

IN THE SUPREME COURT OF THE STATE OF NEVADA

PLUMBERS LOCAL UNION NO. 519
PENSION TRUST FUND; AND CITY OF
STERLING HEIGHTS POLICE AND FIRE
RETIREMENT SYSTEM, DERIVATIVELY
ON BEHALF OF NOMINAL DEFENDANT
DISH NETWORK CORPORATION,

Appellants,

vs.

CHARLES W. ERGEN; JAMES DEFRANCO;
CANTEY M. ERGEN; STEVEN R.
GOODBARN; DAVID K. MOSKOWITZ; TOM
A. ORTOLF; CARL E. VOGEL; GEORGE R.
BROKAW; JOSEPH P. CLAYTON; GARY S.
HOWARD; DISH NETWORK
CORPORATION, A NEVADA
CORPORATION; AND SPECIAL
LITIGATION COMMITTEE OF DISH
NETWORK CORPORATION,

Respondents.

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A-17-763397-B

JOINT APPENDIX

Vol. 72 of 85

[JA016437-JA016686]

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¹ Volumes 2-85 of the Joint Appendix include only a per-volume table of contents. Volume 1 of the Joint Appendix includes a full table of contents incorporating all documents in Volumes 1-85.

² The Evidentiary Hearing Exhibits were filed with the District Court on July 6, 2020.

EXHIBIT 787

EXHIBIT 787

JA016437
015158

TX 102-015699

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF ILLINOIS
3 SPRINGFIELD DIVISION

4 UNITED STATES OF AMERICA and)
5 The STATES OF CALIFORNIA,) BENCH TRIAL
6 ILLINOIS, NORTH CAROLINA, and)
7 OHIO,) 09-03073
8 PLAINTIFFS,)
9 VS.) SPRINGFIELD, ILLINOIS
10 DISH NETWORK, L.L.C.,)
11 DEFENDANT.) VOL. 7

12 TRANSCRIPT OF PROCEEDINGS
13 BEFORE THE HONORABLE SUE MYERSCOUGH
14 UNITED STATES DISTRICT JUDGE

15 JANUARY 28, 2016

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1 P R O C E E D I N G S

2 * * * * *

3 THE COURT: Good morning. Court is
4 reconvened.5 We have all the attorneys from yesterday, with
6 the addition of Illinois Attorney General observers
7 Connor Tubbs and Yangsu Kim. Mr. Deitch and
8 Mr. Ivens are still not here. Ms. Echtman is not
9 here, Jacob Albertson, and DISH attorneys Larry
10 Katzin and Jeff Blume.11 And we have admitted the following exhibits. 1
12 through 27. And I thought -- there they are.
13 Defendant's 6, 947, 746, 674, 604, 121, and 607.
14 And the sheet has been so marked.15 And Plaintiffs' 1340, 129, 254, 724, 1347, 492,
16 203 and 205, 206, 1356, 611, 258, and 1355.17 I'm sorry, that's 266. I'm going to have to
18 get these printed larger.19 All right. Anything else before we begin with
20 the next witness?21 MR. RUNKLE: Your Honor, I think we've come
22 to an agreement on a number of documents that can be
23 basically pre-admitted.

24 THE COURT: Good.

25 MR. RUNKLE: Do you want to read -- Mr. Lee

1 is going to read the numbers.

2 MR. LEE: We have PX104, PX113, PX124,
3 PX132, PX141, PX226, PX227, PX232, PX250, PX252,
4 PX253, PX255, PX262, PX265, PX336, PX344, PX345,
5 PX351, PX463, PX464, PX491, PX493, PX494, PX518,
6 PX533, PX534, PX537, PX542, PX573, PX575, PX576,
7 PX577, PX578, PX579, PX580, PX581, PX597, PX599,
8 PX609, PX620, PX626, PX628, PX635, PX682, PX716,
9 PX719, PX726, PX729 PX1041 PX1052, PX1096, PX1099,
10 PX1105, PX1106, PX1128, PX1135, PX1156, PX1216,
11 PX1236, PX1266, PX1269, PX1285, PX1289, PX1290,
12 PX1344, PX1346, PX1370, PX1371, PX1373, PX1376.

13 MR. WORM: We have some for the states as
14 well.

15 THE COURT: Hold on, I missed some.
16 Okay. Is 1345 suppose to be included?

17 MR. LEE: No, Your Honor.

18 THE COURT: Okay.

19 MR. LEE: I'm sorry, it is suppose to be
20 included. I'm sorry.

21 MR. WORM: Are you ready for the states?

22 THE COURT: 1345 is included?

23 MR. LEE: 1345.

24 MS. ZOU: We didn't waive objection --

25 MR. LEE: I'm sorry.

1 THE COURT: Mr. Bicks is that agreed to?

2 MR. BICKS: Yes, Your Honor. And we also
3 have a defendant's list that was agreed to as well.
4 And it may be easier, Your Honor, we could actually
5 just hand it, if it's the list -- you want me to
6 read it off --

7 THE COURT: We need to put it on the
8 record.

9 MR. BICKS: -- for the court reporter to
10 have. Whatever is easier.

11 MR. WORM: It's a shorter list for the
12 states, Your Honor. PX352, PX571, PX606, PX1044,
13 PX1048, PX1051, PX1055, PX1066, PX1271, and PX1272.

14 THE COURT: Okay. And the defendant's.

15 MS. ZOU: For defendants, DTX72, DTX79,
16 DTX92, DTX121, DTX126, DTX213, DTX607, DTX660,
17 DTX674, DTX676, DTX -- sorry, DTX737, DTX740,
18 DTX750, DTX751, DTX753, DTX756, DTX778, DTX786,
19 DTX793, DTX794, DTX796, DTX804, DTX805, DTX807,
20 DTX809, DTX810, DTX813, DTX814, DTX825, DTX827,
21 DTX859, DTX899, DTX930, DTX933, DTX935, DTX944,
22 DTX947, DTX948, DTX949, DTX950, DTX951, DTX953,
23 DTX954, DTX955, and DTX957.

24 THE COURT: Are those agreed to by
25 everyone?

1 MR. RUNKLE: They are agreed to. The only
2 objection we raised to any of DISH's exhibits are
3 the consent judgments from other cases, which we
4 filed a motion in limine on. And those can be
5 admitted over our objection. I know the Court has
6 already overruled that. But I don't want to say
7 there is no objection. There is, but the --

8 THE COURT: All right. We've preserved
9 that.

10 And the defendants agree to the states' list
11 also?

12 MR. BICKS: Yes.

13 THE COURT: If you could provide us with
14 that list.

15 Thank you. All right.

16 MR. BICKS: You will see one in blue, that
17 was the one objected to. Otherwise that long list
18 on the right was the one that Ms. Zou just read.

19 THE CLERK: Thank you.

20 THE COURT: All right. Your witness.

21 Ms. Ohta, who's the witness?

22 MS. OHTA: Ms. Reji Musso, I guess.

23 MR. RUNKLE: Your Honor, if I could just
24 mention one scheduling item. Ms. Musso obviously
25 goes first today. We also have Manuel Castillo who

1 has to go today. There is only one commuter flight
2 that leaves out of Springfield I believe at 5:21. I
3 don't know if they are both on it. But that's our
4 scheduling stop. Mr. Castillo has to be back in San
5 Diego tomorrow. I don't know what flight Ms. Musso
6 is on.

7 THE COURT: Do you have a flight today?

8 MS. MUSSO: No. Early in the morning.

9 MR. RUNKLE: So it's possible we may put
10 Mr. Castillo on after lunch, if there's still time
11 with Ms. Musso, if we need. We expect to be done in
12 the morning with our examination of Ms. Musso.

13 THE COURT: Is there a reason to get
14 Mr. Castillo on first?

15 MR. RUNKLE: There -- I don't think that
16 there is.

17 He's not here. There is a reason.

18 THE COURT: Okay. Ms. Musso, I'm sorry for
19 your loss.

20 (The witness was sworn.)

21 THE COURT: Please proceed, Ms. Ohta.

22 REJI MUSSO

23 called as a witness herein, having been duly sworn,
24 was examined and testified as follows:
25

1 CROSS EXAMINATION

2 BY MS. OHTA:

3 Q. Good morning, Ms. Musso.

4 A. Good morning.

5 Q. Thank you so much for being here today given
6 your family situation. And I was so sorry to hear
7 about your loss.

8 A. Thank you.

9 Q. Would you please state your name and spell
10 it?

11 A. Reji, R-e-j-i, Musso, M-u-s-s-o.

12 MR. BICKS: Could I just, Your Honor, maybe
13 the mic -- I'm not sure -- if you could put it a
14 little closer.

15 A. Let me speak louder.

16 THE COURT: See if that's good.

17 A. How is that?

18 MR. BICKS: Great.

19 A. Better?

20 Q. What is your current employment?

21 A. I'm semi-retired, and I do contract work for
22 Comcast Cable.

23 Q. Were you a compliance manager for DISH
24 Network?

25 A. I was.

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TX 102-015707

1 Q. And was that a position within DISH'S Risk
2 Management Group?

3 A. It was.

4 Q. And is the Risk Management Group within
5 DISH's Retailer Department?

6 A. It is.

7 Q. And you started as compliance manager for
8 DISH in August of 2006; correct?

9 A. I did.

10 Q. When did you leave this position?

11 A. 2013. May, June time frame.

12 Q. And you testified earlier in a deposition
13 that your responsibilities as compliance manager was
14 to work with DISH retailers to ensure their
15 adherence to the retail agreement; is that correct?

16 A. Yes.

17 Q. Did DISH have more than one type of
18 retailer?

19 A. They did.

20 Q. And just very briefly what are the different
21 types of retailers?

22 A. There are full-service retailers, there are
23 order-entry retailers, and there are distributor
24 retailers.

25 Q. You worked primarily with order-entry

1 retailers; is that right?

2 A. Yes.

3 Q. And what are OE retailers?

4 A. OE retailers are, the acronym stands for
5 order entry. And they're the retailers who do their
6 own marketing and input the -- the sales opportunity
7 into the system and then DISH Network does the
8 installations.

9 Q. Would you please turn to Plaintiffs'
10 Exhibit 1055.

11 THE COURT: Do you have a book?

12 Q. She will pass the binders. I'm sorry about
13 that.

14 I'm sorry that the binder is so large and
15 unwieldily. Will you turn to -- there are tabs and
16 they will be marked with exhibit numbers. If you
17 could turn to Exhibit 1055. And in a moment the
18 screen will also help you out.

19 THE COURT: It's Plaintiffs' 1055?

20 Q. Yes, Plaintiffs' Exhibit 1055.

21 THE COURT: And you will have a big screen
22 up there and a screen next to you.

23 A. I will need binoculars.

24 Q. We will be turning to page 4 of this exhibit
25 when you get there, paragraph 1.7.

1 THE COURT: I'm sorry, you said page 4?

2 Q. Yes, page 4, Your Honor, Paragraph 1.7.

3 THE COURT: Did you hear her say Paragraph
4 1.7?

5 A. I did. I'm confused though, page 4?

6 Q. Page 4 of the overall document --

7 THE COURT: The numbers are at the bottom.

8 A. These numbers. I'm sorry, I got it. Thank
9 you.

10 Q. Let me know when you've had a chance to
11 review this paragraph regarding business rules.

12 A. I've read it.

13 Q. Would you also please turn to page 20 of the
14 same exhibit and take a moment to review Paragraph
15 7.3.

16 A. I've finished.

17 Q. Great, thank you.

18 Mr. Werner testified yesterday that these were
19 standard provisions in the retailers agreements.
20 Would you agree with that?

21 A. I would.

22 Q. And while you were compliance manager for
23 DISH did you understand these provisions of the
24 retailer agreement to mean that DISH could issue
25 business rules which the retailers were required to

1 follow?

2 A. That was my understanding.

3 Q. And DISH's position was that these business
4 rules became part of the retailer agreement with
5 DISH; correct?

6 A. That is correct.

7 Q. Would you please turn to Plaintiffs'
8 Exhibit 1051.

9 A. I have it.

10 Q. Do you recognize this document?

11 A. I do.

12 Q. And what is it?

13 A. It is a facts blast.

14 Q. Were facts blasts one way in which DISH
15 communicated its business rules to OE retailers?

16 A. To all retailers. Yes.

17 Q. Would you please turn to the second page of
18 this document, the -- and take a look at the
19 underlined and bolded section starting, "Your
20 EchoStar retailer."

21 A. I've read it.

22 Q. So this facts blast contains a prohibition
23 against retailers using third parties to assist in
24 their marketing without previous consent by DISH; is
25 that correct?

1 A. That is.

2 Q. And OE retailers were expected and required
3 to abide by this prohibition in the facts blast?

4 A. All retailers were; yes.

5 Q. Would you please turn to Plaintiffs'
6 Exhibit 241. This is a document titled Retailer
7 Order Entry Promotional Program.

8 A. Yes, it is.

9 Q. Does this document, or this type of
10 document, look familiar to you?

11 A. Yes, it does.

12 Q. This document contains the parameters for an
13 OE retailer's -- sorry. This document contains the
14 parameters for a retailer's participation in the OE
15 promotional program; correct?

16 A. That is true.

17 Q. Would you please turn to the second page of
18 this document and take a few minutes to review the
19 paragraph under Call Monitoring.

20 A. I've read it.

21 Q. So under this provision DISH had the right
22 to record, access, and monitor its OE retailers'
23 calls at their discretion; is that right?

24 A. Yes.

25 Q. And would you please turn your attention to

1 the last paragraph on this page that's in bold and
2 all capital letters.

3 A. Done.

4 Q. And so was this requirement that you just
5 read under the paragraph under Call Monitoring
6 regarding DISH's access -- access, recording, and
7 monitoring of its OE retailers' calls, was that a
8 business rule issued by DISH?

9 A. I don't understand the question.

10 Q. I'm sorry. So you looked earlier at the
11 paragraph under Call Monitoring which said that DISH
12 has the right to record and access and listen to all
13 the OE retailer sales calls with customers; correct?

14 A. At our discretion, yes.

15 Q. And I was just asking you was that a
16 business rule that was issued by DISH?

17 A. Yes. And we did develop a quality assurance
18 program that did that.

19 Q. Great. And that was gonna be my next
20 question, so thank you.

21 So DISH exercised this right to monitor phone
22 calls between OE retailers and customers; correct?

23 A. It was a process, but one we started and
24 ultimately, you know, it got a little more robust as
25 we went on.

1 Q. Okay. And DISH exercised that right as part
2 of its quality assurance or QA program?

3 A. Correct.

4 Q. And if I call it just the QA program from
5 here on out would that be okay with you?

6 A. Yes.

7 Q. Aside from the QA program, the Compliance
8 Department also monitored calls and cases where
9 there were escalated customer complaints; is that
10 right?

11 A. Yes. We also had retailers listen to those
12 calls too. The OE retailers.

13 Q. And your department could have requested to
14 monitor calls from OE retailers for any reason; is
15 that right?

16 A. Yes.

17 Q. I'm gonna turn your attention to what -- a
18 tab that says Demonstrative 3. It should be way --
19 where is it, in the separate binder? It's in the
20 small binder. Thank you.

21 Just for clarification, these are screen shots
22 and representative pages of what is a larger
23 spreadsheet in native format, or native file, which
24 we can't get up on the screen. So these are just to
25 help you in recollecting what we're talking about.

1 The actual documents have been admitted into
2 evidence.

3 So under -- so Demonstrative 3 is a screen
4 shot -- it's a partial screen shot because the
5 spreadsheet was so wide. It's a partial screen shot
6 of a document in evidence titled All Granted
7 Affiliates XLS. Do you recognize this document?

8 A. I do.

9 Q. And were these -- was this document a
10 spreadsheet that you used to track information on
11 affiliates or third parties used by OE retailers to
12 assist OE retailers in their marketing?

13 A. Yes. We tracked all of them, whether they
14 granted access or not.

15 Q. Would you now turn to Demonstrative 4. And
16 again, these are screen shots and representative
17 pages of what is a much larger and wider Excel
18 spreadsheet.

19 A. That is correct.

20 Q. And this is a document that is admitted into
21 evidence that's titled Master Consent Denied JP
22 Changes.XLS. Does this document look familiar to
23 you?

24 A. It does.

25 Q. And was this also another spreadsheet that

1 you used to track information on third-party
2 marketing assistants of OE retailers?

3 A. They were all the same -- I mean it's all
4 the same thing. It's just that as we continued to
5 do this process we added tabs to it. So that's why,
6 you know, there are more tabs on this one than the
7 other one.

8 Q. Thank you.

9 So affiliates are third parties that retailers
10 use to assist them in their marketing efforts; is
11 that right?

12 A. Yes.

13 Q. And was it part of your job duties to track
14 information on third-party affiliates used by OE
15 retailers?

16 A. Yes, it was.

17 Q. And I think you said in your deposition you
18 personally instituted this tracking program for
19 affiliate information shortly after assuming your
20 position as compliance manager?

21 A. That is correct.

22 Q. And DISH required its OE retailers to obtain
23 consent from DISH to use any affiliates to assist
24 them in their marketing efforts?

25 A. That was the requirement.

1 Q. And DISH had the right to do so through a
2 provision in the retailer agreement?

3 A. That is correct.

4 Q. Was your department responsible for
5 receiving requests for consent to use an affiliate
6 by an OE retailer?

7 A. Yes.

8 Q. Was your department responsible for granting
9 consent or denying consent for specific affiliates?

10 A. Yes.

11 Q. Did your department conduct background
12 research on the proposed affiliates, the affiliates
13 requested by the OE retailers, before granting or
14 denying an OE retailer's consent to use?

15 A. To the best that we were able, yes.

16 Q. And have you denied some OE retailers'
17 requests to use certain affiliates?

18 A. We have.

19 Q. And these trackers include information on
20 which affiliates you have denied and granted; is
21 that right?

22 A. Yes.

23 Q. I'm gonna switch gears now and ask you about
24 your quality assurance program.

25 As DISH's compliant manager you were familiar

1 with the company's QA program for OE retailers;
2 correct?

3 A. Correct.

4 Q. And in fact, you're responsible for
5 implementing the QA program shortly after you became
6 compliance manager; is that right?

7 A. In conjunction with the sales team and then
8 ultimately the national quality assurance team at
9 DISH.

10 Q. And what was the QA program?

11 A. Initially it started out because we had
12 different sizes of retailers with different
13 telephony capabilities. So it started out as an
14 option for them to provide us a method to listen to
15 their calls either by having onsite visits, allowing
16 us access into their phone system to do random call
17 monitoring, or they could upload recorded calls into
18 a -- a secure FTP site and then we would listen to
19 those. I mean the QA team would listen. I didn't
20 listen to all those calls.

21 Q. And was the initial version of the QA
22 program implemented by September 2006?

23 A. Yes.

24 Q. And as compliance manager did you have
25 ultimate responsibility over the QA program?

1 A. I did.

2 Q. And was one of the purposes of the QA
3 program to make sure that OE retailers were
4 communicating terms and conditions or information
5 regarding the sale to customers?

6 A. Absolutely.

7 Q. Would you please turn to Plaintiffs'
8 Exhibit 1044. And if you will take a look at --
9 sorry, I'll give you a minute to get there. I know
10 that binder is humongous.

11 A. It is, thank you. Work out.

12 Q. So if you're there I'd like to direct your
13 attention to pages 3 to 8 of that exhibit.

14 A. Yes.

15 Q. So the terms and conditions in pages 3 to 8
16 of this exhibit, both in English and in Spanish
17 version, are those some examples of the types of
18 disclosures that DISH required its OE retailers to
19 provide to customers?

20 A. It is.

21 Q. And OE retailers were required to read
22 these -- all these terms and conditions to
23 customers; is that right?

24 A. Yes.

25 Q. And DISH had the right to require OE

1 retailers to read these disclosures under the
2 retailer agreement; correct?

3 A. Yes.

4 Q. I'd like to turn your attention to
5 Plaintiffs' Exhibit 1048. Actually, I'm sorry,
6 scratch that. Could you turn Plaintiffs'
7 Exhibit 1278 instead.

8 A. Sure.

9 Q. And there will be a Demonstrative 5 to go
10 with that, because that's a native file.

11 THE COURT: Which demonstrative?

12 Q. Number 5, Your Honor.

13 And the first page in the demonstrative is just
14 a screen shot of the overall document so you could
15 see the tabs across the bottom. And the second page
16 of that -- the second and third pages of that
17 demonstrative is the information under one of the
18 tabs called Sales OE Summary. Do you recognize this
19 document?

20 A. I do.

21 Q. At this point I will turn you back to
22 Plaintiffs' Exhibit 1048. And if you would look at
23 page 7 of that document.

24 A. I'm reviewing the document.

25 Q. I'm sorry, what was that?

1 A. I'm reading what's in the exhibit.

2 Q. Take your time.

3 A. Thank you. Okay.

4 Q. So as part of the QA program did you use
5 something called a QA form?

6 A. We did.

7 Q. Did a QA form contain the expectations that
8 DISH had for OE retailers' sales calls with its
9 customers?

10 A. Yes. And there were various iterations of
11 that every time a promotion would change.

12 Q. The two documents we looked at, were they
13 examples of some of those various iterations of QA
14 forms?

15 A. Yes.

16 Q. And did you -- for each of the QA forms did
17 you communicate those expectations for the sales
18 calls to the OE retailers?

19 A. Yes.

20 Q. So directing your attention specifically to
21 the first few questions on Page 7 of Plaintiffs'
22 Exhibit 1048. So for this particular iteration
23 would you have communicated to OE retailers that
24 their sales agents should, if you're looking at
25 Question Number 2, ask for the total number of TVs,

1 reconfirm that count, and correctly input TV by TV
2 which will receive HD and DVR services?

3 A. We did. In order to right size the
4 customers; yes.

5 Q. Did DISH, or you rather, communicate to OE
6 retailers that their sales agents should proactively
7 suggest future equipment upgrades?

8 A. If the situation warranted it, of course.
9 You wanted to right size the customers.

10 Q. Did DISH communicate to OE retailers that
11 the sales agent should ask the customer the specific
12 channels they want to watch or currently watch?

13 A. Yes. And that was primarily to avoid having
14 them come back and say, "well, you didn't tell me my
15 favorite channel wasn't gonna be in my package." So
16 it was to protect the consumer.

17 Q. And did DISH communicate to the OE retailers
18 the 42 other criteria on this page?

19 A. Yes.

20 Q. And for all of these -- and were all of
21 these 45 expectations for one sales call?

22 A. It would actually depend on what the
23 customer purchased, or what -- you know, what they
24 wanted. So not all of them apply to every sale.

25 Q. But the OE retailer would have to consider

1 whether each of these 45 criteria would apply for
2 each sales call; is that right?

3 A. That is correct.

4 Q. As part of the QA program did DISH require
5 its OE retailers to provide DISH with recorded calls
6 for monitoring?

7 A. Eventually, yes, we did that.

8 Q. Did the QA program, especially in its
9 earlier iterations, also involve onsite live call
10 monitoring by DISH employees?

11 A. Yes.

12 Q. And was that done by DISH employees called
13 FSDRs in particular?

14 A. It was.

15 Q. Would you tell us what FSDR stands for and
16 generally what their role is with regard to the OE
17 program? I'm sorry, the QA program.

18 A. The field sales development representatives
19 were part of the retail sales group. And they were
20 instructed to go into the retailer's office. And
21 depending on -- not all -- as I mentioned earlier,
22 not all retailers had the same options for
23 telephony. So they would go into the retailer, and
24 depending on what the retailer could provide, like a
25 recorded phone call, or they would sit side by side

1 and listen. They were there to see about the
2 quality assurance process and the meeting of these
3 expectations.

4 Q. So is it fair to say that DISH monitored OE
5 retailers' calls through a combination of listening
6 onsite to live calls and also accessing recorded
7 calls that retailers were required to upload?

8 A. Yes. Sampling of those.

9 Q. And as the QA program evolved were all
10 retailers at some point required to upload calls for
11 monitoring?

12 A. All OE retailers, yes, were required.

13 Q. And the reason that in previous iterations
14 not all retailers -- not all OE retailers were
15 required was because they had different recording
16 and telephony capabilities; is that right?

17 A. Yes. But eventually most of them -- I think
18 we had one retailer that didn't upgrade their
19 system. But they upgraded their systems and we were
20 able to get monitored -- recorded phone calls from
21 all of them.

22 Q. And did you set up an SFTP site for the
23 purpose of uploading OE retailer calls?

24 A. Yes.

25 Q. And did you communicate with OE retailers --

1 OE retailers directly about how to upload those
2 calls?

3 A. We did.

4 Q. And as part of the QA program were OE
5 retailers' calls evaluated?

6 A. They were. And as I mentioned, as the
7 program went on that got more and more robust. And
8 then when we involved the national QA team at DISH,
9 we had -- we had a really good recording and
10 monitoring system and quality assurance system.

11 Q. I'll come back and ask you about the role of
12 the national QA team. So by whom were these OE
13 retailers -- these recorded OE retailer calls
14 evaluated?

15 A. By DISH employees that were on the national
16 quality assurance team.

17 Q. And who was on the national quality
18 assurance team? Were those account managers or are
19 you talking --

20 A. No, these -- no, let -- I'm sure you're
21 confused. So they are employees that worked in the
22 call centers. So they actually do all the
23 monitoring for DISH corporate, all the call centers.
24 And then we added to their responsibilities and then
25 they evaluated our calls, the OE retailers' calls.

1 Q. All right. Thank you.

2 So these OE retailer calls were evaluated
3 according to criteria such as the ones contained in
4 the QA forms; is that right?

5 A. Correct. The same criteria DISH used.

6 Q. So you would communicate a set of criteria
7 and then you would evaluate them on the same set of
8 criteria so there were no surprises for the OE
9 retailer; is that right?

10 A. So the way the process would work is when
11 the promotions -- you know, when the promotions came
12 out then we collectively met, you know, on the
13 direct sales side and on the retail side. And we
14 developed these quality assurance expectations
15 according to the terms and conditions to convey to
16 the retailers.

17 And then we would disseminate that information.
18 And then once -- once the promotion started, then
19 those -- those -- they changed, they would change
20 regularly, you know, like every quarter, every four
21 months. And we would communicate that and then they
22 would meet those -- you know, share those terms and
23 conditions with the customers.

24 Q. Okay, thank you. So if I heard you right,
25 the requirements would change, but once you

1 developed them for a particular promotion you would
2 communicate those to the retailers first, and then
3 after the promotion started then the calls would be
4 evaluated according to those expectations or
5 criteria that you had communicated to them; is that
6 right?

7 A. That is correct.

8 Q. Did DISH's QA program require all OE
9 retailers to participate -- to participate in this
10 uploading evaluation process?

11 A. Yes.

12 Q. Was there a business rule which required OE
13 retailer participation in the program?

14 A. There was.

15 Q. I'm gonna switch gears now and ask you about
16 the POE support list?

17 A. Okay.

18 Q. Are you familiar with something called a POE
19 support list?

20 A. I am.

21 Q. And does the POE support list, is that
22 something that circulates names of consumers that OE
23 retailers have to take off their calling lists; is
24 that right?

25 A. Or add to their internal do not call lists,

1 yes.

2 Q. Would you please turn to Plaintiffs'
3 Exhibit 1107.

4 A. I have it.

5 Q. Do you recognize this document?

6 A. I recognize the information in it, yes.

7 Q. And is this one example of a POE e-mail that
8 would go out to OE retailers informing them that
9 they needed to remove this e-mail from their list?

10 A. Remove the phone number from their list;
11 yes.

12 Q. Thank you.

13 A. Or add to their list, whichever way they did
14 it.

15 Q. And you were responsible for maintaining the
16 POE support list?

17 A. I was.

18 Q. And a POE e-mail requesting retailers to
19 take certain persons off their calling list, those
20 are considered requests from the compliance
21 department; right?

22 A. Actually they started in the call center,
23 because that's where the calls would come from. And
24 then the call center escalations team would
25 communicate that to us, the compliance team. And

1 then we in turn would pass that information to
2 partner order entry support.

3 Q. Great. But OE retailers are suppose to
4 comply with these POE requests; is that right?

5 A. Yes. We -- we -- the reason we send these
6 is because we want to make sure that these customers
7 are not contacted.

8 Q. And you expect that they'll abide by your
9 request?

10 A. Yes.

11 Q. I just have a few more questions for you.

12 A. That's okay, thank you.

13 Q. Did your responsibilities as compliance
14 manager include oversight over OE retailers use of
15 trademarks?

16 A. It did.

17 Q. And OE retailers are allowed to use
18 trademarks that indicate that they are authorized
19 dealers of DISH; is that right?

20 A. That is correct.

21 Q. Andrea, would you pull up for me on the
22 screen Demonstrative 6 and 7 side by side. And you
23 can look at your screen for this one, that might be
24 easier for you.

25 Do you recognize the demonstrative on your

1 right-hand side as DISH's trademark, or at least
2 some point in time?

3 A. Right. I was gonna say an older one, yes.

4 Q. And the demonstrative on the left, was this
5 the logo that OE retailers were permitted to use by
6 DISH?

7 A. It is.

8 Q. Thank you, those are all my questions.

9 THE COURT: Do any of the other states have
10 any questions?

11 MR. RUNKLE: I have some questions.

12 THE COURT: Other states no questions?

13 Okay. Mr. Runkle.

14 CROSS EXAMINATION

15 BY MR. RUNKLE:

16 Q. Good morning, Ms. Musso.

17 A. Good morning.

18 Q. I took your deposition in 2011, you remember
19 that?

20 A. I do.

21 Q. Okay. I really want to thank you for being
22 here today. And at the risk of getting cloying, I
23 apologize that you have to be here under these
24 circumstances?

