. It would be myself, Mark Klein and

1 Steve Klein.

2 Q. Okay. Now, I don't see -- what about
3 Judi Healey?

4 A. I don't see her on 2007.

5 Q. Okay. I see her on eight.

6 A. And then on 2008, yes.

7 Q. Okay. Anybody else?

8 A. No.

9 MR. SAUERS: Okay. If we can go off the
10 record for a second.

11 THE VIDEOGRAPHER: We're off the record at
12 1:28 p.m.

13 (Discussion off the record.)

14 MR. SAUERS: Okay. Go back on the record.

15 THE VIDEOGRAPHER: We're on the record at
16 1:30 p.m.

17 MR. SAUERS: No further questions.

18 EXAMINATION

19 BY MR. GIBSON:

20 Q. Mr. Bell, I have some -- I have some
21 questions.

22 A. Okay.

23 Q. I want to take you back to your days at
24 Coldwell Banker, that time period.

25 As I understand it, you received your

1 real estate license in 2005. Is that correct?

2 A. Yes. Yes.

3 Q. Okay. And soon thereafter you went to work
4 for Coldwell Banker. Is that correct?

5 A. The commercial, yes.

6 Q. Coldwell Banker NRT?

7 A. Right.

8 Q. Okay. And when I say "Coldwell Banker"
9 from now on, we'll know -- we'll know what it is.

10 A. Okay.

11 Q. And your position at Coldwell Banker was
12 similar to your position at Klein & Heuchan. Is
13 that correct?

14 A. Yeah. It's virtually the same.

15 Q. Sales associate, selling and leasing
16 commercial -- commercial real estate?

17 A. Correct.

18 Q. Okay. When you arrived at Coldwell Banker,
19 you were not provided a subscription to CoStar?

20 A. No.

21 Q. At some point during your tenure there,
22 you were provided a subscription to CoStar?

23 A. Yes.

24 Q. Now, as I understand it, at some point
25 somebody put something on your computer to let you

1 have access to CoStar. Is that right?

2 A. I'm not sure.

3 Q. Okay.

4 A. I'm not sure I remember right. They had IT
5 guys that would do a lot of things on my computer,
6 and then we also got e-mail with a password. So
7 I'm not -- I'm not entirely sure.

8 Q. Okay.

9 A. I can't -- I don't recall.

10 Q. Let me back up, just so that we're clear.
11 When you started at Coldwell Banker, you used your
12 own laptop. Correct?

13 A. Correct.

14 Q. You weren't provided one by
15 Coldwell Banker?

16 A. No.

17 Q. Just like you weren't provided one by
18 Klein & Heuchan. Correct?

19 A. Right.

20 Q. Correct. Okay.

21 So you don't know what they put on it. But
22 Coldwell Banker IT individuals did install certain
23 software on your computer?

24 A. Yes.

25 Q. Do you know if at some point one of those

1 installations occurred around the time that CoStar
2 was given -- granted access to you?

3 A. I'm not --

4 MR. SAUERS: Objection. Form.

5 A. I'm not sure.

6 Q. How is it that you accessed CoStar? Do you
7 go through the web site? Is there a proprietary
8 software? How is it -- what is your interface with
9 CoStar on your computer?

10 A. If I can recall back, it -- I believe it is
11 a bookmark on -- web site bookmark. You click on
12 it. It recognizes who you are and you just hit --
13 it just lets you right in.

14 Q. Because, as I think you've testified, your
15 password was saved in the bowels of the computer.

16 A. Right.

17 Q. You'd just hit "enter" --

18 A. Right.

19 Q. -- and you were granted access to the
20 variety of databases that you had access to?

21 A. Yes.

22 Q. And it was your understanding that
23 Coldwell Banker was giving you a subscription
24 to CoStar?

25 A. Yes.

1 Q. Okay. Prior to the time that you were
2 given a subscription to CoStar, do you know if
3 anybody else at Coldwell Banker had access to
4 CoStar?

