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EXCERPT

1 to provide an opinion in this case?

2 A. Yes.

3 Q. And could you tell us about some of the
4 documents that you reviewed?

5 A. Sure. I reviewed depositions from employees
6 of DISH Network. I reviewed -- so some of those
7 are, you know, Reji Musso, Bruce Werner, Mike Mills.

8 And then I reviewed some e-mails between the
9 DISH Network employees and some of their retailers.

10 I reviewed, you know, contracts that were in
11 place between DISH Network and its retailers.

12 Some call records, things like that.

13 Q. Did reviewing these things give you -- would
14 this be the type of thing that you would do when you
15 would be consulting a client?

16 A. Yes.

17 Q. Did it give you a clear picture of -- and
18 were you able -- are you able to reach an opinion,
19 or could you, based on the things that you reviewed,
20 about DISH Network's operation with respect to its
21 retailers?

22 A. Yes.

23 Q. At this time, Your Honor, I'd like to offer
24 Ms. Green as an expert in this case.

25 THE COURT: Mr. Bicks?

1 MR. BICKS: Your Honor, we do not believe
2 that she's a qualified expert. And I'm happy to
3 bring that out on my cross-examination.

4 THE COURT: All right. Do you wish to do
5 so now?

6 MR. BICKS: Yeah. I'm happy to voir dire
7 her now if I can.

8 THE COURT: All right.

9 MR. BICK: Your Honor, I actually have some
10 documents, if I could present to the witness?

11 THE COURT: You may.

12 CROSS EXAMINATION

13 BY MR. BICKS:

14 Q. Ms. Green, while we're handing this around,
15 can I just nail down a couple of things about your
16 educational background. At your deposition you said
17 that you did not receive a degree from the
18 University of Connecticut?

19 A. That is correct.

20 Q. And you did not?

21 A. I did not.

22 Q. And do you have one today?

23 A. No, I do not.

24 Q. And did you receive a degree from the
25 University of North Carolina?

1 A. That was the American Financial Services
2 Program, the AFSA Program, at the University of
3 North Carolina. I was selected to go through that
4 program by Household International. So I have that,
5 but it's not -- well, it is what it is.

6 Q. But at your deposition you said you did not
7 receive a degree from the University of North
8 Carolina?

9 A. Right. It's a completion certificate for
10 the AFSA business administration program.

11 Q. Right. But -- and just so I'm clear, your
12 deposition you said: (As read:) Did you receive a
13 degree from the University of North Carolina? You
14 said no. Was that truthful?

15 A. Yes.

16 Q. So what I'd like you to do is I have your
17 website bio that I have pulled up.

18 Ms. Green, you would agree with me that it's
19 important to be accurate when you describe your
20 academic credentials?

21 A. Yes.

22 Q. That's a pretty important thing to get
23 right?

24 A. Hm-mm.

25 Q. You see on your website that you say that

1 you've got a Bachelor's degree from University of
2 Connecticut and an MBA from University of North
3 Carolina?

4 A. Hm-mm.

5 Q. That's not true; right?

6 A. That is not true.

7 Q. Right. And if we look at the text of your
8 firm bio, and we blow that up, you go into great
9 description there about the degrees that you've
10 gotten.

11 Do you see that in the bottom paragraph? (As
12 read:) Ms. Green earned a Bachelor's degree at the
13 University of Connecticut --

14 A. In the Executive and the Household
15 International Career Development Center Executive
16 Education Series.

17 Q. Yes, I see that. But it says you earned a
18 Bachelor's degree; right? And it says you completed
19 your Master's degree from the University of North
20 Carolina?

21 A. American Financial Services AFSA Program.

22 Q. Right. And so could we just go back to the
23 other indication there. So we're very clear, what's
24 listed there is your education. That is inaccurate;
25 correct?

1 A. That is inaccurate.

2 Q. And I want to ask you some questions about
3 your report in this case. You prepared an expert
4 report in this case?

5 A. I did.

6 Q. And so we're clear, by the way, you don't
7 hold any professional licenses, do you?

8 A. I do not.

9 Q. All right. And remember you were deposed in
10 this case and you testified -- this is at 163, 6 to
11 14. This is your expert report. It's got your
12 opinion in the case; right?

13 A. Yes.

14 Q. Remember you were asked under oath: Have
15 you ever seen it? You said yes. You were asked:
16 Did you write it? You said yes. Did you write all
17 of it? And you said yes. Right?

18 A. Yes.

19 Q. Is that truthful testimony?

20 A. Yes.

21 Q. So is there any way that you've kind of
22 cribbed and plagiarized a bunch of your expert
23 report?

24 MR. LEE: Objection, Your Honor, this isn't
25 going to her expertise --

1 MR. BICKS: This goes to the heart of the
2 expertise.

3 MR. LEE: This is direct --
4 cross-examination to go into her qualifications.

5 THE COURT: The objection is overruled.
6 You may continue, Mr. Bicks.

7 BY MR. BICKS:

8 Q. Let me show you -- so let me just get this
9 straight. You wrote all of your report and that's
10 what you're telling us here today?

11 A. Wrote. Yes.

12 Q. Okay. So let me show you, it's slide 1.
13 This is from your report. DTX967 at Paragraph 12.
14 Maybe if we could turn the lights down.

15 This is a section from your report; right?

16 A. Yes.

17 Q. And you say you wrote all this yourself?

18 A. The report that I submitted I'm responsible
19 for; yes.

20 Q. Okay. I'm just looking at this paragraph.
21 We have it in front of us, Paragraph 19; right?

22 A. Hm-mm.

23 Q. You actually cut and pasted this from a
24 wikipedia site, didn't you?

25 Let's go to slide 2.

1 A. We cited the sources that we used in the
2 definition section. I had some of our junior staff
3 help with the definition section. They -- we
4 used -- we cited all of these references that we
5 used. And I agreed with that definition.

6 Q. Yeah, so I appreciate that. You have a list
7 of sources in the back; right?

8 A. Yes.

9 Q. You actually know you left a couple of them
10 out; right?

11 A. We had some sources that we used that we
12 ultimately didn't use, so --

13 Q. So I just asked you very clearly did you
14 write your report. And the fact of the matter is
15 this is pasted from wikipedia?

16 A. Well, we used their definition because we
17 agreed with it. And we cited that source in the
18 back of the report.

19 Q. Right. But so this paragraph here,
20 Paragraph 19, is your testimony that you wrote that
21 paragraph?

22 A. Well, wrote, put it into the report; yes.

23 Q. And let's look at Slide 3, please. 967 at
24 12. And is your testimony that you wrote this?

25 A. Put it into the report; yes.

1 Q. Yeah. And would it be surprising that it
2 was just copied from wikipedia?

3 A. Well, copied. We agreed with the
4 definitions that they used there. You know, one of
5 the things that I love about my job is the
6 stewardship in bringing our younger resources along.
7 And they focused on the definition section of the
8 report so I could focus on the heart of the matter
9 and the DISH Network documentation.

10 So as we put that in the report, I agreed with
11 those definitions, there's nothing wrong with them
12 based on my experience.

13 Q. And --

14 A. And we -- again, we cited the sources in the
15 report.

16 Q. But you list in the back a series of
17 sources, but you don't actually, in the body of your
18 report, indicate that you're lifting something
19 directly from a source; right?

20 A. We cited the sources in the back of the
21 report.

22 Q. Right. And I'll come to that in a moment.
23 But do you think that experts rely on wikipedia?

24 A. No, they don't. What I said is I agreed
25 with that definition and we used it in the

1 definition section of the report while I focused on
2 the body of the report and the DISH Network opinion.

3 Q. Mm-hmm. And you've testified at your
4 deposition at 223, 15 to 17, that you didn't copy
5 anything else from wikipedia besides this. Let's
6 look at 223, 15-17.

7 You said you didn't, right? Nothing was copied
8 from wikipedia? That was the deposition testimony;
9 right?

10 MR. LEE: Objection, Your Honor. This is
11 taken out of context. It says anything else. Do we
12 know what the anything else is in context to?

13 THE COURT: Can you answer?

14 A. I mean I didn't memorize the deposition, so
15 I'm not sure exactly --

16 Q. Is the transcript there? I want to make
17 sure Ms. Green has her transcript.

18 A. I see that.

19 Q. want to pull that page. The question was:
20 (As read:) Did you copy anything else from
21 wikipedia? And you said: (As read) I did not,
22 right?

23 A. Right.

24 Q. But let's look at 967 at 16 to 17, Paragraph
25 29. This is a part from your report. Do you see

1 that?

2 A. Yes.

3 Q. And can we look at Green slide 6, please.

4 This is out of Wikipedia?

5 A. It's a standard definition.

6 Q. Right, this is -- this is listed from

7 Wikipedia; right?

8 A. It's a standard definition. I agreed with
9 it, I don't see anything wrong with it.

10 Q. And I think you testified at your
11 deposition, let's look at 20 -- 227. Or, Trudy,
12 228, lines 15 to 22.

13 You said -- you're telling us it was just a
14 coincidence that whoever wrote the Wikipedia entry
15 used the phrase --

16 (Court reporter requested clarification.)

17 Q. You testified here at your deposition that
18 it was a coincidence that whoever wrote the
19 Wikipedia entry uses the phrase high call volumes,
20 reduced costs, and improved customer experiences?
21 You said that was just a coincidence?

22 A. I think I probably use the phrase high call
23 volumes, reduced costs and improved customer
24 experience probably every day in my professional
25 life.

1 Q. And so let's just go back, please, to --
2 Trudy, it was slide 6, the side by side. And you
3 see there reduced costs, improved customer
4 experience; right? Looks like it's coming right out
5 of wikipedia. And your testimony is that's just a
6 coincidence?

7 A. That's standard terms that we use when we're
8 talking about call centers. I probably -- as I
9 said, I really probably use those terms every single
10 day.

11 Q. So this had -- that just was in there
12 completely independently of the fact that it was in
13 wikipedia?

14 A. Yeah. This was in the terms and definitions
15 section. This is the section that, you know, what
16 is telemarketing? And these resources were cited.

17 Q. And let's look at 967 at 23, another portion
18 of your report. Tab 2, it's 48. You see that?

19 A. Yes.

20 Q. And this you actually say that -- you talk
21 here about, I think, a robust compliance program.
22 The company whose product is being sold must ensure
23 that it's properly registered. And then you go on
24 to say (as read:) Lack of registration is an easy
25 kill.

1 And you go on there; right?

2 A. Yes.

3 Q. And that's in your report and your testimony
4 is that you wrote that?

5 A. That is in my report.

6 Q. And let's go back, please, Trudy, to
7 Paragraph 23.

8 Right, 967 at 23, Paragraph 48, it's Tab 2.
9 Are you with me, do you see this?

10 A. Yes, I do.

11 Q. And if we go to the next page it says, (as
12 read:) Based on my own experience -- at the top.
13 Based on my own experience and my knowledge of what
14 others in the industries are doing the elements of a
15 robust telemarketing compliance program.

16 Do you see that?

17 A. Yes.

18 Q. And you say this is based on your own
19 experience?

20 A. Well, I say that these are things that I do
21 in my own experience; yes.

22 Q. And let's take a look then at Slide 7. It's
23 DTX967 at 24, Paragraph 48A. Do you see that? And
24 then you go on and talk about what that robust
25 compliance program would look like?

1 A. Hm-mm.

2 Q. Did you write that yourself?

3 A. I think we have some -- this was a source
4 that we used to help us write that, but it is what
5 we do.

6 Q. Yeah. And so actually you lifted this from
7 a lawyer's article; right? You didn't even cite it
8 or list the source?

9 A. That was -- in the deposition that was
10 brought up that that was a source that I missed that
11 the -- that we used and it was a source that we
12 missed citing.

13 Q. Right. But it's not just that you missed
14 citing it, you didn't even indicate the source, but
15 honestly, you lifted the report directly from the
16 source with not even annotating it or indicating in
17 the report, and not even mentioning the document
18 that you listed it from; right?

19 A. We agreed with the -- the methodology there.
20 It is something that we do. And it was -- it was a
21 source that we left off the list inadvertently.