25 A. It's -- I want to be here.

1 Q. Okay. Ms. Musso, the first thing I wanted
2 to tell you was that Mr. Werner was here yesterday.
3 Did you know that?

4 A. I did.

5 Q. Yeah. And when he came back, when Mr. Bicks
6 was asking him questions, he said he was offended
7 that we were trying to imply that he didn't do a
8 good job. And did you know anything about that?

9 A. I did not.

10 Q. Okay. What I wanted to tell you was the
11 last thing I want to do here today is imply that you
12 did a bad job. Do you understand that?

13 A. I do, because I know I didn't.

14 Q. I know you didn't do a bad job. I know you
15 tried very hard; isn't that right?

16 A. I think so, and I think we were pretty
17 successful.

18 Q. Before you went to the Risk and Audit Group
19 in DISH you were on the service side of the company;
20 is that right?

21 A. I was.

22 Q. And that's the side of the company that
23 installs dishes on people's roofs essential; right?

24 A. Correct.

25 Q. And before you came to DISH you had worked

1 in various customer service jobs; is that right?

2 A. I worked for Moen, the faucet company. I
3 worked for South Carolina Bank. I worked for Budget
4 Rent-a-Car.

5 Q. And with apologies to Mr. Dodge over here,
6 you didn't have a fancy title at DISH? You weren't
7 the executive vice-president or the general counsel,
8 were you?

9 A. No.

10 Q. You were a mid-level manager?

11 A. I was.

12 Q. And you went to work every day and you tried
13 to work on these issues that the retailers were
14 having; is that right?

15 A. Not only work on the issues, but develop
16 processes to manage the issues and try to educate
17 retailers. There was a lot going on.

18 Q. There was a lot going on, wasn't there,
19 Ms. Musso?

20 A. Mm-hmm, there was.

21 Q. And when you got there in August 2006 you
22 pretty much had your work cut out for you; isn't
23 that right?

24 A. Yeah, but it was a great challenge.

25 Q. I'm sure it was a challenge. And Mr. Werner

1 was your supervisor when you were hired; is that
2 right?

3 A. He was.

4 Q. If we could bring up PX130. I'm not sure
5 if -- I think it is in your binder, yeah.

6 Do you have that one right there?

7 A. I do.

8 Q. Okay. Have you ever seen this before?

9 A. If memory serves me, I did. Been a long
10 time.

11 Q. I'm sure it has been. It's been a long time
12 for all of us on this case. This was the e-mail
13 that Mr. Werner sent to a couple different people at
14 DISH when you got hired for your job?

15 A. Correct.

16 Q. Yeah. And is the information in here pretty
17 much accurate as to what you were doing?

18 A. That was the first thing I did was work on
19 TCPA, yeah.

20 Q. Yeah, you worked on TCPA. And you were
21 bringing structure to DISH's efforts to comply with
22 state, federal, and internal requirements
23 surrounding marketing. Was that your understanding?

24 A. Not marketing, no. Adherence to the laws,
25 but the marketing pieces were really overseen by the

1 Sales Department.

2 Q. Right. But you were -- there was a
3 marketing aspect to what you were doing because the
4 retailers were marketing; right?

5 A. Well, they would market and I would
6 hopefully make sure they, you know, would abide by
7 the rules when they were doing so.

8 Q. Right. And the subject of this e-mail is
9 TCPA numbers; right?

10 A. Yes, it is.

11 Q. So what Mr. Werner is essentially doing is
12 saying, "Let's send all those TCPA things that we
13 have bouncing around, now Ms. Musso is going to be
14 the point person on that." Is that fair to say?

15 A. Well, I can't say exactly what Bruce meant,
16 but I think essentially I was brought in to
17 certainly be a central, you know, contact for --
18 because there were a number of different departments
19 and people working on these issues.

20 Q. Right. And Marciedes Metzger, she was the
21 head of something called the ERT. Does that sound
22 familiar to you?

23 A. Yes.

24 Q. So she was essentially taking complaints
25 from consumers, customers, and other people?

1 A. Yes.

2 Q. And so she was gonna send those TCPA issues
3 to you?

4 A. Yes.

5 Q. Because the understanding at the time was
6 that a lot of those complaints were because of the
7 activities of the OE retailers; is that right?

8 A. I think that we knew that there were -- when
9 we couldn't identify the -- the phone number as
10 associated with any kind of DISH marketing effort
11 then she would pass it along to us and we would
12 investigate to see if we could identify. More often
13 than not we could not.

14 Q. Right. There were a lot of complaints that
15 didn't have any information?

16 A. They were spoof phone numbers, there were a
17 lot of things going on.

18 Q. Right.

19 THE COURT: I'm sorry, I don't know what
20 the term spoof phone number means.

21 A. A spoof phone number is when it's a phone
22 number, it's -- looks like a regular exchange, and
23 then it -- you try to call it back, it goes to fast
24 busy. There's no -- there's no way to determine who
25 owns it. You do -- you do as much research as you

1 can, but you can't identify it.

2 Q. So spoof phone number could also be -- it
3 could be just not the number the person is calling
4 from? It could be any number that shows up in the
5 caller ID, but it's not the number the person is
6 really calling from?

7 A. It may not be, yes.

8 Q. Okay. So there were a lot of complaints
9 that had either spoof phone numbers or no phone
10 numbers; is that right?

11 A. Yes.

12 Q. Right. And so you took those complaints,
13 and what you told me during your deposition was you
14 can't get blood from a turnip, you remember that? I
15 remember it really strongly.

16 A. I do have a tendency to use little sayings.

17 Q. So you can't get blood from a turnip, there
18 was no way to find out what was really going on with
19 all those complaints?

20 A. We -- we made a huge concerted effort to
21 try, because it was important for us to know too.

22 Q. Right. But when -- when the complaints were
23 coming in with no information you couldn't do
24 anything with those; isn't that right?

25 A. Of course.

1 Q. Right. Now, shortly after you started your
2 position at Risk and Audit there was -- you started
3 having meetings with the Legal Department about TCPA
4 issues that DISH was aware of. Do you remember
5 participating in those meetings?

6 A. Yes.

7 Q. So if we could pull up PX548.

8 A. I have it.

9 Q. Okay. Does this look kind of familiar to
10 you?

11 A. Oh, yes, of course.

12 Q. Yes. You had a number of meetings like
13 this, and this would be sort of either the minutes
14 or maybe the -- the agenda for a meeting?

15 A. Correct.

16 Q. Okay. And so this meeting was called Legal
17 TCPA Meeting, it appears to have occurred on
18 October 24th, 2006. There's a number of entities
19 listed here on the left under the TCPA. Do you
20 recognize some of those names?

21 A. I do.

22 Q. Those are DISH OE retailers; is that right?

23 A. Yes.

24 Q. Okay. And so there was some knowledge
25 inside of DISH Network that these entities were

1 generating complaints; is that right?

2 A. I'm trying to think back, because it's been
3 obviously quite a while. We not only reviewed
4 their -- the TCPA may be just a little bit
5 misleading, because it was really more of a
6 discussion about the whole relationship. But yes,
7 there would have been maybe one TCPA complaint that
8 would have put them on this list, yes.

9 Q. Right. So they were on this list because it
10 was -- the TCPA is about telemarketing; right?

11 A. Of course.

12 Q. Right. So they're on this list because
13 there's some kind of complaint. I'm not trying to
14 say you knew they had violations, I'm saying there
15 were complaints about these entities?

16 A. Right. But I just want to make it clear
17 that that wasn't the only thing that we talked about
18 with respect to all of these retailers.

19 Q. Okay. What other things did you talk about?

20 A. Well, we'd talk about their -- we'd talk
21 about the whole picture, because there were a number
22 of people in these meetings, so they all had a
23 contribution.

24 Q. Right. But this meeting looks like it was
25 related to the TCPA?

1 A. It was a legal meeting, yes.

2 Q. Yeah, right. So the first entity on that
3 list is Atlas Assets. It looks like there were 37
4 complaints associated with a single phone number.

5 A. Right.

6 Q. Do you remember Atlas Assets?

7 A. Yes.

8 Q. They were a robo outfit; right?

9 A. I subsequently found that out; yes.

10 Q. And DISH eventually terminated them; right?

11 A. Pretty quickly after I got there.

12 Q. Okay. But that was going on pretty much
13 around the time that you got there?

14 A. It was.

15 Q. And the next one is Brandvein. Did -- that
16 name rings a bell to you?

17 A. It does.

18 Q. That's a guy, that's a man?

19 A. Alan Brandvein.

20 Q. Do you remember him?

21 A. I do.

22 Q. Did you ever meet him?

23 A. Not personally.

24 Q. But he was in Northern Idaho somewhere;
25 right?

1 A. Yes.

2 Q. And ran a pretty large DISH retailership; is
3 that right?

4 A. I didn't ever really consider him large.
5 But as I tried to clarify, I didn't have an awful
6 lot to do with the sales side of the business in
7 numbers, I stuck pretty much to the pieces of my
8 pie.

9 Q. Mm-hmm. The next one is American. That's
10 American Satellite. You remember them?

11 A. Yes.

12 Q. Right. They were in San Diego somewhere?

13 A. Yes.

14 Q. That was a guy named Todd DiRoberto?

15 A. Yes.

16 Q. You've had meetings with him?

17 A. I did -- I actually went out to their
18 location and visited, and they came into DISH; yes.

19 Q. The next one, DP, that stands for DISH
20 Pronto; right?

21 A. Correct.

22 Q. And you remember Mike Trimarco?

23 A. I do.

24 Q. Did you ever meet him?

25 A. I did.

1 Q. He's kind of a colorful New Yorker?

2 A. Hm-mm, yes.

3 Q. And DISH Pronto was associated with some
4 telemarketing issues; do you remember that?

5 A. Yes.

6 Q. Okay. MG, that stands for Marketing Guru;
7 right?

8 A. Yes.

9 Q. And they were associated with some
10 telemarketing issues too; do you remember that?

11 A. Yes.

12 Q. Okay. And we can go on down the list,
13 there's just two more I'd like to highlight here.
14 National Satellite Systems, do you remember them?

15 A. I do. And if I could add, they -- of course
16 a number of these people are no longer retailers;
17 right? And National Satellite Systems, they're
18 pretty buttoned up. So you know -- and in all
19 fairness, yes, we talked about these, but we also
20 investigated all of these, you know.

21 Q. We're gonna get there in a minute.

22 A. Okay.

23 Q. I certainly understand that. Because you
24 worked hard to figure out what was going on with
25 these --

1 A. My whole team did.

2 THE COURT: I'm sorry, you said somebody
3 was pretty buttoned up. Was that National
4 Satellite --

5 A. Yes.

6 Q. So the other one I wanted to mention was JSR
7 Enterprises. Do you remember them?

8 A. I do.

9 Q. Did you ever meet them or go out and visit
10 their facility?

11 A. I did not.

12 Q. Okay. They were -- they also turned out to
13 be sort of a robo dialing outfit; is that right?

14 A. Apparently. I didn't realize the extent of
15 their activity.

16 Q. So let's turn to -- I'm sorry, I want to go
17 down the page a little bit. If you could highlight
18 the bottom of that page.

19 So down at the bottom there under legal there's
20 also -- there's a couple other entities. Some are
21 repeats from the top. We've got Satellite Systems
22 Network. Do you remember that company?

23 A. I do.

24 Q. They were also based in Orange County,
25 California?

1 A. Yes.

2 Q. Yes. The Tehranchis, brother and sister.

3 Do you remember them?

4 A. Yes, I do remember them.

5 Q. Did you ever meet them?

6 A. I did not meet Alex, I met Sophie.

7 Q. You met Sophie, okay. And then United
8 Satellite and Dash Abramson. Do you remember United
9 Satellite?

10 A. They were actually before my time.

11 Q. But they were --

12 A. I was aware of them.

13 Q. You were aware of it?

14 A. Hm-mm.

15 Q. They were another robo dialing outfit?

16 A. I can't say, I don't know, but I just knew
17 their name; yes.

18 Q. Okay. And Abramson, you remember him?

19 A. I do.

20 Q. Stewart Abramson?

21 A. I do.

22 Q. Lives in the Pittsburgh area?

23 A. I do.

24 Q. He's what you would call a harvester?

25 A. Yes.

1 Q. Or vulture. Did you use --

2 A. Did I say vulture? I probably said
3 harvester.

4 Q. We'll go with harvester. So he was one of
5 these guys who was sort of a frequent plaintiff in
6 TCPA cases?

7 A. He had four phone numbers, yes. And he
8 was -- we saw his name a lot.

9 Q. Right.

10 And then there's Wisconsin AG lawsuit against
11 Marketing Guru. Were you aware of a Wisconsin AG
12 lawsuit against Marketing Guru?

13 A. Back then I was aware of it, but -- this was
14 early on, this was October of 2006, and I had just
15 gotten on board. So vaguely familiar, but not
16 knowledgeable.

17 Q. So let's move on to Exhibit 1082. And this
18 is one that DISH still has objections to.

19 Does this document look familiar to you,
20 Ms. Musso?

21 A. Yes.

22 Q. Okay. This is one of the many spreadsheets
23 that you created during your tenure at DISH;
24 correct?

25 A. Excel hell.

1 Q. And you made spreadsheets on a lot of
2 topics?

3 A. I did.

4 Q. I've spent five years looking at your
5 spreadsheets actually.

6 A. Did you have fun?

7 Q. So this is a spreadsheet that is of
8 complaints and certain issues that you've
9 actually -- that you actually associated with
10 retailers?

11 A. That is correct.

12 Q. And you created spreadsheets like this in
13 the ordinary course of doing your job; right?

14 A. I did.

15 Q. And you collected this information as part
16 of your job responsibilities?

17 A. It was important to track the information.

18 Q. Okay. And you accurately transcribed the
19 information as you understood it at the time?

20 A. Yes.

21 Q. Your Honor, I would move to admit 1082.

22 THE COURT: Objection?

23 MR. BICKS: We don't have objection.

24 THE COURT: All right. PX1082 is admitted.

25 (Plaintiffs' Exhibit PX1082 admitted.)

1 Q. Andrea, if you could zoom in on the
2 spreadsheet. I'm having some minuscule type issues.

3 THE COURT: I think she has zoomed in.

4 Q. All right. We will do it the old fashioned
5 way for now. Although I think my eyeglasses
6 prescription is going to change while I'm doing
7 this.

8 So if you could look at page 1. Near the
9 bottom there's a lot of Atlas Assets issues?

10 A. Yes.

11 Q. Okay. And Atlas Assets, if you could tell
12 me what the fifth column means when it says sting?
13 What does that mean?

14 A. So either the customer, when the -- the
15 consumer, when they were called, would set up an
16 account, or have their credit run to set up an
17 account, or DISH would work with a consumer and they
18 would help them set up the account. So our evidence
19 was a little more concrete that some exchange had
20 happened, but these still required investigation.

21 Q. Okay. But the sting program was also called
22 merchant identification program? Does that sound
23 familiar to you?

24 A. I never called it anything but the sting.

25 Q. You just called it the sting?

1 A. Yes.

2 Q. That's what I'm gonna talk about for a few
3 minutes.

4 When the sting program was set up the idea was
5 that DISH would be able to identify the entities
6 making these calls to people and then take action.
7 Is that -- is that what you remember?

8 A. I think that was the goal.

9 Q. That was --

10 A. The sting program actually started prior to
11 my coming on board.

12 Q. But would you agree with me, Ms. Musso, that
13 the sting -- a sting result was much more than just
14 a violation allegation; is that right?

15 A. It would depend on the circumstances of
16 the -- you know, sometimes there was -- there were
17 extenuating circumstances, like the customer would
18 opt in and, you know, they would get the phone call,
19 set it up, but they had initiated the contact. Or
20 more often than not though, Mr. Runkle, it was -- it
21 was, as I mentioned earlier, more concrete proof.

22 Q. It was more concrete proof.

23 A. Yes.

24 Q. It was something that in the process that
25 I'm sure you're -- Mr. Bicks will lead you through

1 later, you will -- you took that information a
2 little bit more -- with a little more heft than some
3 of the other --

4 A. Absolutely.

5 Q. Yes, okay.

6 So we have -- and right here in the part that
7 I've blown up here we have two stings that were
8 associated with American Satellite. And some more
9 stings that are associated with Atlas Assets?

10 A. Correct.

11 Q. Correct, okay. And did you know, Ms. Musso,
12 that we -- the United States actually won summary
13 judgment against DISH on this call to Robert Parker
14 that's listed right here on your sting spreadsheet;
15 did you know that?

16 A. I did not.

17 Q. That was a prerecorded call that Mr. Parker
18 received.

19 Now, I just wanted to tie this in with the
20 legal exhibit that we looked at earlier, but you
21 don't need to look back at that, I think you'll
22 remember. American Satellite was one of the
23 companies on that list?

24 A. It was.

25 Q. Atlas Assets was on that list?

1 A. They were.

2 Q. If we could go to page 2, please.

3 And the second page, what's your reaction to
4 this, sitting here today? Kind of a yikes, right?

5 A. Well, first of all, these were all
6 associated with -- they weren't actually stings that
7 were done on an individual basis, they were
8 associated with Atlas Assets, because the phone
9 number that we -- I believe it was Mr. Olive, the
10 caller ID that he provided. And then my subsequent
11 interactions with Brian Colin at Atlas Assets
12 yielded this information for us, so we tied all
13 these to him. They weren't individually done
14 stings.

15 Q. Right. But the sting provided you with the
16 info to tie this unknown number to this robo dialer
17 which turned out to be DISH's retailer Atlas Assets?

18 A. It did.

19 Q. Okay. And that's kind of a lot in there,
20 don't you think?

21 A. Oh, but I was thrilled to have it because we
22 have justifiable reason to get rid of him.

23 Q. And I'm sure that you didn't want to see
24 these consumers get these phone calls; right?

25 A. I never want the consumers to get phone

1 calls they don't want. I don't want to get phone
2 calls that I sometimes get. Yeah, you're right.

3 Q. All right. So at the bottom of the page
4 here we have Brandvein?

5 A. Uh-huh.

6 Q. And it goes on to the next page and you
7 can -- you can probably just go to the next page,
8 Andrea. Page 3.

9 So at the top of page 3 there are some
10 complaints, stings associated with Brandvein. Do
11 you agree with me on that?

12 A. I do. If you also notice the explanation
13 there was there were problems with the scrub of the
14 DNC list.

15 Q. Well, Alan had a lot of excuses, is that
16 fair to say?

17 A. I can't say that he had a lot of excuses for
18 me, but if we're talking about this document, that
19 to me was a plausible explanation for what had
20 happened.

21 Q. Right. We'll get more into DISH retailers'
22 excuses in a bit. What I'm asking you about was
23 this column "admitted violation?"

24 A. Right.

25 Q. So Brandvein admitted there was some problem

1 with this?

2 A. With their DNC list; yes.

3 Q. There was a problem with their DNC list.

4 And a little bit down the page there's some
5 complaints, at least one sting, associated with DISH
6 Pronto. Do you see that?

7 A. I'm looking. I do see those.

8 Q. Okay. So there was some DISH Pronto issues,
9 at least one sting associated with DISH Pronto?

10 MR. BICKS: Are you gonna show the whole
11 screen? The whole line on this, Mr. Runkle?

12 Q. I don't know that it would be readable. The
13 witnesses is looking at the whole line.

14 MR. BICKS: Okay.

15 Q. Are you looking at the full document? I
16 certainly don't intend to have you not see the whole
17 document.

18 A. I'm reading it. So -- and what I see is
19 that DISH Pronto has, you know, like they never
20 dialed the number, so it -- you know, it -- not that
21 we would take them at their word, but you know,
22 there are reasons on the side that the Court can't
23 see that have some comments.

24 Q. Right, I understand that. I understand that
25 they gave reasons to you. That was part of your

1 process; right?

2 A. It was.

3 Q. Right. And as I said, I'm not trying to
4 stand here today and say you did a bad job. That
5 was your process, you went and you asked them what's
6 going on with these?

7 A. Hm-mm.

8 Q. And they gave you explanations?

9 A. And sometimes they didn't.

10 Q. Sometimes --

11 A. Sometimes there was -- the -- sometimes it
12 was pretty apparent because, you know, the account
13 was built and -- yeah, but there are a lot of
14 plausible explanations for these too.

15 Q. Right. Sure, there are plausible
16 explanations. But what you told me as we were
17 talking through some of these retailers already was
18 that you learned after the fact that they were
19 basically massive robo calling operations?

20 A. Yes. I didn't learn some of it until I got
21 here.

22 Q. Right. But they -- they essentially weren't
23 telling you --

24 A. You see this gray hair.

25 Q. Well, I was going to ask you, are you

1 enjoying your retirement from DISH OE?

2 A. I'm enjoying retirement period.

3 Q. Okay. So you discovered after the fact that
4 some of these retailers weren't telling you the
5 truth?

6 A. I did.

7 Q. Did you suspect that at that time?

8 A. Well, you know, on a case-by-case basis is
9 how we managed this whole process. So, you know,
10 certainly I trusted them and -- some of them. Well,
11 I trusted all of them to start with, but you know,
12 things happen and sometimes opinions change.

13 Q. Right. And sometimes it changed with some
14 of these retailers. They had a different excuse
15 every time?

16 A. They -- some -- well, they --

17 Q. Maybe they had the same excuse every time?

18 A. They weren't always excuses. Sometimes
19 there were -- I mean there were reasonable, you
20 know, responses. At least in my -- in our
21 estimation.

22 Q. Did anyone ever tell you that Todd DiRoberto
23 is a felon that spent time in federal prison?

24 A. Nobody told me that. I found out, but I
25 don't remember when.

1 Q. Would some of that kind of information have
2 sort of colored the amount of trust you had in some
3 of these individuals you were dealing with?

4 A. You know, that's kind of a loaded question
5 for me. I kind of believe in forgiveness and
6 starting over. So I think I would probably have
7 tried to let that be his past and us be the future,
8 so --

9 Q. But did you know he had been sued by the
10 Security and Exchange Commission for, you know,
11 telemarketing fraud?

12 A. I had -- I recall reading that, but it was
13 pretty late, when we started really, you know,
14 nosing around the internet, so --

15 Q. Did you know anything about Mike Trimarco's
16 mortgage foreclosure scam that got sued by the FTC?

17 A. No.

18 Q. How about his acia berry juice scam that got
19 sued by the State of Florida --

20 A. A what kind of thing?

21 Q. Do you know what acia berry juice --

22 A. Oh, acia berry. I didn't know about that.

23 Q. You didn't know about that either.

24 But some of that information might have helped
25 you put in context some of the things that these

1 retailers were telling you, don't you think?

2 A. I think it would probably have gone into the
3 mix, yes.

4 Q. Okay. So let's take a look at more
5 information about American Satellite. If we could
6 turn to PX744. And I think DISH has an objection to
7 this document, so let's take a look at the document.

8 A. I'm sorry, PX --

9 Q. 744. I'm sorry, Ms. Musso.

10 If you could highlight the bottom part of this
11 e-mail instead of the top.

12 Is this the type of e-mail -- do you recall
13 some interactions like this you had with American
14 Satellite?

15 A. Yes.

16 Q. This doesn't have specifically anything to
17 do with telemarketing, but it has to do with your
18 other responsibilities to work with and affect the
19 way these retailers marketed DISH, is that --

20 A. Quality assurance, yes.

21 Q. Quality assurance. We move to admit this
22 document.

23 MR. BICKS: Your Honor, the objection was
24 relevance. And also, it's an incomplete document
25 because it references an attachment for context and

1 it's not here. That was the objection.

2 THE COURT: The objection is overruled,
3 it's admitted.

4 (Plaintiffs' Exhibit PX744 admitted.)

5 Q. So one of your other responsibilities when
6 you got to DISH was working on these customer
7 service disclosures that the OE retailers would do;
8 is that right?

9 A. That's a rather broad question, but
10 specifically -- I mean because I didn't -- you know,
11 as I mentioned, the -- these disclosures or terms
12 and conditions came from the promotions, so there
13 were a lot of people involved in this. But I was --
14 I was responsible for working with the national QA
15 team developing -- helping put the form together and
16 then getting it out to the OE retailers.

17 Q. Okay. And you had to make sure they were
18 reading the terms and conditions exactly the way
19 DISH wanted; is that right?

20 A. That was the expectation.

21 Q. Right. And that's what this e-mail is
22 essentially about; right?

23 A. Well, as Mr. Bicks mentioned, the
24 attachments aren't here so I can't be totally clear.
25 It looks like we may have, when we drafted the new

1 form, that we may have left some things off and then
2 had to send out -- I mean that's the way I read
3 this, so I can't be sure.

4 Q. Okay. Let's pull up 226. This one has
5 already been admitted.

6 A. PX226.

7 Q. PX226, I'm sorry, Ms. Musso. You are gonna
8 get a work out today.

9 A. That's all right. Burn up calories.
10 I'll need a moment.

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

12 A. I'm reading it now.

13 Q. Okay, I'm sorry.

14 A. I'm done.

15 Q. Okay. So would you agree with me,
16 Ms. Musso, that the picture here doesn't look too
17 good for American Satellite, does it?

18 A. If you're just looking at it face value,
19 that's very true. You know, they were -- they were
20 an up-and-coming business, and certainly 20/20
21 hindsight is a lot -- there's a lot more clarity
22 there. But at the time, yes, you know, we were
23 concerned with it, but we -- we looked into it and
24 tried -- tried to help them get their business on
25 track. But they made some changes too, so -- you

1 know, to -- to satisfy these.

2 Q. All right. Did you know that they always
3 kept sort of a secret robo operation going the
4 entire time you were --

5 A. Of course I didn't know that.

6 Q. I know you didn't know that, but that's the
7 way I have to ask the question.

8 A. I understand. But no.

9 Q. This e-mail would give you the picture of a
10 company that was running a robo call operation,
11 wouldn't it?

12 A. Not necessarily.

13 Q. Not necessarily?

14 A. No.

15 Q. But the Parker complaint was a robo call,
16 and you stung them a number of times. That was fair
17 to say, wasn't it?

18 A. That was fair to say.

19 Q. And if we go up to the very top of this
20 e-mail, the last e-mail in the chain, you wrote to
21 Mr. Origer, Denise Hargan, and Dana Steele, I think
22 they were in the Legal Department, your thought at
23 the time--this was only a couple of months after you
24 assumed your position--was that if you have this
25 type of evidence against a retailer, you assume

1 there's a violation if they don't prove their
2 innocence. Is that a fair reading of the way that
3 you did it while you worked there?

4 A. That is correct. I eventually did get the
5 access to look up to see if their numbers were on,
6 once we established our relationship with
7 PossibleNow, so --

8 Q. Right. But I'm talking now about the first
9 line here where you say (as read:) I do think we
10 assume there's a violation if they do not prove
11 their innocence.

12 Meaning you assume there's a violation if you
13 have this type of information unless the retailers
14 can prove their innocence to you?

15 A. I think that's how I operated when I first
16 got there. I think later on, as we continued to go
17 through this, there -- there were a number of
18 complaints that we got that were not valid, but --
19 well, essentially that's correct. That's correct.

20 Q. Okay. That's correct. Let's move onto 227.

21 THE COURT: Let's take a break at this
22 time. Ten minutes.

23 (A break was taken.)

24 THE COURT: Please continue.

25 Q. Okay, Ms. Musso, I think we were about to

1 turn to Exhibit 227, which is already in evidence.

2 A. I have it.

3 Q. Okay. Do you want to take a moment to look
4 at it?

5 A. Okay.

6 Q. Okay. So this is the Parker sting that we
7 were talking about a little bit ago?

8 A. Yes.

9 Q. Okay. Does this reflect the way that the
10 sting program operated to your recollection?

11 A. Yes.

12 Q. And so DISH would receive information from a
13 complainant, that complainant would sign up for the
14 sting, DISH would give that person some information
15 in order to sign up when the person called back,
16 essentially?

17 A. Yes.

18 Q. And so that's what happened here. And those
19 calls were traced to American Satellite?

20 A. At least one of them was.

21 Q. At least one of them was.

22 A. Yes.

23 Q. And you can see right here that this is an
24 e-mail from Ms. Hargan to you and some other people
25 that the calls were a recording; is that right?

1 A. I believe that's what it says; yes.

2 Q. Okay. So if we could move on to 233.

3 A. I need a moment. Okay.

4 Q. Okay. So this is a do not call issue that
5 came up again with American Satellite in 2008 and
6 early 2009. You'd agree with me about that?

7 A. Yes.

8 Q. And American Satellite wrote back to you
9 eventually -- they ignored you at first, and then
10 they wrote back to you and said that this
11 complainant had actually generated an online lead?

12 A. I can't say they ignored me. He said he
13 didn't get the complaint.

14 Q. Oh, okay. You didn't get the response in
15 the --

16 A. That's why we would go back through the
17 tracker and see that we got responses.

18 Q. So what Mr. DiRoberto told you was that they
19 had a lead for this call?

20 A. Yes, he provided information regarding that.

21 Q. Were you aware, and this is another one of
22 those questions I doubt you were aware, but I'm
23 gonna ask it anyway. Is were you aware that
24 American Satellite employees would sit around and
25 generate leads for themselves and then send them to

1 you? Were you aware of that practice?