5 A. Prior -- I'm sorry. Could you repeat the
6 question?

7 Q. Yeah. At some point during your tenure at
8 Coldwell Banker you were provided a subscription to
9 CoStar. Correct?

10 A. Yes.

11 Q. Prior to that moment, were you --

12 A. Prior to the subscription -- when they gave
13 it to me?

14 Q. -- were you aware of anybody else at
15 Coldwell Banker who had CoStar?

16 A. There was -- his name was Syd Schuster,
17 and he had a subscription that -- and they used
18 a computer in the -- what they call the research
19 room. There was three -- or could be four --
20 computers in their research room and you accessed
21 it through there.

22 Q. Okay. Who is Syd Schuster?

23 A. He's an associate with them.

24 Q. Okay. So when you were granted a
25 subscription to CoStar, you knew what CoStar was?

1 A. Right.

2 Q. And you knew that because you knew that
3 one other Coldwell Banker associate had access
4 to it prior to you be giving -- been given a
5 subscription?

6 A. Yes.

7 Q. Okay. Then you were granted a subscription
8 by Coldwell Banker?

9 A. Yes.

10 Q. Were you told at that time, "This is
11 a six-month subscription. This is a 12-month
12 subscription," any kind of time frame with regard
13 to the subscription?

14 A. No.

15 Q. Were you told that it would expire at any
16 time?

17 A. No.

18 Q. Were you told, "You can only use this
19 when you're inside the Coldwell Banker property"?

20 A. No.

21 Q. Were you told, "You can only use it if
22 you're logged in from a Coldwell Banker authorized
23 terminal"?

24 A. No.

25 Q. Were you told that at some point -- at any

1 point it would not be possible for you to access
2 the subscription?

3 A. No.

4 Q. Okay. You weren't provided any information
5 about the length of time, the parameters with which
6 you had a subscription to CoStar?

7 A. Correct.

8 Q. And I want to be clear because counsel
9 asked you. You were never provided that orally.
10 Correct?

11 A. Correct.

12 Q. You never received an e-mail that you can
13 recall about that. Is that correct?

14 A. Correct.

15 Q. You never received a letter about that.
16 Is that correct?

17 A. Correct.

18 Q. And you never received a telephone call
19 from anybody about that. Is that correct?

20 A. That's correct.

21 Q. Can I also -- is it true, then, once you
22 ceased being affiliated with Coldwell Banker, did
23 you receive an e-mail saying, "You no longer have
24 access to your subscription to CoStar"?

25 A. No.

1 Q. Did you receive a telephone call that says,
2 "Mr. Bell, I just want to remind you, you no longer
3 have access to your subscription to CoStar"?

4 A. No.

5 Q. Did you receive a letter --

6 A. No.

7 Q. -- that said "you no longer have a
8 subscription"?

9 A. No.

10 Q. And can I assume that you didn't receive a
11 telephone call either?

12 A. No telephone call.

13 Q. Okay. Tell me about when you left
14 Coldwell Banker. Were there issues with getting
15 your -- for example, getting your name off of their
16 web site?

17 A. Yes.

18 Q. Tell me about that.

19 A. After I left and, you know, I saw -- I'd
20 see a few of the people that used to be there,
21 and they had left. And my name still appeared on
22 the web site, and I had sent -- put calls in to
23 Jerry Lamb, who's -- took over for John Skicewioz
24 -- and told him that "Could you please take my name
25 off your web site? It's -- I'm not -- I'm no

1 longer there." Didn't get any action on that.

2 So then I finally -- somebody provided
3 me with -- and her name is Peggy Kronos,
4 and I placed a call -- it could have been the
5 first quarter of '07 -- to the headquarters in
6 Sarasota asking them if -- and she took care of it
7 immediately there and took it off and that was it.

8 Q. Okay. Was there any other sort of
9 lingering association with Coldwell Banker that you
10 had an issue with after you left Coldwell Banker?

11 A. I still received some sporadic e-mails with
12 scott.bell@coldwellbanker.com. I still received
13 sporadic e-mails from various -- it's almost like
14 spam or junk, but I still get e-mails from
15 Coldwell. I still -- so I just kind of gave up on
16 that.

17 Q. But did you make contact with anybody at
18 Coldwell Banker at some point saying, "Can you make
19 this stop?"

20 A. Yes, I did. Like, Peggy Kronos,
21 Jerry Lamb a number of times. I even talked to
22 Jim Parker and told him about it.