22 Q. But -- and do you know who actually wrote
23 this article?

24 A. Yes.

25 Q. Who is it?

1 A. Well, I'd have to -- I mean I didn't
2 memorize his name. I can't see it from here. It's
3 too small.

4 Q. He's a lawyer. His name is, I think,
5 Mr. Sanscrainte or something to that effect. Do you
6 even know who he is?

7 A. Yes. He frequently -- there's an article
8 that he wrote most recently in 2012 that -- he's
9 somebody that comes up frequently on the alerts that
10 I have.

11 Q. And -- but you didn't indicate the source,
12 and so --

13 A. No. I told you that was a mistake.

14 Q. And actually, this is just lifted from this
15 article; right? It was not a coincidence that the
16 language between your report and this compliance
17 center document that wasn't cited are the exact same
18 word for word?

19 A. We agree with it.

20 Q. Because you copied it; right?

21 THE COURT: I'm sorry, did you answer?

22 A. I didn't catch it.

23 Q. And can we go back to 163, 6 to 14, please.

24 Did you write all of the report that we just
25 went through?

1 A. I put it into the word document; yes.

2 Q. All right. And Ms. Green --

3 A. And I was responsible for its contents;
4 correct.

5 Q. And I will represent to you that I could go
6 on and -- many more examples where this report that
7 you submitted was copied basically word from word
8 from things like wikipedia, articles written by
9 lawyers. Did you double check that before you
10 submitted the report?

11 A. I missed the one article. We listed all the
12 other sources that were on there.

13 Q. But listing a source like wikipedia in the
14 back is very different than indicating that you
15 actually are cutting and pasting word for word from
16 things. Would you agree with that?

17 A. Yes, I would.

18 Q. And I want to actually show you one of the
19 sources that you did cite. You remember there's one
20 point in your report where you actually did indicate
21 that you were citing a particular source. Do you
22 remember that?

23 A. Yes. "How Big is Telemarketing;" yes.

24 Q. This is the one time in your report you
25 actually indicate there's a source. It's DTX967.

1 It's Paragraph 21 of -- Paragraph 40 of your report.
2 Page 21, please, Trudy.

3 And this is the one point in your report where
4 you actually annotate. And you indicate that you're
5 lifting something, right, from -- or you're citing
6 something; right?

7 A. In the body of the report; yes.

8 Q. Right. And do you know what that source is
9 that you relied on there?

10 A. It was an article in Business Sales. Just
11 to give a generally idea of how big the
12 telemarketing is in the U.S. This is different than
13 the others, which were standard terms and
14 definitions.

15 Q. And this is DTX572 at tab 15. I want to
16 show you this actual article. This is the one -- I
17 went and actually checked it. It's
18 articleslash.com. Here's the thing that you're
19 citing; right?

20 A. Yes.

21 Q. You see at the top -- can you just go to the
22 top of this, Trudy. Can you scroll up a little bit.
23 And it's CX3. I'm sorry, I -- let's look at CX3.
24 There's a color version of this.

25 You see this? This is the

1 articleslash.com/page. Look at the top. Can you
2 blow up those three boxes, Trudy.

3 This is a website which solicits visitors to
4 submit articles for money?

5 MR. LEE: Objection, Your Honor. This
6 looks like an ad that is part of a work page. I
7 don't know that this is -- I don't know that there
8 is any evidence that this is what article --

9 THE COURT: I'm not sure either, Mr. Bicks.

10 Q. If you go back to Paragraph 40 of your
11 report, it's www.articleslash.com. It's page 21,
12 Paragraph 40. And I went and checked
13 articleslash.com, the front page, which is cross
14 CX3, tab 16. This is the front page of this web.

15 And you can see at the front page that it
16 solicits visitors to submit articles for money? Did
17 you check that?

18 A. Again, this was an article just as an
19 example of the telemarketing industry and the size.

20 Q. Yeah. And then DTX572. It's tab 15. This
21 is the one we were looking at. If we can just
22 scroll down to the bottom. Do you know anything
23 about the person who wrote the article and what he
24 says about himself?

25 A. No.

1 Q. Can you blow it up at the bottom, Trudy,
2 there.

3 It says (As read:) Dwayne is an old consumer
4 advocate who has too much time on his hands, his
5 wife says, so he rants to his audience on Ezine
6 Articles.

7 Did you know that when you cited this?

8 A. No.

9 Q. Is that the kind of article that an expert,
10 who's responsible for using a reliable methodology,
11 would rely on an article like that?

12 A. It's just an example.

13 Q. And do you feel, as an expert, that when you
14 copy things word for word that you probably ought to
15 put them in quotation marks so the people who look
16 at it know that you're actually copying?

17 A. The standard definitions and terms are
18 standard definitions and terms that I use every day,
19 so I think as long as we cited the sources that --
20 to be fine. It wasn't part of my DISH opinion.

21 Q. Well, but I showed you the article from the
22 lawyer, who was more than definitions, you copied
23 word for word without quoting it. You actually
24 talked about a robust compliance program, the
25 elements of which come out of an article written by

1 a lawyer?

2 A. Yes. But that, in practice, is what we do.

3 Q. In practice what you do is you copy work by
4 others and --

5 A. No, in practice -- in practice, when we
6 operationalize that laws that regulate
7 telemarketing, that's exactly the type of program
8 that we actually put together.

9 You know, I don't spend my time as an expert
10 witness, nor writing expert reports, I spend my time
11 working with clients, helping them succeed with what
12 they do.

13 Q. Right. But you did submit an expert
14 report --

15 A. I did.

16 Q. -- you told me and the Court that you wrote?

17 A. I did.

18 MR. BICKS: Your Honor, I have no further
19 questions. I would move to have this witness not
20 declared as an expert. And based on what I just
21 saw -- showed here, I don't think this is testimony
22 that should be allowed in court.

23 THE COURT: The objection is overruled.

24 Mr. Bicks, I hope you never analyze any of my
25 opinions. The 7th Circuit, and esteemed Jurist

1 Posner, is known for citing to wikipedia. And I
2 believe it was this month there was a debate--I
3 don't know if it was a debate, I didn't go--a
4 discussion lunch between Judge Posner and Judge
5 Hamilton about that very topic that I would have
6 like to have overheard.

7 I'm not gonna strike the expert. But thank you
8 for your examination.

9 All right. At this time I'm going to take what
10 I hope is going to be a 15-minute break to do a
11 first appearance, in another courtroom. So you
12 don't a have to leave. I will leave.

13 (A break was taken.)

14 THE COURT: My apologies, my defendant did
15 not waive detention so we had to proceed.

16 Is Ms. Green in the courtroom? would you
17 please take the stand.

18 Please proceed.

19 MR. LEE: Thank you.

20 DIRECT EXAMINATION

21 BY MR. LEE

22 Q. Ms. Green, were you asked to provide an
23 opinion in this case?

24 A. Yes.

25 Q. And were you able to reach an opinion about

1 DISH Network?

2 A. Yes.

3 Q. Could you tell us what opinion you were able
4 to reach?

5 A. So my opinion was in regards to how they
6 handled complaints with regard to the telemarketing
7 activities of their retailers. And my opinion was
8 that they did not get to the root cause of the
9 actual complaint, and they followed a process that
10 was not adequate.

11 Q. Did you have any other opinions that you are
12 prepared to testify about with respect to DISH
13 Network and its retailers?

14 A. Yes. Other opinions about whether or not
15 they did investigations of their retailers before
16 they did business with them; that sort of thing,
17 yes.

18 Q. Okay. Before we go into those I'd like to
19 talk a little bit about background.

20 Are you familiar with DISH Network and its
21 relationship to certain OE retailers that it
22 referred to as order-entry retailers?

23 A. Yes. I was able to review the contracts and
24 the applications that were submitted by some of the
25 OE retailers.

1 Q. Can you tell us what your understanding is
2 about the OE system?

3 A. So the OE system, order entry system, is an
4 order entry system that DISH had that allowed
5 their -- certain retailers to enter in orders for
6 DISH goods and services.

7 Q. And what is your understanding about how the
8 OE system worked in terms of its --

9 A. Sure. So there was a specific log-on or
10 user ID that was given via an IP address to the
11 retailers once they were signed on with DISH.

12 Q. Do you have an understanding about who
13 controlled the OE system, access to the OE system?

14 A. So I know in the documents that I read, and
15 the deposition of Reji Musso, she actually assigned
16 the IP address to the various retailers to use. So
17 they had unique and individual IP addresses that
18 they were to use to put in their orders.

19 Q. Do you have an understanding about how
20 access -- whether or not access to the OE system
21 could be turned off and on by DISH Network?

22 A. Several times they talked about, you know,
23 "Is it time to turn this one off?" So yes, they had
24 the ability to turn it on and turn it off.

25 Q. Have you had experience working with this

1 type of merchant -- excuse me, this type of
2 relationship between two companies?

3 A. Yes.

4 Q. Could you tell us a little bit about that?

5 A. Sure. I'll go back to Household Retail
6 Services, where we had over 600 merchants that I was
7 responsible for. And, you know, if we had a
8 complaint, depending on what the complaint was, we
9 were able to stop processing any applications and/or
10 stop funding until we resolved the issue. And it's
11 not uncommon. I'm actually working with a retailer
12 today on the other side, working with a retailer
13 today who has a relationship with consumers as well
14 as with financial services provider.

15 THE COURT: I'm sorry. Did you mean if you
16 had one complaint that would happen?

17 A. No, it would depend. So, you know, if you
18 were doing business with somebody for let's say the
19 last five years and you've never had a complaint,
20 and then a complaint comes up, you might want --
21 might not want to suspend it right away. You might
22 want to investigate that to see how broad or how big
23 the complaint actually was. If there were other
24 violations.

25 But then if you had, you know, a merchant, and

1 I remember this specifically, if you had a merchant
2 where they just signed on, you only had maybe a
3 month of experience with them, and you started
4 getting complaints, yes, I would suspend that right
5 away to figure out what's going on.

6 THE COURT: Thank you.

7 A. You're welcome.

8 Q. Let's talk about -- let's talk about the two
9 sort of areas that you sort of mentioned in terms of
10 your opinions.

11 what kind of due diligence work do you
12 recommend your clients that you work with do in
13 terms of different companies that it brings on to
14 sell product -- sell its product or service?

15 A. Sure. If someone is going to sell your
16 products and services they are an extension of you,
17 an extension of your brand. So you want to make
18 sure you have somebody who is not going to tarnish
19 your reputation in any way, shape, or form.

20 So what I advise my clients is, as they bring
21 on the retailer merchants or partners, they do an
22 investigation. And that investigation includes, you
23 know, Dunn and Bradstreet, due diligence, Better
24 Business Bureau complaints, that sort of thing.
25 Getting the names and address of the principals,

1 doing a criminal background check with those.
2 Probably a credit check of those. To make sure
3 that, you know, it's a reputable business and that
4 it is somebody you want as an extension of your own
5 brand.

6 Q. And why should companies do this sort of
7 work before getting into a relationship with another
8 company?

9 A. Well, obviously, if that company has had
10 problems before, or if there have been complaints
11 against that company, the likelihood of them doing
12 it again is definitely a possibility. So you want
13 to make sure that you assess the risk before you
14 become involved in a relationship with another
15 business.

16 Q. Would your advice differ if a company was
17 bringing on what it believed was a telemarketing
18 vendor as opposed to a retailer or something --
19 something like that?

20 A. No. Even when we've done, you know, a
21 telemarketing vendor, we have worked with clients to
22 bring on a telemarketing vendor, there's quite a bit
23 of due diligence that you do on a telemarketing
24 vendor as well. Including talking to some of their
25 other clients to see if there have been complaints,

1 to see how it's been resolved, to see how the
2 governance model was set up.

3 Q. Is there other information that you would
4 want to get from a retailer or sort of -- somebody
5 selling your product before you would get into
6 business with them?

7 A. Sure. You know, you'd want to understand
8 exactly what their processes are going to be. How
9 they're going to market your services. What the
10 volume is going to be. You'd want to get a
11 forecast. You want to understand, you know, who
12 their employees are. What channels they're going to
13 use. By channels, I mean is it call center, is it
14 e-mail, is it direct mail, is it in store, face to
15 face? However they're going to market your goods
16 and services.