2 A. I was not aware of that practice obviously.

3 THE COURT: I'm not sure I understand the
4 practice.

5 Q. Well, I think we'll understand more about it
6 later today, but were you aware that when you
7 requested a lead, American Satellite would simply
8 take -- it would take information from its lead list
9 that was not a legitimate lead that had been
10 generated by that customer and send it to you?

11 A. Are you insinuating that the information he
12 sent to me was -- was not correct?

13 Q. Yes. You were not aware of that though?

14 A. No.

15 Q. Okay. So but this is -- now we're in April
16 2009. That's a couple years after the other things
17 that we talked about?

18 A. Correct.

19 Q. And again, I'm not trying to say you did a
20 bad job, but this situation went on for, you know, a
21 while with American Satellite; is that right?

22 A. You know, it's been a while, and remembering
23 exact numbers is difficult, but I do believe there
24 was a time frame within -- between 2007 and 2009
25 that we got no TCPA complaints on them. So that

1 would have indicated to me that, you know, they had
2 cleaned up their act and they were, you know, doing
3 a better job.

4 Q. Okay. But here the other part of this
5 e-mail that I wanted to point your attention to is
6 the discussion you had with Mr. DiRoberto on the
7 second page where he's talking about outbound calls
8 and the records that they keep.

9 A. Are you talking about the Friday, April 3rd
10 discussion? Is that what you're --

11 Q. Yes. Ms. Musso, you asked him, "You don't
12 have records of outbound calls made through your
13 VOIP system?"

14 A. Right.

15 Q. And he said, "Oh, we only keep six weeks
16 worth of records." And you didn't ask him for the
17 six weeks worth of records at that point?

18 A. I didn't really -- why would I have asked
19 him for those records? I didn't -- I didn't have
20 any reason to ask him for those records. I asked
21 him about a specific consumer, he provided
22 information that I believed to be true. But then he
23 talked about some other things that brought some
24 questions to my mind. I didn't ask for those
25 records relative to Mr. Coviger. I believe that was

1 the consumer's name.

2 Q. I'm just trying to understand your process.
3 Again, I'm absolutely not insinuating that you
4 didn't do the right thing.

5 A. No, no, I'm not taking it that way. I'm
6 just trying to explain that because he said --
7 first, there were no standards in place about call
8 retention until we put that formal QA process in
9 place, which exact dates are hard for me to
10 remember, but when we -- you know, when they all
11 started upgrading -- all the OE retailers started
12 upgrading their phone systems.

13 So in this particular instance it was merely
14 more about trying to understand what was going on in
15 their business. I didn't suspect them of anything
16 at this point.

17 Q. Okay. And part of your process was not to
18 ask for a large set of call records and look through
19 it? That wasn't ever part of your process; is that
20 right?

21 A. No, because that wasn't my -- you know, I --
22 my job was to track, request information, have them
23 provide it if they had it, and if they didn't -- I
24 mean, you know, they're independent retailers, they
25 run their own business. I couldn't possibly

1 practically be in charge of all the call records of
2 all the retailers.

3 Q. Let's move on to 123.

4 A. Okay.

5 Q. Okay. I want to speed this up a little bit,
6 I'm going to ask you look about a couple of
7 documents about American Satellite and then we can
8 have maybe a more fulsome discussion. Is that good?

9 A. That's fine.

10 Q. Okay. Let's also look at 533.

11 A. May I remove these from the notebook?

12 Q. You're the star today, Ms. Musso, you can do
13 whatever you want with those documents.

14 A. I'm not sure I feel like a Star.
15 What's the other exhibit?

16 Q. 577.

17 A. Is there another?

18 Q. Did you do 577? And 232 is the last one.

19 A. 232.

20 Q. Let's look at 533 if we could first. You
21 can probably put that -- use that binder as a desk.

22 A. It holds my legs down.

23 Q. Let's look at 533 first. This is e-mail
24 from you in May 2007. I think you would agree with
25 me this is discussing some pretty serious

1 telemarketing issue with American Satellite. Would
2 you agree with me about that?

3 A. Can you tell me which -- I pulled documents
4 out --

5 Q. Do they have the sticker --

6 A. I apologized, I see that.

7 Q. You're not a lawyer, Ms. Musso, you don't
8 know what those stickers are?

9 A. I am not a lawyer. I will leave that to
10 y'all.

11 Q. So 533, do you have that?

12 A. I have that.

13 Q. This is a discussion you had with Todd
14 DiRoberto and American Satellite about what I think
15 you would agree with me are pretty serious
16 telemarketing issues?

17 A. All telemarketing issues are serious.

18 Q. Yes. And these are about actual lawsuits
19 and settlements that American Satellite was about to
20 enter into. Would you agree with me?

21 A. Yes.

22 Q. Okay. And there were some discussions about
23 next steps with American Satellite, but this is --
24 this is still -- this is an issue that kept coming
25 up it seems like; right, Ms. Musso?

1 A. As I said a little bit ago, yes, but in
2 2000 -- I think it was between 2007 to -- I think
3 2008, we didn't have any issues with them. So it
4 appeared to us that they were taking these things
5 seriously.

6 Q. Okay. And let's go to 577 then.

7 A. Okay.

8 Q. Okay. And if you see here this reflects
9 what your recollection is, you said there were no
10 TCPA issues for American in 2008, only from 2007?

11 A. Right.

12 Q. Or that's what Serena said? She was a
13 deputy you had, she was --

14 A. She was my assistant, yes.

15 Q. And you said (as read:) Excellent, probably
16 spoofing. Smiley face. That's your sense of humor,
17 right?

18 A. Absolutely, it was a flip comment, and you
19 can tell by the happy face.

20 Q. But there is some truth to that, right,
21 Ms. Musso? You didn't really know what they were
22 doing?

23 A. That's not what it meant at all. It really
24 was just a flip comment, because we, my small team
25 and I, we had a problem with a lot of phone numbers

1 we couldn't identify. So it didn't necessarily mean
2 it was American Satellite, it just meant that -- it
3 was just a flip comment.

4 Q. But they could have been spoofing?

5 A. Well, apparently from what I know today they
6 could have been doing a lot of things.

7 Q. Right. Okay, so let's move on.

8 In your deposition I asked you whether you knew
9 about American Satellite's outbound telemarketing.
10 If we could pull up the deposition. It's either
11 page 120 or 119. Okay, yes, it's 119.

12 And you testified (as read:)

13 "At American Satellite did they make outbound
14 telemarketing calls for DISH Network programming?

15 Answer, I don't recall.

16 Question, would you have documents reflecting
17 that?

18 Answer, I may, but I don't -- I really don't
19 remember."

20 Now, I'm not trying to play gotcha here,
21 Ms. Musso, but you have some more knowledge now than
22 you had in 2011; is that right?

23 A. Well, I didn't know -- I really thought they
24 were doing inbound, you know, as I recall. But as I
25 said, 20/20 hindsight.

1 Q. Mm-hmm. But you said -- if we could look
2 back at Exhibit 233, page 2, you asked Mr. DiRoberto
3 for his outbound calling records?

4 A. Well, that's -- you know, that's if they're
5 calling customers back or if they're dialing for the
6 opt-ins, or I didn't -- that didn't necessarily mean
7 that I was aware that they were doing outbound
8 telemarketing. To this day I can't recall if that
9 was one of their -- you know, it just -- I mean it's
10 been a while.

11 Q. But we -- at the beginning of our discussion
12 today, Ms. Musso, you told me that a company that's
13 not doing telemarketing isn't going to have TCPA
14 problems, don't you think?

15 A. No, that's -- did I say that?

16 Q. You said that the companies on that list had
17 TCPA issues because they were -- TCPA is about
18 outbound calls; right?

19 A. I think there are also some situations where
20 consumers are confused about the law. They forget
21 that they opt-in, as in the case of National
22 Satellite Systems, whose presence is pretty much
23 internet marketing. So I think it certainly points
24 you to that, but I don't think necessarily one thing
25 leads to the other.

1 Q. Okay. But these documents, do they refresh
2 your memory as to whether American Satellite was
3 doing outbound telemarketing, based on what we've
4 seen today?

5 A. Based on the terminology I've used it would
6 seem to be that way.

7 Q. Okay. My computer has fallen asleep.

8 Let's move on to PX405. You can put those
9 away. You can just --

10 A. 405?

11 Q. 405.

12 A. I have it.

13 Q. Okay. So this is a spreadsheet that you
14 made. Again, this is -- you made a lot of
15 spreadsheets; right, Ms. Musso?

16 A. I did.

17 Q. This is a spreadsheet of Marketing Guru
18 stings. Is that what this looks like to you,
19 Ms. Musso?

20 A. It does.

21 Q. I believe DISH still had an objection to
22 this. I would move to admit this.

23 THE COURT: The objection?

24 MR. BICKS: There's no objection, Your
25 Honor.

1 THE COURT: 405 is admitted.

2 (Plaintiffs' Exhibit 405 admitted.)

3 Q. So the picture -- the picture here isn't
4 particularly good for Marketing Guru, is it,
5 Ms. Musso?

6 A. I'm sorry, it's been a while, I'm just
7 trying to look at -- get my arms around the
8 information.

9 Q. Take your time.

10 A. Thank you. It paints a gray picture.

11 Q. Yes. And Marketing Guru was trapped up in a
12 couple of stings that you ran? In fact, on this
13 page there's nine of them?

14 A. Is it -- yes.

15 Q. Do you remember if anything ever happened to
16 Marketing Guru for this?

17 A. I don't recall.

18 Q. Because Marketing Guru wasn't really handled
19 by your office; is that right?

20 A. Well, essentially -- the relationship was
21 handled by sales, but you know, I had some contact
22 with them. But I think that if we look, the dates
23 are all from 2006. I'm -- I feel confident that the
24 sales people would have addressed this and
25 encouraged them to change -- I can't say that they

1 did that for sure, but that was certainly the -- the
2 way things would work if there appeared to be --
3 there appeared to be an issue, they would work with
4 them to change their marketing strategies.

5 Q. Okay. Now with Marketing Guru, and with
6 these other companies that we talked about,
7 especially the robo dialers, do you know now the
8 scope of the amount of calls these companies could
9 make in a day?

10 A. So you continue to refer to robo dialing. I
11 honestly -- I was not aware that there was a lot of
12 that going on, so I really can't shed much light and
13 help you with that. I became aware of a lot of this
14 seriously this week.

15 Q. Okay. Let's talk about Atlas Assets. You
16 knew they were a robo dialer?

17 A. You know, I didn't necessarily equate all
18 those complaints with robo dialing. It was the same
19 caller ID so it could have been just that they were
20 using that caller ID for all of their sales people
21 to call -- you know, to call customers. Or you
22 know, to return phone calls. I didn't -- I never
23 made that distinction, that I recall.

24 Q. Okay. But you knew that robo calling was an
25 issue when you heard about it?

1 A. I never really used the term robo call.

2 Q. Prerecorded messages?

3 A. I knew that it could be; yes.

4 Q. Yes. Okay.

5 And so you're saying you're not aware today
6 that a company could send, you know, many more than
7 a hundred thousand robo calls in a single day?

8 A. I'm aware that's possible; yes.

9 Q. You're aware that's possible?

10 A. Yes.

11 Q. Okay. So -- but it often took months for
12 your process to work its way through. I'm not
13 criticizing the process, I'm just contrasting those
14 two things. It would take months for your process
15 to work it's way --

16 A. What process?

17 Q. The process that you're talking about for
18 handling a complaint. Sending a letter to the
19 retailer, requesting a response, evaluating that
20 response, that could take a long time?

21 A. What do you call a long time?

22 Q. Weeks to months?

23 A. We required a response within seven days of
24 sending the letter. We investigated right away.
25 And I can't imagine that it took longer than a

1 month.

2 Q. But a lot of retailers wouldn't have been
3 terminated in a month? We've seen a lot of examples
4 of that.

5 A. We didn't terminate based on a complaint,
6 based on an allegation, or -- we didn't terminate
7 based on one thing. We obviously didn't terminate
8 based on a number of things, we --

9 Q. I'm not saying that -- you didn't make
10 termination decisions; right, Ms. Musso?

11 A. I certainly participated in them.

12 Q. Right. Who was the decider in that
13 scenario?

14 A. It was a collective effort on a case-by-case
15 basis. We were all involved, from compliance to
16 sales to audit to -- it was -- yes, it was a
17 collaborative decision. You had to certainly make
18 sure you were making the right decision.

19 Q. Okay. Now let's move on to PX9, which I
20 believe has already been admitted.

21 9 may not be in your chart, so we're gonna blow
22 up a line of it on the screen for you. I don't
23 think this will take very long. If you could go to
24 the page -- the page for 2007. I think its gonna be
25 around page 4.

1 No, not there yet. Let's try page 7.

2 Let's try page 9. I'm sorry.

3 Page 10, here we go. I'm sorry. So if you
4 could blow up the line that say American Satellite
5 on there. It's down about 12 or 13 from the top --
6 from the bottom, I mean.

7 So this is a list of the incentive payments
8 that DISH sent to these retailers in 2007. American
9 Satellite was sent \$2.2 million. If we go up the
10 chart a little bit we can see DP Enterprises. DP
11 Enterprises was making -- made \$7.7 million that
12 year. And right above that was a company called
13 Newport Satellite Group. Do you remember Newport
14 Satellite Group at all?

15 A. I do.

16 Q. They got terminated for TCPA violations;
17 right?

18 A. I don't know if it was TCPA, there was a lot
19 of fraud going on.

20 Q. There was a lot of fraud going on. They
21 made \$7.3 million. The only question I wanted to
22 ask you, were you aware of some of these numbers?
23 This money going to these retailers?

24 A. Absolutely not.

25 Q. It's a lot of money; right?

1 A. It is a lot of money, but I've never even
2 seen this. I had nothing to do with the payment
3 side of this.

4 Q. Was the amount of money the retailers were
5 making surprise you?

6 A. That's sort of a relative question.
7 Surprise me. Because I don't know enough about
8 their efforts. I don't know about their investment.
9 I mean there are certainly an awful lot of things
10 that go into this. Certainly it looks like a large
11 amount of money, but I don't know enough to
12 determine whether it's good or bad or whatever.

13 Q. Okay. But you weren't making \$2 million?

14 MR. BICKS: Objection, Your Honor.

15 THE COURT: The objection is overruled.

16 A. Of course not.

17 Q. So let's go to PX729. We may refer back to
18 that so you can just keep that.

19 A. To the incentive page?

20 Q. Yes.

21 A. Why would we refer back to it when I don't
22 know anything about it?

23 I'm sorry, PX729?

24 Q. I'm not trying to trick you, Ms. Musso.

25 A. Okay.

1 Q. I just want to ask you a very simple
2 question about this. Along the way you came up with
3 this quality assurance initiative. And one of the
4 ideas was to send the field sales development
5 representatives into the OE retailer call centers to
6 see what was going on; is that right?

7 A. Well, see what was going on is very broad.
8 It was specifically to, you know -- it was primarily
9 for quality assurance purposes.

10 Q. But the original conception of it had -- had
11 a sort of TCPA or do not call component; is that
12 right?

13 A. Well, we -- we certainly educated the field
14 sales development representatives on the TCPA. But
15 we -- if they -- if they happened to hear something
16 or see something that they weren't comfortable with
17 that was outside of their area of responsibilities,
18 we also directed them to contact their manager or to
19 contact us.

20 Q. Okay. So if you see something, say
21 something; right?

22 A. Well, yeah, of course.

23 Q. Okay. But the focus of the program was not
24 TCPA. In fact, it didn't really have a TCPA
25 component?

1 A. Not -- no, it didn't.

2 Q. Okay. So let's turn to Exhibit 486. We're
3 gonna look at page 4.

4 A. Page 4.

5 Q. Yeah. Do you recognize this document at
6 all?

7 A. Yes.

8 Q. You do. Yeah. This was like the original
9 conception of the QA program; right?

10 A. It was.

11 Q. It was. It wasn't really implemented
12 exactly this way; is that right?

13 A. Well, there were some geographical
14 challenges. And you know, we did it in a number of
15 retailers, but it wasn't -- it wasn't as effective
16 as we'd hoped, which is why we continued to make
17 changes in the program.

18 Q. Okay. And so in the middle of page 4
19 there's a bullet point. And it says, (as read:)
20 DirectTV was fined a significant amount of money for
21 not adhering to the laws. And our focus in
22 preventative measures like this latest initiative
23 for call monitoring is meant to help avoid -- help
24 us avoid a similar punitive action for us.

25 Were you aware of the FTC's lawsuit against

1 DirectTV, Ms. Musso?

2 A. Yes, I was aware.

3 Q. Right. And that action related to the
4 actions, in part, of DirectTV's retailers; isn't that
5 right?

6 A. To the best of my knowledge, yes.

7 Q. Yes. And you were aware of that pretty
8 early on in your time period as compliance manager;
9 is that right?

10 A. Right. I will tell you I didn't write this
11 document. I was a participant, but I didn't write
12 the document.

13 Q. But you were familiar with the action
14 against --

15 A. Hm-mm, yes.

16 Q. All right. Let's move on. Let's look at a
17 time line here that I think you prepared. This has
18 been admitted as PX1367.

19 A. I have it.

20 Q. Okay. Do you remember this one at all?

21 A. I remember the information, I don't remember
22 the spreadsheet.

23 Q. But it's another one of the spreadsheets
24 that it looks like you created; right?

25 A. Yes.

1 Q. And is the information on here accurate?

2 A. To the best of my knowledge.

3 Q. And so you were hired on -- or on or about
4 August 12th, 2006, to oversee compliance?

5 A. Right.

6 Q. Right. That's you, right?

7 A. Right.

8 Q. And the result of that action was that DISH
9 now had a point person to manage telemarketing
10 preventative initiatives and to interact with the
11 retailers; right?

12 A. Correct.

13 Q. Now, the final entry on this spreadsheet,
14 the bottom one, is the expansion of a national sales
15 team. And you wanted to provide more one-on-one
16 attention with the partners. That was part of the
17 QA process; right?

18 A. I think it was -- I think it was part of
19 the -- yeah, it was part of the QA process. It was
20 part of the process.

21 Q. Right. DISH wanted to have a closer
22 relationship with these entities because of all the
23 issues that were coming up; is that right?

24 A. I don't know if it was because of all the
25 issues. I think that it's a good idea when you have

1 retailers that are, you know, doing business for
2 you, that you build good, cooperative working
3 relationships.

4 I mean this was early on, so I can't say it was
5 a result of a lot of problems, you know.

6 Q. Okay. Now let's move onto PX1270.

7 A. I don't think I have 1270? You said 1270?

8 Q. That must -- we'll come back to that one.
9 That must be a mistake.

10 So, Ms. Musso, in your position as compliance
11 manager you were concerned that DISH was exposing
12 itself to risk by continuing to do business with
13 retailers that may be breaking the law; is that
14 right?

15 A. I was concerned that retailers were exposing
16 themselves to risk primarily. And my job was to
17 work with the retailers to educate them and to help
18 them understand that there were consequences if they
19 didn't abide by the retailer agreement. At least
20 the specific portions I was responsible for.

21 Q. Okay. Let's go to Document 457. And here
22 you were being pretty frank when you said, (as
23 read:) Legal and the FCC would have a field day
24 with DISH if we continue to do business with someone
25 who blatantly violated the law.

1 A. This was specific to Apex Satellite, who I
2 met with. And they were -- they admitted to using
3 spoofed phone numbers. So yes, I was passionate
4 about coming to some sort of resolution regarding
5 that.

6 Q. Okay. But you didn't say just Apex, you
7 said if DISH continued to do business with someone
8 who would violate the law? You didn't want to do
9 business with people who violated the law, right,
10 Ms. Musso?

11 A. I don't think anyone who want to
12 deliberately do business with people who violated
13 the law.

14 Q. Right. And I'm just asking you whether you
15 recognized in this e-mail and others that your legal
16 department and the government would have a field day
17 with DISH if DISH continued doing business with
18 these companies?

19 A. I did make that assertion. And it's
20 actually really wrong of me to assume what other
21 people are going to think. But yes, we did say
22 that.

23 Q. But we are here today, Ms. Musso?

24 A. Yeah, we are.

25 Q. Let's go on to Exhibit 571. Now, Ms. Musso,

1 you frequently told retailers that they were
2 responsible for their actions; right?

3 A. Repeatedly.

4 Q. Repeatedly. And you told them that they
5 were responsible for the actions of the third
6 parties that they hired to do marketing for them;
7 right?

8 A. Yes.

9 Q. Okay. Now, in this document right here, the
10 second page of it is the attachment, you are
11 drafting a letter that you're sending to Mr. Werner.
12 And you reference the retailer agreement where you
13 said that prior consent of DISH was required to use
14 affiliates and third parties; is that right?

15 A. That is correct.

16 Q. Okay. And in the next paragraph you said
17 (as read:) You are completely and totally
18 responsible for the behaviors of anyone who acts on
19 your behalf and for whom financial compensation for
20 you, for your company from DISH Network, LLC, is a
21 result.

22 Do you still believe that to be true today?

23 A. Yes.

24 Q. All right. And the retailer agreement was
25 part of why these people would be responsible for

1 their third parties; right?

2 A. Primarily responsible, yeah. The retailer
3 agreement.

4 Q. But it also makes sense, because you dealt
5 with a lot of consumer complaints, right, in your
6 time at DISH?

7 A. Yes, I did.

8 Q. Right. And people thought DISH should be
9 responsible because DISH was the one getting the
10 benefit from the sale eventually; isn't that right?

11 A. DISH -- it's my understanding that DISH
12 doesn't benefit immediately from the sale, it
13 benefits more from customer retention.

14 Q. Okay. But DISH made a sale when a retailer
15 made a sale through the OE system? You'll agree
16 with me about that?

17 A. DISH did own the customer, yes.

18 Q. DISH owned the customer. So DISH ultimately
19 derived a benefit because it had more activations,
20 more subscribers; right?

21 A. Certainly. We're in the business to make
22 money.

23 Q. Certainly. That's what you want to do.

24 So when you told these retailers they would be
25 held responsible for the actions of these third

1 parties, isn't DISH -- shouldn't DISH be held liable
2 for the actions of the third party that it
3 contracted with?

4 A. They're independent contractors. It's an
5 agreement, it's in the retailer agreement, it's
6 understood. And I think if you go through a lot of
7 the documents that I've seen, we repeatedly remind
8 them of that, and they repeatedly tell us they know
9 they're responsible.

10 Q. Okay. Well let's move on to PX535.

11 And what you told Mike Mills here is that
12 somebody was blaming others for their TCPA
13 violations. What you said is that finger pointing
14 means you have three pointing back at you, right?
15 That's another one of your sayings, right,
16 Ms. Musso?

17 A. Correct.

18 Q. And so you understand that what DISH is
19 trying to do in this lawsuit is point the finger at
20 these retailers, right. You understood that?

21 A. The retailers are responsible for their --
22 for their actions and their behaviors. There's
23 no -- there's no way -- in my opinion there's no way
24 that DISH can be responsible for that. We have
25 established that through the retailer contract.

1 Q. But that's just -- I'm not asking you about
2 the contract, I'm talking to you about what you
3 believe, because you're the witness here today?

4 A. Oh, I don't believe DISH is responsible.

5 Q. You don't believe DISH is responsible. But
6 you believed Alan was responsible because when he
7 pointed fingers, he had three fingers pointing back
8 at him?

9 A. Because it was his business, he made the
10 decisions to do the things that he did, and he was
11 responsible for those. Just as I would be
12 responsible for the decisions that I make.

13 Q. Right. And DISH made the decision to
14 continue doing business with American Satellite and
15 Satellite Systems Network and a lot of these other
16 companies, right? DISH had contracts with those
17 companies?

18 A. We did. But we also had valid reasons to --
19 I mean I'm not gonna say we never made any mistakes,
20 but I can tell you that we had valid reasons. And
21 if you go through the history of the relationship
22 with these retailers, that we -- we -- and bear in
23 mind that, you know, we've talked about me not
24 knowing about all these robo calls, but you know, we
25 would present them with an issue, they would come

1 back and they would give us plausible explanations.
2 And we had no reason to doubt that and we would move
3 on. So I think that we acted pretty swiftly in some
4 cases, and maybe could have acted a little more
5 swiftly in another, but I think that overall we --
6 we -- we continued to hold them accountable for the
7 things that they did.

8 Q. Sure. And I know -- I'm not trying to say
9 you did a bad job. I know you tried to hold them
10 accountable --

11 A. You don't have to keep telling me that, I
12 know I didn't do a bad job.

13 Q. I know. But what I'm asking you about,
14 these entities, you understand that they used
15 affiliates to generate sales? You repeatedly told
16 them not to do that, but they continued to do that?

17 A. They could do, but there were processes and
18 procedures that they were to follow in order to do
19 that. There wasn't -- there wasn't anything wrong
20 with using affiliates and lead generation folks. It
21 was letting us know about it.

22 Q. But a common refrain you heard from
23 retailers whom you were asking about TCPA issues was
24 "That was an affiliate, we're going to term that
25 affiliate," right?

1 A. We did hear that frequently, yes.

2 Q. And what you told those retailers was, "It
3 doesn't matter if you knew what that affiliate was
4 doing, the responsibility for that sale was on you?"

5 A. Correct.

6 Q. Okay, so let's look at PX736?

7 A. I don't think I have that. 736?

8 Q. 736 isn't in there?

9 A. I go from 729 to 742.

10 Q. Okay. We'll hold off on that one for a
11 second. Let's go to PX123. Let's see if we can --

12 (Court reporter requested clarification.)

13 A. We looked at this, yes.

14 Q. Okay. So this is an e-mail -- I'm not sure
15 this is admitted. I would move to admit this
16 e-mail, Your Honor.

17 THE COURT: Any objection?

18 MR. BICKS: No, Your Honor.

19 THE COURT: 123 is admitted.

20 (Plaintiffs' Exhibit 123 admitted.)

21 Q. So what you told American Satellite was (as
22 read:) Somebody else may have set up this
23 relationship with this, you know, third party
24 company that may have made this sale, but American
25 is still going to reap the benefits from sales that

1 are completed. So I'm sure you understand that we
2 have no choice but to hold you accountable for any
3 allegations regardless of who set up the vendors.

4 That's what you told them, right?

5 A. That's what I told them.

6 Q. Right. So your testimony is that despite
7 the fact that you held the retailers responsible no
8 matter what they knew or didn't know about what
9 their affiliates were doing, that DISH shouldn't be
10 responsible for that? That's your testimony today?

11 A. It is.

12 Q. Okay. Let's move on to -- and that's just
13 because DISH was very creative with the way that it
14 wrote contracts; is that your testimony?

15 MR. BICKS: Objection, Your Honor.

16 THE COURT: Objection is overruled.

17 A. Would you repeat that?

18 Q. And is your testimony it's because of the
19 way DISH structured it's contract that it's not
20 responsible? That's your testimony?

21 A. I don't think that -- I'm not even sure I'm
22 qualified to answer that question. It's about the
23 contract.

24 Q. Right. But there's a contract which you
25 were testifying about earlier --

1 A. The retailer agreement.

2 Q. I'm sorry, I didn't mean to interrupt you.
3 There's the retailer agreement, right?

4 A. Yes.

5 Q. And then there's common sense? So you
6 understand the difference between the two, right?

7 A. I do.

8 Q. Okay. And what I see you telling these
9 retailers is not just about the retailer agreement,
10 but about common sense? Don't you agree, Ms. Musso?

11 A. I do.

12 Q. Okay. And the common sense is that if they
13 derive the benefit from the sale, doesn't matter
14 what the -- what they knew or didn't know about the
15 third party, they're responsible for it; right?

16 A. That is correct.

17 Q. Okay. Let's move on to PX1282. And I don't
18 believe this is admitted yet, Your Honor. It is,
19 I'm sorry.

20 Does this look familiar to you?

21 A. It does.

22 Q. Okay. So this is more Excel fun, right?

23 A. Yes.

24 Q. Okay. These were the weekly TCPA numbers
25 that your team brought in; right?

1 A. I believe this is year over year.

2 Q. This is year over year. So there were a lot
3 of -- there were a lot of TCPA complaints?
4 Sometimes it went up, sometimes it went down; is
5 that right?

6 A. I think -- I think it's really important to
7 look at the beginning of the end. Because it went
8 up and it went -- it went down a lot and it -- you
9 know, when it spiked in that one year, I think it
10 was 2006 or '7, and that's when we really got rid of
11 a lot of -- a lot of our retailers.

12 Q. So you were able to -- you were able to
13 control the retailers' telemarketing by terminating
14 the ones that were doing bad stuff; right?

15 A. I don't think we were controlling -- we were
16 controlling retailers, we were -- we were cleaning
17 up the --

18 what we were doing was paying attention to our
19 business. And when we realized that retailers were
20 not being forthcoming and there didn't seem to be
21 any repair that could be done, or corrective
22 measures that could be taken, it was, yes, we
23 terminated them. But there was a direct correlation
24 between this significant decline and the -- the
25 termination of a number of retailers.

1 Q. Right. So let's look at DTX129. I think
2 it's probably at the very beginning of your
3 notebook. DTX, that's a different series.