23 And he said, "I'm not in charge here. I
24 can't help you with that. But maybe call somebody
25 down at corporate and they'll take care of it for

1 you."

2 Q. So, if I understand it, you made at least
3 three telephone calls to individuals at Coldwell
4 Banker in an attempt to sever -- completely sever
5 your relationship with Coldwell Banker?

6 A. Correct.

7 Q. And you had to make those calls on numerous
8 occasions?

9 A. Yes.

10 Q. And it took some doing, but they did take
11 your name off the web site. Correct?

12 A. Yes, after --

13 Q. But to -- go ahead.

14 A. Yes. After several months, yes.

15 Q. But, as I understand it, to this day you
16 still get the random spam e-mails?

17 A. Yes.

18 Q. You still have some
19 scott.bell@coldwellbanker e-mail address?

20 A. Correct.

21 Q. Okay. So you're still in some way
22 affiliated with Coldwell Banker whether you want to
23 be or not?

24 A. Right.

25 MR. SAUERS: Objection.

1 BY MR. GIBSON:

2 Q. Now, were you involved in any way in the
3 decision to sign up for CoStar while you were at
4 Coldwell Banker?

5 A. No.

6 Q. You weren't involved in any of the
7 negotiations with anybody from CoStar?

8 A. No.

9 Q. As I understand it, you were told "We're
10 giving you a subscription to CoStar"?

11 A. Yes.

12 Q. "Here it is"?

13 A. Yes.

14 Q. Okay. Were you given training on it?

15 A. No.

16 Q. Okay. How did you -- how did you learn
17 about how to use it?

18 A. Just by way of accessing the web site and
19 you type in different -- you just -- by using the
20 site itself, that's the only way you can learn.

21 Q. Trial and error?

22 A. Yes.

23 Q. Okay. Now, we know that you had your own
24 computer.

25 A. Um-hum.

1 Q. And is that the same computer that you used
2 when you went to Klein & Heuchan?

3 A. Yes.

4 Q. Okay. Counsel asked you about the office
5 suite that was on the computer and specifically
6 about the Outlook program that you use to access
7 your e-mail.

8 A. Yes.

9 Q. Do you remember that?

10 A. Yes.

11 Q. And he -- you testified that you used that
12 Outlook program to access your Klein & Heuchan
13 e-mail. Is that correct?

14 A. Yes.

15 Q. Did Klein & Heuchan provide you with the
16 Outlook program?

17 A. No.

18 Q. That was something that you had when you
19 came to Klein & Heuchan?

20 A. Yes.

21 Q. Okay. Did Klein & Heuchan provide
22 any software services when you started work at
23 Klein & Heuchan? Did they -- and let me strike
24 that.

25 Did they install any software on your

1 computer when you came to work for them?

2 A. No.

3 Q. Okay.

4 MR. GIBSON: Can we take a break now?

5 MR. SAUERS: We can take a break. We need
6 some tape.

7 THE VIDEOGRAPHER: We're off the record at
8 1:40 p.m.

9 (Discussion off the record.)

10 THE VIDEOGRAPHER: We're on the record at
11 1:43 p.m.

12 MR. GIBSON: Thank you.

13 BY MR. GIBSON:

14 Q. When you left Coldwell Banker, you believed
15 that you continued to have the authority to access
16 the CoStar database. Is that correct?

17 A. Yes.

18 Q. Can you look at -- pull out Exhibit 25.

19 A. Okay.

20 Q. Prior to -- and it's your testimony that
21 after that is received -- that exhibit was received
22 by Mr. Klein, Mr. Klein called you -- is that
23 correct? --

24 A. Correct.

25 Q. -- and showed you at least some of the

1 documents that make up Exhibit 5, specifically the
2 first couple pages. Is that correct?

3 A. Yes.

4 Q. Okay. Prior to you seeing that, did you
5 have any inclination that you were at any time not
6 authorized to access the CoStar database?

7 A. No.

8 Q. Do you have any reason to believe that
9 Mark Klein had any reason to believe you didn't
10 have access to the CoStar database?