17 Q. And when you say understand, what kind of --
18 sort of proactive work should a company be doing in
19 terms of this type of due diligence?

20 A. Well, you know, what we've done with our
21 clients is even -- so if you're signing up, for
22 example, a telemarketing vendor, you go to their
23 place of business, you observe calls. You, you
24 know, observe how they do their business. You not
25 only see the scripts, but you listen to what they're

1 actually saying and how they're conducting business.
2 In addition to, you know, all the investigative that
3 I said upfront.

4 Q. How long have you advised your clients or
5 other -- advised your clients, or even in-house, how
6 long have you advised your clients to do this sort
7 of due diligence?

8 A. Well, gosh, I mean I did it back in my
9 Household days, so that's going back to 1993. So I
10 continue to do that even today. I mean it's
11 definitely a best practice.

12 One of the clients I work with I think I
13 mentioned earlier is Disney. You know, they were so
14 concerned with their brand that they even dictated
15 what color the walls would be in their outsourcing
16 call center to make sure that the agents would have
17 the right feeling when they were talking to
18 customers.

19 Q. How much time would you recommend a company
20 spend on do due diligence in a retailer or
21 telemarketing vendor and their call center before
22 actually sort of bringing them on?

23 A. In terms of time? Time spent on the
24 investigation or --

25 Q. Sure. Maybe time is not the best way to say

1 it. How much digging -- you used deep dive before.
2 How much digging would you recommend in terms of the
3 due diligence that's necessary?

4 A. I would start -- I mean for the company
5 itself, Dunn and Bradstreet, Better Business Bureau.
6 You know, looking to see if there are any
7 complaints, AG complaints. Just see if there are
8 any complaints against the company. And then I
9 would limit it to the principal of the company or
10 the officers of the company. The C level
11 executives.

12 Q. And do you need to get into sort of the
13 nitty gritty of the operation to really understand
14 how another company is going to be marketing your
15 product?

16 A. I believe you do.

17 Q. Did you -- do you have an opinion as to how
18 DISH Network conducted itself with respect to all of
19 this due diligence that we are talking about?

20 A. I found, based on the documents that I
21 reviewed, they did have the retailers sign a
22 contact, a retailer contact. They did have two of
23 the retailers that come to mind fill out or give to
24 them a proposal, if you will, outlining how they
25 were going to go about doing the marketing and sales

1 of DISH products.

2 But what I did not see is -- it was the
3 retailer telling DISH what they were going to do,
4 but I didn't see any investigative work that DISH
5 then validated what they were telling them.

6 Q. Okay. And by DISH failing to do this
7 validation, from at least what you saw, what did
8 that do in terms of the risk?

9 A. Well, I think it greatly enhanced the risk.

10 Q. And in terms of risk, what do you mean by
11 enhancing the risk? Risk for what?

12 A. Risk for complaints, compliance issues,
13 fraud. Any of those could be a risk if you don't do
14 your due diligence on the person you're going to do
15 business with upfront.

16 Q. You also discussed consumer -- how a
17 company, or how you'd recommend a company deal with
18 consumer complaints related to its retailers or
19 third parties marketing its services.

20 What would you sort of recommend in terms of a
21 best practice for how to deal with those types of
22 complaints?

23 A. So when a complaint come in it's really
24 important to get to the root cause of that complaint
25 to make sure it's not broader than that one

1 complaint. So, for example, in a telemarketing
2 situation, if you had a complaint from a consumer
3 about either the way the call was handled or that
4 they were on the do not call list and shouldn't have
5 been called, you know, it's important to understand
6 where that phone number came from. And make sure
7 that there aren't any other violations once that
8 complaint comes in.

9 So in telemarketing, the list of phone numbers
10 are usually associated with what's called a
11 campaign. And so practically speaking what you
12 would do is then look, and look at the scrub that
13 they did between the do not call list and the actual
14 campaign to see if there were any other numbers that
15 could potentially be a complaint.

16 At the end of the day you want to figure out is
17 it really just this one complaint or is this just
18 the tip of the iceberg, if it's broader than that,
19 before you determine, you know, what your final
20 course of action is going to be either with the
21 telemarketing firm or the provider that's working
22 with the telemarketing firm.

23 Q. And how long have you counseled your clients
24 that this is the appropriate approach to take?

25 A. I mean always. That's -- from my -- you

1 know, when clients hire me, they hire me for my
2 practical experience, as well as, you know, my
3 consulting background. And all of the experience
4 comes from not only my own work, but my work with
5 clients. And so this is something that most
6 reputable companies would do.

7 Q. Would you recommend that the -- your client,
8 or a company, suspend funding or access to the sales
9 tool while this investigation is going on?

10 A. Yes. You know, again, as I said earlier,
11 you know, if you had done business with this company
12 for a number of years and you never had a complaint
13 before, you might not suspend right away, you might
14 do the investigation. As I said, get the campaign
15 list to see if there were any others or if this was
16 just a one-off.

17 You know, if your relationship is brand new,
18 and you really don't have a lot of experience with
19 this particular relationship, you'd want to suspend
20 right away to make sure it's not something that is
21 broader than that one complaint.

22 Q. And if -- before you brought the -- brought
23 the retailer back online, or sort of paid for their
24 services again, what other sort of -- would you
25 recommend putting other measures in place?

1 A. Absolutely. So you would want to make sure
2 that these complaints don't happen again. So you
3 would -- you know, you might look at how they're
4 scrubbing their list to see if there's issue with
5 that, and make changes to that. You might look at
6 the scripts. You might look at how their IBR
7 application software is configured. How it's
8 dialing, how it's re -- interacting with the person
9 on the telephone.

10 All of those things, you might want to look at
11 them and determine if you need to make changes so
12 that no other complaints occur.

13 Q. Did you have a chance to review -- or reach
14 an opinion about how DISH Network dealt with
15 complaints that it received relating to its
16 retailers' marketing methods?

17 A. Yes. I reviewed several complaints.

18 Q. What is your opinion about how DISH dealt
19 with those complaints?

20 A. So based on the documentation I reviewed,
21 DISH, when they received a complaint, would send a
22 letter to the retailer that was associated with the
23 complaint for that order entry log-on ID.

24 They would then expect a response from the
25 retailer. In many cases they would get the response

1 where the retailer would give an explanation for the
2 complaint. They would then attach it to the
3 complaint and file it. And so they were satisfied
4 with that as the process.

5 Q. Did you believe that that was sufficient as
6 a process?

7 A. No. As a matter of fact, I think that that
8 process caused these complaints to escalate and
9 snowball, meaning more and more complaints, because
10 they never really got to the root cause.

11 Q. Did you have a chance to review DISH's
12 approach with complaints received about JSR --

13 A. Yes.

14 Q. -- Enterprises?

15 A. Yes.

16 Q. Can you tell us a little bit about what you
17 saw there?

18 A. So it's interesting. It looks like they
19 signed a retailer agreement in August, and then
20 right away, in September, they got the first
21 complaint from a customer. I guess it was actually
22 part of a sting. They got a complaint. And they
23 wrote the form letter, if you will, to JSR.

24 JSR then responded and said that, I think
25 something about a corrupted file for the do not call

1 list. And that it wouldn't happen again. And then
2 it seemed as if they then filed the complaint and
3 said, "Okay, it's not gonna happen again."

4 which to me, you know, if they had a corrupted
5 file, do not call list, there may have been other
6 numbers that were called. And, you know, with that
7 relationship as new as it was, personally, I would
8 have suspended the log-on ID until we got to the
9 bottom of that corrupted file, why it was corrupted.
10 And to make sure that the future process going
11 forward was sufficient to scrub the list.

12 Q. Did you see other complaints that DISH
13 received about JSR after this September one you
14 refer to?

15 A. Yes. There were additional complaints that
16 came up afterwards.

17 Q. And what did you think about DISH's response
18 to those complaints?

19 A. Again, they sent a letter. They got a
20 response. The response is -- you know, sometimes
21 were about the consumer actually being on the list
22 or not being on the list. And then they also talked
23 about they, being an independent seller, would not
24 be -- would not affect in any way DISH's reputation.

25 Q. Did you agree with that?

1 A. No, I do not.

2 Q. Would you explain why?

3 A. Because they signed a retailer agreement. I
4 mean they were, in essence, a seller of DISH product
5 and services. So they were an arm of DISH when they
6 made their telemarketing calls. They talked about
7 DISH Network. They were using DISH's order entry
8 system. DISH was fulfilling the orders. So no, I
9 do not agree with that.

10 Q. Do you think that DISH should have done
11 more --

12 A. Yes.

13 Q. -- in terms of its investigation and how it
14 dealt with these complaints?

15 A. Yes, I do.

16 Q. Would you explain what more they should have
17 done?

18 A. Well, as I said, you know, I would have not
19 only, like the first complaint, looked at the other
20 numbers that were contained within that campaign to
21 see how broad the problem was with calling customers
22 who may have been on the do not call list, either
23 state, federal, or internal.

24 And then -- you know, if that went okay, then
25 when you got the second complaint really would have

1 done a deeper dive into the actual telemarketing
2 center itself. You know, how they're doing, what
3 they're doing. Probably made a visit to the
4 telemarketing center to see it, feel it, touch it.
5 And probably would have suspended the log-on ID
6 again.

7 Q. What is your opinion about, again, the risk
8 of problems that results because DISH did not take
9 sort of what you believe they should have done?

10 A. Well, the result became a greater number and
11 a greater number of complaints. Meaning in Reji
12 Musso's deposition I believe she said, you know, "we
13 are now have thousands of these complaints." And I
14 think because they didn't get to the root cause,
15 these complaints started snowballing.

16 Q. Are you -- are you recommending, or do you
17 recommend that a company terminate a retailer after
18 one complaint?

19 A. No. Again, it depends on how severe the
20 complaint is and, you know, what your history has
21 been with that particular partner.

22 Q. But to make that decision what kind of
23 knowledge or investigation do you have to do?

24 A. You have to see how big -- how broad that
25 complaint is. If it's just, you know, one

1 accidental phone number or call that was made, or is
2 it -- is it broader than that. How big is the
3 problem is what you have to determine. You have to
4 get to that root cause.

5 Q. And would you just simply take the
6 retailer's word for it?

7 A. No. No. No.

8 Q. Should the number of sales that a retailer
9 is bringing in impact how you deal with a single
10 consumer complaint?

11 A. No. Compliance and sales should be
12 completely separate.

13 Q. And why is that?

14 A. Well, I mean sales are great, and the
15 company wants to make sales and they want to be able
16 to grow. However, you know, compliance is a
17 completely different issue. And you want to make
18 sure that the business that you're dealing with is
19 complying with the rules and regulations and not
20 going to become in violation of the law and have
21 something like this happen.

22 Q. What about the number of calls that a
23 retailer might be making, does that impact how you
24 deal with a consumer complaint?

25 A. Doesn't matter. I mean if you're making,

1 you know, a thousand calls or ten thousand calls,
2 they all still need to be compliant.

3 Q. Do you think -- from your review is it your
4 opinion that the Compliance Department at DISH
5 Network had enough information to even make that
6 kind of analysis or call?

7 A. No.

8 Q. Have you -- do you recall reviewing a
9 rebuttal report from a Mr. Ken Sponsler?

10 A. I do.

11 Q. And what is your -- what is your reaction to
12 that rebuttal report?

13 A. So, Mr. Sponsler initially focused on the
14 definitions of the various terms that were used in
15 my report, terms like retailer and outsourcer and
16 partner, which are the same terms that were used in
17 many of the documents that I reviewed from DISH. So
18 it was focused on those definitions and terms. And
19 when it came to retailer -- sorry.

20 Q. No, go ahead.

21 A. Then when it came to the retailer
22 definition, he talked about the retailer being an
23 independent seller, et cetera.

24 And what struck me was he -- in his report he
25 did not talk about the actual operation that DISH

1 had. What DISH did or did not do. I mean he didn't
2 talk about that in his report.

