IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GRANT STREET GROUP, INC.,)
Plaintiff,)
VS.) Civil Action No. 9-1407
REALAUCTIONS.COM, LLC,)
Defendant.)

AMBROSE, Senior District Judge

ORDER OF COURT

The parties have filed excessively extensive Objections to deposition designations, counter designations and trial exhibits. (ECF Nos. 454-456, 463). Based on my review of the same, I find as follows:

- 1. Unless otherwise noted below, all objections based on form, foundation, argumentative, speculation, confusion, repetition, compound, duplicative, incomplete document, vagueness/ambiguousness, no predicate for refreshing recollection, or assuming facts not in evidence are denied without prejudice as premature as these can be cured at trial.
- 2. Unless otherwise noted below, all objections based on "prejudice" or "fairness" are denied. The standard requires that the moving party show the evidence should be excluded because its probative value is "substantially outweighed by a danger of....unfair prejudice." F.R.E 403. Unfair prejudice means an undue tendency to suggest decision on an improper basis. The sum total of the movant's argument is the word "prejudicial" or "fairness" and thus, the movant has failed to provide any grounds for meaningful assessment of the objection.
- 3. Unless otherwise noted below, all objections based on relevance are denied, without prejudice, as premature.
- 4. Unless otherwise noted below, all objections as to exhibits that a party suggests that it "may offer" but is not sure it will offer are denied, without prejudice, as premature.

- 5. Unless otherwise noted below, all objections as to mischaracterizations based on prior testimony or improper characterization of exhibit are denied as parties may counter designate.
- 6. Unless otherwise noted below, for rulings on all objections based on a Motion *in Limine*, please refer to the ruling on that Motion *in Limine* for the ruling on the objection.
- 7. As to the remainder of the objections, I rule as follows:

Grant Street Group's Objections to Deposition Designation (ECF No. 454)		
<u>Witness</u>	Objection / Pages	Ruling
David Dering, Robert O'Neill, Jeffery Harris, Daniel J. Veres,	General Objection to unavailability	Denied, see FRCP 32(a)(3) and FRE 801(d)(2)(D)
Robert O'Neill Robert Panoff	All Objections as to Grant Street's Motion in Limine #6 re: Inequitable Conduct	Granted to the extent said testimony relates the Motion <i>in Limine</i> #6, which was granted on September 25, 2012 prohibiting certain testimony, argument, suggestions or evidence relating to inequitable conduct
Danie Veres	98:16-18 (legal conclusion) 99: 5-7 (legal conclusion)	As to legal conclusion, granted.
James Griffith	General Objection based on reasons set forth in Grant Street's Motion in Limine #1 re: testimony and Evidence regarding eBay	Denied, see Order denying Motion in Limine #1.
	Hearsay Objections	Denied, see Order denying Motion in Limine #1.
lan Yorty	83-84 94: 9-10 94:15-95:9	Designations withdrawn
Donald O'Neill	All Objections relating to Motion in Limine re: Issue Preclusion	Granted in part and denied in part as is consistent with my ruling on Motion <i>in Limine</i> regarding issue preclusion at ECF No. 483

C	Grant Street's Objections to Defendant's Trial Exhibits (ECF No. 455)		
Ex. No.	Objection	Ruling	
D16	Hearsay, as to cover letter	Denied for reason stated	
D38	Hearsay	Denied without prejudice to be reasserted at time of trial	
		if and when the exhibit is used. The objection and	
		response are so cryptic that the court is unable to make	
		a ruling at this time as to whether the statements fall	
		under FRE 801(d)(2) and/or 803(6).	
D39	Hearsay	Denied without prejudice to be reasserted at time of trial	
		if and when the exhibit is used. The objection and	
		response are so cryptic that the court is unable to make	
		a ruling at this time as to whether the statements fall	
		under FRE 801(d)(2) and/or 803(6).	
D45	Hearsay, as to email from	Granted to the extent J. Taylor will not be testifying at	
	J. Taylor	trial.	
D52	Hearsay	Denied based on FRE 803(17)	
D62	Hearsay	Denied based on FRE 803(6)	
D90	Hearsay	Denied, not offered for truth but offered for limited	
		purpose of showing the communication took place	
D95	Hearsay	Denied based on FRE 803(18)	
D96	Hearsay	Denied based on 803(6). Additionally, not offered for	
D07	Llagrani	truth just date	
D97	Hearsay	Denied based on 803(6), not offered for truth but rather to show date	
D98	Hooreay	Denied based on 803(6)	
D90	Hearsay Hearsay	Denied based on 803(6)	
D39	Hearsay	Denied based on 803(6)	
D100	Hearsay	Denied based on 803(6)	
D101	Hearsay	Denied based on 803(6)	
D102	Hearsay	Denied based on 803(6). Additionally, not offered for	
D110	ricarday	truth.	
D114	Hearsay	Denied based on 803(6). Additionally, not offered for	
		truth.	
D115	Hearsay	Denied based on 803(6). Additionally, not offered for	
		truth.	
D116	Hearsay	Denied based on 803(6). Additionally, not offered for	
		truth.	
D117	Hearsay	Denied based on 803(6). Additionally, not offered for	
	-	truth.	
D158	Hearsay	Denied based on 803(6).	
D159	Hearsay	Denied based on 803(6).	
D160	Hearsay	Denied based on 803(6).	
D161	Hearsay	Denied based on 803(6).	
D162	Hearsay	Denied based on 803(6).	
DAGE	1.11	Danied	

