UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 14-81395-CIV-MARRA

FEDERAL TRADE COMMISSION AND STATE OF FLORIDA,

PLAINTIFFS,

-v-

INBOUND CALL EXPERTS, LLC, ET AL.,

DEFENDANTS.

West Palm Beach, Florida
December 18, 2014

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TRANSCRIPT OF PRELIMINARY INJUNCTION PROCEEDINGS

BEFORE THE HONORABLE KENNETH A. MARRA

UNITED STATES DISTRICT JUDGE

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(On Page 2.)

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(Call to the order of the Court.)

THE COURT: Good morning, everyone. Please be seated.

Okay. We ready to proceed?

MR. FERGUSON: Yes, Your Honor.

MR. NICHOLSON: Yes, Your Honor.

THE COURT: Who's our next witness?

MR. STREISFELD: Our next witness is Andrew von Ramin Mapp. He's our expert.

THE COURT: All right.

MR. STREISFELD: I believe his declaration is number 11, would be in Volume 2 of the notebooks that we provided to you, is already in evidence.

THE COURT: Sir, would you raise your right hand, please.

Andrew von Ramin Mapp, Defendant's witness, sworn.

THE COURT: Sir, can you tell us your name and spell your last name, please?

THE WITNESS: Sure. It's Andrew von Ramin Mapp. And it's spelled V-o-n, second part is R-a-m-i-n, and third part is M-a-p-p.

THE COURT: Thank you.

THE WITNESS: Yes, Your Honor.

THE COURT: All right. Cross-examination.

Cross-examination

BY MS. ROBBINS:

Q Good morning. My name is Colleen Robbins, and I'm an attorney with the Federal Trade Commission.

A Good morning.

Q So you said in your declaration that you reviewed the exhibits to Mr. Skoudis' declarations; is that correct?

A Correct.

Q And are you referring, when you say exhibits, to the telemarketing scripts?

A I was referring to the information in his actual report.

Q Okay. Did you review the telemarketing scripts at all in this case?

A I briefly looked at them, but not in depth.

Q So the telemarketing scripts were actually attached to Mr. Skoudis' second declaration. So when you were reading Mr. Skoudis' second declaration, did you look at the telemarketing scripts that were attached to that declaration?

A As I said, I looked at them, but I did not review or study them in depth.

Q You say in your declaration that the use of the Windows task manager is a safe and essential tool in troubleshooting a Windows computer; is that right?

A Yes.

Q So can you tell me if you were going to use the task manager as a troubleshooting tool, what would you do?

A Well, it would depend on the type of troubleshooting or the problem.
Q So you'd have to know what the problem was before --
THE COURT: Counsel, can you let him finish the answer before you interrupt?
MS. ROBBINS: Sorry.
THE WITNESS: I wouldn't need to know what the exact problem is, because otherwise we of course wouldn't have to troubleshoot it. But I would have to know an indicator as to if I'm told that the computer is performing poorly or if it's not booting up at all. So I would need some sort of indicator in what direction to go, but --
BY MS. ROBBINS:
Q Right, because -- sorry.
A But as far as utilizing the task manager, it provides us information such as the utilization of the CPU, which is the computer's processor, the memory and the processes that are running. So more than likely I would examine those.
Q So you would look at the CPU, you said?
A Correct.
Q Okay. And you would look at the memory?
A Correct.
Q And you would look at -- you would look at the processes?
A If the problem appears to be a performance issue or an issue with malware or misconfiguration of the system where it

just doesn't perform as expected.

Q And if you were looking at the processes, would you just look at the number of processes, or would you actually look further to see which ones were actually running?

A I would look further to see which ones are running.

Q I'm showing you what's been marked as exhibit 35. This is the script to Ed Skoudis' declaration, and it's page 1038.

So can you tell me, can you please look at step one of that script, and can you tell me what it tells the salesperson to do?

MR. STREISFELD: Objection, Your Honor. This witness was not offered as an expert with regard to the scripts. He was not provided any opinions to rebut Mr. Skoudis' comments about the scripts in the second declaration. He was asked, as you can see from his declaration, he was asked to comment on the utilities of certain of the functionalities that Mr. Skoudis commented on.

THE COURT: Overruled.

BY MS. ROBBINS:

Q Can you tell me, did you -- sorry. Did you have a chance to look at step one of that script?

A I did.

Q Okay. And can you tell me what the script tells the telemarketer to do with the task manager?

A It says to click the performance tab.

Q Uh-huh.
A And if the process count is high, alert the customer.
Q So it tells the salesperson to look at the processes, right, and just count the numbers?
A Well, it doesn't specifically say to count the numbers per se, from what I can see here, but it says click the performance tab, and if the count is high, alert the customer.
Q Okay. Doesn't tell the -- that script doesn't tell the salesperson to look at the CPU, does it?
A At least not specifically in that section.
Q Okay. And can you turn the page and look at the next part, and before you get to step two, is there anything in that paragraph that tells the salesperson to look at the CPU?
A It does not.
Q And does it tell the person -- the salesperson to look to see what processes are actually running?
A No, it does not.
Q Now, you also stated in your declaration that the Windows Event Viewer is also a useful tool in troubleshooting problems; is that right?
A That is correct, yes.
Q And if you were going to use the Windows Event Viewer to troubleshoot a problem, what would you do?
A I would review the events, of course, to see what could

potentially be an issue or cause of concern.
Q Would you have -- would you just merely look at the screen, or would you have to click on an event to see what the detailed information was about that?
A Well, it's a tricky question. If you're familiar with the Event Viewers, you probably don't have to. So, for example, when I was dealing a lot with troubleshooting in an Event Viewer, I didn't have to just because I clearly would know what to identify as far as the ID of the particular event. But if -- if someone would not have that great a familiarity with it, then they probably would have to double click on it and review the entire detail.

But generally that probably would be a good idea.
Q Okay. So if you were a salesperson and had little to no computer experience, then that wouldn't be a very useful tool, to just look at the number of process -- or the events in that log?
A Well, it would depend on how much information one wants to accumulate. So one can take a look at it and can see that there could potentially be a problem by seeing a lot of alerts and a lot of errors, but, of course, if one would want to receive more details of the underlying problems, then that should be -- should be done, and that would be the process, yes.
Q And can you please look at the step in the telemarketing

script. I believe it is step four, where it talks about the use of the Event Viewer, and if you could just take a look and read it to yourself, please.

A Actually, step four is referring to MS config.

Q I'm sorry, step five then.

A (Perusing exhibit.)

Would you like me to read the options, as well?

Q No, no.

A Okay.

Q So in that process, in that step five, does it tell the telemarketer to click on any of the event logs?

A It doesn't appear to specifically state that, no.

Q And isn't it true that it just tells the salesperson to just look at the numbers of warnings and errors that are in the log?

A It does say to look at that in particular to see warnings, yes.

Q Okay. And I want to refer you to exhibit H of your declaration, which is about the Event Viewer.

I'll wait 'til you get there. Just let me know when you're there.

A Okay.

Q So exhibit H says that advanced users might find details in Event Viewers helpful when troubleshooting problems with Windows; is that right?

A That is correct.
Q And exhibit H doesn't say that the Event Viewer is for salespeople who have no computer skills; is that correct?
A Well, it doesn't specify, no.
Q And in exhibit H it says that you need to click on an event log in the left pane and you double click on the event to view the details, right, of the event, and that's what we talked about?
A Yes.
Q And, again, the script doesn't tell the salesperson to double click on that event to look at it in any detail, does it?
A It does not.
Q Can you just read what the definition of an error is in exhibit H, please? I'm sorry. Under application it says events are?
A "Events are classified as error, warning or information, depending on the severity of the event."
Q Okay. And it says an error is a significant problem, such as loss of data; is that correct?
A That would be one issue, correct.
Q Okay. But it doesn't say that an error is a red flag that evidences a certain amount of damage, does it?
A It does not specifically state that, no.
Q And it says that a warning is an event that isn't

necessarily significant but might indicate a possible future problem, isn't that right?

A Correct.

Q And it does not say in that document, does it, that a warning is a red flag that evidences a significant amount of damage?

A While it does not specifically state that, there are issues or events where a warning could lead to significant damage. So despite it not being specified here, you know, there are occasions where a warning should be taken very serious.

Q And if you were going to -- if there was a warning that needed to be taken seriously, wouldn't you need to be an advanced computer user to know that?

A I think it really would depend on the knowledge of the individual. So it's difficult for me to evaluate or state that.

Q So do you think a salesperson who had little to no computer experience would know --

MR. FERGUSON: Your Honor, I'm going to object.

THE COURT: Sorry?

MR. FERGUSON: The record is that the --

THE COURT: Who's handling the witness?

MR. STREISFELD: Apologize.

Your Honor, the record in this case reflects that

the salespeople get training. Mr. Deviny testified to that yesterday. There's other evidence in the record to suggest that. So the assumption that they're not getting any training, the assertion, I'm sorry, that they're not getting any training is inaccurate as to what's in the record, Your Honor.

THE COURT: You can argue that later.

MR. STREISFELD: Thank you, Your Honor.

THE COURT: He says he's an expert. He can give opinions based upon assumptions.

So you can answer the question.

THE WITNESS: Could you repeat the question one more time, please?

MS. ROBBINS: Now I forgot the question.

Could you read it back, please?

(The court reporter read back the requested portion of the transcript.)

BY MS. ROBBINS:

Q -- would know that the event that they were looking at or the warning or error that they were looking at would actually lead to a significant problem?

A If one would have no computer experience, then definitely not.