3 Q. Do -- does terminology, or even sort of
4 specific -- does terminology really impact how a
5 company should view its relationship with retailers
6 that are selling its products?

7 A. No.

8 Q. Could you explain that a little bit? What
9 really should be the top consideration?

10 A. Yeah. So if you're a retailer and you're
11 using an outsource telemarketing group, or if you're
12 a retailer and -- or if you're a seller and using an
13 outsource telemarketing group, or if you're a seller
14 and you're using a retailer, or if you're, you know,
15 using a list service where you're buying lists, all
16 of those are partnerships of sort. And they're an
17 extension of you and your brand. And in order to,
18 you know, protect your business you have to make
19 sure that they are compliant with laws and
20 regulations and, you know, industry best practices
21 and standards, to protect your business.

22 Q. When you say make sure that they are
23 compliant, what does that entail?

24 A. So you put together a governance model.
25 That's something that I advise my clients to do all

1 the time, whether they're contracting with an
2 outsourcer, or a retailer that's doing business
3 with, you know, a seller, you want to put together a
4 governance model.

5 And by that governance model, it's a forum
6 where the two parties regularly get together to talk
7 about, you know, issues, complaints, processes. How
8 they're gonna monitor--so how they're gonna listen
9 to calls, how they're gonna monitor calls, how
10 they're gonna calibrate these things together--to
11 have that clearly defined process for issues that
12 are going to come up between the two entities.

13 Q. Is it enough just to have a governance
14 model?

15 A. Well, you have to execute on the governance
16 model.

17 Q. That's all I have for now, Your Honor.

18 THE COURT: Do the states have any
19 questions?

20 All right. Mr. Bicks.

21 MR. BICKS: Yes, Your Honor, thank you;

22 CROSS EXAMINATION

23 BY MR. BICKS:

24 Q. So can we start out, please, with CX2, which
25 was tab 1. And could we just highlight the

1 educational background.

2 Ms. Green, you've told us that this indication
3 here about your education on your firm's website is
4 not accurate; right?

5 A. The explanation is on the other side of
6 that; yes.

7 Q. All right.

8 A. I think I already answered that.

9 Q. Right. But in fact, you don't have a
10 Bachelor's degree from the University of
11 Connecticut, and you do not have an MBA degree from
12 the University of North Carolina; right?

13 MR. LEE: Objection, Your Honor. Asked and
14 answered.

15 THE COURT: The objection is sustained.

16 Q. My question is, you talk about due
17 diligence. Remember that testimony?

18 A. Yes.

19 Q. Do you think that someone, in looking at
20 your website and that indication that you have those
21 degrees, should be required to go do due diligence
22 to determine whether or not that's true or not?

23 A. I don't know.

24 Q. Now, in terms of your -- your specific
25 qualifications. You know who Mr. Sponsler is?

1 A. I do. I met him during the depositions.

2 Q. And were you in court when his colleague,
3 who was a plaintiffs' expert, described him as one
4 of the foremost leading experts in telemarketing
5 compliance?

6 A. I wasn't in court here then; no.

7 Q. You haven't seen that testimony?

8 A. No, I have not.

9 Q. Have you actually ever run into him at
10 compliance seminars or training on TCPA compliance?

11 A. I don't think so.

12 Q. Are you -- you're not a customer engagement
13 compliance professional who is certified by the
14 Professional Association for Customer Engagement,
15 are you?

16 A. No.

17 Q. And you're not a Certified American
18 Teleservices Association Self-Regulatory
19 Organization Auditor, are you?

20 A. No, I'm not.

21 Q. And you're also not a Certified Project
22 Management Professional by the Project Management
23 Institute, are you?

24 A. No, I'm not. I have managers that work for
25 me that are.

1 Q. Right. And you've told us you don't have
2 any professional licenses; correct?

3 A. No, I do not.

4 Q. And you never took any classes having to do
5 with telemarketing compliance at the University of
6 Connecticut or UNC; correct?

7 A. No. Those were not about telemarketing.

8 Q. And you've done continuing education, I
9 think you mentioned, over 40 years?

10 A. Hm-mm.

11 Q. And did any of that course work have
12 anything to do with compliance with the
13 telemarketing laws?

14 A. I can't recall if it touched on it or not.
15 A lot was spent on call centers, so -- and a lot of
16 the additional seminars and things I went to were
17 put on by call center vendors. So I -- we probably
18 touched on telemarketing I'm sure.

19 Q. Well, let me just look at --

20 (Court reporter requested clarification.)

21 Q. Let's go to 27, line 19 to 28, line 12. And
22 you see the question was what continuing education
23 have you done?

24 A. Yeah.

25 Q. And over the 40 years you've said you've

1 done multiple things. And if we can go to the next
2 page.

3 MR. LEE: Could I ask to give the witness a
4 copy of her deposition.

5 MR. BICKS: We did.

6 THE COURT: Where is her deposition?

7 MR. BICKS: I think it's right there.

8 A. I'm pretty sure this is it.

9 THE COURT: Yes, it is. I think he's
10 asking you to go to page 27.

11 A. That's what this is?

12 Q. Yes. This is your deposition, we were on
13 27, 19, and now we're over to -- 28, 12.

14 THE COURT: Excuse me, Mr. Bicks -- do you
15 need a break, Mr. Runkle?

16 MR. RUNKLE: I'm okay. Thank you.

17 THE COURT: Please continue.

18 Q. And my question was, you see line 10. (As
19 read:) Did any of the course work have anything to
20 do with compliance with the telemarketing laws? And
21 there you said no?

22 A. Yep.

23 Q. Okay. You've never actually yourself worked
24 in a Compliance Department, have you?

25 A. No. I was on the operations side. I work

1 with compliance departments. I ran telemarketing
2 shops and worked with compliance departments. So my
3 job was always to make sure that the operations
4 itself were compliant.

5 Q. Right. But there are actually people who
6 work in compliance departments whose job it is to
7 determine TCPA compliance; right?

8 A. Exactly. And it's my job to operationalize
9 it.

10 Q. Right. And my question to you is, you
11 haven't worked in one of those departments that's
12 responsible for TCPA compliance?

13 A. That is correct.

14 Q. And you've indicated, I think, you've
15 published and you've had speaking engagements. At
16 your deposition you said that none of these directly
17 have any bearing on compliance with telemarketing
18 laws; is that right?

19 A. They may touch on the subject of
20 telemarketing in talking about call centers and
21 telephony, both inbound and outbound. They're not
22 specifically about TCPA -- about compliance issues.

23 Q. And you know there are actually companies --
24 and let's just, for a minute, go back to your
25 website bio, cx2. And if we just blow up the

1 description of your area of expertise and what you
2 do. I see nothing on there about TCPA compliance.
3 Is there anything there?

4 A. No. Again, it's about operations.

5 Q. Okay. And there are companies that actually
6 provide services in connection with the Registry and
7 with TCPA compliance, such as PossibleNow and
8 Compliance Point; right?

9 A. Yes, I do know of companies that use those;
10 yes.

11 Q. And dnc.com. What are the leading companies
12 in that space?

13 A. Today or --

14 Q. Today?

15 A. I'd have to research that. I don't keep
16 those facts in my head.

17 Q. Okay. But what about, let's say, 2010?

18 A. There were, you know, companies that do
19 that. I mean that's something that's easily
20 researched and determined. If there's a need for a
21 company like that you could find a company that
22 would be a good fit. If, for example, you weren't
23 able to scrub your own lists, you would perhaps
24 contact with a partner to do that.

25 Q. Yes. And I'm just asking you in your

1 career, where you have been working with call
2 centers, which of those companies have you worked
3 with?

4 A. I don't remember the names.

5 Q. And did you know actually in this case, have
6 you seen an audit that was done by Compliance Point
7 of DISH?

8 A. Have I seen the actual audit documentation?

9 Q. Yes.

10 A. No, I have not.

11 Q. Were you aware that that actually happened?

12 A. I was aware that they contracted with
13 PossibleNow and told their retailers that they
14 should use them, but they didn't -- they didn't make
15 it a requirement.

16 Q. But I'm actually asking, do you know in this
17 case that Compliance Point did an audit of DISH's
18 records? Did you know that?

19 MR. LEE: Your Honor, before the witness
20 answers, I would like to object to this line of
21 questioning. She didn't provide any opinion about
22 an audit or compliance with respect to DISH's own
23 operations. She provided an opinion about DISH and
24 its relationship with its retailers.

25 THE COURT: The objection is overruled.

1 You may answer.

2 Q. Did you know that Compliance Point had done
3 an audit of DISH's operation?

4 A. I know that they had done a -- they did
5 scrub some of the lists for some of their partners.

6 Q. And were you ever -- let me just show you
7 Plaintiffs' Exhibit 33. It's admitted. It's tab
8 33. And ask you if you have ever seen this?

9 A. I don't remember specifically.

10 Q. And if we can go -- just take a look at it.
11 Did you know -- you know who Compliance Point is?

12 A. Yes.

13 Q. Who are they?

14 A. They are a company that call center
15 operators could contract with to help them with the
16 scrubbing of their do not call lists.

17 Q. Yeah. And if you blow up Mr. Sponsler's
18 name at the bottom. Do you see those three acronyms
19 next to his name?

20 A. Yes.

21 Q. Do you know what CIPP and CMP stand for?

22 A. I do in general terms; yes.

23 Q. What do they stand for?

24 A. One stands for compliance, the other is
25 project management.

1 Q. But CIPP, do you know what the other letters
2 are for?

3 A. Not exactly.

4 Q. But I take it that you've seen this before?

5 MR. LEE: Objection, asked and answered.

6 Q. Now that you've seen the document, does it
7 refresh your memory that you've seen it?

8 THE COURT: Thank you.

9 A. No. I don't think I saw this document.

10 Q. And let's just go to the findings at page 4.
11 Let me ask you if you knew about these findings?

12 A. No.

13 Q. Do you see here that, up at the top, (as
14 read:) DISH has employed sufficient policies,
15 procedures, and processes to ensure compliance with
16 federal and state telemarketing rules --

17 A. Was this for their own telemarketing?

18 Q. Yes.

19 A. So this was not the retailers? This is for
20 their own telemarketing?

21 Q. Correct.

22 A. Got it.

23 Q. Had you seen this?

24 A. No. I was focused more on their
25 relationship with the retailers.

1 Q. So you didn't know about any of the audit
2 work that had been done on DISH's own processes?

3 A. It wasn't a focus of my attention.

4 Q. Okay. Now -- but you would consider -- I
5 mean, do you consider Compliance Point to be experts
6 in telemarketing compliance issues?

7 A. I don't know enough about them to know that.
8 I would have to do some due diligence of my own.
9 And if a client were interested in using them then
10 we would do that sort of due diligence.

11 Q. At your deposition you said that the TSR is,
12 in many cases, open to interpretation; is that true?

13 A. Earlier versions of it were; yes.

14 Q. And what earlier versions are you talking
15 about?

16 A. Well, I mean there were -- there were
17 several editions to the TSR rule after it first came
18 out. So, for example, prerecorded messages were --
19 the way in which they were worded were different in
20 the two telemarketing laws. So --

21 Q. And how was the wording different?

22 A. I'd have to look at them side by side. I
23 didn't memorize them.

24 Q. Well, just summarize the differences?

25 A. They used different terms that could be

1 interpreted differently. And there were -- they
2 were open to interpretation as to what constituted a
3 relationship, for example, with the particular firm
4 using telemarketing. So I'd have to have them side
5 by side to give you the exact wording.

6 Q. And has any client ever actually come to you
7 to help interpret those differences that you talked
8 about?

9 A. Oh, sure.

10 Q. So I'm just asking then tell us about how
11 you interpret the differences?

12 A. Well, we would think through what they were
13 doing and how they were doing it, and how to make
14 sure that their operations worked in such a way that
15 they were compliant with the way in which the laws
16 were interpreted.

17 Q. So as a person with compliance expertise can
18 you walk me through how the definitions of
19 prerecorded calls changed over time?

20 MR. LEE: I object, Your Honor. I don't
21 know that Ms. Green actually testified she has
22 compliance expertise. She has been talking about
23 operations expertise.