Denied

D165

Hearsay

D166	Hearsay	Denied
D173	Hearsay	Denied without prejudice
D189	Hearsay	Denied based on 803(6)
D190	Hearsay	Denied based on 803(6)
D191	Hearsay	Denied based on 803(6)
D200	Hearsay	Denied based on 803(18)
D204	Hearsay (video)	Denied without prejudice
D230	Hearsay	Denied
D241	Hearsay	Denied
D260	Hearsay	Denied
D263	Hearsay	Denied

Realauctions's Objections to Deposition Designation (ECF No. 456-1) **Witness Objection Pages** Ruling David Epner 19:17-20:23 (hearsay) Granted; witness can rephrase 45:18-46:7 (legal conclusion) Denied 46:10-17 (legal conclusion) Denied 46:18-19; 22-25 – 47:1-4) Granted (legal conclusion) 65:9-66:9 (hearsay) Denied 80:14-81:1 (legal conclusion) Denied Kenneth Dale 59:20-23 (hearsay) Denied; doesn't match with a statement or a Farmer, Jr. question calling for hearsay 126:17-26 Designations withdrawn 140:2-3 (hearsay) Denied 140:15-18 (misstates content) Denied 141:19-22 (hearsay) Denied Alexander 5:23-7:9 (delay) Denied 8:5-21 (delay) Lizano Denied 94:13-96:19 (fairness) Denied 37:14-38:16 (hearsay) Doug Denied McClendon 89:12-91:12 (hearsay) Denied Denied 107:6-108:8 (legal conclusion) 108:20-109:5 (legal Denied conclusion) Craig McIntyre 54:15-55:16 (legal Denied conclusion) 55:25-57:11 (legal Denied conclusion) 57:14-20 (legal conclusion) Denied 57:23-58:18 (legal Denied conclusion) 65:7-66:13 (legal conclusion) Denied Denied 66:16-67:18 (legal conclusion) 67:22-68:3 (legal conclusion) Denied 71:3-73:5 (hearsay) Denied 73:22-74:13 (hearsay) Denied 82:12-25 (hearsay) Denied 83:3-84:7 (hearsay) Denied 84:10-23 (hearsay) Denied 100:3-13 (hearsay) Denied 117:8-23 (legal conclusion) Denied 100:8-19 (legal conclusion) Eric Benson Denied 129:11-16 (hearsay) Denied Ronald E. Rubin 11:11-12, 14 (hearsay) Denied 13:18-15:11 (hearsay) Denied

Denied

49:19-52:15 (hearsay)

