

United States District Court
For The Southern District of New York

JEREMY LEBEWOHL, UNCLE ABIES DELI)
INC. d/b/a 2nd AVE DELI, UNCLE)
ABIES DELI ON FIRST INC., UNCLE)
ABIES DELI SANDWICH TRADEMARKS LLC,)
and JACK LEBEWOHL,)

Plaintiff,)

vs.)

No. 11-CIV-3153-PAE)

HEART ATTACK GRILL LLC, HAG LLC,)
and JON BASSO,)

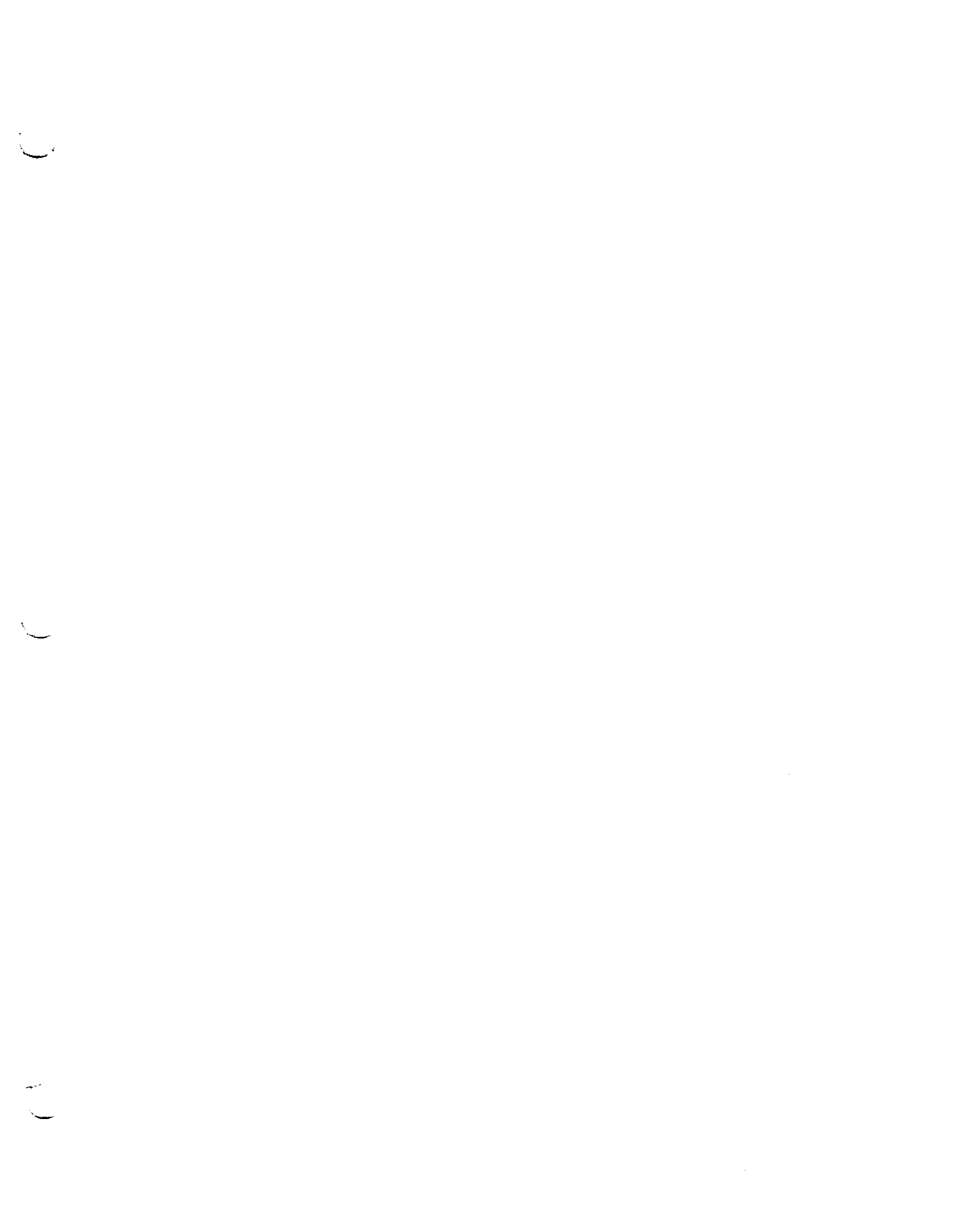
Defendants.)