11 A. No.

12 Q. Did you ever tell Mark Klein, "I'm
13 accessing the CoStar database and I shouldn't be"?

14 A. No.

15 Q. Did Mark Klein ever tell you, "I don't
16 think you should be accessing the CoStar database"?

17 A. No.

18 Q. How about Steve Klein? Did you ever have
19 any type of conversations like that with Mr. Klein,
20 Steve Klein?

21 A. No.

22 Q. How about Ms. Healey?

23 A. No.

24 Q. So -- and what's the date of that letter?

25 A. April 16th, 2008.

1 Q. So am I correct that prior to the time
2 that you had a discussion with Mr. Klein about that
3 letter, you had no idea that you could not -- you
4 could not access the database?

5 A. Correct.

6 Q. After you had the conversation about that
7 letter, did you access the CoStar database?

8 A. No.

9 Q. So from the moment you had an inclination
10 that you were not authorized to access the
11 database, you ceased accessing the database?

12 A. Yes.

13 Q. Prior to your discussion about that letter,
14 am I correct that CoStar never turned your access
15 off to the CoStar database?

16 A. They did not, no.

17 Q. Do you assume that they had the ability to
18 do that?

19 A. Yes.

20 MR. SAUERS: Objection. Calls for
21 speculation.

22 Q. Let's talk about -- let's go to 26,
23 Exhibit 26.

24 A. Okay.

25 Q. Counsel asked you about the sale on the

1 second page, the Rogers sale --

2 A. Yes.

3 Q. -- 1250 Rogers.

4 A. Yes.

5 Q. What was your involvement in that sale?

6 A. Mark and I were the -- it was Mark's --
7 primarily Mark's listing, and he assigned me to
8 help him lease it out and -- actually, it was more
9 of a -- like, a learning experience. You get your
10 feet wet in the business.

11 It was his -- it's his client and it's been
12 his listing for quite a long time, and he assigned
13 it to me. And Mark actually closed it.

14 Sonia Boutros was the one that purchased
15 it and it was -- Mark pretty much handled all --
16 I did some of the -- showed the property and do
17 things like that, but that -- that's it.

18 Q. Sonia Boutros?

19 A. Yes.

20 Q. Who's that?

21 A. She's a Charles Rutenberg realtor.

22 Q. So somebody from another real estate
23 company contacted Klein & Heuchan about a
24 Klein & Heuchan listing?

25 A. Correct.

1 Q. And it was that communication, and then
2 Mr. Klein had you do some of the legwork in showing
3 the property?

4 A. Correct.

5 Q. It wasn't a Klein & Heuchan client who
6 purchased or leased the property. Correct?

7 A. Repeat the question, please.

8 Q. If I understand it, it was not a
9 Klein & Heuchan client who leased or purchased the
10 property?

11 A. Right. Correct.

12 Q. It was another company that came to
13 Klein & Heuchan?

14 A. Correct.

15 Q. You don't know if they used CoStar to find
16 the property. Right?

17 A. Correct.

18 Q. But you at some point accessed
19 CoStar looking at the data they had?

20 A. Yes.

21 Q. CoStar's information had absolutely
22 no bearing on the closing of that transaction.
23 Correct?

24 A. Correct.

25 Q. So it would be safe to say, then, that

1 Klein & Heuchan and you did not benefit monetarily
2 from CoStar's information with respect to the
3 Rogers transaction?

4 A. Correct.

5 MR. GIBSON: I apologize. I do only have
6 one copy.

7 BY MR. GIBSON:

8 Q. But I'm going to hold -- I'm going to hand
9 you a document that's been previously produced and
10 has a Bates number of K&H 0033.