Q So you had mentioned earlier that before using the task manager, say, that you would need to know something. You

would need to know what you were about to troubleshoot, whether it be performance issues, or slowness or just something in general about -- and then to know what you were actually going to look for; is that right?

A That would be my approach, yes.

Q Okay. And I'd like you to look at the script one more time and look at the beginning of the script, the first part, up from the top of the script down to step one. Can you just read that to yourself, please.

A I'm sorry, which step?

MS. ROBBINS: May I approach the witness?

THE WITNESS: Yes.

BY MR. FERGUSON:

Q In reading that, does the sales agent ask the consumer what the problem is before going into that diagnostic test?

A It does not state so.

Q So according to the script, the salesperson would have no knowledge of what the computer problem was before going into that diagnostic; is that correct, according to the script?

A Well, I was under the assumption that when the call is placed, that there is some type of a problem with software or performance. So what I was specifically referring to when I would not involve the task manager or need to know specifics is because we're not just looking at -- when we're looking at computer problems, we're not just looking at software or

malware. There are a large variety of problems that can occur, such as hardware malfunctions on the hard drive, graphic cards, et cetera, et cetera.

So being able to know what type of problem it is from my troubleshooting process would be essential. In this type of situation, we have a computer that at least functions to the point where the Internet can be accessed for a remote control session. So that leads to the conclusion that at least some of the hardware failures wouldn't be applicable in this situation.

Q But if someone was just calling to activate software, that doesn't necessarily indicate that they have a problem with their computer, does it?

A No, it wouldn't.

Q And in that script, it doesn't say anywhere -- it doesn't tell the salesperson in that script to ask the consumer what their problem is, does it?

A No, it does not.

Q So you also mentioned the system configuration tool, that that's a useful tool also in help troubleshooting problems; is that right?

A Yes, that's correct.

Q And the system -- and you attach a document from Microsoft about the steps you would take if you were going to use that system configuration tool; is that right?

A Well, I've attached a document from Microsoft stating how to utilize it.
Q Right.
A But, of course, there are different ways how a process or troubleshooting can be approached, but that is the way that Microsoft recommended it in that particular case.
Q Doesn't it say in that document that you attached that advanced computer users use this to troubleshoot system configuration issues?
A It does, yes.
Q Also in that Microsoft document, it also has a list of things for -- in order to troubleshoot, right? It says that you need to go to the startup, and then often you would restart the computer. It also tells a sales -- it tells the advanced computer user to select files for the computer to load when the computer is restarted; is that correct?
A You're referring to exhibit E, correct?
Q Yes.
Actually, it was actually exhibit D. If you look at method one, the diagnostic and selection startup modes?
A Okay. And could you repeat the question one more time for me, please?
Q So when you look at this document and you look at the diagnostic startup and the selective startup and then you go through the document, doesn't it give a series of steps that

if you were going to troubleshoot a problem using system configuration, you would have to go through a series of steps; isn't that right?

A Well, this would be the method of ruling out certain processes that are loading, so essentially it's troubleshooting by process of elimination.

Q Okay. So in some instances you might need to click on certain programs, and then you might -- or select certain files, I should say, and then you might need to restart the computer to then see what happens on startup?

A Correct.

Although the entire workflow, as it is here, does not necessarily have to be executed every time. So you may just execute a certain subsection.

Q Can you please take a look again at the sales script. And I'll show you.

MS. ROBBINS: May I approach the witness one more time?

THE COURT: Yes.

BY MS. ROBBINS:

Q Can you please look at step three and read it to yourself and then tell us what step three tells the salesperson to do with the system configuration tool?

A (Perusing exhibit.)

Okay.

Q What does the script tell the salesperson to use -- to do with the MS configuration tool?
A To start it up and to hide all Microsoft services.
Q And is that it?
A And then to tell the consumer that the majority of these programs that are installed are aftermarket programs.
Q You also mentioned in your declaration about trace elements.
A Correct.
Q And you say that you -- it sounds like you don't have any knowledge, personal knowledge, of trace elements, but just that you've heard it colloquially used; is that correct?
A I've heard it being used, and I've made reference to it having been used. So, yes.
Q And that term is used to mean the remnants left over from the un-installation of software; is that correct?
A That's the way I understand it.
Q Okay. And you attached attachment J, which is, I guess, an article called "De-clutter Your PC for Better Security and More Storage?"
A Yes, I did.
Q And this attachment says that sometimes un-installed processes can leave trace elements, right?
A Yes.
Q Does it say anywhere in the document, in the article,

that these trace elements can cause the computer to run slow or work harder?

A It doesn't specify that.

Q And does it say that the trace elements can cause error codes or the dreaded blue screen?

A It doesn't specify that either.

Q Okay. Now, I want you to turn to attachment K. That's Mark Russinovich's blog.

A Uh-huh.

Q And he also talks about trace elements and about the traces of applications, right?

A Yes, he does.

Q And he doesn't say anywhere in this article that the trace elements cause the computer to run slow or work harder, does it?

A Give me just a moment to review it.

Q Sure.

A (Perusing document.)

Actually, the way I read it here, it specifies that in his instance of troubleshooting, the Internet Explorer hung, meaning that it did not function as it should, and that's when he started his research and found in the registry that there were old values from a previous install, a previous program that caused the issue.

Q So does that -- are you saying, then, that those trace

elements would cause the computer to run slow or work harder based on that?

A Well, you asked if the trace elements would cause any issues. In this particular instance it caused an issue with the Internet Explorer, which was the browser to utilize the Internet. So in this instance it prevented the computer from properly getting onto the Internet.

Q Okay. But does it say anywhere in the article that the trace elements would cause the computer to run slow or work harder?

A It did not specify that, no.

Q And does it say in the article that these trace elements could cause error codes or the dreaded blue screen?

A It did not specify that.

Q In fact, doesn't the article say that registry junk is a Windows fact of life?

A It does.

Q Now, I want you to look at the last attachment, I believe. It's attachment L. And this article, it states that the un-installation of software leaves traces, right?

A Correct.

Q And it also says that he doesn't recommend that the consumer do anything about this, does it? He says the consumer should do nothing.

A Correct.

Q And it doesn't say anywhere in this article that these trace elements cause the dreaded blue screen, does it?
A It does not specify that.
MS. ROBBINS: I have nothing further.
THE COURT: Redirect.
MR. FERGUSON: Yes.

Redirect Examination

BY MR. FERGUSON:
Q Good morning.
A Good morning.
Q Going back to where we left off talking about tab J, which is the "De-clutter Your PC for Better Security and More Storage" piece in which there is a reference to trace elements, you were asked the question, does that say in the article that clutter could cause errors or computer to run slow.
It doesn't say it, you said, correct?
A Yes.
MS. ROBBINS: Objection, Your Honor, I didn't say clutter. I said trace elements.
MR. FERGUSON: Well, the article is about clutter. So what she said.
THE COURT: I'm sorry. Which one are you referring to?
MR. FERGUSON: Your Honor, I'm at J, exhibit J to

the witness' declaration.

THE COURT: Did she talk to him about J?

MR. FERGUSON: Yes, sir. It's the one that says "De-clutter Your PC for Better Storage and More Security," and that is the article that has the term "trace elements."

THE COURT: Okay.

MR. FERGUSON: So we got there when she was talking about trace elements and she asked what the article does not say.

BY MR. FERGUSON:

Q So does it say that trace elements could cause errors or a computer to run slow?

A It doesn't specify that, per se.

Q Could trace elements cause a computer to run slow or in any way contribute to errors?

A It could.

Q So the fact that this author didn't say those words doesn't mean that that's not a fact, does it?

A Correct.

Q In fact, what would you recommend if a computer has clutter building up and trace elements or artifacts of un-installed software? Would you believe it's recommendable to delete that stuff and clean it out of the system?

A I would.

Q Okay. At the beginning of your cross-examination, you

were asked about the part of the script where the ATS agent is told to go to running processes. Do you recall that?

A I do.

Q So we'd get there, as seen in the script and as you know from your experience, by typing MS config., enter?

A Uh-huh. Correct.

Q And that would open up what?

A The system configuration utility.

Q And then there's a tab for startup.

A Correct.

Q Click that, right?

A Uh-huh.

Q And that shows you what processes are in the startup protocol, correct?

A For the most part, with few exceptions, yes.

Q Okay. And you were asked whether you saw anywhere in the script a direction to go to the CPU usage tab; and that's not in there, is it?

A That is correct.

Q And when you go to the CPU usage tab, it shows you a graph that basically shows out of a hundred percent how much of the CP is being used at that moment, correct?

A Yes, it does.

Q But isn't it true that when you go to active processes and you look at the active processes, not only does it show

you what processes are active, but there's also a column that shows you the percentage of the CP usage occurring at that moment while you're looking at the screen?

A Correct, it shows the CPU and the memory usage of each process.

Q So if a sales agent is looking at active processes in the task manager function aspect of the script, not only are they going to see the processes that are active, they will also see specifically --

A Actually, I apologize. I was in error here, and I think we both may have conflicted the -- that would be the task manager.

Q Okay. So despite the fact that the agent is not directed to go to the CPU usage under MS config. -- I mean under task manager, when they do click the tab for active processes, they will see immediately which active processes are using how much of the CPU?

A That is correct.

Q And it changes before your eyes?

A It changes in realtime, correct.

Q So, for example, if you opened up active processes and someone said their computer was running slow, if you saw one of the active processes was using 90 percent of the CP -- CPU capabilities, that would be obviously a problem, wouldn't it, possibly a contributor to the slow running machine?