TELEPHONIC DEPOSITION OF MIKE SHALDJIAN

Phoenix, Arizona
November 16, 2011
3:13 p.m.

(Copy)

Prepared By:
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I N D E X

MIKE SHALDJIAN

EXAMINATION

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EXHIBITS

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A Broadcast Monitoring Report (HAG--000659 - '0740)	5	11
B Broadcast Monitoring Report (HAG--002163 - '2290)	9	15

1 TELEPHONIC DEPOSITION OF MIKE SHALDJIAN,

2

3 taken on November 16, 2011, commencing at 3:13 p.m., at the
4 offices of mg reporting, 350 East Virginia Avenue, Suite
5 150, Phoenix, Arizona, before Lorena Marin-Garcia, a
6 Certified Reporter, Certificate No. 50541, for the State of
7 Arizona.

8 APPEARANCES

9 For Plaintiffs:

(Participating Remotely via Conference Call)

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(Participating Remotely via Conference Call)

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1 TRANSCRIPT OF PROCEEDINGS

2 (At this time, Mr. Chuang is not participating
3 telephonically.)
4

5 MIKE SHALDJIAN,
6 a witness herein, having been first duly sworn by the
7 Certified Reporter to speak the truth and nothing but the
8 truth, was examined and testified as follows:
9

10 EXAMINATION

11 BY MR. SPIELMAN

12 Q Hi. My name is Darren Spielman. I'm an attorney
13 representing the defendants in the captioned case of Jeremy
14 Lebewohl versus Heart Attack Grill, 11-CIV-3153-PAE.

15 Can you state your name for the record, please.

16 A Mike Shaldjian.

17 Q Mike, can you tell me what the name of your
18 company is?

19 A Media Watch AZ, LLC.

20 Q And, Mike, were you served with a subpoena and
21 notice for deposition regarding today?

22 A Yes, I was.

23 Q Did you bring those documents with you?

24 A I have them here.

25 Q Okay. Mike, can you tell me, what is your title

14:22 1 or position with Media Watch Arizona?

15:14:25 2 A I am co-owner and managing partner.

15:14:30 3 Q Okay. And how long have you been the co-owner
15:14:34 4 and/or managing partner of the Media Watch AZ, LLC, company?

15:14:39 5 A Since January 1st, 2007.

15:14:42 6 Q Okay. In conjunction with the subpoena and
15:14:48 7 documents that you were asked to bring with you, you were
15:14:52 8 also provided some documents as Exhibit A1 and A2.

15:14:59 9 Do you have those with you as well?

15:15:00 10 A Yes, I do.

15:15:01 11 Q Okay. The documents that you have are labeled --
15:15:11 12 that are labeled A1, can you -- do you recognize those
15:15:14 13 documents?

15:15:14 14 A Yes, I do.

15:15:17 15 Q Can you describe what those documents are for the
15:15:19 16 record?

15:15:21 17 A This is a report -- a broadcast monitoring report
15:15:29 18 that we generated and produced for the Heart Attack Grill
15:15:37 19 upon our first meeting with John Basso when he hired us for
15:15:47 20 our services.

15:15:48 21 This report, I believe, scans over a -- about a
15:15:56 22 three and a half year period. We had the capabilities to go
15:16:02 23 back as far as September 1st of 2006 in our database, and I
15:16:10 24 produced that report originally for him. And he continued
15:16:16 25 services with my company through, I believe -- my dates

15:16:25 1 aren't exactly correct, but I believe through May or June of
15:16:32 2 2011.

15:16:35 3 Q Okay. The documents that you have in front of
15:16:37 4 you, on the very first page, can you identify at the bottom
15:16:42 5 of the page the first Bates page number at the bottom of the
15:16:47 6 page?

15:16:51 7 A Is this the HAG--000659?