4 A. I know. Is that the demonstrative?

5 Q. No, I think it's at the very beginning of
6 the big binder.

7 A. Oh, there's just one, there's just one DTX.
8 I have it.

9 Q. Do you see that?

10 A. Yes.

11 Q. Okay. So what you said here is, (as read:)
12 I think there may be a correlation to the
13 termination of RPM and LA Activations with respect
14 to our TCPA complaints. While they were down last
15 month from July to August, through August 26th, we
16 have had only one issue reported to us in the last
17 eight days. We also confirmed that everything was
18 working right on the CSC side.

19 That means you confirmed you were actually
20 getting the complaints; right?

21 A. Well, yeah, because it was surprising in --
22 actually it was exciting to see that decline.

23 Q. Right. Because you didn't want these calls
24 to happen. You didn't want these complaints?

25 A. No, obviously.

1 Q. And you said, (as read:) We are making an
2 impact.

3 So you discovered that when you actually
4 terminated these retailers that were doing this
5 stuff, complaints went down. We can agree on that,
6 can't we?

7 A. We -- some of them, yes.

8 Q. Okay. Are you familiar with the term of
9 disabling log-ins? Do you know what disabling OE
10 log-ins would mean?

11 A. Yes.

12 Q. That means -- it would be a step short of
13 termination, it would be short of putting a retailer
14 on hold, but it would be disabling their log-ins,
15 they can't even log into the OE system; right?

16 A. It means -- it's my understanding, it's
17 certainly not my field of expertise, but it's my
18 understanding that it means if they disable a log-in
19 then the person that log-in belongs to, it may be an
20 individual and it may be a company, can no longer
21 enter activations into the system.

22 Q. Okay. And Mike Mills, you know Mike; right?

23 A. Of course.

24 Q. Mike Mills had the authority to disable
25 log-ins by himself; is that right?

1 A. You mean personally?

2 Q. Yeah. He could go into the system and
3 disable the log-ins; is that right?

4 A. He may have. I can't be certain.

5 Q. He may have, okay. Well, I'll talk to him
6 about that.

7 Now, Ms. Musso, would you agree that the
8 retailers were actually pretty sophisticated
9 business people who knew what they were doing?
10 would you agree with that?

11 A. You know, that's kind of a double-edged
12 sword question. Because I think that they were
13 sophisticated in some ways, but I think they needed
14 some guidance in others.

15 Q. Okay. Let's look at PX124. I believe this
16 document is not admitted, Your Honor. This is an
17 e-mail about terminating JSR Enterprises. I think
18 its relevance is obvious, I would move to admit it.

19 THE COURT: It's already admitted. It's on
20 the chart.

21 Q. Okay. What I wanted look at on this -- your
22 boss at the time was Rob Origer?

23 A. He was the director, yes.

24 Q. The director. And he said, (as read:) My
25 "their" applies to all of them. This isn't new or

1 that difficult. These are smart business people who
2 are choosing not to provide the info. They know
3 where the sales and leads come from.

4 Do you agree with that statement by Mr. Origer?

5 A. I do.

6 Q. You do. So when these retailers were not
7 providing enough info for you to do your job, you
8 knew that they had that info, they just weren't
9 giving it to you?

10 A. But they were giving me info. It just was
11 inaccurate.

12 Q. Mm-hmm. They were giving -- you knew they
13 were giving you --

14 A. I did not know it was. 20/20 hindsight
15 tells me it was not accurate info that I was getting
16 at the time, but they were providing information to
17 me.

18 Q. Okay. Now, Ms. Musso, let's talk for a
19 minute about a company called Satellite Systems
20 Network. You know that company -- we talked about
21 that earlier, that's the Tehranchis?

22 A. Right.

23 Q. Did you know before you got to DISH that
24 there were telemarketing issues with the Tehranchis'
25 business?

1 A. No.

2 Q. I mean before you got to Risk and Audit.
3 I'm sorry?

4 A. I knew there had been problems, but I really
5 sort of hit the floor running. I didn't know the
6 history of them. I kind of -- you know, I was -- I
7 wasn't aware of the extent of what had happened.

8 Q. Okay. Do you know who Thomas Krakauer is?

9 A. His name rings a bell.

10 Q. Okay. He is a consumer. He was actually
11 here on Tuesday. He got called by Satellite Systems
12 Network a bunch of times in 2009 and 2010. And I
13 just wanted to ask you about a document PX1294.
14 This is admitted already, if you could take a look
15 at it.

16 THE COURT: 1294 has not been admitted.

17 MR. RUNKLE: 1294 has not been admitted?

18 THE COURT: Right.

19 MR. RUNKLE: I would move to admit it now,
20 Your Honor.

21 THE COURT: Any objections?

22 MR. BICKS: No objection.

23 MR. RUNKLE: DISH did not provide the
24 attachment to this document, which is very
25 problematic for us, but we're willing to move

1 forward on the document anyway.

2 THE COURT: All right. It's admitted.

3 (Plaintiffs' Exhibit 1294 admitted.)

4 BY MR. RUNKLE:

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

6 A. Yes.

7 Q. Okay. So as part of your job
8 responsibilities did you review sales scripts from
9 some retailers?

10 A. I do want to clarify that. They would call
11 themselves scripts, but it wasn't their selling
12 script that we reviewed, it was the script that had
13 the disclosures in it. So it was the terms and
14 conditions that we reviewed.

15 Q. Okay. I don't think you've had a chance to
16 fully read this document. In here this person from
17 Satellite Systems Network actually says that they
18 haven't submitted their automated disclosure script
19 yet, but they're submitting this is their sales
20 script?

21 A. Right. As I mentioned, they would use that
22 terminology, but it was -- so we would get these --
23 these disclosure scripts. So they couldn't automate
24 all of the disclosures, they had to verbally say
25 most of them. We did allow them to record some of

1 them. But this -- so there were two -- there were
2 two pieces to this pie, if you will.

3 And one of them was that the -- as we've talked
4 about when I was examined earlier, there were as
5 many -- there were a minimum of like 20 disclosures
6 when we first started and by the time I left we had
7 gotten up to like 60, depending on the promotion
8 that the customer purchased. So it was -- we
9 thought it would be helpful to take their disclosure
10 scripts and just verify that they were covering
11 everything they needed to in the particular place
12 that it needed to be covered, automated or verbal.

13 Q. Okay. But this script right here, since we
14 don't have it, we don't know what it had in it. It
15 could have been their whole sales script, but you're
16 saying you didn't look at that?

17 A. Well, if -- that's true, we don't have it.
18 And if -- we wouldn't have -- we wouldn't have
19 evaluated how they marketed. I mean we wouldn't --
20 we wouldn't have provided feedback on that.

21 Q. That wasn't part of your job, you weren't
22 the Sales Department; right?

23 A. No, that's what the account managers did.

24 Q. Right, the account managers provided that
25 part.

1 A. I mean they would go over it with them --
2 you know, actually, I can't speak to what they did.
3 I just know that if they were gonna do that it would
4 fall into their responsibility.

5 Q. Okay. So -- but what I wanted to point out
6 here, it certainly looks like this is a script about
7 switching people from DirectTV to DISH. That's what
8 that title would say to you, don't you think,
9 Ms. Musso?

10 A. I don't know that that means DirectTV. I
11 can't speak to that. I don't know.

12 Q. Okay. Well, let's go to Exhibit 282.

13 I'm sorry, I meant 281. Your Honor, I don't
14 believe this document -- it was not admitted this
15 morning.

16 MR. BICKS: This was admitted I think
17 through Dr. Krakauer.

18 MR. RUNKLE: I think his was 282.

19 MR. BICKS: It's the same document.

20 MR. RUNKLE: Same document. I would move
21 to admit 281, Your Honor.

22 THE COURT: Any objection?

23 MR. BICKS: No objection. The Court should
24 know it's a duplicate of 282.

25 THE COURT: I can't rule on that because

1 it's not in front of me right now, so I will admit
2 it.

3 MR. RUNKLE: Thank you, Your Honor.

4 (Plaintiffs' Exhibit 281 admitted.)

5 BY MR. RUNKLE:

6 Q. So this is the Thomas Krakauer complaint;
7 right, Ms. Musso?

8 A. Right.

9 Q. And the gist of the complaint is he was a
10 DirectTV customer that was called by Satellite
11 Systems Network and they tried to sell him DISH; is
12 that right?

13 A. I believe that's what this says, yes.

14 Q. Okay. And your department, vendor inquiries
15 was an e-mail address that you monitor; is that
16 right?

17 A. Correct.

18 Q. Okay. Your department identified this as a
19 Satellite Systems Network issue; is that right?

20 A. Yes.

21 Q. Okay. Now, again I'm not trying to imply
22 you did a bad job, but Satellite Systems Network was
23 out there and they called him about ten more times
24 after this. Did you know that?

25 A. I believe I was aware that they called him a

1 number of times. I don't remember how many.

2 Q. How many.

3 A. Hm-mm.

4 Q. And that's probably a situation that causes
5 you some concern from your testimony today, don't
6 you think, Ms. Musso?

7 A. As I mentioned, any -- any call to a
8 customer that doesn't want it is problematic.

9 Q. Now, I just have a couple more questions for
10 you, Ms. Musso.

11 If I could have you turn to two documents.
12 PX553 and PX606. We'll get these together. You can
13 take them out.

14 A. I'm gonna.

15 Q. Have you had a chance to look at these?

16 A. Yes.

17 Q. Okay. So Section 7.3 of the retailer
18 agreement. That was the absolute power clause,
19 right?

20 A. I don't know if I could qualify it as that.

21 Q. Well, it looks like you were looking for a
22 retailer agreement justification for requiring the
23 retailers to participate in the QA program; right?

24 A. Well, essentially it was Brett Mason who was
25 the sales manager who sent this e-mail with this

1 information. But this 7.3 does allow us to do
2 business rules. And that's what -- with the OE
3 recording, you know, was a business rule that became
4 part of the agreement.

5 Q. That's right. But he referred to it as the
6 absolute power clause because it actually allows
7 EchoStar to require the retailers to take any action
8 or refrain from taking any action in the marketing
9 of DISH service; isn't that right?

10 A. I don't see that he referred to it as
11 absolute power clause. Does he say that?

12 Q. Yes, he does. I'll show it to you. It's --
13 both -- this e-mail sort of branches out in two
14 directions. You wrote back to him twice?

15 A. Two different -- I was talking about two
16 different retailers. But where does it say --
17 I'm -- first of all, Brett is not qualified to
18 determine that either. He's a sales guy.

19 Q. Sure. But I'm just talking about what
20 people understood at EchoStar that the retail
21 agreement would have permitted. I know you're not a
22 lawyer and he's not a lawyer. I'm just talking
23 about what you thought inside the company.

24 At the bottom of 606, it's essentially the same
25 e-mail. He refers to Paragraph 7.3 as the absolute

1 power clause. He says, (as read:) I guess I can
2 invoke the absolute power clause, but that is not my
3 first choice.

4 A. Oh no, no, he's not talking about these.
5 He's talking about being a sales guy and saying
6 because I said so. That's --

7 Q. That's your testimony, that's what he's
8 referring to? He's not talking about this clause
9 here that allows EchoStar to --

10 A. No, he was looking for -- so, yes, that is
11 my testimony.

12 Q. Okay. I have no further questions now, Your
13 Honor.

14 THE COURT: Any other plaintiffs have any
15 questions?

16 All right. Mr. Bicks.

17 MR. BICKS: So, Your Honor, what I wanted
18 to start with today was I wanted to use a board and
19 walk through a chronology as to JSR with the
20 witness. So can I put that up?

21 THE COURT: It's an actual board?

22 MR. BICKS: Yes.

23 THE COURT: What are you going to put it
24 on?

25 MR. BICKS: I think we have an easel.

1 THE COURT: I'm sure the plaintiffs
2 wouldn't mind you using their easel, I'm just not
3 sure it's big enough. That's why I asked the
4 question.

5 MR. RUNKLE: Your Honor, I just thought I
6 would raise this while they're doing that.
7 Mr. Castillo will essentially have to go on after
8 lunch, so we will have to break with Ms. Musso. I
9 don't know whether that affects what Peter is going
10 to do -- what Mr. Bicks is going to do.

11 THE COURT: Mr. Bicks, we're going to break
12 at the lunch hour. Mr. Castillo will testify after
13 that. Does that affect your doing this now? It is
14 almost twelve?

15 MR. BICKS: Whatever the Court wants to do.

16 THE COURT: I mean I have no problem with
17 you leaving it up during Mr. Castillo's testimony.

18 MR. BICKS: So --

19 THE COURT: Proceed. Go ahead and set it
20 up. Off the record.

21 (A discussion was held off the record.)

22 MR. BICKS: May I proceed, Your Honor?

23 THE COURT: Yes.

24

25

1 REDIRECT EXAMINATION

2 BY MR. BICKS:

3 Q. So, Ms. Musso, I have up in front of you a
4 chart of a chronology that deals with JSR. Is this
5 something you're familiar with?

6 A. I am.

7 Q. And I thought it would be useful to walk
8 through what you knew and saw, and when you knew it.
9 And this is a chart that has timeline and dates on
10 it that you're familiar with?

11 A. Right.

12 THE COURT: Have you been doing research on
13 me to find out I love timelines.

14 Q. Well, Judge, I wanted to do my opening and I
15 had all these timelines. So now I figured I'd do
16 it. I did, and frankly I thought it would be so
17 helpful to understand this case as it relates to
18 knowledge.

19 JSR becomes a DISH retailers in April of 2006?

20 A. Correct.

21 Q. And then they're on the OE tool in August of
22 2006?

23 A. That's correct.

24 Q. And then they're terminated in February of
25 2007?

1 A. That is correct.

2 Q. And then you don't necessarily know this,
3 but I put this on here, what violations that are at
4 issue in this case. And accept that I have them on
5 here as 2.3 million during this time period.

6 MR. RUNKLE: Your Honor, I'd like to make a
7 continuing objection based on the objection we made
8 yesterday that this really isn't a proper mode in
9 which to examine DISH's own witness.

10 Q. I'm just trying to set foundation.

11 MR. RUNKLE: It's not really foundation,
12 there are merits facts, Your Honor.

13 THE COURT: Well, we're going to break at
14 this time for the lunch hour. Do you have any other
15 objections to the timeline? Not to accuracy?

16 MR. RUNKLE: Looks like a good timeline to
17 me, Your Honor. We may add things as we go through.

18 THE COURT: You've seen it already?

19 MR. RUNKLE: We just saw it now, but it --

20 MR. BICKS: I sent it to you last night.

21 MR. RUNKLE: I saw it now. Apparently we
22 got it last night. I was busy. But we may add
23 things to it maybe with a marker as we need to.

24 THE COURT: I don't know if that will be
25 acceptable, if you deface the document. But use

1 Post-Its --

2 MR. RUNKLE: We will use Post-Its.

3 THE COURT: All right. Court is in recess.

4 (A break was taken.)

5 THE COURT: Court is reconvened.

6 So in the chart 119 that we used at the
7 beginning -- you used, plaintiffs, at the beginning
8 of the trial, that included 1052, 1128, 1346, 1051,
9 and 1055. So those were previously admitted. They
10 are therefore not admitted today, because they were
11 previously admitted.

12 Now, defendants already admitted before today,
13 121, 607, and 674 were admitted on 1/27 over
14 objection. And then 947 the objection was withdrawn
15 and it was admitted. Do you wish to preserve that
16 objection? I don't remember what the objection was.

17 MR. BICKS: I honestly don't remember the
18 objection, Your Honor, so I guess I should preserve
19 it until I figure out what it was.

20 THE COURT: All right.

21 If Ms. Musso would take the stand again.

22 MR. LEE: Actually, we're gonna take a
23 break and have Manuel Castillo testify.

24 THE COURT: Yes, right. Is Mr. Castillo
25 here? I was ready for my chronology. Can you use

1 it with this witness?

2 MR. BICKS: You never know.

3 (The witness was sworn.)

4 THE COURT: I wanted to recognize that
5 Illinois Attorney General's Debra Hagan and Rebecca
6 Pruitt are present to observe. Welcome.

7 Please proceed.

8 MANUEL CASTILLO
9 called as a witness herein, having been duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. LEE:

13 Q. Good morning. Or good afternoon, sorry.

14 A. Good afternoon.

15 Q. It might be morning for you.

16 Could you please tell us your name?

17 A. My name is Manuel Eduardo Castillo Saucdea.

18 Q. Could you spell that.

19 A. M-a-n-u-e-l. Middle name is E-d-u-a-r-d-o.

20 First last name c-a-s-t-i-l-l-o. Second last name

21 S-a-u-c-e-d--a.

22 THE COURT: Is that hyphenated?

23 THE WITNESS: It's not hyphenated, Your
24 Honor.

25 THE COURT: why do you have two last names?

1 THE WITNESS: I'm originally from Mexico.
2 We have two last names in Mexico.

3 THE COURT: Is one your father's and one
4 your mother's?

5 THE WITNESS: Yes.

6 THE COURT: I have children with a
7 hyphenated last name. Poor things.

8 BY MR. LEE:

9 Q. So is it okay if I call you Mr. Castillo?
10 Or Manny?

11 A. Manny is fine, too.

12 Q. Manny, where do you live?

13 A. In El Cajon, California.

14 Q. Well, thank you for leaving the sunny
15 California weather and coming out here. Are you --
16 could you give us a brief educational background?

17 A. I was born and raised in Mexico, went to
18 school in Mexico, and -- up to high school. And
19 then I did some college in San Diego, California.

20 Q. Are you currently employed?

21 A. Yes, I am.

22 Q. Where do you work?

23 A. I work for a company called Access Marketing
24 Communications.

25 Q. And what do you do for Access Marketing?

1 A. I'm a consultant. I train companies who --
2 virtually any company that is selling a product, has
3 a sales force, we train them.

4 Q. Have you previously worked for DISH Network?

5 A. Yes, I have.

6 Q. Okay. When was that?

7 A. Between 2002 and 2007.

8 Q. Could you tell us about how you first joined
9 DISH Network around 2002?

10 A. Yes. I learned about the opportunity with
11 DISH at a job fair. I met with a sales manager who
12 was recruiting for a position. We had a good
13 conversation, I submitted my resume, and I got
14 called back and offered a position.

15 Q. What kind of position was it?

16 A. It was called target marketing.

17 Q. And what did target marketing involve?

18 A. Target marketing was a position where we
19 would offer residential customers satellite
20 subscription. We were doing that at retail
21 locations like Costco.

22 Q. How were you compensated in target
23 marketing?

24 A. It was a commission position with a gas
25 allowance, a small nominal gal allowance, but it was

1 monthly based on commission.

2 Q. How long you were in target marketing?

3 A. About two months.

4 Q. Then did you go -- get -- did you move on to
5 another position within DISH?

6 A. Yes, I was -- the target marketing program
7 went away and there was a new position called field
8 sales development. We were encouraged to apply to
9 that position. There were many target marketers in
10 the area, but only a few of us were selected for the
11 field sales development position.

12 Q. And when you joined -- is field sales
13 development also known as FSD?

14 A. Yes, FSD was the common used name,
15 abbreviation for it.

16 Q. Okay. So when you became an FSD, could you
17 tell us how your responsibilities changed?

18 A. Yes. It was quite different. The other
19 position was again just a commission position
20 offering satellite subscription to consumers. This
21 was much more different. It involved supporting
22 retailers in the local market area. They were
23 selling DISH on our behalf and so I would support
24 them via sales training, via collateral, via
25 customer service, via contests. So I would

1 basically support their sales.

2 Q. And when you say local marketing area, what
3 area was that?

4 A. I was first in charge of south San Diego,
5 then it became central and south San Diego.

6 Q. When you were an FSD who was your director
7 at DISH Network?

8 A. My first director was Mr. Shawn Portela, as
9 I recall.

10 Q. And when you were an FSD, were there
11 different kinds of accounts that you were
12 responsible for?

13 A. Yes. The field sales development was in
14 charge of national accounts, what we called. Chains
15 like Costco, Sears, Walmart, Radio Shack, that had a
16 presence nationwide, we were in charge of those
17 accounts, but in our local market. So there were
18 field sales development positions in major markets
19 across the nation.

20 Q. Are there other kinds of accounts that you
21 were responsible for as FSD?

22 A. Yes, there were telco partners, there were
23 some OE retailers, and also some local retailers, we
24 helped support some of them as well sometimes.

25 Q. Did you -- and did you visit each of these

1 accounts that you were responsible for?

2 A. Yes, I did, on a regular basis.

3 Q. Now, are you familiar with how many
4 activations or subscriptions each of these types of
5 accounts were selling?

6 A. Yes, I am.

7 Q. How are you familiar?

8 A. We got regular sales numbers, regular sales
9 reports. It was our job to know what they were
10 selling on a weekly basis. So even more -- on a
11 more regular basis.

12 THE COURT: I'm sorry, I have a question.
13 You're saying that chains like Costco, Sears,
14 walmart, sold DISH services?

15 A. That is correct.

16 THE COURT: Okay.

17 Q. And was your compensation tied to these
18 activation and sales numbers?

19 A. Yes, they were. There was a base salary and
20 then there was a commission based on regional
21 activations.

22 Q. Okay. So the more that the accounts in your
23 area sold, the more money you got?

24 A. Yes.

25 Q. Could you -- so for all these different

1 kinds of accounts could you describe for us
2 approximately how many accounts were being sold
3 through each different type of account on a monthly
4 basis?

5 A. Well, our -- it did vary, but a good store
6 might be selling 20 a month, a bad store maybe one a
7 month, for national accounts. It was different
8 for -- for local retailers it varied as well
9 depending on their commitment. These local
10 retailers had other businesses as well, other
11 products that were not related to DISH. So
12 depending on their commitment, it was similar
13 numbers as well for local retailers.

14 It was different for telco. You know, AT&T is
15 a nationwide company, so AT&T was selling DISH
16 nationwide and there were thousands of activations a
17 months. OE partners were also doing thousands of
18 activations a month.

19 Q. Could you briefly recap for us sort of what
20 the differences are between these kind of accounts?
21 I think you talked about four. Could you just sort
22 of recap that for us?

23 A. Sure. So the difference is retailers are
24 obviously selling to people who walk into their
25 stores. Just consumers that walk in, they're

1 pitched -- the representatives will pitch a product
2 and then there was a subscription. And that's the
3 way local retailers worked. And that's the way the
4 national accounts worked, because they were retailer
5 locations.

6 Then as far as the local mom and pop stores,
7 the independent retailers, it was very similar.
8 Some of them had maybe door-to-door marketing. Some
9 of those small retailers did call -- did do some
10 outbound calling as well.

11 The telco partners, on the other hand, like
12 AT&T, had inbound calling. So customers would call
13 for any reason, such as technical support or to
14 learn about their bill or many other reasons, and
15 then they would be up-sold DISH Network.

16 And then the difference with the OE retailers,
17 OE retailers were typically call center operations.

18 Q. And how do you know -- how do you know that
19 some of these mom and pop stores were doing outbound
20 telemarketing?

21 A. I saw it myself. I trained some of these
22 call centers. I trained some of these retailers
23 when the initial started with DISH. So I would go
24 out and train them on sales.

25 Q. When you did this type of training would you

1 do any sort of compliance, telemarketing compliance
2 training as part of that?

3 A. No. I would just train them on the product,
4 on the technology, on the sales. That's pretty much
5 what I did.

6 Q. Now, at some point when you were -- excuse
7 me, let me step back for a second.

8 Did you -- were FSDs the only DISH
9 representatives that were working with these types
10 of accounts?

11 A. With national accounts, with the telcos, it
12 was mostly the FSD organization. But with the OE
13 retailers and the independent, those fell under the
14 area sales manager position. They were the main
15 people responsible for those type of accounts.

16 Q. And could you tell us how your sales manager
17 differed sort of from your responsibilities as an
18 FSD?

19 A. So the area sales manager had a different
20 area, or it encompassed more -- a bigger area than
21 an FSD. Not only that, but the area sales manager
22 was more in charge of signing up new accounts so
23 that they could sell DISH. They were in charge of
24 the independent retailers. They went more in depth
25 on the business side with these retailers. They

1 would work out marketing with them, they would talk
2 about their marketing, their business plan. And
3 they were directly responsible for the relationships
4 with the OE retailers as well.

5 Q. And did you have an area sales manager
6 counterpart in San Diego?

7 A. I did.

8 Q. Who was that?

9 A. His name was Carlos Prado.

10 Q. Did you interact regularly with Carlos?

11 A. Yes, I did.

12 Q. Can you tell us about that?

13 A. We were in the same office in Miramar, in
14 San Diego. We talked on a regular basis. We
15 coordinated a lot to visit some retailers, to train
16 some retailers. Sometimes when he wasn't able to, I
17 would step in for him traveling to some retailer
18 locations and doing some training myself for him.
19 We talked about numbers, we talked about
20 relationships with some of these retailers.

21 Q. When you -- when you say talking about
22 numbers, what do you mean?

23 A. Talking about sales, activations. We shared
24 a goal, an activation goal. So it wasn't only about
25 what I did, but it was about what his side of the

1 business did in our area that would determine our
2 compensation.

3 Q. So for both you and for area sales managers
4 your compensation was tied to activations in your
5 region?

6 A. That is correct.

7 Q. So let's talk a little bit, you mentioned OE
8 retailers. And then the call centers. Am I
9 recalling that correctly?

10 A. That is correct.

11 Q. Could you describe for us sort of how OE
12 retailers were different from the other accounts
13 that you were dealing with?

14 A. Yes. So the OE program was designed so --
15 to make -- to facility sales, to streamline the
16 sales process. In the past if you wanted to sell
17 DISH you had to buy equipment from DISH. And that
18 is in typical fashion how it would work, you would
19 buy equipment, you would then promote the DISH
20 Network product to customers, and then you would
21 have to be responsible for delivering the equipment
22 and also doing the installation in many cases. That
23 is typically how it worked.

24 With the OE program you did not have to do any
25 of that anymore. You did not have to buy any

1 product or have inventory. All you did was promote
2 the product, and then through the OE tool you would
3 create an order and DISH would bring out the
4 equipment and DISH would do the installation for
5 you.

6 Q. Were you familiar with the order entry tool
7 that was used?

8 A. Yes, I was.

9 Q. Could you describe that to us, please?

10 A. Yes. The OE tool was an online portal.
11 Every retailer had a distinctive log-in. Or a
12 number of log-ins that they needed to give log-ins
13 to their agents or management.

14 And you would go on that portal, log-in, and
15 the portal would walk you through how to set up a
16 new customer. That's -- that's how it worked.

17 Q. And who provided the log-ins for the OE
18 tool?

19 A. DISH Network.

20 Q. And who was responsible for maintaining the
21 OE tool?

22 A. DISH Network.

23 Q. Was DISH Network able to cut off access to
24 the OE tool?

25 A. Yes.

1 Q. At some point in your period as an FSD did
2 your focus in terms of the accounts you were
3 responsible for, did that focus change?

4 A. Yes, it did.

5 Q. Could you describe that for us?

6 A. There was a meeting in Santa Monica,
7 California, and it was a regional FSD meeting, and
8 somebody from Denver came out. They talked to us
9 about -- about changing our priorities and switching
10 our efforts to -- to the most productive channels of
11 the company. And so they talked to us about the OE
12 program and how it was being so successful. That we
13 needed to support the accounts that were being the
14 most productive.

15 Q. When you say most productive, what do you
16 mean by that?

17 A. I mean the accounts that were getting more
18 activations. They were getting way more activations
19 than any other channel, so that's what it was about.

20 Q. Do you remember -- actually -- so how many
21 activations were some of these OE retailers doing?

22 A. They were doing thousands of activations.
23 Up to 20,000 a month.

24 Q. And what did you think when you saw these
25 activation numbers?

1 A. That it was great. That it was great
2 numbers. We're making money, we're achieving our
3 goals. We were excited about it.

4 Q. How did you think these OE retailers were --
5 were making the activations?

6 A. We didn't really know. We, I mean the FSD
7 organization, we didn't really know. Our
8 management, our regional director, brought in some
9 of the retailers to talk to us. And they talked
10 about doing mailers and -- but we didn't really
11 understand marketing too much back then.

12 Q. Okay. So was -- so did DISH consider an
13 activation a benefit for the company?

14 A. Absolutely. Absolutely. We were -- that
15 was our goal.

16 Q. So when this focus switched were there OE
17 retailers that you became responsible for in your
18 area?

19 A. Can I add something to your last question?
20 Something that I just remembered is we actually had
21 a goal of activations. If we were to reach a
22 certain number of subscribers by a certain period of
23 time everybody was gonna get shares of the company.

24 Q. And so were you working to try to get those
25 goals?

1 A. Absolutely.

2 Q. So I think my last question before that was
3 were -- when you -- were there OE retailers that you
4 became responsible for in the San Diego area?

5 A. American Satellite, and there was another
6 one that was there for a couple of months, but I
7 don't recall their name.

8 Q. And was Carlos Prado also responsible for
9 American Satellite?

10 A. Yes, he was. He was mainly responsible.

11 Q. Did you talk to Mr. Prado about American
12 Satellite when you wanted to start focusing on them?

13 A. Yes.

14 Q. What did he tell you about American
15 Satellite?

16 A. He told me that they were doing great, that
17 they were doing great numbers. He talked about
18 their management.

19 Q. So what did he tell you about their
20 management?

21 A. He told me that some of the people that had
22 joined the program had a questionable --
23 questionable past.

24 Q. Did he tell you anything else about this
25 questionable past?

1 A. He hinted that it might have been related to
2 them having made their money in criminal ways and
3 some securities fraud as well.