A Yes.
Q So the script doesn't need to tell the agent to go to CPU usage for them to be able to clearly observe how much CPU capability the active processes are using, would they?
A That is correct.
Q Not to belittle what anyone does or how hard it is to be proficient in computers, but let's be honest. We're not talking about rocket science here when we're talking about checking MS config. or looking at the active processes or what's in the startup menu, are we?
A No.
Q Would you expect that most people with no computer experience whatsoever could be taught to do that proficiently in one week?
A That sounds feasible.
Q Are you aware, contrary to the representation or the assertion in the questions asked to you that the agents have no training or little training, that they do, in fact, receive a week training before they are allowed to speak to customers?
A I was not aware of that.
Q And some of them go to an additional week training in the incubator, or if they don't need that they go right to the floor, like witness Tomich did, who we heard from?
MS. ROBBINS: Objection, Your Honor.

THE COURT: Sustained.

MS. ROBBINS: Counsel's testifying.

BY MR. FERGUSON:

Q The Event Viewer. Clearly, when you open it up it says Event Viewer across the top, doesn't it?

A It does.

Q And who designed the Event Viewer?

A Microsoft.

Q And who dictated the format and the appearance of Event Viewer?

A Microsoft did.

Q Are you aware of whether -- are you aware that the ATS sales agents are instructed never to attempt to repair a computer?

A No, I was not aware.

Q Have you seen any representation in any script or in anything that you've seen by which ATS sales representatives would tell consumers that they were, in fact, going to repair their computer?

A Not that I recall of.

Q Take a look at the script that you were asked about, the first page. You there?

A No.

Which step? Is that prior to step one?

Q The very first page.

MR. FERGUSON: May I approach, Your Honor, just to make sure we're on the same page?

That's fine, yes.

BY MR. FERGUSON:

Q So were you asked to review scripts for giving your expert opinion?

A I was not.

Q But you were shown one here and asked some questions. I'll ask you a few follow-up questions.

Do you understand the circumstances in which this script would be used?

A (No Response.)

Q Let me ask it this way.

Are you aware that a consumer would purchase a product, like PC Cleaner Pro, and then would call in for activation, and this script would be part of the presentation?

A I'm aware of that.

Q So the tech would know what product was purchased -- I'm sorry, the sales agent would know what product was purchased when the call came in?

MS. ROBBINS: Objection, Your Honor.

THE COURT: Sustained.

If you want to ask him a hypothetical, ask him a hypothetical.

BY MR. FERGUSON:
Q Let's assume the tech was aware of what product was purchased because they're going to have to activate it. So I would assume, unless they've got their eyes closed or their back to the monitor, they're going to see what they're activating. Would you say that's safe to assume?
A Yes.
Q So they know they're dealing with a customer who's either having some issues or worried about having issues with their machine, correct?
MS. ROBBINS: Objection, Your Honor.
THE COURT: Ask a hypothetical.
BY MR. FERGUSON:
Q Let me give you a hypothetical.
A Okay.
Q A consumer has dialed a phone number to activate software to help them optimize the performance of their computer. Do you assume that the person -- would you assume that the person on the other end of the phone to help them activate the software knows they're having some issue or are worried about an issue with their computer?
A I would.
Q Okay. The script itself, does it say anywhere, interrupt the caller, don't have any discussion with them, and make sure you read this script to them?

A No, it does not.
Q Does it say, excuse me, sir or ma'am, I have something I need to read to you, or anything to that effect?
A No, it does not.
Q Would it be reasonable to assume there would be some discussion interlaced in between the text of this script as a natural phone call was going forward?
A Based on having been on both sides of receiving tech support call and having been on both sides of the spectrum, I would say yes.
Q Okay. Are you aware that this is not the only version --

MS. ROBBINS: Objection, Your Honor.

THE COURT: Sustained.

MR. FERGUSON: I have nothing further.

THE COURT: Any --

MR. NICHOLSON: No questions.

THE COURT: All right. Any recross?

Recross-examination

BY MS. ROBBINS:
Q So you were not asked to read the scripts in this case, is that what you just testified to?
A I was not asked specifically to read the scripts. I was asked specifically to take a look at the task manager, the Event Viewer, the system configuration, quote, MS config., and the registry, and then to provide my opinion on trace and

trace elements.
Q Okay.
A And to provide my opinion on the software security concerns of the remote connection.
Q Okay.
A That was pretty much the scope of what I was asked to review and provide an opinion on.
Q So you weren't asked to review the scripts and then see how those scripts were -- compare to what you would do in troubleshooting a computer using system config. and Event Viewer and the task manager; is that right? You weren't asked to compare the two?
A To compare the sales script and -- no, I was not.
Q And you don't have any personal knowledge of the sales calls that the ICE salespeople would take from consumers, do you?
A I was not provided with a recording or anything, if that's what you're asking.
MS. ROBBINS: Thank you.
THE COURT: Thank you, sir.
THE WITNESS: Thank you, Your Honor.
THE COURT: Next witness.
MR. STREISFELD: Next witness is Justin Wright.
Justin Wright, Defendant witness, sworn.
THE COURT: Please be seated.

Sir, if you could tell us your name and spell your last name, please.

THE WITNESS: My name is Justin Wright, last name is W-r-i-g-h-t.

THE COURT: Thank you.

All right. Cross-examination.

Cross-examination

BY MS. ROBBINS:

Q Good morning, Mr. Wright. My name is Colleen Robbins, and I'm an attorney with the Federal Trade Commission. I'm going to ask you some questions. Okay?

So first, I wanted to ask you a little bit about your prior company that you worked with that you talked about in your declaration, iS3. Okay?

Now, can you tell me what -- you had mentioned in your declaration that the product of iS3 was STOPzilla; is that correct?

A Correct.

Q And then that at some point, there was a tech support component to the STOPzilla product, or was that part of iS3? Could you explain that?

A Yeah. I just want to clarify before. We had multiple products. It wasn't exclusively iS3 -- or exclusively STOPzilla.

Q But STOPzilla is the only one you talked about in your

declaration, though.
A Yes.
Q And so can you talk about -- just tell us about what the tech support component was to the STOPzilla product?
A Sure.
As I state in my declaration, we were -- you know, the product was anti-malware product, and the malware that our customers were seeing was becoming more and more malicious, and what was occurring was the malware was blocking our install. So it just wasn't exclusive to our product, but other Norton and McAffe and other products.
So when the computer was already compromised, it was difficult for us to install the product. So we placed a phone number on the "thank you for downloading page," and the customer could call in and get a manual technician or a customer service at that time to bypass the infection, disable it and then install STOPzilla.
Q So the malware you're referring to, it didn't block the download?
A It did.
Q Then how would people get the 800 number when you -- you said that they downloaded it and with the activation page they got -- did I miss --
A Let me clarify.
What I meant was when the person landed at the

landing page, they would click the download button. If the install would not fire, they would land at a page notifying that if you didn't see this install box pop up, then it's potentially being blocked by malware and to call us.

Q And is that the malware on the consumer's computer?

A Yes.

Q So was STOPzilla ever blocked by other antivirus vendors?

A There may have been times where we were inaccurately listed. We would notify them. It's pretty common in the antivirus industry where, you know, based on heuristic blocking, where the product had some similar behaviors of -- and we would have to contact that vendor and get white listed.

Q Similar behaviors as what?

A Heuristics, when you're targeting malware, as Mr. Skoudis testified, it's not a perfect science, and sometimes if there is a registry key that's similar to, you know, something that they are blocking, then it may be a false positive.

Q Okay. So what you're saying is that at some point other antivirus companies tagged STOPzilla as malware?

A Inaccurately.

Q Right.

But it tagged it as malware and it blocked it. But what you're talking about here is the consumer's computer blocking the STOPzilla; is that correct?

A No.
Q In paragraph 12?
A No. What I'm saying is that the consumer's computer was already compromised with malware, infected, and that malware had prevention code put into it to stop legitimate anti -- they were trying to control their distribution, remain on the box.
Q How did you market STOPzilla?
A Online.
Q And did you take out Google AdWords?
A Yes.
Q So you bought key search terms so when consumers would search online, then your product would come up?
A Correct.
Q In paragraph 12 of your declaration, you state that rogue creators started to arm the malware with computer code. What do you mean by "the malware?" Was it one piece of malware in particular, or are we talking any type of malware?
A Do you have my declaration?
Q I do not.
MR. FERGUSON: Tab 2, it should be.
THE WITNESS: Okay. I'm sorry. Which part?
BY MS. ROBBINS:
Q Paragraph 12, on page 4.
A In that sentence I'm referring to the rogues that were

extremely prevalent at that time.
Q So it's not just one, though, it's multiple; is that right? Or is it just one malware called rogue?
A No, Rogue anti-spyware is fake anti-spyware. It's prevalent right now. One came out yesterday. But at that time it was an absolute epidemic, just constantly coming out with -- Rogue anti-spyware is malware that is designed to look like legitimate software, run a completely bogus scan, display fake results and attempt to trick the victim into purchasing the software.
Q So when you're talking about the malware, you're talking about any Rogue anti-spyware product on the market at that time?
A In that particular sentence when I'm talking about the Rogues, yes.
Q And so you said that it appeared -- in paragraph 12, at the end of paragraph 12, the last sentence, it says: "It appeared to the user that STOPzilla simply did not load, and they would abandon STOPzilla and look for another product."
A Correct.
Q So does that mean that other products were not blocked by the malware on that consumer's computer?
A No, that's not what that means. If they went to another product, the same exact course of actions would occur. So what I'm referring to there is when you're infected with

these programs and you click the download button, the download box would not come up as traditionally people were used to the executable. So nothing happened whatsoever, and customers didn't know that malware had this capabilities of what they had. So as they went to find another solution, they would incur the same exact thing.