24 THE COURT: The objection is overruled.
25 You may answer.

1 A. So again, in the context of their
2 operations, we would understand what they were
3 doing, and what, if anything, needed to be changed.
4 And how we would put that into operations.

5 Q. No, I fully appreciate that. But your
6 counsel just stood up and indicated you don't have
7 compliance expertise with the prerecorded call
8 statutes; is that true?

9 A. Well, I'm not -- no, I'm not a compliance
10 officer, nor am I a lawyer.

11 Q. So if I asked you to walk us through here
12 today, as somebody who has dealt with telemarketing
13 compliance, how the definitions of prerecorded calls
14 changed over time, could you summarize that for us?

15 A. I would -- if it were in the course of my
16 consulting work we would do the research on that, we
17 would walk through it, I would have that in front of
18 me.

19 Q. Okay. But based on -- I think you've told
20 us you worked with TCI?

21 A. TCI. It was a cable company; right.

22 Q. And Time Warner Cable?

23 A. Yes.

24 Q. So I'm just asking you, based on your
25 experience do you have a general understanding of

1 how those statutes changed?

2 A. Yes.

3 Q. Can you tell us what it is?

4 A. Well so, for example, now the -- the latest
5 version of the law, it doesn't really matter if you
6 have a relationship with the consumer or not, these
7 prerecorded messages are not something that you
8 would want to do. It's brought too much risk --

9 Q. And if we look at 2002, what was the rule
10 then?

11 A. The prerecorded messages?

12 Q. Yeah.

13 A. There were a number of statutes about that.
14 There was a time limit. There were, you know, how
15 long before you could get to a live person. There
16 was an abandoned call percentage. There were many
17 different facets of that law that were open to
18 interpretation.

19 Q. So what was the big -- first big change in
20 the law? On prerecorded calls? When did that occur
21 and what was it?

22 A. I don't remember specifically when it
23 occurred, but it was -- I'd have to pull it up and
24 look at it. I mean I don't memorize all these
25 things.

1 Q. No. Fair enough.

2 A. It's easily researched. I mean you can pull
3 it up and look at it. And as I did my expert
4 report, I had -- you know, some of the documents
5 that I had were those laws specifically and the --
6 the years in which those changed.

7 Q. And you were asked at your deposition had
8 you done any work with clients to help determine
9 whether or not they satisfied the safe harbor
10 provision of the telemarketing sales rule. And you
11 said you didn't know the answer to the question?

12 A. So in the course of my consulting work the
13 actual safe harbor provision never actually came up.

14 Q. And you were asked at your deposition could
15 you identify any of the elements that need to be
16 satisfied in order to secure the protection of the
17 safe harbor provisions in the TSR, and you could not
18 identify any such provision. Can you today?

19 A. Sure. I could then too. But in the course
20 of my review of the DISH Network documentation I
21 don't remember ever seeing anything about safe
22 harbor.

23 But I mean safe harbor is showing that you have
24 actually done your due diligence. And you have, you
25 know, policies and procedures in place. You have

1 policies and procedures and rule -- procedures to
2 rule out those policies and procedures. You have
3 monitoring in place. You have training in place.
4 And, you know, you have a limited exposure.

5 Q. Yeah. But -- I'm gonna come back to that in
6 a minute. But my question is, can you yourself
7 identify any of the elements that need to be
8 satisfied in order to secure the protection of the
9 safe harbor provision?

10 A. Sure. I mean I'd have to -- I would pull it
11 up to make sure I quote the law. Again, I don't
12 have it memorized.

13 Q. Okay. At your deposition you did not even
14 know what the safe harbor was a safe harbor from;
15 right?

16 A. No, that's not true.

17 Q. Let me show you 143, 13 to 142, 22. Are you
18 with me, Ms. Green?

19 A. Yep.

20 Q. (As read:) Question: Do you have an
21 understanding of what the safe harbor provisions are
22 intended to provide?

23 Objection.

24 well, I don't know what the legal reason was to
25 have that in the law.

1 Do you know what they are a safe harbor from?

2 Answer: No.

3 A. Yeah. So this is the first deposition that
4 I've ever done in my entire life. And it was
5 stressful to say the least.

6 Well, it's true.

7 THE COURT: And it wasn't even Mr. Bicks.

8 Q. So let me just turn my attention a little
9 bit to DISH. So is it a good practice to have a
10 written do not call policy?

11 A. Yes.

12 Q. Did DISH have a written do not call policy?

13 A. Yes.

14 Q. Is it a good policy to update the do not
15 call policy when the law changes?

16 A. Absolutely.

17 Q. Did the telemarketing law change between
18 2002 and 2008?

19 A. Yes.

20 Q. Did DISH update its written do not call
21 policy to reflect the changes in the law?

22 A. I'm not -- I don't know.

23 Q. So, for example, have you looked at DISH's
24 various do not call policies?

25 A. Yes.

1 Q. How many did they have?

2 A. I don't remember.

3 Q. Let me just show you tab 17. It's joint
4 Exhibit 5 at page 4. This is the 2002 do not call
5 policy. It's JTX 50. Have you -- were up familiar
6 with this?

7 A. No.

8 Q. Let's look at DTX6 at 3. That's 2002.
9 Did -- you see the date there?

10 A. Hm-mm.

11 Q. You see that it's -- it was revised in 2004?

12 A. 2004; correct.

13 Q. Do you know how it was revised?

14 A. No, I do not.

15 Q. Did you see this as part of your expert
16 opinion?

17 A. No.

18 Q. Let's look at JTX49. Did you see this as
19 part of your opinion?

20 A. No.

21 Q. Did you know that DISH revised its policy on
22 February 6, 2006?

23 A. No.

24 Q. Let's look at JTX48.

25 THE COURT: I'm sorry, what was that

1 number? The last one?

2 Q. JTX49.

3 JTX48, had you seen this before?

4 A. No.

5 Q. So if I told you to walk us through how
6 DISH's policies were revised, you wouldn't know that
7 because you haven't seen them?

8 A. Correct.

9 Q. All right. Is it a good practice, do you
10 think, to have the written do not call policies
11 accessible to employees on the internet?

12 A. On the internet or the intranet?

13 Q. Intranet?

14 A. Intranet?

15 Q. Yes.

16 A. Yes.

17 Q. Do you know if DISH did that?

18 A. I do not.

19 Q. Let me show you DTX14 at 12 and ask if
20 you've seen this before.

21 Had you seen this before, by the way? Do not
22 call requests, 52 page document?

23 A. No.

24 Q. Let's look at page 12. Did you know that
25 DISH's do not call policy was -- could be accessed

1 over the internet?

2 A. No.

3 THE COURT: I'm sorry, I missed it. What's
4 the date on this exhibit?

5 Q. That's a good question, Your Honor. I will
6 check, because I don't know off the top of my head.
7 We'll check and come back to that.

8 Did you -- do you know who Mr. DeFranco is?

9 A. No.

10 Q. Were you ever shown -- it's important,
11 right, to communicate with retailers as a general
12 proposition on do not call issues?

13 A. Absolutely.

14 Q. And did you know that -- do you know who
15 Mr. DeFranco is?

16 A. I don't remember.

17 Q. Did you know that he was the co-finder of
18 DISH?

19 A. No.

20 Q. Were you shown a retailer chat in January of
21 2007 where he cautioned all the retailers on do not
22 call compliance issues?

23 A. No.

24 Q. And did you see that the -- let me back up
25 for a minute. Do you think it's a good idea for

1 senior management of a company to be involved in
2 compliance issues?

3 A. Absolutely.

4 Q. And as part of your opinion did you look at
5 the number of communications from DISH to retailers
6 about telemarketing compliance?

7 A. I saw numerous form letters and e-mails that
8 went back and forth about compliance; yes.

9 Q. What about actual communications from the
10 chairman of the company and the co-founder of the
11 company? Did you see any of those?

12 A. No, I did not.

13 Q. Do you know what a Charlie Chat is?

14 A. No, I do not.

15 Q. Do you know who Mr. Ergen is?

16 A. No, I do not.

17 Q. You didn't know that he is the CEO of DISH?

18 A. Not off the top of my head.

19 Q. And you weren't provided with communications
20 from the chairman and the co-founder about retailer
21 compliance and do not call lists?

22 A. No. I was more interested in what DISH
23 actually did when they got a complaint and the
24 investigation of that complaint, not necessarily
25 what DISH told its retailers.

1 Q. But you would agree with me that
2 communication to retailers from senior management
3 about the importance of compliance is a good thing
4 to do; right?

5 A. Yes.

6 Q. Okay. And you talked a little bit about
7 DISH's OE retailer agreement; right?

8 A. Yes.

9 Q. Are you familiar with DISH's facts blasts,
10 where they sent out to all the retailers'
11 communications about the specifics of the
12 telemarketing laws?

13 A. I do remember that.

14 Q. And you think it's a good thing to
15 communicate details about telemarketing laws?

16 A. This was after they started receiving
17 numerous complaints. So they decided this facts
18 blast might be helpful.

19 Q. And do you know what date -- this facts
20 blast you are talking about was?

21 A. Off the top of my head I don't remember.

22 THE COURT: Excuse me, you didn't answer
23 the question. He asked if the facts blast were a
24 good idea.

25 A. Yes.

1 Q. And let me show you Defendant's 607 and ask
2 if you've seen this before?

3 A. Yes.

4 Q. And is this an accurate and complete
5 statement of the law as you understand it on do not
6 call issues?

7 A. Yes.

8 Q. And do you think it's a good idea to
9 communicate accurately issues relating to
10 telemarketing compliance?

11 A. Yeah. As long as you enforce it.

12 Q. And let me ask you about training. Is it a
13 good idea to train employees and independent
14 retailers on the telemarketing laws?

15 A. Yes.

16 Q. And how often did DISH provide trainings?

17 A. I don't know.

18 Q. Do you know who attended?

19 A. Who attended the trainings at the retailers?

20 Q. Yeah.

21 A. I do not.

22 Q. And do you know what was said at the
23 trainings?

24 A. I didn't see evidence of that, so no.

25 Q. But you looked at Mr. Bangert's testimony

1 about training employees on scrubbing procedures;
2 right?

3 A. Yes.

4 Q. And do you recall that he said he personally
5 trained on the PDialer. And when he transitioned it
6 this was one of the things that he trained the
7 person who took over him on. Did you read that
8 testimony?

9 A. I don't remember specifically.

10 Q. Let me help you out, because you said you
11 looked at his deposition; right?

12 A. Hm-mm.

13 Q. Okay. It's April 18, 2012, at 120, 10 to
14 14. Mr. Bangert's testimony. Do you remember
15 seeing this testimony?

16 A. Yep. Yes.

17 Q. And what about Ms. Dexter's deposition? Do
18 you recall her testifying she received on-the-job
19 training and formal do not call law training,
20 including PowerPoint presentations by DISH personnel
21 reviewed with the managers?

22 A. No.

23 Q. Let's look at 16, 22 to 17, 6. This was a
24 deposition that you looked at; right?

25 (As read:) We have formal training. There was

1 some formal training that was put together for the
2 do not call policies. Do you recall that -- who
3 gave you that training? It was training material
4 within the department. PowerPoint training managers
5 put together was reviewed with my managers.

6 Does this refresh your memory on that topic?

7 A. Somewhat.

8 MR. LEE: Your Honor, I just wanted to make
9 a note that whatever this PowerPoint presentation
10 training material that is referenced here was not
11 made available to the plaintiffs during discovery.

12 MR. BICKS: Your Honor, I went through
13 multiple PowerPoints with Ms. Musso and Mr. Werner.

14 MR. LEE: But this specific one was not
15 identified. We're not sure exactly what they're
16 talking about here.

17 THE COURT: I thought this witness just
18 testified that she saw it.

19 A. I saw this deposition --

20 MR. LEE: She saw the deposition, not the
21 PowerPoint itself. We don't know what it is.

22 THE COURT: So could we get that over the
23 lunch hour?

24 MR. BICKS: Yes, Your Honor.

25 THE COURT: Okay.

1 BY MR. BICKS:

2 Q. You also heard from Mr. Werner that there
3 were retailer development forums, probably a dozen
4 per year, where training was done? Did you see that
5 testimony?