15:16:57 8 Q Correct.

15:16:57 9 And then can you identify for me the last page --
15:17:00 10 Bates page number in that sequence for Exhibit A1?

15:17:08 11 A One moment.

15:17:13 12 HAG--000740.

15:17:20 13 Q Prior to today's deposition, did you have an
15:17:22 14 opportunity to review Exhibit A1, Bates pages '659 through
15:17:29 15 '740?

15:17:31 16 A Yes, I have.

15:17:34 17 Q The information contained in those pages, do you
15:17:39 18 believe that those are an accurate representation of the
15:17:42 19 report that you provided to the defendant client in
15:17:47 20 relationship to your business as you provide to other
15:17:52 21 clients?

15:17:52 22 A Yes, I do.

15:17:53 23 Q Do you have any reason to believe that the
15:17:55 24 information contained in those documents are not accurate as
15:17:59 25 of the time that you provided them to the defendant client?

15:18:05 1 A I have no reason whatsoever to believe these are
15:18:08 2 not accurate or tampered with at all.

15:18:12 3 Q The information contained in those reports, can
15:18:15 4 you briefly identify how -- for instance, the very first
15:18:20 5 entry, how that is generated on behalf of your company or
15:18:28 6 the defendant client?

15:18:29 7 A Certainly.

15:18:30 8 Our company is a national news monitoring service,
15:18:35 9 and we compile what's known as Line 21 from a broadcast that
15:18:46 10 is put out over the air and that -- in Line 21 is contained
15:18:57 11 the closed-caption text that the station broadcasts for the
15:19:05 12 hearing-impaired.

15:19:07 13 Our computers capture that Line 21 closed-caption
15:19:12 14 text, parses the information, and then matches hits from the
15:19:21 15 broadcasts to computer folders that we have set up for our
15:19:29 16 various clients across the country with the key words for
15:19:33 17 that particular client.

15:19:36 18 In Exhibit A1, for instance, this was what we call
15:19:42 19 a back search that I initially ran for my client when we
15:19:48 20 were first asked to provide our services. And this was
15:19:55 21 called a back search where I went back as far as I could in
15:20:00 22 our database to grab all of the broadcast hits from across
15:20:07 23 the country that matched up with a selection of key words
15:20:13 24 that we felt would accurately pull up all the stories
15:20:19 25 pertaining to his business.

15:20:24 1 Q So would you say that your system is essentially
15:20:26 2 automated and that there is very little human interaction
15:20:37 3 with how the results are displayed?

15:20:38 4 A Absolutely.

15:20:38 5 Q So do you have any reason to doubt the accuracy of
15:20:39 6 the information displayed on the 82 pages of Exhibit A1?

15:20:45 7 A No reason whatsoever.

15:20:48 8 Q Okay. And can you briefly explain how the Nielsen
15:20:51 9 audience number is applied to a specific entry?

15:20:56 10 A Our company subscribes to Nielsen, and we pay a
15:21:03 11 fee for their audience figures that are associated with
15:21:10 12 specific markets, stations, and time slots.

15:21:16 13 That information is input on an annual basis into
15:21:21 14 our main database so that when we generate a report for a
15:21:27 15 client, the coinciding Nielsen numbers for a specific news
15:21:35 16 broadcast from a specific market, station, and time also
15:21:43 17 appears in the reports that we provide.

15:21:48 18 Q Do you believe that the information provided as it
15:21:50 19 relates to the Nielsen numbers in connection with each of
15:21:53 20 the entries is an accurate representation of the data as
15:21:57 21 provided on the given date when you provided the report to
15:22:01 22 the defendant client?

15:22:04 23 A I do.

15:22:05 24 And I have complete faith in the Nielsen company
15:22:10 25 for gathering this data.

15:22:14 1 Q Okay. Do you have any reason to believe that
15:22:16 2 those numbers were altered or modified in any way prior to
15:22:20 3 you receiving this exact Exhibit A1?

15:22:26 4 A From reviewing the documents, it doesn't look like
15:22:31 5 there is anything that jumps out at me that would alert me
15:22:38 6 to even believe that these have been altered with at all, so
15:22:45 7 no. It looks like these are the original numbers that were
15:22:49 8 generated from our report, correct.