Q So this happened no matter what product they downloaded?

A If malware was targeting that security, if you're talking about a reputable security product at that time, you know, to the best of my knowledge, that malware was targeting all of the vendors.

Q So then you state in paragraph 13 that you internally created what's called a blocked install page.

A Correct.

Q And what is that?

A That was what I described before.

Q Okay. So -- okay. So can you just explain it one more time, though?

A Sure.

So when a user types in a problem, I have, you know, Win 7 anti-spyware, which was a Rogue at the time, and they landed at our page, when they clicked the download button to install it would go to a thank you for downloading page. On that thank you for downloading page, we added content saying if you didn't see the executable pop up, you know, if you're

experiencing this symptom, then call in and we will bypass the infection for you and install STOPzilla.

Q Okay. And then, so that's how you started getting inbound calls; is that right? And for that purpose, people would call in because they'd want to --

A We were receiving those calls before that. That's how it came to be. The symptoms that the customers were experiencing, we had some people that e-mailed and called in. We had customer service at the time. So that wasn't the beginning of inbound calls.

Q And how else did you receive inbound calls? From what other leads?

A They weren't leads. People could not activate, they could not register STOPzilla. That was the chief problem, you know, normal billing calls, normal software support calls.

Q Okay. And what was the -- was the tech support arm of iS3 called anything else?

A It was called Smart Support.

Q Smart Support. Now, the people who answer the phone for ICE are called sales agents, right?

A Correct.

Q Okay. And it's not required for a sales agent who applies to work at ICE to have any kind of computer experience beforehand; is that right?

A In the interview process we expect and we ask them, you know, whether they know their way around a computer, they're comfortable with a computer, they understand computers. If someone came in and they just had a sales background with zero ability to operate a computer, then, no.
Q Okay. And isn't it true that the key responsibilities of a sales agent are to answer the phone, right? Answer the inbound calls?
A Amongst other, yes.
Q Amongst other things, right? Answer inbound calls?
A Sure.
Q And to remotely log into the customer's computer?
A Sure.
Q And activate the software that the customer's already purchased?
THE COURT: Is that a "yes"?
THE WITNESS: Correct, I'm sorry.
BY MS. ROBBINS:
Q And run a diagnostic on the computer?
A That, and part of the diagnostic is, as you've seen from the calls the FTC made and from the consumer witnesses that have come up here, part of it is asking the question of what is wrong with the computer, why did you call in, why did you download the software.
Q But it doesn't say that on the script, though, does it?

A It does on other variations. That was occurring in the natural conversation.

The one thing that's I think sort of missing is there were dialogues here and there were conversations from the consumer, even, you know, as I stated, the consumer witnesses that came up here and the calls, that those questions were asked.

Q But isn't it true that sales agents were supposed to stick to the script and read the script verbatim?

A We called it a guideline. If a customer asked a question, they could certainly deviate. They could build rapport. They could ask what was wrong with the computer.

Q They could deviate from the script?

A They could deviate from having a conversation. We want to maintain the path of the call.

Q So could they -- could they deviate from the script and not sell tech support?

A Sure, sure. There were plenty of calls where people just wanted to be activated, we activated. There were calls where people had a problem with the original software, they wanted a billing question.

Q So that wasn't an infraction to do that?

A I don't understand.

Q So a salesperson who deviated from the script and decided, you know what, you don't need any tech support, they

didn't get a warning for that?
A If the customer didn't need any tech support, they could offer the preventive maintenance program that we had.
Q Could they not offer anything?
A It depended on the customer. There were definitely calls where people had billing issues with the original software, and, no, they wouldn't offer -- if the customer called in and said there was nothing wrong with my computer, they shouldn't offer it.
Q So if a customer called in after activating a product --
A Uh-huh.
Q -- that salesperson reading that script could deviate from the script and not sell tech support?
A Depending on the question, what's wrong with your computer, the response to that.
Q I want to show you --
THE COURT: I'm sorry, you didn't let him finish. Go ahead. Finish your answer.
THE WITNESS: I lost my train of thought, I guess.
MS. ROBBINS: You can have it read back if you want.
BY MS. ROBBINS:
Q I want to show you PX37, page 1795. And I'm going to show you the first page.
A Uh-huh.
Q Can you tell me -- can you please read to yourself from

the top of the page down to step one, and then look up when you're ready.

MR. STREISFELD: Excuse me, Ms. Robbins. I didn't hear what you said, which page?

MS. ROBBINS: It's PX37, and I don't know which page.

THE WITNESS: 1795.

Okay.

BY MS. ROBBINS:

Q Does it say anywhere in that first part of the script for the representative to ask the consumer what their problem is?

A It does not, but that does not mean that did not occur.

Q Okay. I'm showing you PX37, page 1537, and then -- actually, 1537 and 1189.

First, 1537. Can you please read what that document says? What is that document?

A To be honest with you, I'm not familiar with this. I've seen it before. You know, my role in the company was not really in the sales department. I focused on the recruiting.

Q But you were president of ICE, weren't you?

A Yeah, uh-huh.

Q And what does that document say?

A It says The Golden Rules of every call.

Q And what does number 3 say?

A It says read all the worlds in the script. Do not add

any words or leave any out.

But like I said, based on the transcripts, it's clear that there's a dialogue going on here in conversation.

Q But in that -- in those golden rules, they are told that they have to read every word from the script; isn't that right?

A It says that.

Q And you heard yesterday from Mark Campeau in the script training notes that he tells the trainees that they are actors and actresses, and they have to read every word on the script; isn't that true?

A Mark who?

Q Campeau. Your sales -- oh, sorry, Mark Deviny. Sorry. I messed up the names.

So Mark Deviny is a sales trainer; isn't that true?

A It's true.

Q And yesterday he testified.

A Uh-huh.

Q And yesterday he said that he, in his training, tells sales agents that they are actors and that they cannot deviate from the script. Isn't that true?

A That he testified that; is that true?

Q Yes.

A Yes, he said that.

Q And I'm showing you PX37, page 1189. This is a meeting

script that's from -- was one of the call rooms.

And can you please read step one, the five steps under step one?

A Sure.

It says: "Log onto every computer, read all the words from the script, make sure you don't add anything or leave anything out, ask for money, learn how to rebut well, resell value, ask for money again."

Q Okay. And in that document, does it say that it's a guide, or does it call it a script?

A It says meeting script.

Q Under step one, when it says read all the words, does it refer to it as a guide or as a script?

A Script.

Q Now, I'm also showing you from exhibit 37 page 1539 and page 1544.

Can you please tell me what those documents are?

A These are -- these are employee warning reports from the sales managers.

Q And on the first document, what did the salesperson do wrong?

A I would need the context of the call to see if this response is accurate.

Q I'm showing you the document that was found in your business premise called Employee Warning Report.

A Uh-huh.
Q So can you please tell us what the employee did on that first one that caused him to have an Employee Warning Report written up about him or her.
A It says: Details of the infraction: Agent was off the script throughout the whole call."
Q And what does the second one say?
A "Details of infraction: Telling customers how to remove infections off computer. Also not following the infection pitch, wasting company's time -- customer's time and his own time."
Q So on the second one you read, it said that the infraction was telling customers how to remove infections off computers. So the sales agents were not allowed to help the consumer at that point in fixing the computer, were they?
A No. Removing an infection without being a certified technician is extremely dangerous.
Q And the first one says the agent was off script throughout the whole call, and that was an infraction, correct?
A Correct.
Q Now, you signed a contract with Ripoff Report, correct?
A Yes.
Q And Ripoff Report is an online service that allows consumers to file complaints, right?

A Correct.
Q Okay. And you were very adamant in your declaration that Ripoff Report does not take down posts that have already been posted, right?
A Correct.
Q Okay. But your contract, what your contract says, is that it will hold complaints before they're even posted, right? So the consumer has to wait a few days before it will get posted; is that correct?
A That was one part of -- I forget the details of the contract, but there were specifics on when the complaint would be published.
Q Well, let's look at the contract.
A Okay.
Q I was trying to find the right page for you.

This is PX37. Starts at page 1426.

This is page 1428.

So in that contract, isn't it true that consumers have to wait until Ripoff Report e-mails the consumer, and then the consumer must wait five days before contacting Advanced Tech Support, and that was supposed to be a cooling off period, right?
A That's their policy, yes.
Q Okay. But you paid for that service, right?
A Yes.

Q And you paid $15,000 to Ripoff Report; isn't that right? That was your upfront fee?
A I can't recall the exact amount.
Q Well, it's in the contract. You can look and see.
A If you say so, yeah.
Q And isn't it true that in that contract, Ripoff Report can decide to wait for the consumer to e-mail Ripoff Report back before responding, and that Ripoff Report cannot post a report if the consumer does not respond within 10 days?
A Yes.
My objection to what Mr. Aiken put in his report is that he wrote that Wright signed the agreement to Ripoff Report to not display complaints after ICE corporate Defendants on its website, and after I signed the contract, those complaints would be displayed on the website still.
Q On whose website?
A On Ripoff Report. My complaint did not remove complaints from the website. So the way the sentence is written is incorrect.
Q So -- but the question is is that the consumer may not have their report posted at all, isn't that right?
A But what I'm referring to in my declaration, what you're referring to now, is strictly to that comment that Mr. Aiken put in there, which is very specific, which is incorrect.
Q But that's not what I'm asking you. What I'm asking you

is isn't it true that consumers' complaints may never get posted at all under this contract?

A In certain -- in certain circumstances.