6 A. I think so.

7 Q. All right. And do you think it's good to
8 have companies like PossibleNow come when retailers
9 are there and provide training to them? Is that a
10 good thing to do?

11 A. Yes.

12 Q. Do you know how many times DISH did that?

13 A. No, I don't.

14 Q. Do you know how long DISH has worked with
15 PossibleNow?

16 A. Off the top of my head I do not remember.

17 Q. Is it a good thing to create a comprehensive
18 database to centralize federal, state, and internal
19 do not call lists?

20 A. As long as it's kept fresh.

21 Q. And did DISH do that?

22 A. I don't know.

23 Q. Did you see any information indicating
24 whether or not DISH fined retailers?

25 A. Yes.

1 Q. And how many such penalties were imposed; do
2 you know?

3 A. I know of a few. JSR being one.

4 Q. How much was JSR penalized?

5 A. \$500.

6 Q. JSR was actually terminated; right?

7 A. After multiple complaints; yes.

8 Q. Right. And you think -- are you possibly
9 confusing another retailer when you say \$500? Are
10 you sure it's JSR?

11 A. No, it was JSR. They had originally
12 estimated they were going to fine him \$2500, and
13 then Reji decided that \$500 was going to be
14 sufficient.

15 Q. Yeah. And I'll represent to you that's not
16 JSR, but that's fine.

17 A. Okay.

18 Q. Do you think it's a good thing to terminate
19 retailers in certain circumstances?

20 A. Terminate or suspend in certain
21 circumstances. I've actually talked about that
22 earlier.

23 Q. Right. And did DISH terminate JSR?

24 A. They did.

25 Q. There's a company called Dish TV Now. Were

1 you provided any documents about them?

2 A. I'm sorry, say that again?

3 Q. Dish TV Now, were you shown any documents
4 about them for your expert opinion?

5 A. I don't remember the name. You know, there
6 were many volumes of many documents.

7 Q. And did you know that DISH terminated Dish
8 TV Now?

9 A. Not off the top of my head; no.

10 Q. What about Star Satellite; did you look into
11 that retailer?

12 A. No.

13 Q. Were you provided the testimony of
14 Mr. Hagan, Mr. Baker, Mr. Myers? Do you know who
15 those people are?

16 A. No.

17 Q. Is it a good thing, do you think, when you
18 terminate a retailer, to issue a press release so
19 all the other retailers see what you did?

20 A. I don't know.

21 Q. Did you see evidence of whether or not DISH
22 issued press releases when it terminated retailers?

23 A. No, I did not.

24 Q. Let me show you DTX947, tab 28. Have you
25 seen this before?

1 A. No, I have not.

2 Q. And I think if you go to the next page of
3 it. I take it you haven't seen this before?

4 A. No.

5 THE COURT: For the record, Mr. Bicks, what
6 is it?

7 Q. This is DTX6 -- I'm sorry, let's bring up
8 674. It was 947.

9 You had never seen this document where DISH
10 sent out a facts blast about using third-party lead
11 generation?

12 THE COURT: Did you say no?

13 A. You're asking me?

14 Q. Yes.

15 A. No.

16 Q. Okay. And can we look at 674. I was asking
17 you about publicizing and issuing press releases
18 about terminating retailers. Had you seen this
19 press release where DISH issued a press release that
20 JSR had been terminated?

21 A. No.

22 Q. And you mentioned JSR as a retailer; right?

23 A. Mm-hmm.

24 Q. Let me show you Neylon 1 to see -- it's a
25 graphic that I think will balance some of the issues

1 here.

2 Have you, as part of your expert opinion,
3 looked at the number of violations that are at issue
4 here, and when they actually occurred?

5 A. Not this specific document, but other
6 documents; yes.

7 Q. Okay. Because I had asked you about Dish TV
8 Now and Guardian. You weren't provided any
9 documents on that topic?

10 A. Not that I remember.

11 Q. And then when we talked about Star Satellite
12 and Guardian; you weren't provided documents on that
13 topic?

14 A. Not that I remember.

15 Q. Okay. But the topic -- the American
16 Satellite, did you know that there's a claim of one
17 telemarketing violation on American Satellite here?
18 Did you know that?

19 A. I don't remember.

20 Q. And on JSR, that is a retailer that you did
21 provide some testimony about; right?

22 A. Yes.

23 Q. And I'm gonna come over here and put up a
24 timeline that we have used. You would agree with me
25 that whether or not to terminate a retailer is

1 fact-specific; right?

2 A. Yes.

3 Q. And you would agree with me that it involves
4 judgment calls; right?

5 A. Yes.

6 Q. And you would agree with me that at the time
7 of what was going on here, obviously, you were not
8 there as a matter of fact; right?

9 A. No, I was not.

10 THE COURT: Mr. Bicks, excuse me for -- do
11 we have the timeline of retailer violations? Is
12 that what this is?

13 MR. BICKS: I was going to the JSR
14 timeline.

15 THE COURT: The one on the screen, is
16 that -- I just want to make sure we have a copy of
17 what is on the screen.

18 MR. BICKS: Yes. I will get a copy. I
19 think there's one in the binders.

20 MS. MOWER: We will print it out and send
21 it.

22 MR. BICKS: We will get it.

23 THE COURT: Okay.

24 BY MR. BICKS:

25 Q. Can you see this?

1 A. Yes.

2 Q. Will you hold this? So this is a timeline
3 of the complaints that DISH received on JSR; right?

4 A. Yes.

5 Q. And the first one was in September 2006. It
6 was the Hannah Klein sting, where DISH was said --
7 told it was a corrupted DNC download; right?

8 A. Yes.

9 Q. Have you, in your work in call centers, have
10 you seen situations where there has been a corrupted
11 DNC download?

12 A. Yes, that can happen.

13 Q. That can happen; right.

14 And so your testimony -- and by the way, can we
15 bring up the JSR business plan. Naomi, what is
16 that?

17 MS. MOWER: PX235.

18 Q. 235. You said DISH got a business plan from
19 JSR. Is getting a business plan, is it a good idea?

20 A. It's part -- it's a good idea; yes.

21 Q. And you see in this business plan that
22 there's an indication that there will be print,
23 telemarketing, and also direct mail; right?

24 A. Yes.

25 Q. And then you see in the comments there,

1 there are additional comments, and then it is signed
2 and indicates there was an office with eight phone
3 lines, and they hired two gentlemen, and so and so
4 forth; right?

5 A. Mm-hmm.

6 Q. Is that good information --

7 A. It's good information to base your own
8 internal investigation on them before you sign them;
9 yes.

10 Q. Yeah. And when it's a new business and it's
11 people who just formed a venture, tell me again what
12 exactly are you going to investigate?

13 A. Well, it's risk, so you're going to
14 investigate the principals for sure.

15 Q. Yeah. And is it the case that every -- by
16 the way, do you know if there are any restrictions
17 on doing investigations on people's backgrounds?

18 A. There are, definitely. That's why you
19 include that in your contract with them, to make
20 sure that they understand and agree to the
21 investigation that you're going to do.

22 Q. And do you actually -- are you aware, have
23 you ever come across any governmental regulations of
24 the federal government where there are restrictions
25 on looking into people's backgrounds?

1 A. Of course there are.

2 Q. And -- but just so we're --

3 A. I'm not a lawyer, so I would, you know, work
4 with a legal department to make sure that those
5 types of investigations that I wanted to do were
6 included in the contract.

7 Q. So I just have a -- curious. So I'm at a
8 law firm and I hire people to come work at my office
9 for the summer, should I be doing investigations on
10 their background?

11 A. Yes. Actually, we hire folks in my
12 professional services firm, we have people that come
13 in and work as interns. And we do an investigation
14 on them. Today we investigate things like Facebook,
15 Twitter, social media, you know, to see what type of
16 person we're bringing on board. Absolutely.

17 Q. And you think that's what all major -- just
18 pick out law firms, you think all law firms do those
19 investigations on people's backgrounds?

20 A. I don't know what law firms do. When I said
21 legal advice, when I was working, for example, at
22 Household Retail Services, and we were going to sign
23 a retailer to market our credit card services, we
24 would have certain wording within the contract that
25 allowed us to do an investigation on the principals

1 of that particular business.

2 Q. And so on these complaints here, you see
3 that August 2006, JSR became an OE retailer --

4 A. Right.

5 Q. -- and then DISH terminated them in February
6 2007?

7 A. Yes. But they had a complaint after one
8 month.

9 Q. And that was the complaint where they
10 reached out to them and the individual said that it
11 was the result of a corrupted DNC download?

12 A. Yes.

13 Q. And these are judgment calls; right?

14 A. No. That's a fact.

15 Q. They're judgment calls about how to handle a
16 complaint? You said that yourself; right?

17 A. You mean whether or not to suspend them or
18 terminate them?

19 Q. Right. That's a judgment call; right?

20 A. It is.

21 Q. Right. And I think you said in response to
22 a question from the Court that if you got a
23 complaint, one complaint, you wouldn't necessarily
24 terminate somebody; right? It depends on the facts?

25 A. After my investigation I would make that

1 determination.

2 Q. Right. And do you know how many people at
3 DISH were working on this investigation at the time,
4 and looking into it?

5 A. From the evidence that I saw?

6 Q. Yes.

7 A. They sent the letter to JSR, they got the
8 response back about the corrupted file, they
9 attached it to the complaint, and they filed it. I
10 didn't see any evidence of investigation.

11 Q. What about with the Melissa Wallace
12 complaint? Did you see the actual response from
13 JSR --

14 A. I did.

15 Q. -- where they told DISH that they were
16 completely compliant with the law. That it was less
17 than 3 percent of all the calls they were making, so
18 therefore it was covered by the safe harbor. That
19 Melissa Wallace was actually not on the do not call
20 list, and that therefore, the complaint was
21 erroneous. And as a matter of fact, the letter also
22 said that JSR is completely outside of the control
23 of DISH. Did you see that?

24 A. I did see that.

25 Q. Okay. And when you saw that did you think

1 the person was lying or telling the truth?

2 A. What I saw was that DISH didn't make an
3 attempt to determine if they were lying or telling
4 the truth.

5 Q. Well, DISH reached out to them and asked for
6 their explanation?

7 A. Right. And then they didn't validate that
8 explanation. They didn't do their own
9 investigation. Or at least that I saw.

10 Q. Was there something about that particular
11 response which made you think that it was not true?

12 A. It doesn't matter whether I think it's not
13 true or not. I need to do my own investigation to
14 determine if she is indeed on the do not call list,
15 what campaign she was associated with, if there are
16 other numbers on that list. You know, a month
17 before they had a problem with the list, so it would
18 make sense then to look at the list again and look
19 at their process for scrubbing the list.

20 I mean all of that due diligence needs to be
21 done by myself, the seller. Not just relying on a
22 merchant who I signed up only two months ago. And
23 didn't do an investigation on.

24 Q. Do you actually know what JSR did? What
25 investigation they did on that?

1 THE COURT: On which?

2 Q. On any of these things? For example,
3 Melissa Wallace?

4 A. Only -- they were the ones that had the
5 complaint.

6 Q. Right.

7 A. Therefore, they're explanation is their
8 explanation. DISH then should have done an
9 investigation to determine if that was true or not.

10 Q. Let me show you the John Foard complaint.
11 Do you remember what that was?

12 A. Somewhat.

13 Q. That was one where the actual individual
14 wrote back and said it was not even JSR, it was a
15 different company?

16 A. Oh, yes, I do remember that.

17 Q. As you sit here today do you know as a
18 matter of fact whether or not that actually was JSR,
19 or whether or not when the person said it was a
20 different company, whether or not he was right?

21 A. I saw no evidence that DISH did their own
22 investigation of that particular complaint. So all
23 I have is JSR's word for that, and their response to
24 the complaint.

25 Q. But you don't know, as you're telling us

1 here today, whether or not there was something
2 untruthful about that complaint?

3 A. No, I don't.

4 Q. Okay. And can I just ask you, as you look
5 at this, did you look at how many different DISH
6 people were on the e-mails exercising judgment about
7 how to handle this -- these situations?