15:22:52 9 Q Okay. I'd like to have you hand over Exhibit A1
15:22:57 10 to the court reporter and have it labeled as Exhibit A for
15:23:01 11 the purposes of this deposition. And we can move on to the
15:23:08 12 next one once you're ready.

15:23:20 13 (Deposition Exhibit A was marked for
15:23:21 14 identification.)

15:23:24 15 Q BY MR. SPIELMAN: Exhibit A2 that you were
15:23:25 16 provided prior to this deposition, same type of questions.

15:23:30 17 Did you review this set of documents prior to the
15:23:32 18 deposition?

15:23:33 19 A Yes, I did.

15:23:36 20 Q And do you have any reason to believe that the
15:23:38 21 information contained in that set of documents has been
15:23:42 22 altered or amended?

15:23:45 23 A No, I don't.

15:23:52 24 Q And that stack of documents, can you identify the
15:23:58 25 Bates page range as well for me?

15:24:03 1 A HAG--002163 through HAG--002290.

15:24:15 2 Q And what date frame does that cover?

15:24:20 3 A This covers from April 13th of 2010 through
15:24:31 4 May 20th, 2011.

15:24:35 5 Q The Exhibit A2 that you're referring to right now,
15:24:39 6 is this any different in the way that the data was compiled
15:24:43 7 or in the way that your business handled the compilation of
15:24:46 8 such data as compared to the last exhibit?

15:24:49 9 A Yes. There are a few differences, and the first
15:24:55 10 one being, in the Exhibit A, the original documents, those
15:25:04 11 were generated as a back search for only television and
15:25:12 12 radio hits.

15:25:17 13 Exhibit A2 was generated automatically on an
15:25:24 14 ongoing subscription service with my client, whereas the
15:25:33 15 computer system would automatically email the report
15:25:40 16 directly to my client on a weekly basis.

15:25:44 17 And I believe those were set up to be distributed
15:25:48 18 every Saturday morning, along with the fact that these were
15:25:57 19 completely, automatically generated and delivered to the
15:26:02 20 client without any action on my part.

15:26:05 21 We also at that time included our Internet
15:26:09 22 monitoring service which is differentiated on this report by
15:26:16 23 the icon next to the story hit.

15:26:22 24 The Internet monitoring reports have an icon of a
15:26:28 25 little computer mouse, whereas the broadcast television news

15:26:32 1 segments have an icon of a television set.

15:26:40 2 Q And do you believe that the information contained
15:26:44 3 in the subpoena attachment Exhibit A2 has been altered or
15:26:48 4 amended in any way beyond what you provided to the defendant
15:26:53 5 client?

15:26:55 6 A I do not.

15:27:00 7 Q Do you believe that the exhibit provided to you is
15:27:02 8 an accurate representation of the information that you
15:27:06 9 provided to the defendant client at the time that it was --
15:27:09 10 that it was delivered in accordance with the normal
15:27:12 11 procedures of your business?

15:27:15 12 A Yes, I do.

15:27:18 13 Q Okay. The date ranges that are there, do you
15:27:24 14 believe that the Exhibit A2 is an accurate date range in
15:27:28 15 light of the volume of entries of 128 pages' worth of data
15:27:35 16 or an approximately one-month time period? Is that a
15:27:39 17 reasonable and appearingly accurate result?

15:27:42 18 A Yes, it is.

15:27:45 19 Q Okay. Prior to the deposition, do you recall
15:27:52 20 having a conversation with me about your upcoming
15:27:55 21 deposition?

15:27:56 22 A Yes, I do.

15:27:58 23 Q Did I instruct you in any manner on how to answer
15:28:02 24 any of the questions?

15:28:03 25 A No, not at all.

15:28:05 1 Q Did I provide you any answers prior to this
15:28:08 2 deposition?

15:28:08 3 A No, you haven't.

15:28:10 4 Q Do you have any reason to doubt the accuracy of
15:28:14 5 either of the documents that you've reviewed today?