Q Now, you mentioned in your declaration -- I'm sorry -- so this is paragraph 67 and 68. You talk about Eric Haus.

A Yes.

Q And the FTC had submitted a declaration from Eric Haus with an e-mail exchange for purposes of the TRO; is that right?

A Yes.

Q And that e-mail exchange was between you and between Mr. Haus?

A Correct.

Q And you chose to put in portions of that e-mail exchange into your declaration; is that right?

A I didn't think it was appropriate to put the entire dialogue into my declaration, since it was already in evidence.

Q But you chose to put in the portions -- well, strike that. Eric Haus is a malware researcher at ThreatTrack Security?

A ThreatTrack Security is a product of GFI. Eric Haus works for GFI.

Q Okay. But he -- and that company has a product called Viper Internet Security?

A Yes.
Q Isn't it true that at one point Viper Internet Security blocked advancedtechsupport.com, your domain?
A Yes, and it was particularly surprising, because our anti-malware product is powered by Viper.
Q But in that e-mail exchange, Eric told you that it was blocked due to numerous complaints and your BBB revocation; isn't that correct?
A Yes, and he supplied one link to a single complaint where the -- if my recollection's correct, the person was saying that we didn't fix the computer properly, and at the end of that complaint he said the customer said that they were satisfied.
Q So your testimony is that he only provided you with one link to one complaint?
A If I recall, yes.
Q And did he say anything else about any other complaints, or was it just the one complaint that you had with Ripoff Report, that was on Ripoff Report?
A Yes, he said that his organization has received complaints about us, some of our tactics. He didn't provide any additional information or have a way that I could verify that they were our customers.
Q But didn't he tell you that the site was being blocked because of widespread complaints about the service being a

scam or fraud?
A He said that he's received complaints about that, but, again, he provided no evidence of whether that was our customer or not, and he said the main reason, I think it's in follow-up, was the BBB revocation. The revocation of the BBB was the main, if I'm recalling correctly.
Q Isn't it true that he said that your site was blocked because of widespread complaints about the service being a scam or a fraud, and that he gave you an example of the complaint from Ripoff Report?
A Right. And that example, if you look at the content of what that person said, that was not the person complained about their computer not being fixed.
Q Didn't he also tell you that the complaints had been bad enough that the BBB recently revoked the company's accreditation?
A He had no personal knowledge of why it was revoked.
Q And did you ask him that?
A No.
Q So you have no idea what he --
A I explained it, what happened in the follow-up e-mail.
Q Isn't it true that in that follow-up e-mail, that he told you that they personally, he personally had received complaints directly from consumers about Advanced Tech Support, and that, in fact, they were reporting that the

company's representatives used baseless scaremongering tactics, i.e. remotely connecting to users' PCs and showing them routine errors in the Windows Event Viewer in order to pressure them into buying unnecessary and outrageously expensive remediation services and products. Isn't it true that he told you that based on his own knowledge?

A That was in the previous line that you questioned me about earlier. That was connected with that.

Q Now, you said in your declaration that consumers who have different infections --

A I'm sorry. Where was --

Q Oh, sorry.

Okay. It's paragraph 59.

A Yes.

Q Yes.

Okay. So you said in your declaration in paragraph 59 that consumers who have different infections -- so if you have an FBI virus and you Google search that -- your company bought AdWords, Google AdWords, right, or search terms? I guess you bought search terms?

A Correct.

Q So that way when consumers Google something, your domain would display; is that correct?

A Correct.

Q And so what you say in your declaration is that because

of that, your sales agents would know exactly what infection the person had before calling in; is that correct?

A Do I say that? If I say that, I miswrote. No, the agents did not know the specific exact infection. They did know that if it was a malware experts call or a similar website, that that person had some type of variation of some type of virus.

Q So -- and then -- and your phone system could recognize that this was supposed to be an infection call, and it would display the infection script, right?

A Correct.

Q I'm showing you the infection script, which is exhibit 37, page 1571. Just take a look at it, and I'm going to need it back.

A Okay.

Q So that's the script that a sales agent would use if the consumer called in about an infection, correct?

A Correct.

Q And there's no other infection script, is there? That's the only one that pops up?

A I mean, like I said, I didn't focus in the sales part. I'm not a hundred percent sure.

Q But in your declaration you talk about the fact that consumers would -- that when the phone system would recognize that this was an infection call, that they would display the

infection call guideline, which was script four; is that correct?

A Correct.

Q And, so, no matter what infection a consumer called in about, that would be the script that the sales agent would read; is that right?

A Correct.

I'm sorry.

Q Okay. So in paragraph -- sorry. Let me take that back. Thanks.

In paragraph 47 of your declaration, you talk about the Event Viewer, and that the Event Viewer -- that ICE historically trained its phone agents on the utility of the Event Viewer to educate a consumer who already believes his computer is not working correctly, that errors listed in the Event Viewer may show evidence of a problem that should be addressed by a technician; is that true?

A Correct.

Q And isn't it true that the majority of the customers that call in to Inbound Call Experts are calling to activate software?

A No.

Q So what percentage of calls that Inbound Call Experts receives are from activating software?

A I don't know. I don't know. We receive customer service

calls, we receive billing calls, call-backs, activation calls, infection calls.

Q In terms of new calls, so not repeat callers, what do you think -- do you know what the percentages of inbound calls that relate to activating products or services?

A I don't know.

Q Have you ever seen the activation page of when a consumer does purchase a program and then downloads it? Have you ever seen the page that pops up to tell consumers to call Inbound Call Experts?

A There's many variations of it.

Q But you've seen it?

A Uh-huh.

Q So you know what it looks like?

THE COURT: Is that a "yes"?

THE WITNESS: Yes.

BY MS. ROBBINS:

Q And isn't it true that that on that activation page, that the thing that consumers see, the phone number in big bold letters rather than seeing the activation key?

MR. NICHOLSON: Objection as to which activation page. There's a number of them.

BY MS. ROBBINS:

Q Have you ever seen the PC Cleaner activation page?

A I've seen it in the trial so far.

Q So did you ever download PC Cleaner yourself?
A Not that I recall. I don't think so.
Q So you never once download -- did you download any of the other software products that you partner with?
A Yes.
Q Okay. And when you've downloaded those products, did you see the activation page?
A I have seen it. I didn't always make a purchase. Sometimes I made a test purchase. So I have seen it.
Q Okay. So now I know you said you haven't downloaded PC Cleaner. I'm going to show you the PC Cleaner -- have you?
A I said I wasn't sure.
Q Well, let me show you --
MR. NICHOLSON: Objection, no foundation. He's just testified he's not familiar with it, then there's no foundation for him testifying about it.
THE COURT: Overruled at this point.
BY MS. ROBBINS:
Q So I'm going to show you what this activation page looks like, and tell me if it looks familiar to you.
MR. NICHOLSON: Can I see the exhibit first please?
MS. ROBBINS: This is exhibit 38?
MR. NICHOLSON: I'm going to object to this exhibit, because it does not represent the full page, and it's misleading.

THE COURT: Overruled.

MS. ROBBINS: Can you see it, Your Honor?

THE COURT: If you want me to see it.

BY MS. ROBBINS:

Q Can you see that, sir?

A Okay.

Q Does that page look familiar to you?

A Yes, it's not the entire page, but the first half of the page looks familiar.

Q But when it's on a computer screen, right, you don't see the whole page, you'd have to scroll down to see the rest of the page, isn't that right?

A That depends on the monitor size, a very small monitor. It would actually be -- it could be cut off where it says order confirmation, and you would have to scroll down. A very large monitor, say even a TV screen, you would get the entire page.

Q Right.

But in a smaller monitor, that could be all that you see; isn't that right?

A Well, it could be even less.

Q Right.

Okay. And from looking at that, can you see what the activation code is? Can you find it?

A It's cut off.

Q Okay. So do you see the box in the middle that says activate your software by calling?
A Yes.
Q Okay. And that's ICE's phone number? Or was one of ICE's phone numbers?
A I can't confirm that.
Q You don't know for sure?
A I don't. I don't.
Q Okay. And isn't it true that a consumer could activate the software on their own?
A Yes, many did.
Q And if a consumer -- strike that.
Isn't it true that ICE has posted ads, like on Craigslist and other places like that, careerbuilder.com?
A For recruiting?
Q Sorry, for recruiting for sales agents?
A Yes.
Q Isn't it true in those ads that they say, for the sales agent job, that no computer experience is necessary?
A I'm not sure. Does it?
I know in our original iterations we said computer experience, computer experience, we want computer experience, and we could get no one to show up. So the rare person who has, you know, a ton of computer experience and they're a tech and the ability to sell, it's just there's not too many

people out there.
Q So if you had someone who applied to who had computer experience, you'd probably use them as a tech, then, instead of a sales agent, right?
A No, that doesn't mean that.
Q So you wouldn't use a person who had computer experience as a tech?
A It completely depends on their personality, their background, their resume.
Q But in your ad that you place, you say that no computer experience is necessary?
A Correct.

MS. ROBBINS: I don't have anything further.

THE COURT: Thank you.

Any redirect?

MR. STREISFELD: Yes, Your Honor.

Redirect Examination

BY MR. STREISFELD:
Q Good morning, Mr. Wright.
A Good morning.
Q You were asked some questions about the infection script this morning, correct?
A Yes.
Q And in relation to the use of AdWords, correct?
A Correct.