8 A. Yes.

9 Q. How many people? Approximately?

10 A. I couldn't remember a number.

11 Q. Senior people in the company?

12 A. Mostly Reji.

13 Q. You didn't see any senior --

14 A. Reji, Mike Mills, Bruce Werner.

15 Q. What about Mr. Neylon, did you see him?

16 A. Don't remember that.

17 Q. Do you know who he is?

18 A. No.

19 Q. And again, so we're clear, these are
20 judgment calls; right? About how to handle
21 information when it's in front of you; right?

22 A. Well, doing an investigation is not a
23 judgment call.

24 Q. Well --

25 A. The action that you would take with your

1 retailer would be based on the facts of my own
2 investigation, not just the response from the person
3 who received the complaint.

4 Q. I was going through the things and asking
5 you if they're good things to do. Is it a good
6 thing to track complaints?

7 A. Yes.

8 Q. Was DISH tracking complaints when it got
9 them?

10 A. Yes.

11 Q. And is it a good thing to have a centralized
12 compliance group to handle telemarketing complaints?

13 A. Yes.

14 Q. And did DISH have such a group?

15 A. Yes.

16 Q. Is it a good thing to have a legal
17 department to resolve issues associated with
18 telemarketing compliance?

19 A. Yes.

20 Q. Did DISH have a legal department that worked
21 to resolve issues associated with telemarketing
22 compliance?

23 A. I don't remember.

24 Q. What about a field sales development
25 representative? Do you know what that is?

1 A. Yes.

2 Q. Is it a good thing to have field sales
3 development representatives visiting retailers?

4 A. Yes.

5 Q. Is it a good thing to have a quality
6 assurance program in place to monitor calls?

7 A. Yes.

8 Q. Did DISH do that?

9 A. Yes.

10 Q. Are you aware that DISH had an Executive
11 Resolution Team that handled customer complaints
12 that were made to executives?

13 A. Yes.

14 Q. Is that a good thing?

15 A. Yes.

16 Q. Are you familiar with something called the
17 Dispute Resolution Team or DRT?

18 A. Don't remember.

19 Q. Do you know that DISH had a Dispute
20 Resolution Team that followed up on Attorney General
21 and Better Business Bureau complaints?

22 A. I remember they had a group that did that.
23 I didn't remember what it was called.

24 Q. Is that a good thing to do that?

25 A. Would be a good thing not to have to have

1 that.

2 Q. Well, so you mentioned the company that you
3 worked for and you talked about, what was it, Time
4 Warner Cable?

5 A. Time Warner Cable. One of my projects, yes.

6 Q. And how -- you were working on their
7 Compliance Department? Their --

8 A. No. I was working with their sales and
9 marketing and telemarketing group.

10 Q. Yeah. And how do you grade their compliance
11 on TCPA? Were you involved with that?

12 A. For the group that I was with we don't give
13 grades.

14 Q. I thought you -- were you involved in TCPA
15 compliance issues for Time Warner Cable?

16 A. Well, we made sure that their
17 operations--that we worked on and that we
18 re-engineered--were compliant.

19 Q. Yeah. I want to show you Cross Exhibit 65
20 and 66. Did you know that they have been sued in
21 class action complaints? A lawsuit saying that
22 their telemarketing compliance doesn't comply with
23 the law?

24 A. Was that in the Midwest group that I worked?
25 Or where was that at?

1 Q. I'm gonna show you. So you weren't looking
2 at Time Warner Cable overall, you just looked at
3 part of it?

4 A. We worked with the Midwest region in
5 Columbus, Ohio.

6 Q. So do you know whether or not the company
7 has been sued in class actions for making
8 unsolicited telemarketing calls to telephones of
9 consumers nationwide to obtain redress for all
10 persons injured? Did you know that?

11 A. No.

12 Q. Let me show you --

13 A. Where and when?

14 Q. Is it up here?

15 Well, Ms. Green, I have before you CX65. It's
16 a lawsuit filed -- class action lawsuit filed
17 against Time Warner Cable. Where you aware of that?

18 A. No. But this is 2015. They were my client
19 five years before that. They have since disbanded
20 the Midwest region, they have gone to just east
21 coast, west coast. So yeah, no, I was not aware of
22 this.

23 Q. So you're not up to speed on kind of the
24 current compliance issues at Time Warner Cable?

25 A. Well, Time Warner Cable is not my client

1 currently. And this was November of 2015. So I
2 have been working with other clients since then.

3 Q. Yeah. But is it fair to say that what you
4 had done in 2010, whatever part of Time Warner Cable
5 that you were involved with, did you give them kind
6 of a clean bill of health or telemarketing --

7 A. For the Midwest Region. That's been
8 disbanded.

9 MR. LEE: I just want to object to that
10 line of questioning. She testified -- there's no
11 evidence in the record about whether or not what
12 Ms. Green did relates to this part here, this
13 lawsuit here.

14 THE COURT: The objection is sustained.

15 Q. But you weren't aware of any of these
16 complaints against Time Warner?

17 A. No. That's relatively new.

18 Q. Okay. On -- what is spoofing, by the way?

19 A. Spoofing is when you show a phone number on
20 a caller ID that's really not yours.

21 Q. And you talked about investigating
22 complaints. Can investigating telemarketing
23 complaints be difficult?

24 A. It can be.

25 Q. And how can it be difficult?

1 A. Well, if you -- I mean the caller ID that
2 comes up may not be associated with the actual
3 caller, so you may have to dig a little deeper. I
4 mean, most of what I looked at were the OE
5 retailers, and they certainly had log-on ID's and
6 they kept track of who was able to use those log-on
7 ID's. So you could track that to the OE log-on.

8 THE COURT: Mr. Bicks, I apologize for
9 interrupting again. But how physically does the
10 false number exist?

11 A. So I don't know -- you know, technically I'm
12 not a technical person, but what spoofers have done
13 in the past is, let's just say you're in New York,
14 but you want the number -- they have a way to make
15 the number in the caller ID look like you're in
16 Colorado, you're calling from Colorado --

17 THE COURT: I just don't understand
18 physically how they do that.

19 A. I'm not technical. I just know that it
20 happens.

21 THE COURT: Okay.

22 A. The good news is there's less and less of it
23 today.

24 Q. It's tough sometimes to investigate
25 complaints; right?

1 A. It's tough sometimes to investigate
2 complaints; right. Sometimes you have to dig a
3 little harder.

4 Q. And you saw DISH had a whole tracking
5 process for complaints?

6 A. Tracking? Yes.

7 Q. And you also saw DISH had a sting operation?
8 Do you know how many stings they did?

9 A. They did a number of strings. I didn't
10 count them.

11 Q. How many?

12 A. I didn't count them.

13 Q. Give me your rough estimate based on your
14 expert work?

15 A. I can't.

16 Q. 150?

17 A. I can't.

18 Q. You don't know?

19 A. I don't. I could go back through all the
20 documents and count them I suppose.

21 Q. What about POE notices? Do you know what
22 those are?

23 A. Place of employment notices?

24 Q. POE. Did you see that in the case?

25 A. No.

1 Q. Stands for partner order entry. Does that
2 ring a bell?

3 A. No.

4 Q. You didn't see information where DISH
5 distributed notices instructing retailers not to
6 call specific consumer numbers?

7 A. They did a lot of instructing.

8 Q. Right. So I'm asking you, did you see those
9 POE notices?

10 A. No.

11 Q. And I want to ask you about what you looked
12 at. Remember you mentioned on direct something
13 called a wish list?

14 A. Yes. It's something we use in our practice.

15 Q. But you didn't ask for things on a wish list
16 in this case, did you?

17 A. No. I was given evidence to review.

18 Q. And the reason you didn't ask for documents
19 is because you didn't think they were available;
20 right?

21 A. No. This wasn't a normal assessment that I
22 do. This -- a wish list is what we give to clients
23 when they have asked us to do an assessment of their
24 operation.

25 Q. Right. Sometimes you get involved in

1 something and you put together a list of things and
2 say, "This is what I would like to look at." Right?

3 A. Yes.

4 Q. You didn't prepare a wish list here?

5 A. No. This wasn't that type of engagement.

6 Q. And you didn't ask for materials because you
7 didn't know that you could ask for things; right?

8 A. I was given volumes of materials to review.
9 And at -- reviewing those documents, I felt that I
10 had enough to form an opinion, which is what I was
11 asked to do.

12 Q. Well, you did say that in your normal job
13 you come up with a list and you wish you could see
14 X, Y, or Z documents, but you don't have them. But
15 you didn't do that in this case; right?

16 A. No. Again, I was given volumes of materials
17 to review and asked if I could form an opinion based
18 on those documents. And the answer was yes. I mean
19 that's what I do every day, especially with my
20 numerous years of experience. I certainly can
21 understand an operation as simple as this.

22 Q. Well, let me show you your deposition at
23 178, lines 10 to 16.

24 (As read:) why didn't you ask for the
25 additional documents that occurred to you might be

1 helpful to have while you were doing your work? I
2 don't know, I didn't think there were any other
3 available. I don't know, I don't remember.

4 Do you remember this testimony?

5 A. Yes. Again, first deposition ever.

6 Q. And I wasn't even there.

7 A. I know. You're actually nicer.

8 Q. Thank you for saying that.

9 You saw my slide there where I was comparing
10 your report to sources that --

11 A. Yeah.

12 Q. And when you took a break from the courtroom
13 did you take a look at that?

14 A. No.

15 Q. Okay.

16 A. I've seen it before.

17 Q. What's that?

18 A. I've seen it before. During the deposition,
19 of course.

20 Q. Okay, okay.

21 when you talk about industry standards and
22 practices, you would agree with me that it's
23 actually more robust than what the law requires;
24 right?

25 A. Oh, yes.

1 Q. Thank you very much.

2 THE COURT: Redirect?

3 MR. LEE: Thank you, Your Honor.

4 THE COURT: Let's just go ahead and break
5 for lunch at this time. Is that acceptable?

6 MR. LEE: Excuse me, Your Honor?

7 THE COURT: Let's go ahead and break for
8 lunch. We'll come back at 1:20. And I have to ask
9 the courtroom, is there an attorney named Bill in
10 the courtroom.

11 Who are you with?

12 UNIDENTIFIED SPEAKER: Cassidy Shade.

13 THE COURT: Okay. I apologize for
14 embarrassing you. I received a text from my
15 daughter that you would be here and you were a
16 friend of hers. I didn't know if I need to disclose
17 that.

18 MR. BICKS: Your Honor, the rule is no
19 talking about the testimony over lunch?

20 THE COURT: Yes.

21 (A lunch break was taken.)

22 THE COURT: Please be seated. Please
23 continue.

24 REDIRECT EXAMINATION

25 BY MR. LEE:

1 Q. Good afternoon, Ms. Green.

2 A. Hello.

3 Q. Did you have a good lunch?

4 A. I did, thank you.

5 THE COURT: Where did you go?

6 A. They brought in lunch. It was a salad. And
7 I went to Starbucks.

8 THE COURT: I always wonder if somebody has
9 a good lunch in Springfield.

10 Q. I had a few follow-up questions based on
11 what Mr. Bicks asked you about.

12 One of the things, do you recall Mr. Bicks
13 asking you about what you referred to as a document
14 wish list?

15 A. Yes.

16 Q. Do you typically feel like you need to
17 review all of the documents that you identified in
18 this wish list to know when there is an issue with
19 an operation that you're reviewing?

20 A. No.

21 Q. Did you review enough documents in this
22 case, in this engagement, to know whether or not
23 there were any issues with DISH's operations?

24 A. Yes.

25 Q. Now, Mr. Bicks also asked you about some of

1 DISH's own internal policies. Is your testimony
2 today related to DISH'S own internal policies and
3 telemarketing operations?

4 A. No.

5 Q. Okay. So does DISH'S own calling policies
6 with respect to its own internal operations, is that
7 relevant to your opinion?

8 A. Yes and no. I mean they had policies and
9 procedures, that's one step. But I looked more at
10 what they actually did in reference to the
11 complaints and the operations that they had.