11 MR. GIBSON: Counsel, do you need to see
12 this before I ask about it?

13 MR. SAUERS: Which is it? No. I have a
14 copy. That's fine.

15 BY MR. GIBSON:

16 Q. Do you recognize that document?

17 A. Yes.

18 Q. And am I correct that in the lower
19 right-hand corner there's a Bates number of
20 K&H 0033, very small there?

21 A. Um-hum.

22 Q. Yes?

23 A. K&H 0033.

24 Q. Okay.

25 A. Yes.

1 Q. What is that?

2 A. Independent Contract or Agreement Between
3 Broker and Salesman.

4 Q. Who are the parties to that agreement?

5 A. It looks like Mark Klein. I can't read --
6 it would be the firm and myself.

7 Q. Okay. This is your Independent Contractor
8 Agreement with Klein & Heuchan. Is that correct?

9 A. Yes.

10 Q. Is your signature on the bottom of the
11 document?

12 A. Yes.

13 Q. Do you recall signing that document --

14 A. Yes.

15 Q. -- prior to your beginning your association
16 with Klein & Heuchan?

17 A. Yes.

18 Q. Okay. Can you read for us out loud -- out
19 loud number -- paragraph number 10 of the
20 agreement?

21 A. "It is intended that the salesman shall
22 be an independent contractor not an employee for
23 federal tax purposes or any other purposes and
24 it shall, at all times during the term of this
25 agreement, perform his duties and responsibilities

1 without any supervision or control by the broker."

2 Q. Isn't it true that Mr. Mark Klein and
3 Mr. Steve Klein did not control your daily
4 activities during your association with
5 Klein & Heuchan?

6 A. We -- could you -- could you repeat the
7 question again?

8 Q. Did Mr. Klein -- Mark Klein and
9 Mr. Steve Klein -- control your daily activities
10 during your association with Klein & Heuchan?

11 A. No.

12 Q. Did you have to be at work at a certain
13 time --

14 A. We had to be at --

15 Q. -- every day?

16 A. We had to be at meetings on Mondays and
17 Wednesdays.

18 Q. Okay. So you needed to appear at sales
19 meetings?

20 A. Yes.

21 Q. But did you have to be at the office at
22 8:30 every single day?

23 A. No.

24 Q. Okay. You controlled the hours that you
25 worked. Is that correct?

1 A. Yes.

2 Q. You didn't have to stay at the office until
3 5:30 every day and never a minute before. Is that
4 correct?

5 A. Correct.

6 Q. During your day you could go in and out
7 as you pleased doing your work. Is that correct?

8 A. Yes.

9 Q. Okay. While you were at Klein & Heuchan, I
10 believe we know that internet service was provided
11 to you. Is that correct?

12 A. Yes.

13 Q. Am I correct that you would show up with
14 your laptop and connect a cable and you'd have
15 internet service?

16 A. Correct.

17 Q. Did you log in through some process,
18 or did you just plug in and it was live?

19 A. Plug in and go.

20 Q. Okay. So you didn't actually log into some
21 server or some Klein & Heuchan system?

22 A. No.

23 Q. Okay. You also testified that, in addition
24 to your own laptop, you had your own printer?

25 A. Correct.

1 Q. All of the associates had their own
2 printer?

3 A. Yes.

4 Q. Okay. You did have a copy machine/scanner
5 that you had -- were granted access to by
6 Klein & Heuchan. Correct?

7 A. Yes.

8 Q. Okay. And you were provided a desk.
9 Is that correct?

10 A. Yes.

11 Q. All right. Now, as I understand it, all
12 you needed was a live internet connection in order
13 to access the CoStar database. Is that correct?

14 A. Correct.

15 Q. So, once you plugged into Klein & Heuchan,
16 you could access the CoStar database?

17 A. Yes.

18 Q. Just like you could access CNN?

19 A. Yes.

20 Q. Okay. And if you went to a Starbucks and
21 logged in and used Wi-Fi, could you access CoStar
22 from such an internet portal?

23 A. I believe so. I'm not sure. I would
24 believe so, yes.

25 Q. How -- did you ever access CoStar at home?

1 A. Yes.

2 Q. Okay. How did you do that?

3 A. Same way. Just plug into the internet and
4 go.

5 Q. Okay. So as far as you knew, anywhere that
6 you had access to live internet, you could access
7 the CoStar database?

8 A. Yes.

9 Q. Okay.

10 MR. GIBSON: Can I get that document back,
11 please?

12 BY MR. GIBSON:

13 Q. Can you tell me what LoopNet is?

14 A. LoopNet is a -- very similar to CoStar.
15 They have the sales. It's the listing. We would
16 use that as our primary listing, external database,
17 a list in there.