	65:17-18 (hearsay)	Denied
	65:23-67:7 (hearsay)	Denied
	80:5-18 (hearsay)	Denied
	81:17-82:11 (hearsay)	Denied
	87:5-7 (hearsay)	Denied
	91:10-12 (hearsay)	Denied
	91:19-92:4 (hearsay)	Denied
	92:17-93:7 (hearsay)	Denied
	103:19-22 (hearsay)	Denied
	107:19-108:11 (hearsay)	Denied
Marc	24:19-25:8 (hearsay)	Denied
Thomashaw	27:8-22 (hearsay)	Denied
6-28-11	41:10-13 (hearsay)	Denied
	152:7-153:7 (hearsay)	Denied
	192:5-13 (hearsay)	Denied
Marc	40:5-43:10 (hearsay)	Granted as to 43:7-10, otherwise denied
Thomashaw	46:11-48:14(hearsay)	Granted as to 47:22-48:1, 13-14, otherwise
10-18-11	40.11-40.14(ncarsay)	denied
10-10-11	40.24 40.2 (haaraay)	
	48:21-49:2 (hearsay)	Denied
	49:10-51:6 (hearsay)	Granted as to 49:17-21, 50:10-22,
		otherwise denied
	51:10-55:10 (hearsay)	Granted as to 53:4-13, 18-24, otherwise
		denied
	56:4-24 (hearsay)	Denied
	58:19-20 (hearsay)	Denied
	62:13-65:21 (hearsay)	Granted as to 64:1-11, 24-25; 65:8-13, 19-
	(,	21, otherwise denied
	72:3-75:16 (hearsay)	Denied
	75:22-25 (hearsay)	Denied
	` ,	
	76:5 (hearsay)	Denied
	76:8-83:6 (hearsay)	Granted as to 76:14-19, 77:4-19; 78:17-21;
		79:1-4, otherwise denied
	92:2-18 (hearsay)	Denied
	98:13-99:6 (hearsay)	Denied
	99:9-19 (hearsay)	Granted as to 99:15-17, otherwise denied
	117:2-118:5 (hearsay)	Denied
	125:2-127:25 (hearsay)	Denied
	130:5-133:22 (hearsay)	Denied
	134:5-136:14 (hearsay)	Denied
	136:17-137:1 (hearsay)	Denied
	` ,	
	140:14-148:21 (hearsay)	Denied
	158:12-159:2 (hearsay)	Denied
	159:4-25 (hearsay)	Denied
	161:5-11 (hearsay)	Denied
	161:14-162:21 (hearsay)	Denied
	162:24-163:4 (hearsay)	Denied
	163:7-18 (hearsay)	Denied
	163:25-164:1 (hearsay)	Denied
	164:18-166:17 (hearsay)	Denied
	166:20-168:10 (hearsay)	Denied
	168:13-169:4 (hearsay)	Denied
L	100.10-103.7 (116a13ay)	Domou

175:2-4 (hearsay)	Denied
175:7-13 (hearsay)	Denied
176:16-182:6 (hearsay)	Denied
182:9-184:1 (hearsay)	Denied
184:4-189:4 (hearsay)	Denied
189:7-192:21(hearsay)	Denied
194:7-196:23 (hearsay)	Denied
197:1-198:4 (hearsay)	Denied
205:4-206:10 (hearsay)	Denied
206:13-24 (hearsay)	Denied
230:15-232:1 (hearsay)	Denied

Realau	ctions's Objections to Grant Street's Exhibit List (ECF No. 456-2)	
Ex. No.	Ruling on Hearsay Objections	
3	Denied	
4	Denied	
5	Denied without prejudice	
24	Denied	
25	Denied	
27	Denied	
30	Denied	
31	Denied	
32	Denied	
35	Denied	
36	Denied	
37	Denied	
38	Denied	
39	Denied	
40	Denied	
41	Denied	
46	Denied	
48	Denied	
49	Denied, without prejudice	
54	Denied, without prejudice	
58	Denied, without prejudice	
61	Denied Denied	
62	Denied	
64	Granted except pages or excerpts that are actually statements of an opposing party. Objection as to those pages or excerpts are denied.	
65	Denied	
66	Denied	
71	Denied	
73	Denied without prejudice	
76	Denied	
78	Granted	
93	Denied without prejudice	
95	Denied	
97	Denied	
115	Denied without prejudice	
117	Denied	
118	Denied	
121	Denied	
128	Denied	
143	Granted	
168	Granted	
173	Granted	
174	Granted	
175	Granted	

Realauctions's Objections to Counter Deposition Designation (ECF No. 463) ¹		
Witness	Hearsay Objections	Ruling
David Dering	35:13-36:5	Granted
	71:22–73:3	Granted
Robert O'Neill	20:22-22:10	Granted as to 21:16-22:2; Denied as to all
		other portions
David Landes	57:8-60:13	Denied
7/27/11	62:15-69:12	Denied
	69:15-72:20	Denied
David Landes	81:9-82:1	Denied
11/15/02		
David Landes	35:6-41:7	Denied
10/2/06	42:1-49:25	Denied
Jeffery Harris	121:20-121:25	Granted
Robert Panoff	63:8-67-18	Denied

BY THE COURT:

s/ Donetta W. Ambrose Donetta W. Ambrose United States Senior District Judge

Date: December 28, 2012

¹Just as a note: Grant Street did not respond to Realauction.com's Objections to Plaintiff's Counter-Designations.