Q Okay. Can you explain for the Court how your company used the AdWords specific to the infection script?
A Yes, we would -- I've been in marketing, security, anti-spyware and the security industry for 12 years now, and people Google. They don't -- certainly, people Google the word "malware," but we found that people started getting a little more educated in what they queried, so they would query the specific infection they had. So the FBI virus is very prevalent right now, and so people would query how to remove the FBI virus, I need help removing the FBI virus, help to remove the FBI virus, and derivatives like that. We would bid on those keywords.
Q So then what would happen if that phraseology that you just mentioned was inputted by a consumer? What would happen next on the Internet?
A The AdWords ads is an auction, so there's other companies bidding on those phrases. Google would display the results based on a complex algorithm that they had that determines bid price and quality rank, and our ad would show based on where we fell into that equation.
Q And what would happen if a consumer, or anyone for that matter, clicked on that ad?
A They would land at our page that would display a guide on how to remove the infection.
Q Okay. And did it also display a telephone number if the

individual wanted to contact your company?
A In the ad?
Q Yes.
A No.
Q Okay. There was no outbound calling done with regard to what we're discussing, correct?
A No.
THE COURT: No, it's not correct, or, yes, that is correct?
BY MR. STREISFELD:
Q Is it correct that there was no outbound calling done by ATS or ICE with regard to what we just discussed?
A Yes, that is correct.
MR. STREISFELD: Thank you, Your Honor.
BY MR. STREISFELD:
Q You were asked some questions about the hiring of sales agents, do you recall that?
A Yes.
Q In the more recent times in the conducting of your business, of your company's business, when sales agents are hired, do they have to pass any sort of testing in order to be put onto the floor?
A Not every single time, but we -- it depends on different things. But we would put them through some type of standardized testing, personality tests, computer efficiency

tests, and the scoring out. Was the test given to every single person? I don't believe so.

Q During the process when someone is calling, for example, the activation number that's displayed on the exhibit on the easel --

A Yes.

Q -- there's a process by which the consumer will be asked if the sales agent can remotely connect to the customer -- the caller's computer, correct?

A Correct.

Q And, in fact, at the point in time that that person is -- dialed the number, that person is not yet a customer of ATS, correct?

A Correct.

Q And is it also correct that in order for your sales agent to be connected to that computer remotely, it requires at least an activity to be done by the caller?

A Yes, there is remote confirmation and at least three or four actions that the customer has to take to authorize us.

Q Including putting in a code that the sales agent gives in order to allow for the system to connect, correct?

A Correct.

Q To your knowledge, had some customers of ATS become customers even though the sales agent didn't complete the script entirely?

A Yes, it happens a lot. In the beginning of the call, the customer would often tell us the systems, the problems that they're having: Can you fix me, can you help me. A lot of people are not aware of the technology of being able to remote into a computer. So they think their only solution at that point is unhooking everything, driving it to Geek Squad, or hiring a technician to be in their living room, so that they only think those are the only two options, and the remote technology is a huge, huge asset to the consumer.

Q And if a caller had cut the customer service -- I'm sorry. Strike that.

If the caller had said at some point during the call to the sales agent that I've heard enough, I'd like to buy support services to get the computer fixed, is it acceptable under your policies for the sales representative to complete that transaction without going through all the steps in the script?

A Absolutely.

MR. STREISFELD: Excuse me, Your Honor.

May I approach?

THE COURT: Yes.

BY MR. STREISFELD:

Q I'm going to show you a document that Ms. Robbins showed you. For the record, it's PX37, 1189.

Mr. Wright, do you recall being asked a few

questions about step one on this meeting script document?
A Yes.
Q Can you read item number 2 under step one for the Court, please?
A "Read all the words in the script. Make sure you don't add anything or leave anything out."
Q And based upon your knowledge of the sales representative's work, was that sentence intended to make the sales agents robots such that they couldn't interact with the customer based upon the questions and the comments made by the customer during a call?
A No, not at all -- as I stated, the transcripts of the calls that they made, there was dialogue, that the consumer witnesses that came in testified that there was dialogue. On every single call there's a conversation that occurs.
Q Okay. Number 4 in step one says learn how to rebut well. Do you see that?
A Yes.
Q What does that mean in the context of the sales call that a -- strike that.

What does that mean in terms of the context of a call where someone has dialed an activation number, such as the one on the easel?
A That means there is -- if the customer has objections, there are certain rebuttal tactics I believe that the sales

agents had in there that they could use.
Q And those things, were those things that they were trained to do as part of the overall training maybe separate from script itself?
A Yes.
Q You can lay that in front of you.
MR. STREISFELD: May I approach, Your Honor?
THE COURT: Yes.
BY MR. STREISFELD:
Q Mr. Wright, you have before you the document that was marked PX37, page 1544. Do you see that?
A Yes.
Q You were asked about this document by Ms. Robbins, correct?
A Yes.
Q Can you remind the Court what this document is?
A It's a Employee Warning Report. This is -- the sales managers use this report.
Q And Ms. Robbins took you through the -- if I recall correctly, took you through the description of the infraction and the plan for improvement sections of this warning form, do you see that?
A Yes.
Q Do you agree that's what she did?
A Yes.

Q Below that plan for improvement section, there's a section called consequences of further infractions. Do you see that?
A Yes.
Q What is handwritten to the right of that?
A Possible termination.
Q Okay. Is it correct that ICE, doing business as ATS, from time to time terminated people for not following company policies?
A Sure.
Q So do you view this warning report as indicating that someone -- this particular person, I guess it's Mr. Davis, might be terminated as a result of this conduct?
A Yes, especially telling a customer how to remove an infection without being certified is a pretty serious infraction. That could cause serious damage to a caller's computer.
Q There is a signature line for the employee below in the acknowledgment of receipt of warning section, correct?
A Correct.
Q So it was ATS's policy that the employee actually have to sign the warning report, as opposed to just putting something in their file and not telling them about it, correct?
A Correct.
Q And as part of the processes of your company, would that

employee be counseled by someone in management?
A Yes, his manager.
Q You were shown another employee warning during your testimony, correct?
A Yes.
Q And the format of that report was the same, correct?
A Yes.
Q Including the fact that the employee had to sign that report, correct?
A Yes.
Q You were asked some questions about the Ripoff Report, do you remember that?
A Yes.
Q To your knowledge, is it a fact of life in this day and age with the Internet that there are a variety of websites that go up that are asking people to comment about a particular company or rate a particular company?
A Yes. The most reputable charity, the Red Cross, are on the Ripoff Report for being -- you know, having problems. There's not a company that's not on there.
Q And the Government's trying to make something out of the fact that your company contracted with the owners of Ripoff Report to get involved in a back and forth service, so to speak, in order to be able to have an opportunity to address potential complaints, correct?

A Correct.

One of the key features about the advocacy program that I liked about Ripoff Report is that it opened up a pipeline to us and the customer where Ripoff Report would be the proxy in between, but at least we would have communication with them, and we could investigate it and help them out the best we could.

Q I'm happy to show you the contract if you need to review it, but Ms. Robbins asked you some questions about the process, the back and forth process once a complaint is made, correct?

A Correct.

Q And she asked you a question about the number of days of delay between the time that Ripoff Report would receive the complaint before it would go up, correct?

A Correct.

Q It was a matter of a few days, correct?

A Correct.

Q And is it not correct that under the terms of the agreement, the -- if the customer through the back and forth process had indicated to the Ripoff Report company that the matter was resolved because your company had an opportunity to address it, that that would be the instance in which the report would not go up on the website.

A Correct.

Q And so your company used that as an assistance of customer satisfaction; is that correct?
A Correct.
Q And also as an assistance to avoid -- to try to help deal with the issue that a company like Ripoff Report might post something and leave it up there without having any opportunity to address it, correct?
A Correct.
MS. ROBBINS: Objection, Your Honor.
THE COURT: What's the objection?
MS. ROBBINS: He's testifying.
THE COURT: Sustained. Rephrase your question.
BY MR. STREISFELD:
Q What purpose being involved in the corporate advocacy program have beyond what you already testified to?
A It would ensure that we could communicate with the customer and make them whole, make them happy. If they want a refund, we would give them a refund, if they haven't got one yet, or attempt to fix the computer and get a refund, we wanted to make sure they were happy.
Q Okay. You were asked some questions about your communications with Mr. Haus at ThreatTrack. Do you recall that?
A Yes.
Q Prior to the issuance of the temporary restraining order

in this case, what was your company's status with ThreatTrack?

A We were white listed, and he thanked me.

Q Okay. What do you mean by he thanked you? And I assume you're referring to Mr. Haus?

A Yes, Mr. Haus sent a follow-up e-mail where he received a -- if I'm recalling the contents correctly, he received -- a customer said that we installed a temp version of Viper on their machine, and I asked the customer's name, I investigated the matter. I even listened to the call. It turned out that the customer was an active member of Advanced Tech Support. They asked us to install Viper.

We did not have the registry activation key for Viper, so we un-installed it, and reinstalled it, and then we told them that they had to go to Viper to get their activation key if they couldn't find it in their e-mail from the past purchase.

He responded back that -- he thanked me at that point, and that was the last I heard.

Q Just for the Court, so it has context, what is Viper? What are you referring to?

A Viper is an Internet security product. It also can be an Internet security SDK engine. It's an anti-malware product.

MR. STREISFELD: Just give me one second.

MR. NICHOLSON: Judge, while he's doing that, may I

retrieve that exhibit?

Thank you.

BY MR. STREISFELD:

Q Do you recall whether the Viper product that you just identified for the Court is something that ATS sold to that customer?

A Viper powered our PC MRI anti-malware product.

Q I see.

And in the discussion about Mr. Haus that you had with Ms. Robbins, there was a reference made to the Better Business Bureau; is that correct?

A Yes.