18 And you could get a basic membership for
19 free and you could upgrade to a premium membership.
20 And they had different suites and different
21 amounts, but you could -- it was your choice what
22 you wanted to go with, and you didn't have to use
23 it at all.

24 Q. So do I understand you that LoopNet is a
25 database. Correct?

1 A. Yes.

2 Q. And is it a database of commercial
3 properties available in the area?

4 A. Yes.

5 Q. It sounds like similar to CoStar. Correct?

6 A. Yes.

7 Q. Okay. Did you access LoopNet while at
8 Klein & Heuchan?

9 A. Yes.

10 Q. Did Klein & Heuchan pay to have you
11 permitted access?

12 A. No.

13 Q. Okay. Did you have the free access to
14 LoopNet?

15 A. Yes.

16 Q. Did you have any additional access to
17 LoopNet?

18 A. I had a premium package for quite sometime,
19 yes.

20 Q. Okay. And who paid for that?

21 A. I did.

22 Q. Klein & Heuchan didn't pay for that?

23 A. No.

24 Q. So each individual associate could make the
25 decision as to what subscription they did or did

1 not want?

2 A. Yes.

3 Q. And each -- each associate could make the
4 decision as to what level of subscription they
5 wanted or not?

6 A. Yes.

7 Q. Is that true?

8 The difference is, is that with
9 Coldwell Banker, Coldwell Banker paid for CoStar.
10 Correct?

11 A. Yes.

12 Q. And with LoopNet, you had to pay whatever
13 level you wanted?

14 A. Yes.

15 Q. Okay.

16 MR. SAUERS: Objection. Calls for
17 speculation.

18 MR. GIBSON: What was the -- can you read
19 back the last question?

20 (The requested portion was read back by the
21 reporter.)

22 BY MR. GIBSON:

23 Q. Okay. With LoopNet, during your employ
24 with Klein & Heuchan --

25 A. You chose --

1 Q. Well, let me ask, so that we can get the --

2 A. All right.

3 Q. -- and I'm not trying to be rude.

4 But with LoopNet during your employ with
5 Klein & Heuchan you made the determination as to
6 what subscription level and access you wanted?

7 A. Yes.

8 Q. And you paid for it?

9 A. Yes.

10 Q. Okay. Did you have any communication
11 with anybody at Coldwell Banker after receiving
12 or discussing with Mr. Klein the letter from
13 Mr. Ricketts?

14 A. No.

15 Q. Okay. You've discussed a conversation
16 that you had with Mr. Ricketts on the telephone
17 with Mr. Klein. Am I correct?

18 A. Yes.

19 Q. There was one telephone conversation?

20 A. With -- yes. With me, yes.

21 Q. With Mr. Ricketts?

22 A. Yes.

23 Q. After that telephone conversation, any
24 further conversation with anybody from CoStar?

25 A. Me, no. No. No.

1 Q. Okay. And I guess I should say before you
2 got sued.

3 A. Yes.

4 Q. Okay. No communication with anybody at
5 CoStar?

6 A. No.

7 Q. Can you look at Exhibit 7?

8 A. Okay.

9 Q. Who is Gus?

10 A. I believe Gus is somebody that had called
11 and asked about -- was inquiring about perhaps
12 moving his business or leasing somewhere. And he
13 was inquiring about, do you have any information
14 that gives -- tells me what the different rates
15 might be around, and I sent him this.

16 Q. Okay. Now, back up just a second.

17 During your association with Klein &
18 Heuchan, is it accurate that you sent and received
19 numerous e-mails on a daily basis?

20 A. Yes.

21 Q. Did you inform or cc a Klein & Heuchan
22 individual or associate on every e-mail that you
23 sent?

24 A. No.

25 Q. Okay. Is there any reason to believe that

1 Klein & Heuchan, Mr. Klein or Steve Klein knew that
2 you were sending that e-mail on that day?

3 A. No.

4 Q. Okay. They aren't cc'd on it. Is that
5 correct?

6 A. Correct.

7 Q. Okay. Exhibit 8, if you could.

8 As I understand it, this is an e-mail --
9 the first e-mail on the chain, if you will, is an
10 e-mail that you received from CoStar.