12 Q. And this was with respect to the retailers?

13 A. Yes.

14 Q. Now, Mr. Bicks also asked you about a number
15 of different things that he referred to as good
16 things. For example, having policies with respect
17 to do not call, communicating to retailers, tracking
18 complaints. Do you recall that questioning?

19 A. Yes, I do.

20 Q. Now, are having those things enough?

21 A. No.

22 Q. What more do you need in your opinion?

23 A. Well, having the policies is step one. Then
24 making sure that those policies are complied with
25 and, you know, utilized within the execution of

1 their operations is step two.

2 Q. And do you have an opinion about whether or
3 not DISH did enough with respect to step one or step
4 two?

5 A. For their retailers, I would say no and no.

6 Q. In your opinion is -- is telling retailers
7 simply not to violate the law and providing
8 reminders, is that sufficient in terms of mitigating
9 risk?

10 A. No.

11 Q. Could you explain that?

12 A. It's like telling a child, don't do this,
13 and you tell them don't do this, but you never do
14 anything about it. The child is still going to push
15 the limits. For example, even with that JSR, if
16 they had the first complaint, they asked what the
17 problem was, they got an answer. They didn't
18 investigate the answer, they didn't find out for
19 themselves how widespread the problem was. They
20 relied on the person that allegedly had the
21 violation to respond. That's not enough. You have
22 to satisfy your own -- you have to satisfy it on
23 your own and do your own investigation.

24 Q. Kind of going off that, Mr. Bicks also asked
25 you about difficulty that there may be sometimes

1 with investigating consumer complaints because of
2 things like spoofing. Do you recall that testimony?

3 A. Yes.

4 Q. Do you think that it would have been
5 difficult for DISH to investigate the practices of
6 its OE retailers?

7 A. No. I think that you might have to dig a
8 little harder. You might have to call some
9 consumers and actually talk to them and ask them
10 what happened. You might have to go to the place of
11 business where these calls are actually being made
12 to see it. But I don't think hard is not -- I mean
13 it's doable.

14 Q. And did DISH have the right to do these sort
15 of investigative steps that you just testified
16 about? With respect to its retailers?

17 A. Yeah. Based on the contract they had with
18 the retailers, I would say yes.

19 Q. In terms of this -- in terms of the due
20 diligence that you testified earlier. Do you recall
21 that testimony?

22 A. Yes.

23 Q. Were you suggesting that you -- did you
24 testify previously about, when you were suggesting
25 that companies do their due diligence, were you

1 testifying that they should do investigation that
2 was more than the law required or -- excuse me, more
3 than the law allowed?

4 A. No.

5 Q. Okay. Do you know if, in the process of
6 doing due diligence investigation, if things like
7 felonies and bankruptcies are public record?

8 A. Yes.

9 Q. And are those the types of things that you
10 would recommend --

11 A. Absolutely. As part of the criminal
12 investigation, absolutely. And financial
13 investigation in the case of the bankruptcy.

14 Q. There was -- Mr. Bicks asked you about some
15 changes in the TSR and the TCPA and different
16 changes in the law. Do you recall that?

17 A. Yes.

18 Q. Have you, in your time working as a
19 consultant in-house, have you always counseled --
20 excuse me, let me rephrase that.

21 Have you counseled you clients and in-house
22 folks that voice broadcasting, robo calling, was
23 covered and regulated by these two statutes?

24 A. Yes.

25 Q. Now, you mentioned JSR. Were you able to

1 hear the testimony of Richard Goodale yesterday?

2 A. I actually did.

3 Q. And what did you think?

4 A. It was interesting.

5 Q. Now, Richard Goodale was one of the
6 principals at JSR; do you know that?

7 A. Yeah. He was the R.

8 Q. Excuse me?

9 A. He said he was the R in JSR.

10 Q. Based on what you heard of Mr. Goodale's
11 testimony yesterday, how would you have counseled
12 your client as to whether or not to take his word in
13 terms of the -- in terms of the explanations he was
14 giving about do not call violations?

15 MR. BICKS: Your Honor, I would object to
16 this. And only in the sense this goes beyond the
17 scope of what Ms. Green had opined on in direct and
18 having testified to in her report. I'm just saying
19 if she is now going beyond that, and the Court is
20 going to allow it, I want to request that when
21 Mr. Sponsler is here, that he be allowed to talk
22 about what he's seen in the courtroom. If we're
23 going to allow this to happen.

24 THE COURT: Certainly.

25 Q. Go ahead. You can answer the question.

1 A. Well, the first part, when he was talking
2 about downloading phone numbers, essentially the
3 white Pages, and calling everybody with his 25
4 dialers that he would light up, didn't -- you know,
5 was interesting and similar to -- you know, was in
6 line with what I read in the documents provided. I
7 mean they didn't do a lot of due diligence on those
8 records, they were just trying to make as many sales
9 as possible.

10 Also the -- the shared log-in was quite
11 interesting.

12 Q. What did you think about Mr. Goodale's
13 testimony that DISH was signing up robo call
14 operations? would that have influenced sort of how
15 you counseled your clients about the investigation
16 that was necessary?

17 A. Oh, yes.

18 Q. How so?

19 A. So I mean if they -- he said they knew that
20 they were doing robo call operations. And, you
21 know, DISH, being a large retailer and wanting to
22 protect their reputation, I wouldn't have signed up
23 with them.

24 Q. From your review of -- from your review of
25 documents you saw at JSR, did you think that the

1 compliance folks at DISH--Ms. Musso, Mr. Werner--had
2 enough information about -- had enough information
3 about JSR to make an informed decision about how to
4 proceed with that company once they got complaints?

5 A. No. I did not see any evidence of their own
6 investigation. They got the reply from JSR, but
7 they didn't dig any deeper than that that I saw.

8 MR. LEE: That's all I have.

9 THE COURT: Mr. Bicks, anything further?

10 MR. BICKS: Yep.

11 RE CROSS EXAMINATION

12 BY MR. BICKS:

13 Q. Ms. Green, how many retailers did DISH
14 terminate?

15 A. You want the specific number?

16 Q. Yes.

17 A. I do not know.

18 Q. How many --

19 A. Over what period of time?

20 Q. Well, you tell me. You're the expert, you
21 looked at the record. How many --

22 A. I didn't memorize them.

23 Q. Give me your estimate?

24 A. I can't.

25 Q. Not even anywhere like 10, 15, 20, 25, 30?

1 You don't know?

2 A. No.

3 Q. How many people, when retailers get
4 terminated, were put out of work; do you know?

5 A. I don't know that. I know reading one
6 instance where they had 47 people and they shut down
7 the telemarketing operations, and the 47 people were
8 sitting there with nothing. But that has no bearing
9 on whether or not you would shut down an operation.

10 Q. I think you said that DISH -- people should
11 go actually visit the place of business of the
12 retailers?

13 A. Yes.

14 Q. Did DISH do that?

15 A. I believe they did in some cases.

16 Q. And --

17 A. But it was -- in some cases that was the
18 sales manager who owned the relationship, or the
19 field service team, and not necessarily the folks
20 that were involved in compliance investigation.

21 Q. But do you actually know whether compliance
22 people visited any of the retailers?

23 A. I didn't see evidence of that.

24 Q. And did you see -- you didn't look at the
25 evidence of the retailer communications about

1 training? And the training seminars?

2 A. Yes, I did see the training.

3 Q. And training given to OE retailers about
4 compliance?

5 A. Yes.

6 Q. Did I hear -- was your testimony that DISH
7 should not essentially trust and accept what
8 Mr. Goodale said to them?

9 A. Correct.

10 Q. Well, if DISH couldn't trust what he said
11 then how could we in court listen to him and trust
12 what he says?

13 MR. LEE: Objection, Your Honor. He's
14 trying to impeach Mr. Goodale's testimony with
15 Ms. Green's.

16 THE COURT: The objection is overruled.

17 A. Well, he actually said two things yesterday,
18 didn't he? He initially said, you know, that he
19 told them lots of lies. And then when you were
20 directing his responses to the complaints he said he
21 was telling the truth. So he said both.

22 Q. Yeah. Have you seen situations you're
23 counseling where people have actually concealed
24 information from people?

25 A. I've seen retailers try to conceal

1 information. Try to conceal fraud. That's why it's
2 up to the seller to do their own investigation and
3 form their own conclusions based on the
4 investigation that they do.

5 Q. Right. And I think you told us about on
6 direct some investigation you did about credit card
7 fraud; right?

8 A. Well, it's not necessarily credit card
9 fraud, but it was sales fraud for sure.

10 Q. Right. And what, you shut the people down;
11 is that what happened?

12 A. I suspended them until we had assurances
13 that it would no longer happen again.

14 Q. Did you bring them back on?

15 A. Yes.

16 Q. And just so we're clear, on the -- the
17 documents that you saw. 1376, it's an admitted --
18 it's admitted in evidence. I'm gonna pull it up on
19 the screen and ask if you've seen this. PX1376.
20 Had you seen this before?

21 A. It's just -- the logo? Oh, no.

22 Q. Okay. Just go to say page 25 up on the
23 screen. Had you seen that before?

24 A. No. But I've seen the e-mails from Reji
25 that said almost the exact same thing.

1 Q. And I'm just asking you in your --

2 A. It's telling them -- yes, I've seen them
3 tell them many times.

4 Q. Yeah. And I'll just ask you one final
5 question. Do you know how many retailers were
6 actually terminated?

7 A. No, I don't know the number.

8 MR. BICKS: Thank you very much.

9 MR. LEE: Just a couple of questions.

10 THE COURT: Yes.

11 REDIRECT EXAMINATION

12 BY MR. LEE:

13 Q. Mr. Bicks asked you about visiting the
14 sites. Is simply visiting the sights, is that
15 enough?

16 A. No.

17 Q. What do you need to do once you get to the
18 sites?

19 A. Well, depending on why you're there, you
20 know, or what you're investigating, you may pull the
21 call records, you may pull the campaign lists. You
22 may walk through the way in which they scrub their
23 lists. You may listen to calls, recorded calls.
24 You may sit side by side with the telemarketers.
25 You may observe -- observe how they quality monitor

1 their calls. All those things. I mean, you do
2 whatever you need to do to make sure you understand
3 how the operation is performing.

4 Q. And should you be documenting these steps
5 along the way?

6 A. Oh, gosh, yes.

7 Q. And should it -- who should be doing this
8 sort of investigation? The sales folks --

9 A. No, not the sales folks. I mean the sales
10 own the relationship. And they are incented to make
11 sells and work with them. So compliance and sales
12 should be completely separate.

13 And it isn't really the sales responsibility to
14 do that. I mean, they may go and look how they're
15 sales effectiveness is being handled, but from a
16 compliance prospective, I mean a sales person is
17 incented to grow revenue, so that would be a
18 conflict of interest.

19 Q. Mr. Bicks also asked you about reviewing
20 what Ms. Musso told -- told retailers about.
21 That -- is that enough in your opinion?

22 Actually let me rephrase that. Even taking
23 that to be true, and what has been provided, does
24 that change your opinion in any way?

25 A. No. I mean actually reading through many,

1 many of Ms. Musso's e-mails and her deposition, she
2 told people that many, many times. It's not enough
3 just to tell somebody though, you have to verify
4 that it's actually being followed.

5 MR. LEE: That's all I have.

6 THE COURT: Anything further, Mr. Bicks?

7 MR. BICKS: Nothing, Your Honor.

8 THE COURT: May this witness be excused?

9 MR. BICKS: Yes.

10 THE COURT: Does that go for the plaintiffs
11 also?

12 MR. LEE: Yes. Thank you, Your Honor.

13 THE COURT: You may step down. Thank you,
14 ma'am.

15 (The witness was excused.)

16 THE COURT: Your next witness?

17 MS. HSIAO: Your Honor, the plaintiffs
18 don't have any more live witnesses. We have a
19 number of housekeeping issues, including offering
20 some additional deposition transcripts related to
21 retailers into the record. And then also, some
22 remaining exhibits that we would like to have
23 admitted. And we've given DISH counsel a list of
24 those exhibits. So we anticipate there may be some
25 back and forth discussion with the Court about