15:28:16 6 A No, I don't.

15:28:19 7 Q Prior to showing up for the deposition today, you
15:28:29 8 were also asked to do a review of any additional documents
15:28:30 9 or to confirm and verify that these documents are still
15:28:31 10 acceptable in your company's databases or computer system.

15:28:34 11 Did you attempt to do that search?

15:28:36 12 A No, I didn't. But I do know for a fact that the
15:28:40 13 data is still in our database. However, in order for me to
15:28:47 14 have run this search for a two-year period, it would have
15:28:54 15 taken a lot of man-hours for me to do so.

15:29:00 16 Q Would you say that it was completely burdensome
15:29:03 17 and/or unreasonable for you to do a new independent search
15:29:06 18 that would match this set of documents?

15:29:10 19 A Absolutely.

15:29:12 20 Q Okay. Do you have any reason to believe that
15:29:16 21 doing an additional independent search would provide
15:29:19 22 different results?

15:29:21 23 A Not at all.

15:29:23 24 MR. SPIELMAN: Okay. I have no further questions,
15:29:26 25 but I'd like to make a note for the record that opposing

15:29:30 1 counsel, William Chuang, was served with a notice of this
15:29:34 2 deposition on Friday, November 4th, via email, with a copy
15:29:45 3 of the notice and was not present for the deposition today
15:29:55 4 in order to effectuate any potential cross-examination that
15:30:01 5 the plaintiffs might have been entitled to.

15:30:18 6 (A discussion ensued off the record.)

15:30:19 7 MR. SPIELMAN: Can you please hand the second set
15:30:24 8 of exhibits labeled as A2 to the court reporter and have the
15:30:29 9 court reporter --

15:30:29 10 Can you please enter those in as Exhibit B for
15:30:33 11 purposes of this deposition.

15:30:40 12 THE WITNESS: Yes.

15:30:40 13 (Deposition Exhibit B was marked for
15:30:41 14 identification.)

15:30:41 15 Q BY MR. SPIELMAN: One last question.

15:30:48 16 Does your company routinely rely upon the
15:30:52 17 information contained in both Exhibit A and/or Exhibit B in
15:30:57 18 the course of your company's business and your employment?

15:31:04 19 A Darren, I'm not sure that I completely understand
15:31:08 20 the question as --

15:31:10 21 Q Or I can rephrase.

15:31:13 22 Do you, on behalf -- you or your company, Media
15:31:16 23 Watch, do you routinely rely on the information contained in
15:31:22 24 those reports in order to provide those reports to your
15:31:25 25 clients?

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A Yes, we absolutely rely on the reports generated from our system for all of our clients that subscribe to regular reports or purchase ad hoc reports as needed.

That is the entire basis of our existence, is because we are able to provide this service to public relations, marketing, communications professionals, attorneys, investigators, and a wide variety of other clients that would call upon us for our service.

MR. SPIELMAN: Great. Okay. That's all.

(At this time, Mr. Chuang is participating telephonically.)

MR. CHUANG: This is William Chuang.

MR. SPIELMAN: We just finished.

Let's go off the record for one second, please.

MR. CHUANG: Go ahead.

(A discussion ensued off the record.)

THE WITNESS: I have full trust in your abilities. I waive the right completely.

MR. SPIELMAN: Great. Thank you.

(This deposition concluded at 3:34 p.m.)

(Signature waived.)

MIKE SHALDJIAN


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STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing deposition was taken before me, Lorena Marin-Garcia, a Certified Reporter in and for the State of Arizona, Certificate No. 50541; that the witness before testifying was duly sworn by me to testify to the whole truth; that the questions propounded to the witness and the answers of the witness thereto were taken down by me in shorthand and thereafter reduced to typewriting under my direction; that the witness waived reviewing and signing the deposition transcript; that the foregoing pages are a true and correct transcript of all proceedings had upon the taking of said deposition, all done to the best of my skill and ability.

I FURTHER CERTIFY that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

DATED at Phoenix, Arizona, this 28th day of November, 2011.


Lorena Marin-Garcia, RMR, CRR
Certified Reporter
Certificate No. 50541