11 A. Yes.

12 Q. Did you ask for that e-mail?

13 A. No.

14 Q. It is an unsolicited e-mail?

15 A. Yes.

16 Q. In fact, it appears as though there's some
17 program that classifies that at some level of spam
18 in the regarding line, doesn't it?

19 A. Um-hum.

20 Q. Yes?

21 A. In the subject line, "spam-low."

22 Q. Okay. It didn't require your password to
23 see that e-mail?

24 A. No.

25 Q. And it didn't require your password to

1 forward that e-mail to the individual you forwarded
2 it to?

3 A. No.

4 Q. Exhibit 11.

5 A. Okay.

6 Q. This is an e-mail, as I understand it, to a
7 Tracy McMurray. Is that correct?

8 A. Yes.

9 Q. Tracy McMurray was a client of yours for
10 over 10 years. Is that correct?

11 A. Yes.

12 Q. Well, I guess more accurate, you knew him
13 for more than 10 years. Correct?

14 A. I would say approximately 10 years.

15 Q. And he was a client of yours?

16 A. Yes.

17 Q. Did you make the sale associated with the
18 property listed in this e-mail?

19 A. No. No.

20 Q. Did you make any commission based on the
21 property listed in that e-mail?

22 A. No.

23 Q. Did Klein & Heuchan make any money with
24 regard to that property listed in the e-mail?

25 A. No.

1 Q. I want to -- we talked about a transaction
2 that you had with regard to a space in Westshore --
3 in the Westshore area.

4 A. Yes.

5 Q. I understand that you had a client who
6 wanted to move from the Pinellas area to the
7 Westshore market. Is that correct?

8 A. Yes.

9 Q. And there was a closing of that transaction
10 at some point. Is that correct?

11 A. Yes.

12 Q. Did I understand you that the client
13 of yours brought to you the building that he
14 eventually closed on?

15 A. Yes.

16 Q. You didn't provide him information with
17 which he then selected that building?

18 A. No.

19 Q. He came to you with a property and you
20 assisted him in closing that property?

21 A. Yes.

22 Q. You did at some point look at the CoStar
23 database with regard to that building?

24 A. Yes.

25 Q. CoStar and the information on the database

1 had no impact on the closing of that transaction?

2 A. No.

3 Q. You talked about a call to CoStar
4 corporate --

5 A. Yes.

6 Q. -- at some point. And you called them
7 in an effort to find out how much an additional
8 package would be that you didn't currently have
9 with your subscription. Correct?

10 A. Yes.

11 Q. Did they ask you, for example, your user
12 name or password?

13 A. No.

14 Q. Did they ask you what level of service you
15 currently had?

16 A. No.

17 MR. SAUERS: Asked and answered.

18 Q. Did they ask you how long you had been a
19 CoStar subscriber?

20 A. No.

21 Q. They didn't ask you any information about
22 your subscription to CoStar?

23 A. No.

24 Q. And am I correct that they told you that
25 they could send a sales associate to you to provide

1 you additional information?

2 A. Yes.

3 Q. Did that ever happen?

4 A. No.

5 Q. Did you not want it or did they just never
6 follow up to it and do it?

7 A. No, I didn't want it. No.

8 Q. You didn't ask for the follow-up?

9 A. No.

10 MR. SAUERS: Objection. Foundation to
11 this line of questioning. I don't think he ever
12 testified in this deposition that anyone was
13 offered to come to his facility.

14 MR. GIBSON: Yes, he did.

15 All right. Can we take a break?

16 THE VIDEOGRAPHER: We're off the record at
17 2:02 p.m.

18 (There was a recess.)

19 THE VIDEOGRAPHER: We're on the record at
20 2:11 p.m.

21 BY MR. GIBSON:

22 Q. During your association with
23 Klein & Heuchan, did you access the IMAP database?

24 A. Yes.

25 Q. Do you have any personal knowledge that

1 Klein & Heuchan, during your association with
2 Klein & Heuchan, benefitted financially because
3 of your access to CoStar's database?