Q And around or after that point in time, did the Better Business Bureau restore ATS's status?

A They did, and I notified Mr. Haus, and he white-listed us immediately after that.

Q Were there times when ATS would get calls for activation -- calls using the activation number, for example, on the board that Mr. Nicholson took to prepare anything he wanted to ask you about -- let me do it again.

So with regard to example of that --

MR. STREISFELD: It's okay.

BY MR. STREISFELD:

Q -- were there times where people that had bought one of your partners' products, for example, PC Cleaner, might use

that activation number to contact your -- contact your company even though they had completed the installation of the software on their own?

A Yes.

Q And can you give the Court a couple of examples of why those people might contact you even though they had successfully activated the software by themselves?

A It could be many, many. They could be unhappy with the software potentially, have billing questions, they have a much more common and much more serious problem with the computer that's out of scope of what the software they downloaded. It was various.

MR. STREISFELD: Nothing further. Thank you, Your Honor.

THE COURT: How much do you have?

MR. NICHOLSON: Five minutes or less.

THE COURT: Okay.

Cross-examination

BY MR. NICHOLSON:

Q With respect to exhibit, Government exhibit -- or Plaintiffs' exhibit number 38, you're familiar with, generally speaking, the activation screens of the various software partners you have?

A Yes.

Q And are you generally familiar with computer screens in

general from your background in the tech support business?
A Absolutely.
Q Does it appear to you that this is a complete screen shot of the information that would appear associated with this screen?
A Not at all.
Q I don't know if you can read it from there. If you can't, I'll come over to you. But you can tell me what the heading on the top of this screen says?
A You're testing me here.
Q I can walk closer if you need.
A I think I got it. Order confirmation, license key and instructions.
Q Would that seem to indicate that somewhere on this page one would expect to find a license key?
A Yes.
Q Let me show you what we're going to mark as defense exhibit number 10 --
MR. NICHOLSON: Which, Your Honor, I would move to continually admit for the purpose of this witness and with the subject of Mr. Myricks authenticating it.
THE COURT: Any objection?
MS. ROBBINS: No, Your Honor.
MR. NICHOLSON: May I approach the witness?
THE COURT: Admitted without objection.

(Defendants' Exhibit No. 10 entered into evidence.)
BY MR. NICHOLSON:
Q Can you just take a look at that screen there? First, take a look at that as compared to this. And can you tell us whether they are in the same format?
A No, they are not. This is -- exhibit 38 is cut off right where the third download button is and right where the license key is.
Q So what's right below -- let me retrieve this. This was one of those days where I wish we did have the ELMO up and running.
All right. So on 38, it's cut off. Right here you said it's cut off right at the third download, correct?
A Right.
Q And on exhibit number 10, what is right after that third download?
A The license key.
Q And just so --
MR. NICHOLSON: Judge, I don't expect with our eyes that you'll be able to see it from there. I'm going to point to this.
BY MR. NICHOLSON:
Q That would be right here under the point that says -- right here under the third download, right?
A Yeah, it has the key icon in the box.

Q In a bolded box?
A Yes.
Q With the word "license key?"
A Yes.
Q Now, let me go back to this again, since this one's easier to read.

Right under the block where it says activate the software, activate your new software by calling, can you read the instructions or the directions that appear right below that?

You got it right there.

A "To quickly activate your software, call us toll free at the number above. Our technicians will securely connect to your PC and remotely activate your software for you. At your request, we will diagnose your PC for other hard to identify problems."
Q When PC Cleaner Pro customers would contact ICE, were they instructed -- your sales staff, were they instructed to activate the software when the customer called in?
A Yes.
Q Did they have to purchase anything for you to activate that software?
A No.
Q And where would they get the activation key in order to do that?

A Where would who get?
Q Your customer service rep. Where would they get that activation key in order to enter it to activate the software?
A They could get it from the page, they could get it from -- we had a lookup tool, and they could get it from there. The customer's e-mail, if the customer went into their e-mail and grabbed it.
Q And if they remotely logged in on the customer's computer, would it be there on the screen?
A Yes.

MR. NICHOLSON: I have no further questions.

THE COURT: Any recross?

MS. ROBBINS: Just a few questions.

Recross-examination

BY MS. ROBBINS:
Q Mr. Wright, I'm just showing you People's exhibit 30, page 1002, 1003. This is the job description on the Inbound Call Experts website.
A Okay.
Q And can you just read on that first page the first bullet on position highlights?
A Yes.

"Anyone with any type of sales experience excels at this position."

Q And on the next page under job specifics, can you just

please read what is written there under job specifics for the job for the sales agent.

A "Prequalified inbound calls from people with computer problems. You sell the service of our IT technician workforce. You are not expected to repair the computer. You sell; the technicians do the work, it is simple. No cold calls ever."

Q And isn't it true that employees could be terminated for instructing a customer how to activate the software themselves?

A No.

Q I'm showing you exhibit 37, page 1545. Can you please read what that is? Is that an employee warning?

A Employee Warning Report.

Q Okay. And what is -- under the infraction, what does it say?

A It says "Miguel picked up a driver support call, stopped trying to log onto the computer after a few minutes, then instructed the customer how to activate the software themselves. Then offers refund number to customer in case she ran into any problems."

Q And under consequences what does it say?

A Well, the infraction relates to not trying to log onto the computer. We have a policy where, if you don't make significant attempts to remote onto the computer, that is the

infraction that he's stating here. That's what he's talking about.

Consequences of further infractions, it says possible termination.

Q So what you're saying is that even though the infraction says they stopped attempting to log on and activated the customer's software -- or told the customer how to activate the software themselves and gave them the refund number, the two things after, those don't count? Those aren't the infraction?

A No, what I'm saying -- yes, it's poorly written. The specific infraction is that the agent stopped trying to log onto the computer after only a few minutes.

Q But under the infraction they don't just say --

THE COURT: One at a time, please.

THE WITNESS: It does say, then instructed the customer how to activate software themselves.

MS. ROBBINS: Thank you.

I don't have anything further, Your Honor.

THE COURT: We'll take a recess, 15 minutes. We'll see you in 15 minutes. Thank you.

(A recess was taken from 10:54 a.m. to 11:11 a.m., after which the following proceedings were had:)

THE COURT: Please be seated, everyone.

Are we ready for the next witness?

MR. FERGUSON: Yes, Your Honor. We call Robert Deignan.

We're going to move his declaration into evidence.

MR. STREISFELD: Well, actually, his declaration is already in evidence as tab 1 of or Volume 1 of our notebook, Judge. But in addition to that, we would like to mark as exhibit 50 an amendment to his declaration. Just picking 50 randomly to space it out from the PC Cleaner Defendants and to use the number that you used yesterday, which we haven't actually used yet.

So exhibit 50 would be the amendment to declaration of Robert Deignan that I believe is in your notebook, and it was filed with the Court at docket entry 64-1, to address a math error in paragraph 3.

THE COURT: Any objection?

MS. BURTON: No.

MS. ROBBINS: No, Your Honor.

THE COURT: They'll both be admitted without objection.

(Defendants' Exhibit No. 50 entered into evidence.)

Robert Deignan, Defendants' witness, sworn.

THE COURT: Please be seated.

Sir, if you could tell us your name and spell your least name, please.

THE WITNESS: My name is Robert Deignan, last name

D-e-i-g-n-a-n.

THE COURT: Thank you.

THE WITNESS: Thank you.

THE COURT: Cross-examination.

Cross-examination

BY MS. ROBBINS:

Q Good morning, Mr. Deignan. My name is Colleen Robbins and I'm an attorney with the Federal Trade Commission. I'm just going to ask you some questions about your declaration.

A Okay.

Q So you wrote out a declaration in this case, correct?

A Yes.

Q And you wanted to be truthful and accurate and give the Court as much information as possible about this case, isn't that right?

A Of course.

Q Okay. And you spent a lot of time actually talking about your interactions with the Better Business Bureau; is that right?

A Yes.

Q Okay. So you talked about the Better Business Bureau in paragraphs 22, 23, 24, 25, 27 and 28 of your declaration; is that right? You can take a look and confirm.

A Where did you start?

Q Twenty-two, 23, 24, 25, 27 and 28.

A Yeah, we -- yeah.
Q Okay. And you say in your declaration that you personally responded to every complaint; is that true?
A Up until May of this year.
Q And who responded to the complaints after this year?
A Aaron Barge.
Q Did you review any of them before he responded to them, or did you just stop reviewing them in May?
A Yeah, I mean, as the CEO of the company I probably held onto it a little too long, but Aaron was a perfect fit to be able to handle it. So he took over everything from the initial to the whole process.
Q So you stopped reviewing them in May of 2014, then?
A I stopped reviewing -- which part, the actual complaint?
Q Yes.
A Yeah, but the team would keep me up to speed with what was going on.
Q Okay. So they would just fill you in if you had received -- if the company received complaints, but you wouldn't then personally review them?
A No, I was aware that we were getting complaints. When I say that I turned it over to Aaron, that was for him to respond. I actually kept -- okay. Let me take a step back.
Q Sure.
A How the Better Business Bureau works is they have an

Internet, right? So if there's a complaint it will go to the Better Business Bureau, and you would receive an e-mail notifying you that there was a complaint. So you would log in and you would be able to read that. I still to this day receive those. I just don't do the initial response. Okay. So up until May I did the initial response, and then around mid May, Aaron started taking over that. But I still did get the initial correspondence from the BBB.

Q Got it.

So you -- so you stopped reviewing them -- sorry. You stopped responding to them in May, but you reviewed them continuously throughout, since July 2012, when you were first accredited with the BBB; is that right?