4 Q. Did you eventually learn -- so let me
5 establish, who were these -- who were these
6 owners --

7 A. Todd DiRoberto.

8 Q. Are there other owners of American
9 Satelllite?

10 A. Yes, Tim Pyle. And then there were other
11 gentlemen that were partners with them. Sean
12 McCracken and other gentlemen from Orange County.

13 Q. Did you eventually learn about
14 Mr. DiRoberto's past?

15 A. Yes. Many months later, maybe a year later,
16 I went online and saw he had been indicted on
17 securities fraud or something like that.

18 Q. And did Mr. Prado tell you anything else
19 about American Satelllite and its marketing?

20 A. Yes.

21 MR. BICKS: Your Honor, I would object on
22 this as hearsay.

23 Q. Mr. Prado was an employee of DISH Network at
24 the time he made these statements to Mr. Castillo.

25 THE COURT: Is that correct?

1 A. Yes.

2 THE COURT: The objection is overruled.)

3 Q. Was Mr. Prado, while he was a DISH Network
4 employee and area sales manager for American
5 Satellite, did he tell anything about American
6 Satellite's marketing methods?

7 A. Yes. He told me about Sean, he said he was
8 the genius that was making the phone rings.

9 Q. What did you understand that to mean, that
10 he was making the phones ring?

11 A. That they were outbound calling. At the
12 time I didn't understand too much about it, but he
13 told me they were outbound calling.

14 Q. So how long were you an FSD with American
15 Satellite before you left DISH Network?

16 A. I supported them for a couple of years.

17 Q. And during this time when you were
18 supporting them what did you do?

19 A. I would visit them, sometimes bring some
20 pastries. And talk to the owner, see how they were
21 doing. I would do training. Train their new agents
22 if they had new agents, on the product, on the
23 promotions, on the industry. I would sometimes do
24 some QA, quality assurance. Listen to some calls.

25 Q. Let's talk about the QA program just

1 briefly. When you were listening to calls what --
2 how were you getting access to these calls?

3 A. Sometimes they would provide recorded calls,
4 and sometimes they would -- we would just listen.
5 Maybe stand behind a representative and listen to
6 some calls.

7 Q. And what were you listening for when you
8 were doing these QA calls?

9 A. I was just listening for accurate
10 information. That they weren't lying to the
11 customer, that they weren't promising things that
12 weren't true. Listening for disclosures. Making
13 sure that they were compliant with our quality
14 standards.

15 Q. Did you -- were you listening for compliance
16 with telemarketing regulations?

17 A. No, I was not.

18 Q. Did you do any training or anything with
19 American Satellite for telemarketing compliance?

20 A. No, I did not.

21 Q. So you testified that you left DISH Network
22 sometime in 2007. Could you tell us about that,
23 about your departure from DISH Network?

24 A. Yes. I -- I decided to leave DISH because I
25 wanted to join retailers that were selling DISH.

1 They were having a lot of success and they were
2 making money, and I thought there was more money to
3 be made on the retailer side of the business.

4 Q. Why did you think that they were making more
5 money?

6 A. I know they were making more money. They
7 were -- I would see the sales numbers. I knew what
8 they were making per activation. There was people
9 that had been working for DISH that had left DISH to
10 work for the OE program, some of them had invited me
11 to work with them. So I knew they were making more
12 money.

13 Q. Okay. Let's talk about a couple of things
14 you talked about there.

15 So in terms of how much these retailers were
16 making, do you know how much a retailer would
17 typically be making per activation?

18 A. It was about \$175 up to like \$200. It
19 depended on a number of things. If there was a DVR
20 attached, if the programming was a higher
21 programming, if there was an HD receiver attached to
22 the -- to the sale. It could vary.

23 Q. And how many activations were -- let's say
24 American Satellite, during the time you were an
25 FSDR, how many activations were they making on a

1 month?

2 A. You said per month?

3 Q. Per month, yes.

4 A. So it was about 150 a day, times six days,
5 we worked some Saturdays. So that would make it --
6 I'm sorry, what's the math?

7 Q. 900 a week?

8 A. About that. So yeah, it with thousands, up
9 to like 5,000 sometimes. I mean on its peak I
10 recall it was about 5,000, if I recall correctly.

11 Q. Did retailers also receive residual
12 payments?

13 A. Yes, they did. There was a residual on a
14 monthly basis.

15 Q. And could you -- what are residuals?

16 A. A residual was essentially when there was an
17 activation, not when there was a transaction, but an
18 activation, if a customer actually got installed and
19 receivers got activated and the account was live in
20 the customer's home, that was considered an
21 activation. So there was a fee for that, depending
22 on, again, the kind of activation.

23 Then if the customer stayed on, every month the
24 customer stayed on for a period of time there was
25 another fee. That was the residual income.

1 Q. You also mentioned DISH employees that left
2 DISH Network to work at other -- at retailers.
3 Could you tell us who you're talking about?

4 A. Yes. Shawn Portela, who was our director.

5 Q. Do you know of anybody else?

6 A. Carlos Prado, who was the area sales
7 manager. He went on to become one of the partners
8 of American Satellite.

9 Q. So then let's go back to the events that
10 we're talking about. why -- why did you leave DISH
11 Network?

12 A. So what happened is I was contacted by a
13 lady named Becky Adler. She had a network of call
14 centers that wanted to -- she was looking to sell
15 DISH. They wanted to sell DISH, she wanted to sell
16 DISH Network. I was still working for DISH at the
17 time, so I said, "You should talk to Shawn Portela,
18 he's looking for people to sell DISH for him." And
19 so I gave her Shawn Portela's phone number and they
20 got in touch.

21 Q. How did you know that Shawn was looking for
22 people to work with to sell DISH?

23 A. Shawn Portela had told me about it. He
24 actually had asked me to help him sell DISH, but at
25 the time I was still employed with DISH. I was not

1 ready to make that decision.

2 Q. And so after Becky Adler had called -- at
3 Call Services got hooked up with Sean, then what
4 happened?

5 A. So she kept calling me because she wanted my
6 support and she had questions. And she started
7 telling me about how well she was doing and how
8 great it was, and she started asking me to join her.
9 To help her grow the business, to work for her.

10 Q. So did you -- did you join her?

11 A. Yes, I eventually did.

12 Q. And what did you understand your
13 responsibilities were going to be at Call Services?

14 A. It was -- my responsibilities was to help
15 grow the business. There was a number of call
16 centers, a network of call centers she had. She
17 wanted me to be directly responsible for these call
18 center. Train them, help them get more sales
19 numbers, help them with their plans to expand to get
20 more agents on the phone and sell more.

21 Q. So were these call centers working with a
22 specific retailer?

23 A. Yes. Originally Shawn Portela was working
24 through DISH Nation. And that's where they were
25 entering sales, through DISH Nation's OE portal.

1 And eventually Shawn got his own license, which was
2 under Cactus, Cactus Concepts.

3 Q. So after -- so you accepted the job; is that
4 right?

5 A. That is correct.

6 Q. And then -- so what did you discover when
7 you first started working for Becky Adler and Call
8 Services?

9 A. Well, I started visiting the call centers
10 and looking into what they were doing. Originally
11 was to support them and help them grow, but as I
12 started to dig in I started seeing a lot of things
13 that they were doing that I considered to be wrong.

14 Q. Where were these call centers located?

15 A. So most of the call centers were located in
16 Tijuana, Mexico. But there was some in Costa Rica,
17 Nicaragua, Colombia, and Argentina. I would visit
18 the ones in Tijuana. The ones in Central and South
19 America I typically supported over the phone.

20 Q. So these call centers that you would visit
21 in Tijuana, what would you see when you visited?

22 A. They were varied operations. There were a
23 number of call centers, some of them were very
24 small, some of them were bigger. One of them might
25 have had 50 people, the other might have had 10

1 people or 5 people. There were -- they seemed more
2 like improvised call centers rather than like
3 established call center.

4 Q. Were these call centers doing outbound or
5 inbound telemarketing?

6 A. They were doing outbound telemarketing.

7 Q. How do you know that?

8 A. I saw them do it.

9 THE COURT: Excuse me a second, I'm going
10 to interrupt. I've had the clerk's office bring up
11 Judge Schanzle-Haskins Aeron chair and I'm going to
12 allow Mr. Dodge to use it because of his back.

13 MR. DODGE: Thank you very much.

14 THE COURT: Why don't we simply move the
15 chair he's in now and put the Aeron chair there.
16 Unless you would like it somewhere else, Mr. Dodge.

17 MR. DODGE: Right here is fine, Your Honor.
18 Thank you very much, I appreciate it.

19 THE COURT: Just don't steal it. You may
20 want to adjust the back, depending on the height.
21 Judge is about your height so it may be fine, but
22 you may want to tighten the tension in the back.
23 Have you ever had one of these chairs?

24 MR. DODGE: I have. Thank you very much.

25 THE COURT: Feel free to stand if you want

1 to.

2 MR. LEE: That's going to be a coveted
3 seat.

4 BY MR. LEE:

5 Q. So we were talking about the call centers in
6 Tijuana that you were visiting. Do you know what
7 product these call centers were selling for Cactus
8 Concepts?

9 A. DISH Network.

10 Q. And how do you know that?

11 A. Because we hired them to do that. We were
12 paying them to do that.

13 Q. So you had just testified before that you
14 believe these call centers were doing outbound
15 telemarketing; is that right?

16 A. That is correct. We -- I -- when I started
17 going down there I started finding out what they
18 were doing. I started digging into their practices
19 and I started finding out a lot of things that I
20 considered that they were doing wrong.

21 Q. How were these call centers getting their
22 calling lists for this outbound telemarketing?

23 A. Originally they told me they were using a
24 service called --

25 MR. BICKS: Again, Your Honor, that's

1 hearsay. Now he's saying this is what they told
2 him. Now we have an out of court statement.

3 Q. Well, I'm not going to be offering this for
4 the truth of the matter, I'm offering them just to
5 show what Mr. Castillo's state of mind and knowledge
6 of what was going on.

7 THE COURT: All right. For that limited
8 purpose you may answer.

9 A. So they said they were using Sales Genie for
10 their calling list. But I confronted them and I
11 said, "Log me in, show me." And they couldn't do
12 that. I realized they were using the phone books to
13 just call people.

14 Q. What do you mean they were using the phone
15 books to just call people?

16 A. So they had -- they had the yellow pages and
17 they were calling people out of the yellow pages.

18 Q. And you saw this?

19 A. Yes, I saw this with my own eyes.

20 Q. Do you know -- can you tell us a little bit
21 more about these phone books?

22 A. Yeah. They were -- they were U.S. phone
23 books. They were -- they were targeting people
24 who -- they were targeting the Hispanic community
25 because they felt that they would not get too many

1 complaints if they called the Hispanic community.

2 Q. And on these calls were they -- were these
3 call center representatives, were they selling
4 residential or business service?

5 A. No, it's all residential. DISH did not --
6 the license that we had was only for residential.
7 There was no commercial business going on with these
8 retailers.

9 Q. And so these phone books, they had
10 residential numbers in them?

11 A. That is correct.

12 THE COURT: You said they were in the
13 yellow pages?

14 A. That is correct. Or yellow books or -- the
15 directories.

16 THE COURT: Not in the business section, in
17 the residential section?

18 A. No, no. There was no -- we could not sell
19 business accounts at all.

20 THE COURT: Usually in our phone books
21 yellow pages are the businesses.

22 A. No, I mean like --

23 THE COURT: They're not yellow anymore.

24 A. -- the directory.

25 THE COURT: Okay, thanks.

1 Q. To your knowledge was there -- so when you
2 discovered that these call centers were generating
3 their calls through phone books, what did you do?

4 A. I told Becky Adler about it and then I told
5 Shawn Portela about it.

6 Q. And how did they respond?

7 MR. BICKS: Objection, Your Honor. It's
8 hearsay.

9 Q. I'm asking how they responded, what actions
10 they took.

11 THE COURT: All right. Go ahead.

12 A. Well, at the same time that I told them
13 about that there were other things that they were
14 doing that -- that these call centers were doing.
15 So really, the do not call was not really the
16 concern, the concern was that there were -- the call
17 centers were faking people's socials and selling
18 accounts under somebody else's names. And that's
19 what -- what Becky and Shawn and I were really
20 worried about at the time. So what Shawn said was,
21 you know, DISH is gonna want their money back,
22 that's what he said.

23 Q. Okay. But you also told Shawn and Becky
24 about the types of telemarketing that these call
25 centers were doing?

1 A. Yes, that's correct.

2 Q. And how did they react to that information?

3 A. Again, that was not a big concern. The
4 concern was the social security fraud and the
5 setting up customers under somebody else's name and
6 duplicating customers. That was the big concern.

7 Q. So were you comfortable with these things
8 you were seeing in these call centers?

9 A. No, I was very uncomfortable. After we
10 talked to them we shut them. We didn't want to be
11 part of that. We felt we could be held responsible
12 for that, so we just didn't -- we didn't want any
13 liability, so we shut down the whole thing.

14 Q. And so then did you stay on with Call
15 Services?

16 A. No, I did not.

17 Q. Where did you go?

18 A. I went to work for an advertising company.

19 Q. How long did you stay with that advertising
20 company?

21 A. Maybe about a month. A little bit more than
22 that, about two months.

23 Q. I just want to step back for a second. When
24 you were with Call Services, just for the few months
25 that you were, how much were you being paid?

1 A. I was getting paid a thousand dollars a week
2 and I was getting paid a fee per activation as well.

3 Q. Was that more than you were making at DISH
4 Network?

5 A. Yes, it was.

6 Q. Was it significantly more?

7 A. It was more. It wasn't -- it was more.

8 Q. And when you were at Call Services did
9 you -- did you learn that these call centers were
10 calling for any other retailers?

11 A. Yes. The same network of call centers that
12 had worked with us, DISH Nation, Cactus Concepts,
13 had also worked in the past for Newport Satellite.

14 Q. So after -- so did you -- you eventually
15 left the yellow pages company that you were with?

16 A. That is correct.

17 Q. And where did you go?

18 A. I -- Carlos Prado called me and asked me to
19 help him at American Satellite. He wanted me to
20 help him out and clean up the house at American
21 Satellite.

22 Q. What did you understand clean up the house
23 to mean?

24 A. Well, he told me specifically that he wanted
25 the company to have more corporate structure. That

1 there was some lack of organization.

2 Q. And just so that we can orient ourselves,
3 around what time period was this when you were --
4 were contacted by Carlos?

5 A. That was early 2008, I believe. I'm trying
6 to recall, it was a long time ago, but it was -- I
7 left DISH at the end of 2007, did a few months with
8 Becky, maybe a month or so with -- with the
9 advertising company, and then I did -- I joined
10 American.

11 Q. So what did you -- what did you see when you
12 first joined American?

13 A. It was pretty shocking. I saw people just
14 doing whatever they wanted. People would come and
15 go whenever they wanted. People would drink on the
16 job. People would -- the female employees were
17 being harassed. It was just completely
18 free-for-all.

19 Q. And so what did you set out to do?

20 A. I set out to change things. I set out to --
21 I created scheduling, I started disciplining people.
22 I created some scripts. Did my best to protect, you
23 know, female employees. I did just -- implemented
24 many changes on how we were operating.

25 Q. Did you learn about the kinds of marketing

1 that American Satellite was doing?

2 A. I did, I did. As time went on I learned
3 more about them.

4 Q. Could you tell us what you learned?

5 A. Well, first what I learned is that the
6 company was doing some print advertising. Then I
7 learned that the company was doing online marketing.
8 And then finally I learned that the company was
9 doing voice broadcasting.

10 Q. Let's talk about those three different
11 things that you mentioned. When you say print
12 advertising, what do you mean by that?

13 A. So the company would advertise in magazines,
14 newspaper, with a phone number, and then expecting
15 the consumer to see it and then would, you know,
16 call the number and buy DISH.

17 Q. How effective was that as a marketing tool?

18 A. It was very ineffective.

19 Q. Did you say effective or ineffective?

20 A. It was very ineffective.

21 Q. Why was it ineffective?

22 A. It was only about a two percent response.

23 Q. Was it an expensive type of marketing for
24 American Satellite?

25 A. It could be expensive because it was not

1 effective. You were basically throwing away
2 90 percent of your marketing budget. It -- that
3 went to waste because there was only a two percent
4 response, so -- there was virtually no business from
5 that.

6 Q. How about the second type, online? Can you
7 tell us about how effective that was as a marketing
8 tool?

9 A. That was more effective. It was generating
10 more numbers for us. It was expensive though. But
11 it was effective --

12 Q. How was it more expensive?

13 A. So what the company was doing was paying a
14 fee per lead. Not per sale, but per lead. So every
15 lead would cost between \$8 and \$13. And the company
16 had to pay for every lead, and then we tried -- when
17 we got those leads we would try to convert those
18 leads into customers. So we needed to make sure
19 that we closed enough customers in order to pay for
20 that marketing. It could get expensive. That's
21 what I mean. So there were numbers, but it was more
22 expensive to get those numbers.

23 Q. And the third kind of marketing you
24 mentioned was voice broadcasting. Could you tell us
25 what you mean by voice broadcasting?

1 A. So voice broadcasting is essentially an
2 automated dialer will dial a certain amount of --
3 you can determine the amount of numbers it dials at
4 a given time. It will call more numbers than agents
5 are available just to ensure that the sales floor is
6 busy. So it's calling, it's dialing many numbers.
7 If a consumer picks up the phone then there's a
8 recorded message that will typically be -- will be
9 triggered by somebody saying hello. So you say
10 hello and that will typically trigger the technology
11 to start playing a message.

12 And so the message will say something to the
13 sorts of, "are you interested in DISH Network?
14 would you like to learn more about it, press this
15 number. If not, press this other number. Or if you
16 want to be put on the do not call list, press this
17 other number." And so that's what it was.

18 Q. How effective was voice broadcasting as a
19 marketing tool?

20 A. It was -- it was effective. It was -- it
21 was relatively cheap to the amount of sales that you
22 could get.

23 Q. How did you learn that American Satellite
24 was using voice broadcasting?

25 A. So at first, if I -- if I can go back, when

1 I was at DISH my impression was they were doing
2 inbound, but when I started working with American I
3 started getting complaints from customers. So
4 customers would say, you know, "why are you calling
5 me, I'm on the do not call. why did you call me
6 from the local number, from the local hospital? why
7 did you call me from the local police, I thought
8 something had happened, I thought something had
9 happened to my son or to my daughter, why are you
10 guys doing that."

11 So I started getting these kind of complaints.
12 And again, I didn't understand the technology too
13 much at the time so I would ask management and say,
14 "why did they get a call from the local number?"
15 And they just said, you know, "Don't worry about
16 it."

17 Q. So then did you get any more familiarity
18 with this voice broadcasting, this dialing that
19 American Satellite was doing?

20 A. Yes, because I was then asked to start a
21 dialer myself. So eventually they started asking me
22 to start the dialer, set the dialer at a certain
23 speed. Speed meaning, you know, if there's two
24 agents on the phone, call eight lines so that we are
25 keeping busy. So I would have to set the speed.

1 And then also I would have to talk to some
2 people in the Philippines via Skype in order for
3 them to have agents ready. At the time I didn't
4 know why they needed to have agents ready, but -- so
5 what I learned is that these calls that we were
6 dialing were going to people in the Philippines.
7 And then people in the Philippines would say, "are
8 you really interested in learning more about the
9 product?" And then if that was the case then they
10 would transfer the calls to my agents in San Diego.

11 Q. Let's talk about the consumer complaints you
12 were getting. Did you do anything to sort of
13 investigate these consumer complaints?

14 A. No, no. Just apologize to the customer, put
15 them on the do not call if they wanted to, and let
16 management know maybe.

17 Q. Were you getting other types of complaints
18 at this time at American?

19 A. No, just complaints about -- well, sometimes
20 it would be complaints about, "Hey, this agent
21 didn't tell me the truth," or -- but that -- those
22 were much less of a problem. They weren't as often.

23 Q. Was American Satellite being investigated by
24 any law enforcement around this time period?

25 A. Well, I'm not sure about the time period

1 that you mean.

2 Q. Well, when you were at American Satellite?

3 A. Yes, yes, they were.

4 Q. Could you tell us about that?

5 A. Yes. There was some complaints from some
6 State Attorneys regarding a number of calls. And
7 they wanted -- they wanted a response from us.

8 Q. So what did you do to provide that response?

9 A. Well --

10 Q. Well, did American Satellite respond?

11 A. Yes, it did.

12 Q. What did American Satellite do to respond to
13 these --

14 A. So what American did is they came up with a
15 plan to enter these customers as online leads. So
16 basically, grab their information, enter them
17 online, produce the online lead, and then say, "Hey,
18 you know, they asked for information, here it is,
19 they're an online lead. They requested
20 information." That's what they did.

21 Q. Was that usually enough to end the
22 investigation?

23 A. I don't know what the conclusion of the
24 investigation was to be honest with you.

25 Q. Okay. So I just wanted to clarify one

1 thing. American Satellite was selling American
2 residential DISH Network service; is that right?

3 A. Correct.

4 Q. So as you continued to work at American
5 Satellite were there other things that you were --
6 that you became sort of uncomfortable with?

7 A. Yes, there was many things happening.

8 Q. Could you tell the Court about that?

9 A. Well, they -- DISH had a process where you
10 needed to try to qualify a customer in order to --
11 for them to become an account. Part of the process
12 was that the customer needed to have a credit card.
13 In case a customer cancelled and -- the cancellation
14 fee could be taken out of the credit card. So DISH
15 did that to protect its own interest.

16 And so what some of the retailers were doing,
17 including American Satellite, was if the customer
18 did not want to provide a credit card, or did not
19 have a credit card, American would use prepaid
20 credit cards, put a dollar on them, then they would
21 put it on the system. The system would say yes,
22 this is an valid credit card, and then they would
23 move on with the process.

24 Q. Were there other things that -- at American
25 Satellite that you discovered that you were not

1 comfortable with?

2 A. Yeah. The -- the do not call violations.
3 The credit cards. The -- so as far as QA was
4 concerned, DISH wanted to listen in on a certain
5 number of calls on a weekly basis. So they asked us
6 to produce those calls, to give them those calls.
7 And so the company didn't want to give those calls,
8 so what they did is they asked me to have employees
9 fabricate the calls. Pretend to be a customer,
10 pretend to be an agent, and they asked me to do
11 that. I did not want to do that.

12 Q. Why didn't American Satellite want to
13 provide these calls?

14 A. Because they were afraid that they would be
15 found to be in non-compliance. That they would
16 have -- run into trouble with DISH.

17 Q. But even though American Satellite didn't
18 want to, it still -- American Satellite did still
19 provide these calls?

20 A. Yes, it provided fake calls.

21 Q. Why did you do that?

22 A. We had to give them the calls, we couldn't
23 say no. It was in our agreement. They had the
24 right to ask for any call at any time upon request.

25 Q. Did you have an impression about the balance

1 of power in terms of contractually between American
2 Satellite and DISH Network at this time?

3 A. Yes, I did.

4 Q. What was it?

5 A. DISH had all the power.

6 Q. What's your basis for saying that?

7 A. Well, my first basis is I tried to sign up a
8 retailer, I came up with a lead when I was working
9 for DISH, and they gave it to Carlos Prado because
10 he was in charge of setting up new retailers. I
11 come across this lead, I give to him, he's in
12 charge. And then he said nothing happened with this
13 lead, we couldn't sign him up. I said why? He
14 said, "well, they didn't like the agreement." And
15 then he told me essentially DISH, the way they do
16 things is they have all the power, and then if
17 they -- if they want to, they can just squash you
18 like a bug.

19 MR. BICKS: Your Honor, this is all
20 hearsay. And I would object to it, move to strike.
21 He's talking about something that somebody at
22 American Satellite is telling him.

23 Q. Was this -- was Mr. Prado telling you this
24 while he was at DISH Network?

25 A. Yes. I provided the lead while I was

1 working for DISH Network, he was still working for
2 DISH Network.

3 THE COURT: The objection is overruled.

4 A. Again, this is when I was working for DISH
5 and I was trying to give him a lead so he could sign
6 up a new retailer for DISH. And so he told me that,
7 that basically DISH could just squash you like a bug
8 at any time.

9 And so same thing when I was at American, if
10 DISH was coming, you know, everybody be on their
11 best behavior. Everybody, you know, stay in your
12 seats, don't say too much. That's what it was.

13 Q. So you talked a little about these tactics
14 that you became uncomfortable with. Did you
15 eventually leave American Satellite?

16 A. Yes, I did.

17 Q. Could you tell us about how your departure
18 at American Satellite came about?

19 A. I was let go from American Satellite.

20 Q. Could you tell us what happened?

21 A. Yes. Reji Musso from DISH Network spoke to
22 the owners of American Satellite and told them that
23 I had been working with Shawn Portela. So they
24 called me into a room and said, "We know you're
25 working for Shawn, Reji Musso told us." I said,

1 "No, I'm not." I called Shawn on the spot and put
2 him on speakerphone and said, "Shawn, when is the
3 last time we worked together? And he said, "Before
4 you joined American." And I said, "Thank you,
5 that's all I wanted to know." And I hung up the
6 phone. But they still fired me anyway.

7 Q. So what happened after you got fired?

8 A. When I got fired I called Reji Musso on the
9 phone, and I was pretty mad and held her
10 responsible. And I said, "why did you tell them
11 this? why did you lie to them? why did you do
12 that? They fired me because of you." And I said,
13 "You don't even know what's going on at American."
14 And she was very apologetic to me.

15 Q. So did you tell Ms. Musso about the things
16 you saw at American Satellite?

17 A. Yes, I did.

18 Q. And how did she -- how did she respond?

19 A. She responded by saying that she would put
20 me in touch with a gentleman from DISH who was -- I
21 knew was Bert Eichhorn from the internal audit at
22 DISH Network.

23 Q. And just so we're clear, when you say you
24 told Ms. Musso about all these things, what
25 specifically did you tell Ms. Musso about what you

1 saw at American Satellite?

2 A. The credit cards, the DNC, secret deals with
3 other retailers, the fabrication of the calls, the
4 fabrication to the State Attorneys, making it seem
5 like people were online leads when they were not.

6 Q. Just so we're clear, when we say DNC, what
7 do you -- what are you referring to?

8 A. Do Not Call Registry.

9 Q. So we talked about the voice broadcasting.
10 Were there other problems in terms of do not call or
11 DNC at American Satellite?

12 A. Not really sure of any other problems. Or
13 not that I know of.

14 Q. So you talked about being put in contact
15 with Bert Eichhorn. Could you tell us what you told
16 Mr. Eichhorn?

17 A. Yes. I told him everything again, same
18 thing that I told Reji Musso. Again, it was about
19 how they were circumventing the system, what kind of
20 tricks they were using. The do not call violations,
21 the secret agreements between retailers. The using
22 of the gift cards, credit card gift cards to
23 circumvent the system. I told them about Becky and
24 Shawn. What some of the call centers in Tijuana
25 were doing. Basically gave them all the

1 information.

2 Q. At this time did you --

3 THE COURT: What time is this?

4 Q. Well, at the time you told Mr. Eichhorn this
5 information, this was after you left American
6 Satellite? Or after you were fired from American
7 Satellite?

8 A. That is correct.

9 THE COURT: So what time period is that?

10 A. That would be either -- I think it was late
11 2008, Your Honor, as I recall. I don't recall
12 exactly, it was a long time ago. Sorry.

13 Q. Well, let's see if we can look at a document
14 here. Could I -- could you please pass out the
15 binders.

16 If I could ask you to turn to PX222. If you
17 could take a look at this document, please read it.
18 Let me know when you're done.

19 A. Okay.

20 Q. Do you recognize this?

21 A. Yes, I do.

22 Q. What is it?

23 A. It's an e-mail between myself and Bruce
24 Eichhorn regarding a secret deal that American
25 Satellite had with Allegro Satellite.

1 Q. Your Honor, at this time I would like to
2 move this document into evidence.

3 THE COURT: Any objection?

4 MR. BICKS: No objection.

5 THE COURT: It's admitted.

6 (Plaintiffs' Exhibit 222 admitted.)

7 Q. If you go to the bottom of the first page,
8 there's an e-mail from you on Wednesday, January 7,
9 2009, at around 2:45. Could you read -- could you
10 read that for us?

11 A. I'm sorry, you said the first page?

12 Q. Yes, it's the bottom of the first page.
13 Could you read that e-mail for us that you sent to
14 Bert Eichhorn at 17:45 military time?

15 A. It says (as read:) The checks and links on
16 the site are proof unless you don't want to see it.
17 My guess is that Andy Steeples might be lying to
18 Glen, the owner, about AMSAT putting through the bad
19 deals with them. If you look at the checks from
20 Allegro, they are made out to CW Web Designs, Caleb
21 Wickman. It's possible that the owner may not know
22 who CW Web Designs is, or maybe he knows and they
23 have an agreement.