4 A. No.

5 MR. GIBSON: I don't have any other
6 questions.

7 MR. SAUERS: I just have a few.

8 EXAMINATION

9 BY MR. SAUERS:

10 Q. Do you believe you're affiliated with
11 Coldwell Banker?

12 A. No.

13 Q. Did you believe you were affiliated with
14 Coldwell Banker when you joined Klein & Heuchan?

15 A. No.

16 Q. In the course of your employment with
17 Klein & Heuchan, did you have to comply with the
18 requirements set forth in Exhibit 2, which is the
19 Office Policy Manual and Commission Schedule?

20 I suppose we could just look at the first
21 page where you -- does it state that you understand
22 it completely --

23 A. Yes.

24 Q. -- and agree to abide by it in every
25 respect?

1 A. Yes.

2 Q. Is that your signature on the bottom?

3 A. Yes.

4 Q. Who paid for your premium access to
5 LoopNet?

6 A. I did.

7 Q. Who had a contract with LoopNet?

8 A. I would. Me.

9 Q. Did you get a password and user name for
10 your access to the premium content?

11 A. No. You create it yourself. You -- they
12 log you in; you create it yourself.

13 Q. But it was a password-protected setup?
14 You had to use a password and user name in order to
15 access the premium content?

16 A. It depends on what you had. If you had the
17 -- like, when I had the -- I had the basic, it's --

18 Q. Sure.

19 A. -- it's not -- anybody can use it.

20 Q. My question is limited to the premium
21 access content.

22 A. Okay.

23 Q. For your premium access content, you had
24 to use a user name and password to access it?

25 A. Yes.

1 Q. And you paid -- you paid for that access?

2 A. Yes.

3 Q. And you had a contract?

4 MR. GIBSON: Objection. Asked and
5 answered.

6 Q. You had a contract with LoopNet?

7 A. Whatever their terms of use, I guess, would
8 be.

9 Q. Okay. And you would be -- you would -- you
10 would be required to comply with those terms of
11 use. Correct?

12 A. Yes.

13 MR. SAUERS: No further questions.

14 MR. GIBSON: One follow-up.

15 EXAMINATION

16 BY MR. GIBSON:

17 Q. As I understand it from questioning, you
18 agreed to use some sort of terms of use when
19 accessing CoStar. Is that correct?

20 A. Yes.

21 Q. And, likewise, you agreed to use some terms
22 of use when you accessed LoopNet. Correct?

23 A. Yes.

24 MR. GIBSON: That's all I've got. Thanks.

25 MR. LOVE: One follow-up.

EXAMINATION

1

2

BY MR. LOVE:

3

Q. Any discernible difference between your
4 access to LoopNet and your access to CoStar as a
5 user?

6

A. No.

7

MR. LOVE: No further questions.

8

MR. SAUERS: All set.

9

THE VIDEOGRAPHER: We're off the record at

10

2:14 p.m.

11

(The deposition was adjourned at 2:14 p.m.)

12

13

14

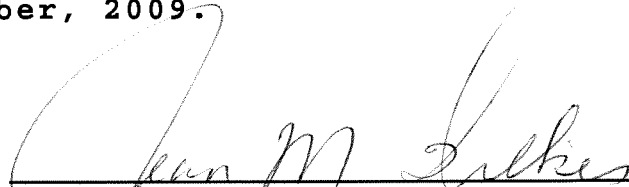
15

CERTIFICATE OF OATH

STATE OF FLORIDA)
 COUNTY OF HILLSBOROUGH)

I, the undersigned authority, certify that CHRISTOPHER SCOTT BELL 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

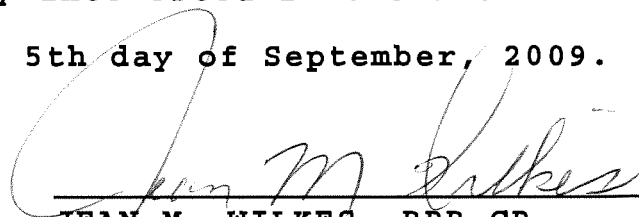
REPORTER'S DEPOSITION CERTIFICATE WITH ACKNOWLEDGMENT

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