24 It continues on the second page.

25 Q. Yes. Keep reading.

1 A. (As read:) That if a license goes bad they
2 both use the other one, but that's just speculation.
3 The facts are Allegro and AMSAT from an agreement.
4 AMSAT puts through Allegro voice broadcasting deals
5 to avoid liability. AMSAT puts through Allegro
6 deals with prepaid debit cards. Andy Steeples and
7 Allegro employee -- an Allegro employee knows about
8 it since he was warned by me and other former AMSAT
9 employees, and did nothing about it except remove
10 evidence from AMSAT's home page. Glen Vastine is
11 accountable either because he knows or because he
12 does not have proper oversight of his business. Any
13 questions?

14 Q. So who is Caleb Wickman?

15 A. Caleb Wickman was one of the partners at
16 American.

17 Q. Who is Andy Steeples?

18 A. Amy Steeple was an operator for Allegro
19 Satellite.

20 Q. And who is Glen Vastine?

21 A. He was owner the Allegro Satellite.

22 Q. So could you recap for us what were you
23 telling Mr. Eichhorn through this e-mail?

24 A. I was telling them about a deal that they
25 had. So essentially when we were on the floor of

1 American we were asked to log in to Allegro's
2 account and set up deals under Allegro's account.
3 That to me seems suspicious. Why are we entering
4 sales under somebody's else license? And we were
5 only doing that on the voice broadcasting deals. So
6 everything that was through voice broadcasting was
7 input on Allegro's license at that point.

8 Q. And why was American Satellite doing that?

9 A. Because they didn't want to risk their own
10 license. They knew that if they -- that if somebody
11 knew that, they could be removed from the OE
12 program.

13 Q. So how did Mr. Eichhorn react to this
14 information that you gave him?

15 A. He was just very dismissive and always
16 pushing back. And also he would -- he was like in
17 denial and making excuses for them all the time.

18 Q. Okay. And there's -- on the first page
19 again there's another e-mail that you sent on 1758
20 military time the same day. Would you take a minute
21 to read that?

22 A. Sure. Okay.

23 Q. So what were you telling Mr. Eichhorn at
24 this time?

25 A. Well again, his push back was, when I gave

1 him the evidence he said, "well, you know, we're not
2 getting a lot of complaints from them, so what you
3 say basically doesn't matter." So I said on this
4 e-mail, you know, "Can't you see they're violating
5 the DNC? That they're doing it on a huge scale.
6 Can't you understand that other companies have
7 already been sued for the same thing, and you guys
8 are basically opening up yourself, exposing
9 yourself. This is a liability for you."

10 Q. How did you know that other companies were
11 being sued for this?

12 A. Because I had known that DirectTV had been
13 sued. I saw it online.

14 Q. And when you say this, what did you mean by
15 that? By "this?"

16 A. That DirectTV had been sued for DNC
17 violations.

18 Q. Its own DNC violations?

19 A. No, they -- DirectTV typically did not have
20 inhouse call centers, they typically relied on
21 third-party call centers to -- to generate
22 activations.

23 Q. And so how -- how did Mr. Eichhorn respond
24 to you? What was your perception of Mr. Eichhorn's
25 response when you told him this information?

1 A. Again, same thing, push back. The focus was
2 really not on that. The focus was on, we don't want
3 to pay these guys for duplicate accounts, we don't
4 want to pay these guys if they're using phony credit
5 cards, because that affects our bottom line. So
6 that's what we worry about, that's what we care
7 about. We want to know, you know, how are they
8 cheating our system? How are they setting up an
9 existing customer with a new account so that we have
10 to pay them for it? That's what they were concerned
11 about.

12 Q. But did you feel like when it came to other
13 information you were giving about voice broadcasting
14 that that wasn't taken as seriously?

15 A. It wasn't taken seriously. They told me by
16 their omission that wasn't the focus.

17 Q. Could you turn to the next page, PX644.
18 Your Honor, at this time I would like to admit PX644
19 into evidence.

20 MR. BICKS: No objection.

21 Q. Could you take a look at that document,
22 please?

23 THE COURT: PX644 is admitted and so
24 marked.

25 (Plaintiffs' Exhibit PX644 admitted.)

1 Q. Thank you, Your Honor.

2 A. Okay.

3 Q. Do some of the topics -- if you go to the
4 second page and the third page, do some of these --
5 do these topics that are listed here in this -- in
6 this interview worksheet, do they look familiar to
7 you?

8 A. Yes, they do.

9 Q. And are these the things that you told
10 Mr. Eichhorn about?

11 A. Yes, it does look like this is what I told
12 him.

13 Q. Well, could you tell us what the first on
14 the second page there, what's Sedium or Sedium?

15 A. It was a company that was doing voice
16 broadcasting.

17 Q. And is the information contained there
18 accurate in terms of what you told Mr. Eichhorn
19 about?

20 A. Yes, to the best of my knowledge it's all
21 accurate.

22 Q. So we won't go through all of this, but
23 basically is it -- is it fair to say that you told
24 Mr. Eichhorn about both telemarketing problems as
25 well as sort of other types of fraud problems?

1 A. Yes, absolutely. I told him everything.

2 Q. And then what was your sort of perception
3 about how Mr. Eichhorn responded -- how did he take
4 that information?

5 A. Always --

6 MR. BICKS: Your Honor, this is asked and
7 answered.

8 THE COURT: The objection is overruled.
9 You may answer.

10 A. Always -- always giving me the runaround.
11 Always giving me the runaround, always, you know,
12 making excuses for retailers. I would say, you
13 know, "why is this retailer still working?" And
14 they would say, "Oh, it's because they have an
15 injunction, or because we don't have proof, or it's
16 because this or --" they were always just making
17 excuses and giving me the runaround. It was very
18 frustrating to me.

19 Q. When you first got in touch with
20 Mr. Eichhorn, when you first got in touch with him,
21 did you provide all the information that you knew?

22 A. Yes, I did.

23 Q. And did you ask anything of Mr. Eichhorn in
24 return for this information?

25 A. I did not.

1 Q. Okay. Did you continue to have
2 conversations with Mr. Eichhorn and other folks at
3 DISH about things that you knew?

4 A. So what happened is after I gave all -- all
5 the information, they asked me to help them get more
6 information. So they wanted to find out what
7 everybody was doing. They wanted to find out, you
8 know, what are retailers doing? How are they doing
9 it? What are the tricks they are using? How is
10 this happening? How are they getting around this?

11 So he asked me to help do that. And at that
12 point we discussed either some compensation for me
13 doing that work or them helping me get a job at DISH
14 Network again.

15 Q. So you were being -- so were you going to
16 have to do more investigatory work, or just more
17 sort of take more efforts in general to find out the
18 information that Mr. Eichhorn was asking you about?

19 A. Yeah, that's correct. They wanted me to --
20 to now not just say what I knew, but actively seek
21 out information so that they would have information
22 on what was going on with the rest of the retailers.

23 Q. And so who first brought up the idea of
24 being compensated for your efforts?

25 A. They did.

1 Q. And why did you want to go to -- you know,
2 have -- why did you want to think about a possible
3 job at DISH Network being one of the things you were
4 looking for?

5 A. Because I was always a very proud employee
6 of DISH. I was two-time West Coast employee of the
7 month for the region, so -- West Coast region. I
8 was always trying to go above and beyond. I really
9 liked the company, I liked my work. Even when I
10 went to work for the retailer side it was still
11 positive because I was still working with DISH and
12 helping DISH achieve their goal.

13 I thought I would be in a very good position to
14 help the company clean up what was happening. I
15 felt that I knew enough people, knew enough, had
16 enough insight into what was happening -- what was
17 going on that I could help the company clean up this
18 mess.

19 Q. Did you -- so did you actually end up doing
20 more investigatory work?

21 A. I did.

22 Q. Could you just tell us briefly about what
23 you did?

24 A. So after I left American retailers started
25 calling me and -- back then everybody wanted a piece

1 of the pie. Everybody wanted to sell DISH because
2 it was a moneymaker. So a lot of people would say,
3 "Hey, help us get a license. Help us build a
4 business plan. Help us with our operation. Connect
5 us with somebody who is selling DISH." A lot of
6 people wanted in.

7 And so certain operations started calling me
8 and saying, "Hey, help us get a deal. We'll fly you
9 out here. Tell us what we need to do." And so when
10 that started happening, I was -- whatever retailers
11 would tell me or what these companies would tell me,
12 I would tell DISH Network.

13 Q. Do you know -- who did you specifically
14 tell?

15 A. Bert Eichhorn.

16 Q. Do you know what was done with that
17 information you passed on?

18 A. As he explained, it would go up to Kathy
19 Knight, and then it would go up to Bernie Han.

20 Q. Did you tell anybody else at DISH Network
21 the things that you were discovering?

22 A. Reji Musso.

23 Q. Did you also talk to any sales folks, the
24 people in the Sales Department?

25 A. I do not recall having done that, no.

1 Q. So did you eventually get a job again with
2 DISH Network?

3 A. I did not.

4 Q. Did you at least get an interview?

5 A. I did get an interview. There was an
6 interview set up for me. I met with Mr. Mike
7 Oberbillig and Mr. Bobby Fielding. Nothing came out
8 of it.

9 And then at a later time I met with Mr. Rob
10 Calbert in Hollywood, California. And there was
11 another gentleman that was above him, I do not
12 recall his name. But we -- the three of us had a
13 meeting in Hollywood.

14 Q. What did you -- what did you guys talk about
15 at this meeting?

16 A. So I thought it was for them to help me get
17 a job, and so -- but all it was, it was them wanting
18 to know everything that I knew. And they were
19 interested in knowing who the next troublemaker was
20 going to be. So -- not Rob Calbert, but the other
21 gentleman, asked me, "So in your opinion who's gonna
22 be the next retailer to give us trouble?"

23 Rob Calbert was very nice, very helpful with
24 me, very appreciative of me being there. The other
25 gentleman was very dismissive and didn't really seem

1 to care for me being up there. Unimpressed.

2 Q. Okay. So do you recall about when this
3 meeting was in Hollywood with Rob Calbert and this
4 other gentleman?

5 A. I do not recall the dates. It's possible
6 that it's in their internal documents or e-mails,
7 but I do not recall the dates.

8 Q. So how long did you end up working with Bert
9 and the folks at DISH Network during this sort of --
10 during this 2009 time period?

11 A. I think it ended at the early 2009.

12 Q. And why did you stop working and providing
13 information to DISH?

14 A. Because they just made promises, they never
15 did anything, never acted on the information that I
16 gave them. Always given the runaround. They never
17 gave me any compensation or made true on their
18 promise to help me get a job there. So it was just
19 the runaround, it was just games with them. I felt
20 they were just manipulating me and I had enough.

21 Q. So why -- why did you tell -- why did you
22 decide to sort of work with DISH Network in this
23 time period and tell them all this information?

24 A. Because I knew what was going on. I knew it
25 was wrong and I knew I could help them. I knew I

1 could -- I could have -- I could have helped them if
2 they'd let me, but they didn't. So --

3 Q. How did you feel, sort of? You testified
4 earlier that you were very proud of DISH Network at
5 some point in your association with them. How did
6 you feel after that whole experience?

7 A. After that experience I was disappointed.
8 They didn't seem to care. It was -- to me it was
9 like they were putting in the balance risk versus
10 reward, and as long as the reward was there, the
11 risk didn't really matter. So I was disappointed by
12 that.

13 Q. I don't have any more questions at this
14 time, Your Honor.

15 THE COURT: Do any of the plaintiffs have
16 any more questions?

17 MS. LEAHY: I have one question, Your
18 Honor.

19 DIRECT EXAMINATION

20 BY MS. LEAHY:

21 Q. Good afternoon, Mr. Castillo. My name is
22 Erin Leahy, I'm from the Ohio Attorney General's
23 Office. I have one quick question for you.

24 On the OE tool that you talked about earlier
25 you indicated that DISH would want a credit

1 reference, whether it be a credit card. Were there
2 also instances in which they would require a check
3 on a new subscriber's credit report?

4 A. A check on a new subscriber's credit report?
5 There was a credit check on every instance. I don't
6 know if that's the question. So every customer
7 needed to provide their Social Security number.
8 Same screen, Social Security number, credit card,
9 and then there was a credit check. So there was
10 definitely a credit check. I don't know if
11 that's --

12 Q. Was this something that you entered on the
13 OE tool?

14 A. Yes, that is correct, that is on the OE
15 tool. In many cases some customers would not pass
16 the credit check and we could not set them up with
17 DISH Network. So there was definitely a credit
18 check.

19 Q. And were the OE retailers required to have
20 their own access to the credit reporting agencies to
21 be able to pull that credit?

22 A. No, they were not required. It was -- this
23 was done through the -- through the tool. The tool
24 itself would come back with an answer, yes, the
25 person is approved, no, the person is not approved.

1 Q. So essentially that was built into the tool
2 and DISH was actually the entity responsible for
3 running that credit report prior to that completion
4 of the activation?

5 A. That is correct.

6 Q. No further questions.

7 THE COURT: Any other questions from the
8 plaintiffs.

9 Mr. Bicks.

10 MR. BICKS: Yep. Thank you, Your Honor.

11 THE COURT: Mr. Bicks, actually it's almost
12 3:00. Would you like to take a break before?

13 MR. BICKS: Sure.

14 THE COURT: We will take a ten minute
15 recess. You may step down if you wish.

16 (A break was taken.)

17 THE COURT: Court is reconvened. How long
18 do you think you'll be, Mr. Bicks, with
19 Mr. Castillo?

20 MR. BICKS: 45 minutes.

21 THE COURT: And then how much do you think
22 you have with Ms. Musso?

23 MR. BICKS: I probably have an hour and
24 fifteen.

25 THE COURT: And she said she was leaving

1 early on a flight in the morning?

2 MR. BICKS: That's right.

3 THE COURT: I assume that means 6:00 in the
4 morning. Does anybody know.

5 MR. BOYLE: Would you like me to ask her?

6 THE COURT: If you would, and ask if there
7 are any later flights.

8 Please continue. Or please begin, Mr. Bicks.

9 CROSS EXAMINATION

10 BY MR. BICKS:

11 Q. Good afternoon, Mr. Castillo.

12 A. Good afternoon.

13 Q. You should have a binder of documents. Do
14 you have that, sir?

15 A. Yes.

16 Q. You spent a fair amount of time preparing
17 for your testimony?

18 A. I guess you could say that.

19 Q. And during that preparation has it been
20 brought to your attention that the government is
21 seeking to hold DISH liable for one single
22 prerecorded call placed by American Satellite in the
23 year 2006? Did you know that?

24 A. I'm sorry, sir, I want to make sure I
25 understand your question. You said that they're

1 being held accountable for only one call?

2 Q. By American Satellite. Did you know that in
3 your preparation?

4 A. I did not know that.

5 Q. Did you know that American Satellite was
6 terminated by DISH?

7 A. I did -- I heard about that. I did not know
8 when that happened, but I heard about that.

9 Q. You actually do know that American Satellite
10 was placed on hold by DISH? You know that because
11 that was in an affidavit that you had put together;
12 right?

13 A. That is correct.

14 Q. But as you're sitting here today you're not
15 aware that American Satellite was actually
16 terminated by DISH?

17 A. No, my understanding that it was. I don't
18 know when, but yes, I am aware.

19 Q. All right. And you worked at DISH for 2002
20 to 2007; right?

21 A. That is correct.

22 Q. And you told us that you started out as, I
23 think it was target marketing or marketer?

24 A. Target marketing.

25 Q. And then you became a field sales

1 development representative?

2 A. That's correct.

3 Q. And in fact, you were very proud of working
4 for DISH; right?

5 A. Yes.

6 Q. And you actually tried to come back and get
7 a job with DISH; right? You told us that on direct?

8 A. That is correct.

9 Q. And that's after all the things that you saw
10 at American Satellite and all the things that you
11 saw when you were down in Mexico at that call center
12 job you had; right?

13 A. That is correct.

14 Q. In fact, I've got Exhibit 1 there because I
15 want to go through it. I have your LinkedIn page.
16 And you actually have on it the time you worked for
17 DISH; right?

18 Do you see that field sales development
19 representative?

20 A. Yes, I see it.

21 Q. And if we look at that, you have a -- an
22 awards section on here where you actually list the
23 awards that you got at DISH; right?

24 A. Yeah, that's right.

25 Q. This is the same DISH that you said on

1 direct, your words, "would squash like a bug?"

2 Those were your words?

3 A. I'm sorry, what is the question?

4 Q. This is the same DISH that you used the
5 phrase on your direct, you said "squash like a bug?"

6 A. No, I didn't say squash DISH like a bug. I
7 said DISH could squash any retailer like a bug.

8 Q. Right. This is the company you are very
9 proud to work for and you've got awards up on your
10 LinkedIn page; right?

11 A. Correct.

12 Q. All right. And I want to ask you a little
13 bit about timing in your work history. Now, you
14 resigned from DISH in August or September about
15 2007; right?

16 A. It was I believe September of 2007; yes.

17 Q. Right. And the reason you resigned, you
18 wanted to make more money; right?

19 A. That is correct.

20 Q. You went to work for a company called Call
21 Services?

22 A. Call Services.

23 Q. And you were there for two or three months?

24 A. Correct.

25 Q. Because on your LinkedIn page, if you look

1 at that ops manager for Call Services, it says you
2 were there for a year. But that's not accurate, is
3 it?

4 A. No, that's not accurate.

5 Q. Because in fact, you were there for two to
6 three months?

7 A. That is correct.

8 Q. And if we go to what you've got up there for
9 your work at American Satellite, let's look at that.
10 You weren't there for a year, were you, sir?

11 A. No, I was there for less than a year.

12 Q. You were there for about five or six months;
13 right?

14 A. I think a little bit more than that, but not
15 a year, yeah.

16 Q. And here you say that you were in charge, on
17 your website, for ensuring quality and compliance
18 with business partners. That was your job, right?

19 A. That is correct.

20 Q. And you talked a lot about DISH, but you
21 were also in charge of compliance for DirectTV;
22 right?

23 A. That's correct.

24 Q. And American Satellite was selling DirectV
25 products; true?

1 A. That is true.

2 Q. And you were also dealing with DISH; right?

3 A. That is true.

4 Q. Now, when you were at DISH you visited
5 American Satellite; right?

6 A. Yes, sir.

7 Q. And in fact, you were there a lot, weren't
8 you?

9 A. Yes, sir.

10 Q. Because that was your job as a field
11 service -- FSD representative; right?

12 A. That is correct.

13 Q. And I think you said on direct, I'm not
14 gonna have it exactly right, but you heard some bad
15 things about Mr. DiRoberto. Do you remember that?

16 A. Yes, I do.

17 Q. That didn't prevent you from going to work
18 at the company, did it?

19 A. No, it didn't.

20 Q. And it didn't prevent you from saying you
21 were responsible for all the compliance; right?

22 A. No, it didn't.

23 Q. So let me get this straight. You went to
24 work for a guy who somebody told you had criminal
25 history; right?

1 A. That is true.

2 Q. And you took on the position as head of
3 compliance at the company; right?

4 A. Well, not head of compliance of the company.
5 Head of compliance as far as the product, as far as
6 the sales themselves, as far as what DISH considered
7 to be quality assurance.

8 Q. Well, your job on your website, it says
9 you're -- it's ensuring quality an compliance
10 with --

11 A. Correct. But I was not a lawyer for the
12 business. It was more like as far as the calls, as
13 far as the sales.

14 Q. Right. Now, you don't say up here on your
15 website entry that you got terminated after five
16 months; right?

17 A. No, I do not.

18 Q. And --

19 A. You -- I'm sorry.

20 Q. So we're clear, when you worked at DISH and
21 you were visiting American Satellite, you didn't see
22 anything improper; right?

23 A. When I worked for DISH?

24 Q. Yeah.

25 A. No, I did not.

1 Q. And you were there how often?

2 A. Maybe once a week, once every two weeks.

3 Q. Once every two weeks over how long a period
4 of time?

5 A. Couple of year.

6 Q. Couple years. And so on direct you said
7 when you went to American Satellite, you walked in
8 there, and I can't remember exactly how you
9 described it, but it kind of sounded like a frat
10 party to me. People drinking and doing all these
11 crazy things?

12 A. That is right.

13 Q. But you were there visiting them all the
14 time when you were at DISH; right?

15 A. Right, yeah.

16 Q. And then you went and you worked and took a
17 job there; right?

18 A. Yeah. So what happened is they were
19 basically putting on a show for me whenever I went
20 there.

21 Q. Oh, so they hid it from you when you were
22 there?

23 A. Yeah, they did.

24 Q. And they hid it from you when you were at
25 DISH and you went there, they hid everything from

1 you; right?

2 A. They hid some things from me.

3 Q. And actually when you went to work there you
4 testified on direct that you saw a bunch of things
5 that you thought were improper; right?

6 A. That is correct.

7 Q. And actually, to back up for a minute. Can
8 we go down, Trudy, to the position as the -- when
9 you were the call -- the ops manager for Call
10 Service for that two to three months. Let's blow
11 that up.

12 You said you saw some things down in -- when
13 you were down at call centers, right, down in
14 Tijuana. You saw some things you thought were
15 improper?

16 A. Yes, sir.

17 Q. And did you pick up the phone when you were
18 down at Call Services during that two to three
19 months and did you inform people at DISH Network?

20 A. I informed Becky Adler and Shawn Portela.

21 Q. But they weren't at DISH. You were working
22 with them somewhere else?

23 A. That's correct. I informed Shawn Portela
24 and he told DISH.

25 Q. Oh, no, no, no, no. You didn't tell anybody

1 who was working at DISH?

2 A. No, I told Shawn Portela and he told DISH.

3 Q. Shawn Portela was not working at DISH,
4 right?

5 A. No, not at the time, no.

6 Q. All right. And when you were at American
7 Satellite you had a lot of friends who were at DISH;
8 right?

9 A. Yes.

10 Q. And you got this position as the compliance
11 manager and you've told us that you saw all these
12 things that made you feel uncomfortable?

13 A. Right.

14 Q. Did you pick up everything and say, "I'm
15 leaving the company, this is bad, I can't stay
16 here"?

17 A. No, I couldn't.

18 Q. You didn't do that, did you?

19 A. No, no. I had a family to provide for. And
20 it was right after the crisis, so it was -- you
21 know, it was a balance.

22 Q. Yeah.

23 A. Yeah.

24 Q. You stayed on at the company until you got
25 terminated; right?

1 A. Yeah, that's correct.

2 Q. And it's a fact that you didn't tell anybody
3 at DISH what you saw when you were at American
4 Satellite with that role in compliance, did you?

5 A. That is correct.

6 Q. So let me get this straight. You worked at
7 DISH for five years, you had friends of your's and
8 colleagues who were at DISH, yet you came into your
9 knowledge information at American Satellite and you
10 didn't tell anybody at DISH; isn't that right?

11 A. It is right.

12 Q. And in fact, what you told us is that you
13 were dealing with state Attorney Generals when you
14 were at American Satellite; right?

15 A. Not directly. The company was.

16 Q. So who did you tell at the state Attorney
17 General about all the things you saw at American
18 Satellite?

19 A. Nobody.

20 Q. Nobody?

21 A. Nobody.

22 Q. Now, you said you were terminated; right?

23 A. That is correct.

24 Q. And you said you were terminated because
25 Ms. Musso said that you had some associations with

1 somebody named Shawn Portela?

2 A. That is correct.

3 Q. Well, did you have contact with Shawn
4 Portela?

5 A. What do you mean by have contact?

6 Q. Well, he was somebody who you worked with
7 and talked with; right? That's what you told us on
8 direct?

9 A. Yes, that is correct.

10 Q. And you told the people at American
11 Satellite, you said you explained what the facts
12 were with Portela; right? You told them that?

13 A. Yeah, that is correct.

14 Q. And they terminated you anyway; right?

15 A. Yes.

16 Q. And you were angry about that, weren't you?

17 A. Yes.

18 Q. You were angry at the people at DISH,
19 including Ms. Musso, weren't you?

20 A. Yes.

21 Q. And you then started talking to
22 Mr. Eichhorn; right?

23 A. Yes. After Ms. Musso, yes.

24 Q. And you know Mr. Eichhorn is an audit
25 investigator at DISH; right?

1 A. Yes, that is correct.

2 Q. And do you know, by the way, how many
3 retailers DISH terminated during this time period
4 that you were talking to them?

5 A. I do not.

6 Q. Did you know that they actually terminated
7 over 40 retailers right during this time period that
8 you were talking with them? Did you know that?

9 A. I just know they terminated some retailers,
10 I did not know how many.

11 Q. And you wanted to get a job with DISH;
12 right?

13 A. That's correct.

14 Q. And you didn't give Mr. Eichhorn all the
15 information you had right in the beginning, did you?

16 A. I did.

17 Q. You don't remember sending e-mails that had
18 names blacked out of them and x'd out?

19 A. Yes, but this is a completely different time
20 period your talking about. You're talking about --
21 the initial information I had I gave it to him.
22 When he said, "Hey, we want you to go after more
23 information. We want you to reach out and see what
24 they're doing." And even they told me, "We want to
25 go after somebody criminally so we can set an

1 example." That's when I talked to the person you're
2 referring to.

3 Q. Right. And he said to you that he wanted to
4 go after somebody criminally; right?

5 A. That's right.

6 Q. And you wouldn't do it, right? You didn't
7 want to do?

8 A. At first I had agreed to it, but then, no, I
9 didn't want to do it.

10 Q. Right. And are you sure that you didn't
11 send e-mails to Mr. Eichhorn that had information
12 blacked out and X'd out so you couldn't figure it
13 out?

14 A. No, I didn't say that. I did send that to
15 him. But we're talking about completely different
16 periods. Like I said, there was a period where I
17 gave information without asking anything in return,
18 everything that I knew from the past. And then
19 there was another period when he said, "Hey, go
20 ahead and get more information from me, contact
21 these people, actively seek out." And that's
22 when -- and then he said, "We might be able to
23 compensate you or we might be able to get you a
24 job." And that's when that happened.

25 That's when I said, "Okay, you're having me do

1 all this stuff and you want all this for free and
2 you want me to tell you everything and you're doing
3 nothing, you're just promising."

4 Q. Right. And what actually you wanted from
5 him was you wanted assurances, in your words, now or
6 never, and you said no more free rides; right?

7 A. That is correct.

8 Q. You wanted money, right?

9 A. Or a job.

10 Q. Money or a job, right? Because let's look
11 at Defendant's 973. Because you actually put that
12 in writing, didn't you?

13 A. Look at what, I'm sorry?

14 Q. It's Defendant's 973. It's Tab 13 in your
15 binder. And it's up on the board there on the
16 screen. 973, do you see that, it's an e-mail you
17 wrote?

18 A. I see it now.

19 Q. I move it into evidence, Your Honor?

20 THE COURT: Any objection?

21 MR. RUNKLE: No objection.

22 THE COURT: 973 is admitted of defendants.

23 (Defendant's Exhibit 973 was admitted.)

24 Q. Trudy, blow up the bottom. (As read:) I
25 have information on four OE retailers. Do you see

1 that, Mr. Castillo?

2 A. I do.

3 Q. Did you put the names of the retailers
4 there?

5 A. Doesn't look like it, no.

6 Q. And remember you said (as read:) No more
7 free rides. Let Kathy know I need assurances now or
8 never.

9 A. That's correct.

10 Q. Those were your words, right?

11 A. That's correct.

12 Q. And was there anything preventing you, sir,
13 from -- when you were at American Satellite, from
14 picking up the phone and calling the people you
15 worked for for five years, and you have featured on
16 your website, from saying to them, "Hey, I got
17 important information that you need to know and I'm
18 gonna give you all the e-mails right now." Anything
19 preventing you from doing that?

20 A. I'm not sure I understand your question.
21 That's exactly what I did after I left American.

22 Q. Was there anything preventing you from doing
23 that when you were at American Satellite?

24 A. Preventing me?

25 Q. Yeah.

1 A. Yeah, the fact that I was employed by
2 American.

3 Q. Right. You didn't want to share this
4 information because you had information while you
5 were there about dealings I guess with a company
6 called Allegro; right?

7 A. Yes.

8 Q. And you didn't share that with DISH while
9 you worked there; right?

10 A. Not while I worked there, no. There --

11 Q. And there were actually DISH people who you
12 knew who were on the telephones listening to calls
13 to try to monitor quality assurance, and you knew
14 that; right?

15 A. Yes, I did.

16 Q. And you actually knew when you testified on
17 direct that you saw things -- you saw calls being
18 fabricated; right?

19 A. I did.

20 Q. And during any of those contacts with people
21 at DISH, the company you worked for for five years,
22 did you tell them about that fabrication while it
23 was happening?

24 A. Nope, not while I was at American Satellite.
25 Afterwards I did.

1 Q. And take a look at Defendant's Exhibit 974
2 behind Tab 14. This is an e-mail you sent to
3 Mr. Eichhorn; correct?

4 A. Yes, it looks like it.

5 Q. And it's December 2nd, 2008; right?

6 A. Yes.

7 Q. And do you actually remember when it was
8 that you first started talking to Mr. Eichhorn?

9 A. It was after American Satellite, after I was
10 terminated with American.

11 Q. And when did that happen?

12 A. Late 2008, I believe.

13 Q. Late 2008. And here we are in December of
14 2008; right?

15 A. That's late 2008, right.

16 Q. Right. And flip over the e-mail to the
17 other side and look at it for us, would you. And
18 blow that middle box up, Trudy, with all those Xs on
19 it.

20 You X'd these names out, right?

21 A. Yes.

22 Q. So you were dealing with an investigator at
23 DISH and you X'd out the name of the person involved
24 here; right?

25 A. Yes.

1 Q. You didn't give them all the facts in this
2 e-mail, did you?

3 A. This had nothing to do with my time at
4 American. This, again, was information that I got
5 afterwards. So it was information that he had
6 requested me to get for him. So he was asking me to
7 essentially investigate for him and give him
8 information. We had -- or he had said that he would
9 compensate me or either get me a job. So if
10 somebody promises you to pay you for some work then
11 I assume, you know, you would not work for free.

12 Q. Well, actually some people, if they think
13 there's something wrong, don't ask for money or a
14 job, they feel they have an obligation to tell
15 people. Did you ever share this information with
16 any authorities?

17 MR. LEE: Objection, Your Honor.
18 Argumentative.

19 THE COURT: The objection is overruled.

20 A. Well again, like I said, if it's -- if
21 you're an investigator, you have to investigate
22 because it's the right thing, but also because it's
23 your job, right?

24 Q. Right.

25 A. And you're compensated as an investigator.

1 Q. Right. So it's helpful if you're
2 investigating if somebody tells you the names of the
3 people? Does that help the investigation?

4 A. I agree with that.

5 Q. Right. And actually, you remember when you
6 put together a -- a draft affidavit was put together
7 for you. Do you remember that?

8 A. I do not recall.

9 Q. And you said that affidavit was accurate.
10 Do you remember that?

11 A. Oh, I do recall, yes, yes.

12 Q. Yeah. And --

13 A. It wasn't sure what you meant with --

14 Q. You remember the affidavit? That was an
15 affidavit that was put together right when you first
16 talked to Mr. Eichhorn; right?

17 A. Yes.

18 Q. And you said that was an accurate affidavit?

19 A. I said that on my deposition, but then I
20 corrected myself on one small detail on the
21 affidavit.

22 Q. What was the one small detail, sir?

23 A. Could you refer me to that on --

24 Q. It's Tab 12, defendant 977.

25 A. It was on point 10.

1 Q. Just so we're clear, this is right when you
2 first started talking to Mr. Eichhorn?

3 A. That is correct.

4 Q. Okay. And let's go to the draft affidavit.
5 He took down what you told him; right?

6 A. That is correct.

7 Q. Okay. And then look at -- you said there
8 was something on, what point ten?

9 A. Point ten.

10 Q. Yeah. This is the thing about Mr. Portela
11 and Ms. Adler? Right? And you said something had
12 to be fixed here, right?

13 A. It says -- can I read it? Can I read it on
14 here?

15 Q. Yeah, sure?

16 A. No, I mean can I read it outloud? Is that
17 okay?

18 Q. Yeah, read it outloud?

19 A. It says (as read:) Mr. Portela and
20 Mrs. Adler were spreading the following tactic
21 throughout the call center industry.

22 And so the -- the small point that I objected
23 to was that they did not knowingly want to spread
24 this, they did not on purpose try to spread this.
25 Because as soon as we found out what was going on,

1 we acted upon it.

2 Q. Right. And so otherwise the -- this
3 affidavit is all correct?

4 A. To the best of my knowledge it's correct.

5 Q. Okay. So take a look at the affidavit and
6 tell me what paragraph you say anything about
7 American Satellite in this affidavit. Or you
8 mention anything about prerecorded calls. Take your
9 time.

10 A. It doesn't seem to mention anything other
11 than that I worked for them.

12 Q. And so you talked to Mr. Eichhorn and you
13 got an interview with folks at DISH; right?

14 A. Yes. So I talked to him, he drafted this
15 document, like you said, and then he returned it to
16 me I think the next day. So he wrote what he wanted
17 on it. I gave him the information. If that's your
18 question.

19 Q. Well, you're back on the affidavit.

20 A. Yeah. So you said that there's nothing on
21 American. I gave him all the information, he wrote
22 down what he wanted to write down.

23 Q. Right. You gave him all the information and
24 he wrote it down, and you told us it was accurate
25 except that one adjustment to Paragraph 10; right?

1 A. It doesn't mean it's not accurate, I'm just
2 saying it's not on there. So he could have not
3 included information, doesn't mean it's not
4 accurate.

5 Q. Right. Now when things didn't work out
6 for -- you didn't get a job at DISH, you were upset
7 about that; right?

8 A. That I didn't get a job?

9 Q. You didn't get a job.

10 A. I didn't get a job at DISH.

11 Q. And you went and had an interview and you
12 didn't get hired; right?

13 A. That is correct.

14 Q. All right. And you were angry; right?

15 A. After I didn't get hired?

16 Q. Right.

17 A. Not really.

18 Q. But you wanted to get a job and they didn't
19 hire you, you weren't --

20 A. That happens all the time. I mean I was
21 angry at the point where they weren't doing
22 anything, they weren't answering my requests, they
23 were giving me the runaround. They gave me an
24 interview, I didn't get hired. Obviously I wasn't
25 happy, I wanted a job, but that doesn't mean I was

1 angry.

2 Q. Tell us, sir, how many different jobs have
3 you had since you got terminated from American
4 satellite?

5 A. I've had maybe five or six.

6 Q. Maybe eight or nine, if I looked at your
7 LinkedIn page and filled in some of the things like
8 the yellow pages and some of those other jobs?
9 Eight or nine --

10 A. Yellow Pages was before, so maybe you have
11 it wrong.

12 Q. And actually, what really happened was when
13 you didn't get a job at DISH you contacted the
14 Department of Justice to help them in their case
15 against DISH; right? Isn't that what happened?

16 A. No.

17 Q. Well, let me look at your deposition at 201,
18 16 to 20, and see if -- you were under oath and
19 truthful at the deposition, weren't you?

20 A. Yes.

21 Q. And let me show you 201, lines 16 to 20. Do
22 you see that, sir?

23 A. Yes, I see it.

24 Q. And I wanted to make sure you have time to
25 look at it to make sure it is the truth. It is the

1 truth, right?

2 A. It is the truth in the way you want to word
3 it. That's kind of implying that because I didn't
4 get the job I went to DISH, and that's not the case.
5 It's I didn't get the job and then later I talked to
6 the Justice Department.

7 Q. Well, what you said here was truthful;
8 right?

9 A. Yes.

10 Q. Do you remember somebody named Tim Pyle?

11 A. I do.

12 Q. Was he involved in any of this improper
13 stuff that you saw?

14 A. He was not at American Satellite when I
15 joined American Satellite.

16 Q. But I thought you saw him kind of involved
17 in improper telemarketing call center things, or did
18 I not get that right?

19 A. So he was a partner of American when I was
20 with DISH. He left American by the time I joined
21 American. So what he did with American I do not
22 have knowledge of -- of any wrongdoing.

23 Q. Okay. But you actually tried to get him on
24 to the OE tool at DISH, didn't you?

25 A. Yes, I did.

1 Q. And DISH wouldn't let him on it, would they?

2 A. I guess not.

3 Q. I don't think I have anything further to
4 discuss with you today, sir.

5 THE COURT: When did you try to get Pyle on
6 the OE tool at DISH?

7 THE WITNESS: That was in -- after I left
8 American, when I was giving DISH Network
9 information, Your Honor.

10 THE COURT: Thank you.

11 Follow-up? Redirect?

12 MR. LEE: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. LEE:

15 Q. Could you turn to Exhibit 1 of that black
16 binder. This is your LinkedIn page?

17 A. That is correct.

18 Q. And in some of the -- did you identify in
19 some of these different job descriptions you had,
20 did you identify the months that you worked at the
21 particular job?

22 A. No, it was more like I was trying to
23 identify the years that I was there.

24 Q. All right. So Mr. Bicks made this big deal
25 about the fact that while you worked a couple of

1 months at some of these places it looks like on your
2 LinkedIn page that it's inaccurate. But in fact,
3 doesn't LinkedIn auto populate the year if you don't
4 have the month?

5 A. It's auto populated. All I did was put in
6 what years I worked in between and the system does
7 the adding by itself.

8 Q. Another thing Mr. Bicks made a big deal was
9 about the fact that you --

10 THE COURT: I'm sorry, I don't understand
11 what auto populates the year means.

12 Q. Could you explain that for the Court.

13 A. Could I explain that, Your Honor?

14 Q. Sure?

15 A. So on here it says, for example, the example
16 that was cited here was Call Services, which is --
17 I'm sorry. It's right here, Your Honor.

18 So it says here -- that is auto populated by
19 LinkedIn. So since I worked from late 2007 to early
20 2008, I put in the years, but this calculates a
21 whole year.

22 THE COURT: Okay. But on these other
23 entries where there are certain number of months
24 that you worked, you put that in?

25 A. Yes. So -- because I did not recall the

1 months on like my older jobs, I did not put in
2 months.

3 THE COURT: Did you put the months in up
4 here on these others?

5 A. Yes, on the most recent ones, Your Honor.
6 But the older ones I did not.

7 THE COURT: Okay.

8 BY MR. LEE:

9 Q. Another thing Mr. Bicks made a big deal
10 about was the fact that you didn't provide
11 information -- if you go to Tab 14 here.

12 A. Yes.

13 Q. The back page there, talked a little bit
14 about the fact that you X'd out some of the
15 information. Do you remember that questioning?

16 A. Yes, I do.

17 Q. And could you sort of look at that -- the
18 first e-mail, page 3, of DTX974. What is the
19 subject line of that e-mail?

20 A. I'm sorry, of what page?

21 Q. Sorry. So it's DTX974.

22 A. I have that.

23 Q. Okay. So page 3 of 3, that last page.

24 A. 3 of 3. Okay.

25 Q. So on that -- on that bottom page, the last

1 e-mail, so it's the first e-mail in the chain,
2 what's the subject of that e-mail?

3 A. E-mail in book 1.

4 Q. And so you at some point would have x'd out
5 this information?

6 A. That's correct.

7 Q. Could you turn to Tab 15. So could you go
8 to the last page of Tab 15. It's DTX975, I believe.

9 A. Yes.

10 Q. So could you go to the second page there.

11 A. Uh-huh.

12 Q. So is this the same e-mail that you had x'd
13 out previously?

14 A. Yes, it is.

15 Q. So eventually you did provide that
16 information to DISH?

17 A. Yes, I did.

18 Q. Could I offer DTX975 in evidence, Your
19 Honor?

20 THE COURT: Any objection?

21 MR. BICKS: Absolutely not.

22 THE COURT: It's admitted.

23 (Defendant's Exhibit DTX975 was admitted.)

24 Q. Mr. Bicks also asked you about Tab 12.
25 Could you go to Tab 12, please. It's DTX977.

1 A. Yes.

2 Q. So this is the declaration that Mr. Eichhorn
3 drafted based on the information you gave him; is
4 that right?

5 A. That is correct.

6 Q. Now, anywhere in this declaration is there
7 any representation you make that this contains all
8 the information that you had provided to him?

9 A. No, does not.

10 Q. And was Mr. Eichhorn interested in the DNC
11 and robo calling and telemarketing information that
12 you had provided to him?

13 A. No, he was not concerned about that.

14 Q. Mr. Castillo, when you contacted the Justice
15 Department were you expecting a job from them?

16 A. No, I did not.

17 Q. You were expecting payment from them?

18 A. I did not.

19 Q. Why did you contact the Justice Department
20 with the information that you had?

21 A. I went online and I saw that there was a
22 case against DISH. And I read some of the claims
23 that DISH was making and that they didn't know what
24 was happening, and I was -- I just felt like that
25 wasn't right. That I knew the truth and that I

1 needed to tell the truth.

2 Q. And what is that truth?

3 A. That they did -- that they knew what was
4 happening because I told them. I told them and they
5 did nothing.

6 Q. No more questions.

7 THE COURT: Anything further, Mr. Bicks.

8 RECROSS EXAMINATION

9 BY MR. BICKS:

10 Q. I'm gonna come back to this thing about what
11 DISH knew just to make sure we're on the same page
12 here, sir.

13 When you were at DISH and you were at American
14 Satellite you didn't see anything improper; right?

15 A. Correct.

16 Q. And when you were at American Satellite and
17 you saw things that were improper you didn't tell
18 anybody at DISH; correct?

19 A. Correct.

20 Q. And you don't even know today when it was
21 that DISH terminated American Satellite; right?

22 A. That is correct, although I know --

23 Q. And you actually don't know, sir, what
24 Mr. Eichhorn was doing with the information that you
25 provided to him, do you? You're not an at DISH, you

1 don't know --

2 A. He told me.

3 Q. -- were you there?

4 A. He told me.

5 Q. I've got no further questions.

6 THE COURT: Anything further.

7 REDIRECT EXAMINATION

8 BY MR. LEE:

9 Q. One last one, Your Honor.

10 So do you think in this scenario that you've
11 testified today, was DISH the victim?

12 A. The victim? No, DISH was making money.

13 Q. No more questions.

14 THE COURT: I think that completes your
15 testimony. Thank you, sir. You can just set those
16 books there.

17 He may be excused from his subpoena?

18 MR. LEE: Yes, Your Honor.

19 THE COURT: Mr. Bicks?

20 MR. BICKS: Yes, Your Honor.

21 THE COURT: All right.

22 (The witness was excused.)

23 THE COURT: Go ahead and get Ms. Musso.

24 (A discussion was held off the record.)

25 THE COURT: Please proceed.

1 REDIRECT EXAMINATION

2 BY MR. BICKS:

3 Q. Welcome back, Ms. Musso. We were going to
4 talk through this timeline on JSR?

5 A. Yes.

6 Q. And did you as compliance manager receive
7 complaints relating to JSR?

8 A. I did.

9 Q. And are they reflected on this timeline?

10 A. Yes, they are.

11 Q. All right. Let's look, please. Let's pull
12 up Plaintiffs' Exhibit 510, which is I think Tab 1.
13 And can you tell us what this is?

14 A. Yes. This is a standard letter that we
15 would send from my group for -- to notify the
16 retailer regarding violations, alleged violations.

17 Q. And Plaintiffs' 510, Your Honor, I would
18 move this into evidence.

19 THE COURT: Any objection?

20 MR. RUNKLE: No.

21 THE COURT: It's admitted.

22 (Plaintiffs' Exhibit 510 admitted.)

23 Q. And was this the first complaint -- relates
24 to the first complaint that you received regarding
25 to JSR?

1 A. Yes.

2 Q. And how -- this refers to somebody named
3 Hannah Klein?

4 A. Yes.

5 Q. And how was this actually uncovered?

6 A. Through a sting.

7 Q. And I think you explained to us what that
8 is. Give us the details of what that is?

9 A. Once again, it's when either DISH initiates
10 and engages with a customer or the consumer, and
11 then they set up an account, or either the customer
12 themselves set up an account and then we have a path
13 of -- to track the retailer.

14 Q. And in this letter you see that it says
15 within seven days of this receipt, in the middle
16 paragraph, please give us a response?

17 A. Yes.

18 Q. And did DISH get a response to the Hannah
19 Klein situation?

20 A. We did.

21 Q. Can we look at Defendant's Exhibit 750,
22 which is tab -- it should be, I'm sorry, Plaintiffs'
23 Exhibit 420 at 1, which is your tab 3. Can we pull
24 that up.

25 A. Excuse me, I'm confused. Did you say 750?

1 THE COURT: 420.

2 Q. Yeah. It's Tab 3, it should be Tab 3 in
3 your binder.

4 A. I don't believe it is. I think mine is Tab
5 2.

6 Q. Maybe it's tab 2. Thank you. Is that
7 Plaintiffs' Exhibit 420?

8 THE COURT: No, that's 750.

9 A. Sorry. Tab 3, yes.

10 Q. Okay, you with us?

11 A. I'm a little distracted trying to change my
12 plans.

13 THE COURT: We're not going to make you do
14 that, okay.

15 A. Okay.

16 Q. And what is this?

17 A. This is a response from JSR Satellite,
18 Richard Goodale.

19 Q. And what is the explanation that's given for
20 the Hannah Klein situation?

21 A. That there was a corrupted download, one of
22 their affiliates had inadvertently placed a call to
23 this customer.

24 Q. And so on our chart here, I've got the
25 Hannah Klein sting and the affiliate, it says after

1 a corrupted DNC download?

2 A. Correct.

3 Q. And is this the response you got to the
4 first complaint?

5 A. It is.

6 Q. And what did you make of this information as
7 somebody in compliance?

8 A. I felt like it was a plausible explanation.
9 That mistakes happen, you know. And we took it at
10 face value and moved on. We did have conversations
11 about it, of course, but --

12 Q. And when you see something like this and
13 somebody says it's a corrupted DNC download, is that
14 grounds to terminate somebody in your experience?

15 A. No.

16 Q. Why not?

17 A. Because it's a mistake. People make
18 mistakes. And you know, it didn't indicate that
19 there was any pattern of abuse.

20 Q. And let's look at Plaintiffs' Exhibit 513.
21 which I think is Tab 4. And I'd move this into
22 evidence.

23 THE COURT: Any objection?

24 MR. RUNKLE: No objection.

25 THE COURT: 513 plaintiffs is admitted.

1 (Plaintiffs' Exhibit 513 admitted.)

2 A. I have it.

3 Q. What is this?

4 A. This is a letter to JSR about a complaint
5 filed by consumer Melissa Wallace.

6 Q. And does that name, Melissa Wallace, mean
7 anything to you?

8 A. She seemed to show up frequently on our
9 violation list.

10 Q. And you mentioned a concept called a
11 harvester?

12 A. Yes.

13 Q. What's a harvester?

14 A. Well, a harvester is someone who sets
15 themselves up to get calls from -- from retailers --
16 our retailers, let's just stick to that, and then
17 they tend to make money doing this.

18 Q. And did you look into the Melissa Wallace
19 complaint?

20 A. Absolutely. We always do.

21 Q. And again, this letter says within five days
22 of the receipt, and this is the October 31st letter
23 from EchoStar to Mr. Goodale, saying within five
24 days of receipt can we have a response. Did DISH
25 get a response?

1 A. They did.

2 Q. And can we look at DTX737. And was this the
3 response?

4 A. What tab would that be?

5 Q. 737 would be Tab 6.

6 A. Yes, this is the response.

7 Q. And it -- you can see this came from JSR?

8 A. Yes.

9 Q. And what do you make of this response?

10 A. It seemed that they had actually consulted
11 an attorney to reply to Melissa's allegations. And
12 that they didn't -- based on that they didn't --
13 they didn't believe that they had done anything
14 improper. And the explanations once again were
15 reasonable and we agreed.

16 Q. And I want to pull up one particular phrase
17 here. Inasmuch as the complainant only contacted --
18 if we can go down to the bottom. And can you blow
19 this up, Trudy, so we can make sure we can see that.
20 Because I want to ask some questions about that.

21 Do you see what I'm referring to there at the
22 top, Ms. Musso?

23 A. I do.

24 Q. And this is a comment that JSR Enterprises
25 made to you?

1 A. Yes, it is.

2 Q. So it says in here that JSR Enterprises
3 owned and operates its own satellite service
4 business. Do you see that?

5 A. I do.

6 Q. Did you believe that to be truthful?

7 A. Absolutely.

8 Q. As you're here today do you know anything
9 that makes that anything but the truth?

10 A. No.

11 Q. And then it says here that the business is
12 outside of the control of DISH Network. Do you
13 believe that to be true?

14 A. I do.

15 Q. Has anybody ever suggested to you that JSR,
16 that that was anything but a truthful statement?

17 A. No.

18 Q. This is the second complaint, that Melissa
19 wallace complaint; right?

20 A. Yes.

21 Q. And internal --

22 THE COURT: I'm sorry, this is the second
23 Melissa wallace complaint?

24 Q. This is the second complaint, the Melissa
25 wallace complaint, on our timeline.

1 THE COURT: Okay. So it's not -- thanks.

2 Q. And we -- did you internally on your tracker
3 keep track of these things?

4 A. Yes.

5 Q. And so let's look at Plaintiffs' Exhibit 344
6 at Tab 5, which is already admitted. And you'll see
7 on here -- you had it right before there Trudy. The
8 last one. At page 4.

9 Do you see the reference to Melissa Wallace?

10 A. I do.

11 Q. And you've got your additional comments.
12 Can you tell us what those comments are and what
13 they mean?

14 A. The consumer was advised that the complaint
15 was erroneous.

16 Q. So here you are, again to orient ourselves
17 on the timeline, this is the second complaint. Did
18 you see any reason based on the explanation, the
19 lawyer's letter that has that detail in there, was
20 that in your mind, as someone with experience in
21 compliance, was that grounds to terminate?

22 A. No.

23 Q. At this point in time did you have knowledge
24 that somebody was actually violating the
25 telemarketing laws?

1 A. No.

2 MR. RUNKLE: Your Honor, just -- right
3 before we broke for lunch I registered a continuing
4 objection to the way that these witnesses are being
5 examined directly by DISH.

6 I would just hope you'd give me a continuing
7 objection based on the fact that Mr. Bicks hasn't
8 established foundation. He is essentially just
9 having his witnesses come in and interpret documents
10 without saying they actually have a recollection of
11 the topics.

12 THE COURT: The objection is overruled.

13 Q. These are documents that were sent to you,
14 right?

15 A. To me, by me, developed by me. I'm familiar
16 with the ones you're -- I'm seeing.

17 Q. You were the person who was there; right?

18 A. Absolutely.

19 Q. All right. Let's talk about the third
20 complaint. Plaintiffs' 420, which is your Tab 9.
21 Do you remember, can you tell us what this is?

22 A. This is a letter to JSR, Mr. Goodale,
23 regarding a complaint by John Foard.

24 Q. And what's the date?

25 A. December 11, 2006.

1 Q. And again, this is bringing to JSR's
2 attention a notice of a complaint?

3 A. It is.

4 Q. And it's asking within five days of receipt
5 of this letter to respond; right?

6 A. Yes.

7 Q. Did you get a response?

8 A. I did.

9 Q. And can we look at DTX753, which is Tab 11.
10 What is this?

11 A. This is Richard's response to the John Foard
12 contact.

13 Q. And so we're clear, did you deal with
14 Mr. Goodale?

15 A. I did.

16 Q. And JSR, is he one of the three people at
17 JSR?

18 A. Yes.

19 Q. He's the R in JSR for Richard?

20 A. I believe so, yes.

21 Q. All right. And he responds to the John
22 Foard complaint. What does he tell you?

23 A. He tells me that he contacted Mr. Foard to
24 find out more details about the call because they
25 couldn't find a record of the call. And as it turns

1 out, it was a DirectTV dealer named J & R Satellite
2 in Fullerton, California that contacted Mr. Foard.

3 Q. And actually he says here, I decided to
4 contact him, do you see that, because he was stating
5 that a woman had contacted him; right?

6 A. Right, yes.

7 Q. And this is indicating, what?

8 A. That they didn't make the call.

9 Q. And he says here that according to JSR they
10 didn't even have a woman who was making calls;
11 right?

12 A. Correct.

13 Q. And then he indicates here (as read:) we
14 have found a telemarketing company named J & R
15 Satellite in Fullerton, California. Who's not even
16 a DISH retailer, it's a DirectTV retailer; right?

17 A. Correct.

18 Q. So what did you make of this when you got it
19 for the third complaint?

20 A. That once again they had a complaint that
21 there was a plausible explanation for it.

22 Q. That's the third complaint in November that
23 another company according to them made the call?

24 A. Correct.

25 Q. Did you have any reason to disbelieve this?

1 A. No.

2 Q. So now you're at the third complaint on our
3 timeline. Would that information in your seat at
4 the time, was in your mind that grounds to
5 terminate?

6 A. Not at that time.

7 Q. Fourth complaint involving someone named
8 Linda Chesley.

9 A. Yes.

10 Q. Do you remember that?

11 A. I recall.

12 Q. How was that identified?

13 A. I think that was a sting as well.

14 Q. And let's go to Plaintiffs' Exhibit 248. I
15 move 248 into evidence.

16 THE COURT: Any objection?

17 MR. RUNKLE: No objection.

18 THE COURT: It's admitted.

19 (Plaintiffs' Exhibit 248 admitted.)

20 Q. And this is November 18th, and it says sting
21 operation at the top, and it says Chesley; right?

22 A. Yes.

23 Q. Did you investigate this -- the sting
24 situation?

25 A. We did.

1 Q. And if you look at Plaintiffs' Exhibit 250,
2 which is Tab 13. Tell us what this is?

3 A. This is the response from Richard regarding
4 what transpired with the Linda Chesley complaint.

5 Q. Are we on -- do I have the same one up on
6 your -- this is a December 20th e-mail from you to
7 Mr. Goodale?

8 A. Yes.

9 Q. And does this refer to the Chesley
10 situation?

11 A. It does.

12 Q. And you said --

13 THE COURT: I'm sorry, this e-mail is which
14 number?

15 Q. This is Plaintiffs' 250, which is Tab 13.

16 THE COURT: Okay.

17 Q. And you say that internal investigation has
18 linked this attempted sale. Was that of concern to
19 you?

20 A. Yes.

21 Q. You were following up?

22 A. Absolutely.

23 Q. And you say here, (as read:) I know we have
24 talked about your four people.

25 And what is that referring to?

1 A. The four people that he said he had in his
2 office doing his customer service and his sales.

3 Q. And by the way, at this time did you have
4 any knowledge that he may have been using a call
5 center anywhere?

6 A. No.

7 Q. Did he ever tell you that?

8 A. No.

9 Q. You say here, (as read:) It's critical that
10 I get some feedback immediately on this.

11 why -- what was the urgency for you?

12 A. Well, the urgency was he had four people
13 that he said were male. And she was saying that she
14 had been contacted and they were rude and obscene,
15 and that's unacceptable. So it was really important
16 to figure out what on earth was going on.

17 Q. And let's look at Plaintiffs' 255. So we're
18 oriented in time, this is the next day. And you
19 say, (as read:) I had a lengthy discussion with
20 Richard Goodale yesterday. This latest allegation
21 is probably a violation, it was done by a
22 third-party call center.

23 Tell us what this is about?

24 A. Richard admitted that they had been using a
25 call center in the Philippines, I believe. I think

1 that's where it was. And then -- and they were the
2 ones that made this phone call.

3 Q. And did he indicate to you during this time
4 period that they would no longer do that?

5 A. I believe he and Mike Mills had a
6 conversation and agreed that that -- that he would
7 discontinue using them.

8 Q. Let's look at your tracker, which is 344,
9 Tab 5. And can you see the reference to Linda
10 Chesley at third from the bottom?

11 A. Yes.

12 Q. And it says no longer affiliate. What does
13 that mean?

14 A. It means that they told us that they were
15 not going to be using them anymore, so --

16 Q. And so we're orienting ourselves in time on
17 our timeline, we're now right towards the end of
18 December?

19 A. Yes.

20 Q. And what was -- in terms of your mind, the
21 skepticism and what you were thinking, to the extent
22 you can go back then, what were you were thinking
23 about these folks?

24 A. I was disappointed that they had not been
25 forthcoming, but still felt that they had shared

1 honestly with us up to this point. So you know, we
2 were willing to give them the benefit of the doubt
3 and see what happened after they discontinued the
4 use of that center.

5 Q. And if we look at the top of the e-mail,
6 which was Plaintiffs' 0255. This is your e-mail on
7 December 21st. And you see that we're talking about
8 Ms. Chesley. He's spoken to Mr. Chesley and assured
9 him he's ceased operations with the other call
10 center?

11 A. Correct.

12 Q. And was that the information you had at that
13 time?

14 A. It was.

15 Q. Did you have any reason to think that it was
16 untruthful?

17 A. No.

18 Q. You say that they were very responsive. And
19 you make a comment, (as read:) I don't think
20 guilty.

21 And you say (as read:) This is the first time
22 they used some outside help and it hit them in the
23 behind.

24 Right?

25 A. Correct.

1 Q. And you say, (as read:) I think a fine is
2 certainly in order.

3 A. Right.

4 Q. Why did you think a fine was in order?

5 A. Because -- because this was clearly a
6 violation. And they were responsible for the
7 activities of the affiliate and they needed to be
8 held accountable for that.

9 Q. Did you terminate them at the time?

10 A. No.

11 Q. Did you consider terminating them at the
12 time?

13 A. I think there was probably some discussion
14 about it as I recall.

15 Q. And so we're clear, this is at the end of
16 December. Were they terminated in the middle of
17 February?

18 A. They were.

19 Q. So we're talking about -- about a little
20 under two month time period was going on during a
21 holiday situation?

22 A. Correct.

23 Q. Okay. And then we go into 2007. And so
24 we're on our -- on chart and we have the violations
25 that are down here. I want to focus on this time

1 period from the early part -- the fall of 2006, when
2 you get this complaint, until this time period in
3 December 2006. We're talking about activity over
4 about three months?

5 A. Right.

6 Q. Did you act in good faith in trying to
7 respond to this?

8 A. I think I always acted in good faith.

9 Q. And did you have any belief that you were
10 knowingly violating any telemarketing law?

11 A. No.

12 Q. Did these explanations seem credible?

13 A. Yes.

14 Q. Now, in January of 2007, you got some
15 complaints from the Louisiana Attorney General. Do
16 you remember that?

17 A. I do.

18 Q. And before we get to that let's just look at
19 Plaintiffs' Exhibit 254 at 2. And to take us back
20 to know where we are in December 20th.

21 And this is an e-mail from -- it's from
22 Mr. Mills to Musso, and it's 253, Tab 16. Do you
23 see that?

24 You're on it, Ms. Musso? Do you see that?

25 A. I am. Yes, I do.

1 Q. And there is a comment in there about
2 they're deactivating the log-ins that the Philippine
3 call center was using today. Do you see that?

4 A. Yes.

5 Q. And is that information that was conveyed to
6 you at the time period?

7 A. It was.

8 Q. Did you have any reason to disbelieve it?

9 A. No.

10 Q. All right. Going forward, do you
11 remember -- let's go to Plaintiffs' 254 at 2, which
12 is an e-mail you sent to Mr. Origer, Mills, and
13 Neylon. Do you see that?

14 A. I do.

15 Q. And you said you didn't disagree. (As
16 read:) I just think we can trust them from this
17 point forward.

18 why did you say that?

19 A. Because even though there had been
20 complaints, they were -- they were forthcoming, they
21 were responsive, they had what I perceived to be
22 plausible explanations. And they were relatively
23 new at the DISH business and I thought it would be
24 okay to give them another chance.

25 Q. All right. Now, you actually at one point,

1 do you remember, the early part of January, that you
2 did some investigation of your own and listened in
3 to a phone call?

4 A. When the -- yes. When I got the information
5 from the Louisiana Attorney General's Office I
6 picked up the phone and called the caller ID that
7 was listed. And I thought I recognized a voice. So
8 I reached out to Mike Mills and asked him if he
9 would call the number and see if he could -- if he
10 recognized the voice. And he did and called me back
11 and agreed that it was Richard.

12 Q. And what did you make of that information?
13 This is Tuesday, January 9th. And this e-mail says
14 (as read:) Based on the identification of the voice
15 submitted by the Louisiana AG, we provided that
16 contact information to the State of Louisiana.

17 why did you share that information?

18 A. Because it looked like JSR was implicated in
19 this contact with consumers there.

20 Q. And this was information you uncovered on
21 your own investigation?

22 A. Oh, yes.

23 Q. And if you look at Plaintiffs' 113 -- 1113,
24 which is Tab 17. what is this?

25 A. It's the -- there's no letter, but it's the

1 standard letter I would assume that shares with JSR
2 the complaints from the Louisiana AG's Office.

3 Q. And this is on January 17th, 2007?

4 A. Yes, it is.

5 Q. And then if we look at Plaintiffs' 420,
6 which is Tab 13. And I think we better go to page
7 15-16. What is this?

8 A. I believe this is the letter that was
9 suppose to be the attachment.

10 Q. And this is sending on to JSR the Louisiana
11 complaints?

12 A. Absolutely.

13 Q. And did you get a response back?

14 A. I'm pretty sure I did.

15 Q. Yeah. Let's look at 256. What is this?

16 A. Richard's response.

17 Q. And this is received, it says at the bottom,
18 about January 22nd, 2007?

19 A. Yes.

20 Q. And did you review this response?

21 A. I did.

22 Q. And if you go one by one -- well, first of
23 all, he says at the top that, (as read:) we've
24 taken additional steps with the employ of Call
25 Center Compliance Corporation. What kind of

1 information does that provide?

2 A. I would assume how to comply with the law.

3 Q. And then he goes complaint by complaint.

4 The first one he says the number was not registered
5 on the do not call list; right?

6 A. That's what it says.

7 Q. And then the second one he says the number
8 at -- will be deleted and the person won't be
9 contacted again; right?

10 A. Correct.

11 Q. Then he says the third was contacted by an
12 affiliate and has been deleted.

13 Fourth he says is not registered on the do not
14 call database.

15 And then the fifth he gives another explanation
16 that there was an affiliate and he removed it.

17 A. Right.

18 Q. So what did you think of this information?

19 A. Well, honestly, at this point I'm beginning
20 to think that maybe there's reason to be cautious.

21 Q. And if we look at Defendant's 756. Did you
22 actually go through each of these in details? The
23 explanations?

24 A. Yes.

25 Q. And let's look at Defendant's 756. Are

1 these your markups?

2 A. What tab number is that? Because this is
3 really hard for me to read.

4 Q. I'm sorry. It's Tab 20.

5 A. And may I have some water?

6 Yes, they are.

7 Q. And this is a document -- these are your
8 interlineation edits on what he was saying?

9 A. Yes.

10 Q. And sum up what's your focus is?

11 A. Remember, I was under the impression he was
12 not using affiliates. And now I'm concerned because
13 he's got an affiliate. And the complaints don't
14 always have to be do not call complaints for the
15 TCPA because there are other caveats in there that
16 can be offensive and unlawful under the TCPA. So I
17 was sharing with him that it may not -- that may not
18 have been -- do not call may not have been the
19 problem.

20 Q. And in terms of your state of mind and your
21 skepticism, what was going through your mind looking
22 at kind of the timeline we're looking at? We're now
23 into late January.

24 A. Well, as I'm passionate about these things,
25 I was highly frustrated and upset.

1 Q. And did you then get a press release about
2 an injunction in Missouri?

3 A. Yes.

4 Q. And this is 252. And what did you make of
5 this when you got it?

6 A. I was shocked. And very concerned.

7 Q. And was JSR then terminated in February?

8 A. Yes.

9 Q. And during your time period as compliance
10 manager focusing on this time from August of 2006,
11 'til the end of December 2006, did you have any
12 knowledge that they were violating the telemarketing
13 laws?

14 A. Absolutely not.

15 Q. And were you taking any steps in any way to,
16 during that time period, with these four complaints
17 and the explanations, were you in any way doing
18 anything to encourage violations of the
19 telemarketing laws?

20 A. No.

21 Q. Now, you were asked questions about American
22 Satellite. Do you remember that?

23 A. Yes.

24 Q. And did DISH fine American Satellite?

25 A. It did.

1 Q. Let's look at Defendant's Exhibit 935.

2 A. Tab number?

3 Q. Tab 33. Can we blow up the bottom of this.

4 Is this an e-mail you sent on February 9th, 2007?

5 A. Yes.

6 Q. And I want to come back to some questions
7 that were asked of you. Remember there was some
8 suggestion you were a mid-level, not particularly
9 highly paid --

10 A. I do.

11 Q. Remember that?

12 A. I do.

13 THE COURT: I'm sorry, did you say not
14 highly paid?

15 Q. Not highly paid. There were some questions
16 during her examination suggesting she was not.

17 THE COURT: Suggesting she was highly paid?

18 Q. She was not. I forget how you were
19 described, some mid-level --

20 A. It was mid-level manager.

21 Q. And actually, who's the Charlie being
22 referred to there?

23 A. Charlie Ergen.

24 Q. Who was he?

25 A. The CEO and founder of the company.

1 Q. And Carlson, Neylon, Origer, who were those
2 people?

3 A. They were the executives on the retailer
4 sales team.

5 Q. These the highest people in the company?

6 A. In retailer services, yes. Charlie is the
7 highest.

8 Q. What?

9 A. Charlie is the highest.

10 Q. And what is this about and what happened?

11 A. So when we advised them they were being to
12 be penalized \$10,000 they wanted to know if that was
13 coming from Charlie. And I informed him it was
14 retailer services team that was charging him.

15 Q. And in your experience, what was the level
16 of involvement of -- in telemarketing issues of the
17 senior people at DISH?

18 A. They trusted us to handle them and then let
19 them know what was going on.

20 Q. And Mr. Carlson son -- Mr. Carlson, he's
21 today the president of DISH; right?

22 A. He just got promoted, so I'm not sure what
23 his title is now, but --

24 Q. Yeah. And so at this meeting were they
25 fined?

1 A. Yes.

2 Q. And do you remember that they responded and
3 told you what they were going to do?

4 A. Yes.

5 Q. And let's look at Defendant's 825. Is this
6 a communication you got from Mr. Pyle at American
7 Satellite?

8 A. Yes.

9 Q. And he says here (as read:) We've taken
10 direct and total control of our marketing
11 operations. And he's -- said they're bringing any
12 and all marketing activities under our internal
13 organizational control?

14 A. Right.

15 Q. And what did you make of this?

16 A. That they took the meeting that we had
17 seriously and realized that they couldn't -- that
18 the people that were generating leads for them were
19 not -- excuse me, were not doing it properly and
20 they needed to take control of their business.

21 Q. And over -- did their business plan change
22 to your knowledge?

23 A. Their business plan changed, yes. But I
24 don't recall exactly -- I think they were -- they
25 started doing some opt-ins and -- I can't recall.

1 Q. Can you describe opt-ins? What are opt-ins?

2 A. So opt-ins are generated on the internet.
3 Say a consumer would go and look for DISH and end up
4 on their landing page. And then there would be a
5 space that the consumer could fill out their
6 interest. And they would and then they would get
7 contacted through the information that the consumer
8 provided.

9 Q. Atlas Assets, remember you were asked
10 questions about them?

11 A. Uh-huh.

12 Q. Did DISH terminate them?

13 A. Oh, yeah.

14 Q. And can you estimate how quickly DISH
15 terminated them after they became an OE retailer?

16 A. They were the first person -- the first
17 retailer that I was involved with termination. And
18 I believe it was two or three months after I took
19 the position.

20 Q. Yeah. So let's look at 794, at 36. Just to
21 help us time wise orient ourselves. It's Tab 36,
22 Defendant's 794.

23 A. Yes.

24 Q. I'm pulling up -- I'll represent to you
25 that -- I'll get it. But they're retailer agreement

1 was dated August 2nd, 2006. Does that sound
2 consistent with your memory?

3 A. Yes.

4 Q. And there was a suggestion, you were asked
5 questions remember about activations. Do you
6 remember that?

7 A. Yes.

8 Q. Are activations and fees that are paid for
9 activations, are those the same thing as profit to
10 DISH?

11 A. No.

12 Q. What's the difference?

13 A. To the best of my knowledge an activation is
14 when the retailer inputs the order into the system
15 and activates the customer.

16 Q. And do you -- well, we'll learn from another
17 witness about the economics of DISH.

18 A. Yes.

19 Q. I have on the screen here the August 2nd,
20 2006, retailer agreement for Atlas. Does that ring
21 a bell that that's the date of the agreement?

22 A. Yes.

23 Q. And let's look at Plaintiffs' Exhibit 9.
24 Page 37 at Tab 10. We'll put it on the screen to
25 see the activations.

1 Do you see Atlas Assets? Can you see Atlas
2 Assets right there? It says inactive?

3 A. I do.

4 Q. 2 point -- 14,000 subscribers in six months,
5 a little under 14,000, 13,8, and \$2.1 million in
6 activation payments. Do you see that?

7 A. I do.

8 Q. Did you catch them in a sting?

9 A. Yes.

10 Q. And let's look at Defendant's 796. You say
11 Brian, who is Brian?

12 A. Brian was one of the principals of Atlas
13 Assets.

14 Q. And you say, (as read:) It's imperative
15 that I speak to you today. As if there's some
16 urgency. What was going on?

17 A. He was implicated in the sting with Bob
18 Olive.

19 Q. And if we look at Defendant's 803, this is
20 October 19th, the November 1st response. And he
21 gives you his explanation here. Do you remember
22 that?

23 A. Is that tab --

24 Q. It's Tab 39, 803.

25 803 I would move into evidence.

1 THE COURT: Any objection?

2 MR. RUNKLE: No objection.

3 THE COURT: Defendant's or Plaintiffs'
4 exhibits?

5 Q. These are defendant's exhibits.

6 THE COURT: Defendant's 803 is admitted.

7 (Defendant's Exhibit 803 was admitted.)

8 Q. And you see this is his response. He says
9 he's intending to drive to Las Vegas to do an onsite
10 due diligence?

11 A. Yes.

12 Q. And how is he planning to address this, do
13 you remember?

14 A. He was gonna have a meeting with, I think
15 Scott Presto was the -- was it Scott? He was gonna
16 have a meeting with Silverbird, who was their
17 affiliate.

18 Q. Were you concerned about all this?

19 A. Oh, yes.

20 Q. And let's look at 804, your e-mail to --
21 back to Mr. -- you had serious questions here?

22 A. I did.

23 Q. Why were you asking all these questions?

24 A. Because at this point the caller ID looked
25 much like a number of other complaints that we had.

1 And by the way, had not been able to identify.

2 Q. Yeah. And 804, this is in evidence.

3 And 807, November 9th, 2006. Saying (as read:)

4 Already communicated to Bruce. He is on it.

5 And then there's a comment, (as read:) Please
6 put them on hold pending investigation.

7 A. Correct.

8 Q. What does that mean, put somebody on hold?

9 A. It means that they can't generate
10 activations. Or if they do, they won't -- they
11 can't enter them to the system.

12 Q. And have -- and your job as compliance
13 manager, when you saw facts that you thought
14 warranted, did you put people on hold?

15 A. Yes.

16 Q. Even though the activations were large?

17 A. I didn't -- I really didn't take that into
18 consideration.

19 Q. And Defendant's 810, Tab 43. Were they
20 terminated?

21 A. They were.

22 Q. On November 17th, 2006?

23 A. Yes.

24 Q. Within three months of signing --

25 A. Yes.

1 Q. -- a retailer agreement, right?

2 A. Yes.

3 Q. The quality assurance program that you
4 discussed, remember that? In timelines was Star
5 Satellite involved with that?

6 A. No.

7 Q. DISH TV now?

8 A. No.

9 Q. JSR?

10 A. No.

11 Q. Let me show you Paragraph 7.1. Remember you
12 were asked questions about the legal responsibility
13 of an affiliate of an independent retailer.
14 Remember those questions?

15 A. I do.

16 Q. Can we pull up Defendant's 84 -- I'm sorry,
17 it's Plaintiffs' 535, Paragraph 7.1.

18 I'm sorry, it's 238 that we're pulling up.
19 7.1.

20 Are you familiar with 7.1?

21 A. Yes.

22 Q. And remember you were asked questions, well,
23 if the independent retailer derives the benefit from
24 the affiliate, they should be responsible, so
25 therefore DISH should. Do you remember those

1 questions?

2 A. I do.

3 Q. And the contract -- in your business are
4 contracts important?

5 A. Yes.

6 Q. And this contract says that (as read:) In
7 the event EchoStar does grant consent to the
8 retailer to use persons not employed by retailer to
9 perform activities, the retailer shall be
10 responsible for the acts and omissions of such
11 persons under this agreement to the same extent it
12 is responsible for the acts and omissions of its own
13 employees.

14 What's your understanding of that?

15 A. It means that if the retailer chooses to use
16 someone who is not their employee to do any of the
17 tasks under -- involved in activations or marketing,
18 that they will be responsible for those actions.

19 Q. Can I have DTX129. (As read:) We're making
20 an impact. Those were your words, right, in 2009?

21 A. Yes.

22 Q. What's that all about? How does that fit in
23 with how you feel about the job you did?

24 A. Well, essentially we terminated two
25 retailers. I mean we certainly terminated more, but

1 these two had, in our opinion, been participating in
2 unlawful or unacceptable activities, and as a result
3 we had a number of complaints. And then once they
4 were terminated we saw a decline almost immediately
5 in our reported complaints.

6 Q. And how did you feel about that?

7 A. I felt pretty darn good.

8 Q. Did you ever in your career put profits or
9 activations ahead of doing what was right?

10 A. Absolutely not.

11 Q. Were you ever pressured by anybody in sales
12 not to take disciplinary action against a retailer?

13 A. No.

14 Q. I am finished with my questions. So thank
15 you.

16 THE COURT: Mr. Runkle.

17 MR. RUNKLE: I'll try to be brief, Your
18 Honor. I think I have about 10 to 15 minutes.

19 RE CROSS EXAMINATION

20 BY MR. RUNKLE:

21 Q. All right. Ms. Musso, thanks for coming
22 back this afternoon. We're trying to get you out of
23 here.

24 A. Thank you so much.

25 Q. Mr. Bicks asked you about harvesters and

1 especially about Melissa wallace?

2 A. Yes.

3 Q. I'd like to put up PX1135. I'm sorry,
4 Ms. Musso, it's in the big white one.

5 A. I thought it probably was. I feel like a
6 librarian. PX what?

7 Q. 1137. So you were sort of annoyed that
8 Ms. wallace kept catching the DISH retailers; right?

9 A. Let me be clear. It didn't annoy me, it
10 frustrated me a little bit. But you know, it also,
11 even though I felt that not just Melissa, but there
12 were a number of people that would -- a number of
13 consumers that would pop up regularly. It was also
14 good that they pointed us in the direction of these
15 retailers because then we were able to investigate
16 and maybe there were things that would improve their
17 businesses so they wouldn't be susceptible to these
18 types of things.

19 So yes, I was a little frustrated that that was
20 kind of their line of work, but at the same time
21 there were times it proved to be helpful.

22 Q. It was American ingenuity, don't you think
23 so?

24 A. I think there is some ingenuity to it.

25 Q. Would you agree with me, Ms. Musso, that if

1 Ms. Wallace actually got a call that violated the
2 law, the law gives her an entitlement to recompense?

3 A. Absolutely. But as in the case of JSR, you
4 know, it turns out the claims were unfounded.

5 Q. Well, you don't really --

6 A. Well, that's what the response was.

7 Q. You don't know that for sure?

8 A. Yes.

9 Q. And in retrospect you know that DISH has
10 been found liable to 2.3 phone calls that JSR
11 Enterprises made to people on the Do Not Call
12 Registry?

13 A. I don't know why DISH would be responsible
14 for that.

15 Q. Well, the court already found that, did
16 you --

17 A. Oh, I don't know.

18 Q. Okay. So let's look at PX420.

19 A. PX420.

20 Q. Mr. Bicks was just questioning you on this
21 document. See we are gonna get a work out, it's Tab
22 3 in the black book.

23 A. Okay, got it. Thank you.

24 Q. Okay. So I think you agreed with Mr. Bicks
25 that this was -- this is basically an admission that

1 there was a DNC violation, but they -- they didn't
2 have any intent; right? would you agree with me
3 that's what this is?

4 A. That was the way I interpreted, yes.

5 Q. Do you know if intent is a requirement under
6 the TCPA?

7 A. No.

8 Q. It's not, right?

9 MR. BICKS: Your Honor -- whatever.
10 Objection.

11 THE COURT: The objection is overruled.

12 A. I'm not sure what you mean.

13 Q. Well, I'll just tell you it's not. So let's
14 just assume there's no intent requirement. If you
15 call somebody with a telemarketing call on the
16 registry and there's no defense, it's illegal. You
17 understand that, right?

18 A. Sure.

19 Q. All right. So now let's turn to PX238,
20 which is the -- we were looking at this yesterday.
21 This is the JSR retailer agreement.

22 Do you see this, Ms. Musso?

23 A. I do.

24 Q. Okay. Could you turn to page 19 of this
25 exhibit. There's big numbers on the bottom after

1 the dash.

2 A. Okay.

3 Q. Okay. So I think you're familiar with a
4 provision of this. And this is the retailer
5 agreement that you helped to ensure compliance with;
6 right?

7 A. Certain provisions of it, yes.

8 Q. Certain provisions of it. So right here it
9 says that (as read:) If the retailer fails to
10 comply with any applicable federal, state, or local
11 law or regulation that, among many other things,
12 including any violations of telemarketing and do not
13 call laws, then the agreement shall terminate
14 automatically.

15 That's what it says, right?

16 A. Can you point me to exactly where you're
17 reading.

18 Q. It's in Paragraph 10.4, subparagraph -- I
19 think we call that a Romanette V, the fifth one. Do
20 you see that?

21 A. I do.

22 Q. And that's the way these terminations
23 worked, right? When you sent them a letter they
24 said, these -- these termination for TCPA violation,
25 you sent them a letter saying your agreement has

1 automatically terminated because you violated
2 federal law. Do you remember that?

3 A. I don't think we terminated every time there
4 was a violation. I guess I'm confused.

5 Q. Well, that's what this contract says though,
6 doesn't it? That the agreement shall terminate
7 automatically if the retailer fails to comply with
8 telemarketing laws. That's what it says, right?

9 A. It says that -- well, I'm not an attorney so
10 I can't really interpret the contract.

11 Q. Okay. But you did work on this contract,
12 right?

13 A. On the contract? No.

14 Q. You worked on compliance with the retail
15 agreement. That's what you said this morning,
16 right?

17 A. Yes, but I didn't have any -- any
18 responsibility for creating the contract.

19 Q. Okay. So I'm going to prove this one.
20 Let's just assume that the contract terminated
21 there. So that's the first time the contract
22 terminated, okay? Now let's move on to PX255, which
23 Mr. Bicks was just showing you. Do you remember
24 this one?

25 A. Yes.

1 Q. Okay. And at the bottom you said the latest
2 allegation is probably a violation after you had a
3 discussion with Richard Goodale; right?

4 A. Yes.

5 Q. All right. So you thought it was a
6 violation?

7 A. I did.

8 Q. Yeah. So then the agreement terminated
9 again, apparently it was still active, that was in
10 December.

11 And then I'd like you to turn to page 18 of
12 this contract. And under Paragraph 10.1, if you
13 could look there.

14 And Mr. Werner testified yesterday that these
15 contracts had to be renewed ever year. And that
16 this one had to renew on December 31st, 2006. That
17 was his testimony --

18 A. If that's what he said.

19 Q. That sounds right; right?

20 A. If that's what he said, yes.

21 Q. And it says this agreement is not
22 automatically renewable. So I'll put another
23 Post-It up here.

24 So right after here DISH decided to re-up its
25 contract with JSR Enterprises despite all this

1 knowledge; isn't that right?

2 A. Are you assuming that I had knowledge of all
3 of the calls in green? Or are you just talking
4 about the --

5 Q. No, I'm talking about the things you
6 testified you had knowledge. Certainly seems that
7 way, doesn't it, Ms. Musso?

8 A. I think I thoroughly explained our thought
9 process when we were going through each and every
10 one of those complaints. So I -- I'm not
11 necessarily sure that I agree with you. But go
12 ahead.

13 Q. Okay. Well, would it also surprise you to
14 learn that in June -- on June 28th of 2006, a DISH
15 Network employee wrote an entry in the Siebel
16 database that said, (as read:) JSR Enterprises is
17 generating sales through autodialing. List of 1
18 million plus clients ranges from about 2K to 9K,
19 meaning dollars, per list depending on the quality.
20 JSR is spending about \$2,000 per month and makes
21 about 750,000 dials per week, generating around 40
22 sales a week.

23 would that surprise you that that was in DISH's
24 Siebel database?

25 A. It may be there, but I don't have any

1 knowledge of it.

2 Q. You don't have any knowledge today. We'll
3 improve that chart again. June 2006, DISH knows JSR
4 is calling 750,000 numbers a week with autodial. It
5 looks like June is probably right here. There we
6 go.

7 would it also surprise you that JSR kept
8 dialing into 2007? Because the S is Shawn Portela.
9 You know that guy; right?

10 A. The S in JSR is Shawn Portela?

11 Q. I believe so, yeah?

12 MR. BICKS: Actually, I don't think that's
13 correct.

14 A. I don't think that's correct. I think it
15 was a Shaun Gazzara or something like that. I don't
16 think it was Shawn Portela.

17 Q. I'll withdraw that question, I'm sorry.

18 Did you know that Shawn Portela was associated
19 with JSR Enterprises?

20 A. I did not know he was associated with them,
21 but yes, I do know Shawn Portela.

22 Q. So about JSR. Do you remember testifying
23 about JSR during your deposition?

24 A. I'm sure we touched on it.

25 Q. And so if I could pull up Ms. Musso's

1 deposition. 239, line 3. So if we can just read
2 this. I in fact showed you one of these documents
3 that we were talking about today. It's about the
4 Philippines call center. And I asked you, (as
5 read:) What is JSR?

6 You said: JSR was an OE retailer.

7 And I asked you: When was JSR active?

8 And you said: Apparently in 2006.

9 And I said: Was there a time that they ceased
10 being a DISH Network retailer?

11 You said: Yes.

12 Then I said: When was that?

13 And you said you don't recall.

14 And I said: Okay. And so when Mr. Mills said
15 they were deactivating the log-ins that the
16 Philippines call center is using today, what does
17 that mean to you.

18 And Joe objected, but you can ignore that.

19 And the witness said, that's you: The OE
20 apparently they gave the Philippines call center
21 log-ins to, I have to assume, the OE tool, and they
22 deactivated those log-ins so they no longer have
23 access.

24 So you didn't know a whole lot about JSR. I
25 asked you when they were terminated and you didn't

1 know or what happened in the --

2 A. I didn't remember the exact date.

3 Q. But today you remembered a lot more; right
4 Ms. Musso?

5 A. It's right there, yes.

6 Q. Because you looked at the documents between
7 your deposition and today; isn't that right?

8 A. Well of course.

9 Q. Right. But you didn't have independent
10 memory of that?

11 A. I didn't then, no.

12 Q. Right, okay. So if I could pull up PX70.
13 PX70 is in the white binder. I promise we're almost
14 finished.

15 A. That's all right. Am I through with the
16 retailer agreement?

17 Q. Yes. Take a chance to look at this.

18 A. Thank you.

19 MR. BICKS: Your Honor, I would just note
20 this was an area I did not ask questions,
21 PossibleNow. So this would be beyond the scope of
22 what I did.

23 Q. Your Honor, I'm asking questions about how
24 Ms. Musso could or could not have determined what
25 the retailers were doing, and I think that's very

1 much within the scope of what Mr. Bicks was asking
2 questions about.

3 THE COURT: The objection is overruled.

4 Q. You had a chance to look at this?

5 A. I have.

6 Q. Do you know who Ken Sponsler is?

7 A. Of course I do.

8 Q. He's right there, right?

9 Did PossibleNow at some point, it appears that
10 they suggested that you buy compliance surveys and
11 audits of retailers. Is that --

12 A. I don't think they were asking us to buy
13 them. I think they gave us options to share with
14 our retailers so that they could choose or not
15 choose to purchase them. I actually --

16 Q. Did DISH actually purchase certifications of
17 its retailers?

18 A. I'm sorry --

19 Q. Did DISH look to purchase any certifications
20 of these -- of these retailers?

21 A. No. DISH would have the retailer do that.
22 Actually, if you look at this e-mail, I think it
23 started as a conversation about doing certifications
24 for our internal call centers. And then from that
25 they offered opportunities for the retailers, which

1 we would have passed along to the retailers.

2 Q. Right. But DISH never required the
3 retailers to -- to have a PossibleNow certification?
4 That never happened?

5 A. Why would it? Why would we do that? The
6 retailer would choose to do that.

7 Q. Well, the reason that you would do that, I
8 would assume, was you would want to actually know
9 what was going on with the retailers instead of
10 guessing from inaccurate information that you are
11 getting, isn't that right, Ms. Musso?

12 A. The retailers are independent retailers.
13 They run their own businesses. They invest a lot of
14 money in their business. They have costs of doing
15 business. Some of the certifications wouldn't apply
16 to some of the smaller retailers. So it would be an
17 option that the retailer would choose on their own.
18 But we would share this information with them.

19 Q. Okay. Ms. Musso, we talked about a number
20 of aphorisms today that we've used. We've seen them
21 in your e-mails that are very colorful. Have you
22 ever heard fool me once, shame on you. Fool me
23 twice, shame on me. Have you heard that?

24 A. Yes.

25 Q. Do you think that's a valid, common sense

1 aphorism?

2 A. Sometimes.

3 Q. That's all I have.

4 THE COURT: Do any of the states have any
5 further questions?

6 No.

7 Mr. Bicks.

8 MR. BICKS: No. I just want to thank the
9 Court and staff for saying late. We really
10 appreciate it.

11 A. Thank you very much.

12 (The witness was excused.)

13 MR. BICKS: Your Honor, could I move in
14 DTX129 and 974. My team told me --

15 THE COURT: I may have one other one.
16 Diane, does that take care of it?

17 Yes, you may. DTX129 and 974 are admitted.
18 Any objection, Mr. Runkle?

19 MR. RUNKLE: No Your Honor.

20 (Defendant's Exhibit DTX 129 and 974 was
21 admitted.)

22 THE COURT: PX70 we don't have as admitted.

23 MR. RUNKLE: Yes, PX70. Do you need a
24 copy?

25 THE COURT: I just don't have it listed as

1 admitted.

2 MR. RUNKLE: I move to admit.

3 THE COURT: PX70 is admitted as well.

4 (Plaintiffs' Exhibit PX70 admitted.)

5 THE CLERK: And PX256 I didn't have as
6 admitted.

7 THE COURT: I did not either. PX256.
8 Somebody move for that admission?

9 MR. BICKS: Yes.

10 THE COURT: Any objection?

11 MR. RUNKLE: No objection.

12 THE COURT: Admitted.

13 (Plaintiffs' Exhibit PX256 admitted.)

14 THE COURT: We'll go over these again in
15 the morning to make sure everything is properly
16 admitted.

17 At this time may we excuse Ms. Musso?

18 MR. BICKS: Yes, Your Honor.

19 THE COURT: Thank you again for taking the
20 time and staying for the testimony.

21 THE WITNESS: Thank you so much.

22 THE COURT: All right. Court is adjourned
23 for the day.

24 (Court was adjourned for the day.)

25

1 I, KATHY J. SULLIVAN, CSR, RPR, CRR, Official Court
2 Reporter, certify that the foregoing is a correct
3 transcript from the record of proceedings in the
4 above-entitled matter.

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