A Yes.

Q And you also made it a policy to refund every customer that wanted a refund from the BBB complaints; is that true?

A I don't believe I made a policy to do that, no.

Q But did you refund consumers who complained to the BBB?

A For the most part, yes, but not everybody.

Q Okay. And when would you decide not to refund a customer?

A Sometimes I believe we would get it resolved, and there wasn't a refund that was warranted, and a lot of times when I was handling it initially, there was a section from the BBB that says the customer's desired response. If that was a

refund, we would refund them, and we would still reach out to them to find out what happened.

Q Okay. And you also said that you made sure to review and act upon every complaint; is that right?

A Yes.

Q Okay. Now, in all these paragraphs that you talk about the Better Business Bureau, you never once mentioned that Advanced Tech Support had its accreditation revoked in August 2013, did you?

A I did not.

Q And you failed to mention in your sworn declaration that the revocation was because you failed to cooperate with the BBB in its efforts to eliminate the cause of pattern of complaints; is that right?

A Can you repeat that?

Q So the BBB letter that you received stating that you were initially suspended and then revoked was because of a failure to eliminate the cause of pattern of complaints; is that right?

A There was a pattern of complaints, yes. That was the reason for it to happen the first time, yeah.

Q But it's also the failure to eliminate the cause of the pattern of complaints; isn't that true?

A That's what they stated, but that's why we made sure that we set up a meeting with them to discuss that with them.

Q Okay. And you actually were able to get your accreditation back, right?
A That's correct.
Q Okay. But then you also fail to mention in this sworn declaration that you were -- that the BBB suspended your accreditation pending revocation on October 21st, 2014; isn't that correct?
A Yes, I did. That was the same date of the declaration from Sara Taylor to this Court, October 21st.
Q Sara Taylor didn't submit a declaration to the Court on October 21st because the FTC hadn't filed a lawsuit yet, isn't that true?
A The lawsuit, I don't --
MR. FERGUSON: I'm going to object, Your Honor. He didn't say she submitted anything. He said it was the date of the declaration, and it, in fact, is.
THE COURT: Rephrase your question.
BY MS. ROBBINS:
Q Isn't it true that on October 21st, 2014, you received a letter from the BBB -- excuse me. Isn't it true that you received a letter from the BBB dated October 21st, 2014, stating that Advanced Tech Support, its accreditation, was suspended pending revocation?
A I did receive a letter, and I did have a conversation with Sara Taylor after that.

Q And in that letter, again, it was, you were suspended for failure to cooperate with the BBB in its efforts -- in efforts to eliminate the cause of pattern of complaints, is that what the letter said?
A Every time that we had that happen, it was because of the pattern of complaints.
Q Okay. Now, in your declaration, I'll turn to the page, paragraph 37, you refer to ICE's sales guidelines; is that correct?
A Yes.
Q But, in fact, these are actually referred to as scripts within your business; isn't that true?
A We've called it both, guidelines and scripts. I personally always called it a guideline.
Q But when the trainers would train the salespeople, they would refer to them as scripts, isn't that true?
A Most of them did, yes.
Q Okay. And -- okay. I'm going to show you -- show you -- you had several types of scripts, didn't you? The company had several types of scripts; isn't that true, for different things?
A Yes.
Q Okay. So I want to go through those scripts.
So you had a script that had the Event Viewer as part of the diagnostic; isn't that true?

A Yes.
Q I'm going to hand you exhibit 37, page 1784. This, in fact -- this one was actually found in your office. Do you recognize that?
A We've had a bunch of variations of this, but this looks familiar.
Q And then you also had -- oh, and, actually, can you please look at the Event Viewer portion of the script, which is, I believe, step five?
A Okay.
Q And can you just read at the top where it says Event Viewer? Can you read what it says?
A Next to step five?
Q Yes.
A "Do not say Event Viewer."
Q Okay. Now, you also have another script called the hijack -- well, it talks about browser hijackers; isn't that true? I'm going to show you exhibit 37, page 1204.
Can you look at that script, please.
A Okay.
Q And that script does not have the Event Viewer in it, does it, as a diagnostic step?
A It does not.
Q But that script has a list of browser hijackers; isn't that true?

A Yes.
Q Now, I'm also going to show you, there's also a script that has System Advisor in it; isn't that true?
A Yes.
Q This is exhibit 37, page 1269. And if you could just review that. Is that the script that has the System Advisor in it for the diagnostic step?
A Step five, System Advisor, yes.
Q You also have a script that deals with customers who call in for infections; isn't that true? Isn't that correct?
A Yes.
Q I'm showing you exhibit 37, page 1384.
And is that the script that salespeople would use when consumers would call in with a particular infection?
A A particular infection, yes.
Q Okay. And you also have a wrap-up script; isn't that true?
A Yes.
Q Okay. Which I think is attached to one of those?
And you also have a script that talks about other products and services; isn't that true?
A I'd have to see that.
Q So you have a script -- well, I'll show you.
So this is a script that talks about Panda, up-selling Panda; is that true? And then PC MRI, you also

sell PC MRI; is that right?
A Yes.
Q And ID Watchdog?
A Yes.
Q These are all things that are sold to consumers after they've already purchased; is that correct?
A For the most part, yes. There were times that somebody would call in and they didn't want our service, and if they needed antivirus, we would sell that to them.
Q And then also the wrap-up script is back here.
So I'll just show you, this is exhibit 37, page 1665.
Are those products you would sell to consumers typically after a consumer would make a purchase?
A Yes.
Q Now, you also had a script for responses to consumers' questions, isn't that right? So your sales agents would know how to respond to somebody when they asked a particular question; is that right?
A Okay. Rebuttals?
Q Well, I'll get to the rebuttals in a second. You have -- well, I guess these are also considered rebuttals.
So you have a rebuttal for, I'll just buy a new computer; is that correct? And you have a rebuttal for, I'm not sure I want to spend that much money; is that correct?

THE COURT: I'm sorry, you need to answer.
THE WITNESS: Yes.
THE COURT: Was that yes to both of those?
THE WITNESS: I'd like to see it if that's okay?
MS. ROBBINS: So, sure. Take a look.
BY MS. ROBBINS:
Q So you have a rebuttal for, I'll just buy a new computer?
A Yes.
Q And you have a rebuttal for, I'm not sure I want to spend that much money?
A Yes.
Q And you have a rebuttal for, I have no money? Might not be on that one.
A Yes, it is.
Q Do you have a rebuttal for, I have a family member or friend that can fix this?
A Yes.
Q And do you have a rebuttal for, I have to ask my husband or wife?
A Yes.
Q Okay. And you also have a script for when someone is put on hold, isn't that right?
A I'd have to see that.
Q I'll show you. This is exhibit 37, page 1218.
A I've never seen this before.

Q Does it appear to be if somebody is on hold, I'm calling in about an infection, that that would be the script someone would read?
A Yeah, I don't know if this is something that was constructed to be put on the voicemail system or if this was something that was instructed for someone to read. So I've never seen this before.
Q Okay. And these are all scripts that your salespeople are directed to follow verbatim; isn't that true?
A I think being able to follow a script verbatim, I know we've put a lot of emphasis on that, I don't think that that's possible. I don't want to say it's impossible. Anything's possible. But I don't -- when somebody would call in, there was dialogue that took place between the consumer or the caller and our representative.

Many times the caller called in and told us exactly what was going on with their computer. Many times as we were trying to log in at the beginning of the call we would ask you what the problem was, what made you buy the software today, what made you go to Google and type in malware, what made you type in slow computer?

So there's a lot of things -- to sit here and say that the script is exactly how the phone call went, there's no way.
Q That wasn't my question.

My question is is that the salespeople were directed to stick to the script and not add any words or take any words away; isn't that true?

A It was with regards to getting to the technical part to show the consumer what it was we could do. There was dialogue that took place. It wasn't somebody wouldn't call in and say hi, and we say you're not allowed to talk, okay, and we would go through a 25-minute presentation, and at the end of that presentation the customer said, okay, thanks, I just want to -- I just had a billing question. That would be a terrible experience.

So the script was focused on when we got into the components of showing the consumer what we could do. There was a lot that took place before then.

Q Okay. So --

A And if you look at the three calls that you guys did, on each one of them that took place. On the first two the computer was slow before we ever got into any component of the diagnostic. On the third one the call came in and we talked about Panda not working properly and that the machine wasn't working, was running slow.

So the scripts were set up at the point for the diagnostic, but there is dialogue that takes place. There is communication. There is the consumer telling us that there was a problem with their computer way before we get into

this.
Q But just to be clear, once they get to the diagnostic they have to follow the script?
A We want them to follow the script. We don't want them making up that you're normal to have 10 processes as opposed to the other processes, right, because that would be misleading. You can't say something like what Phil Tomich said yesterday, like if this was me, I would never use this computer. That would get you terminated.
There were things with regards to the technical component of the pitch which our Microsoft, our head Microsoft certified technician put together, that you, as a sales rep, could not deviate from.
Q So you couldn't deviate from the, say, the Event Viewer script, because you could be terminated?
A With regards to that component, with the processes and the Event Viewer, you were told to stick to that part.
Q Now, isn't it true that you had some other competitors in this space?
A Yes.
Q And John Paul Vasto was -- had been an employee of yours; is that correct?
A He was.
Q Isn't it true he left ICE and started OMG Tech Help or Vast Tech?

A He was terminated by ICE and did that, yes.
Q Did he take anything from you when he left?
A I would have no way to know that.
Q Did he take any scripts or anything from you when he left?
A I would tend to think maybe he did, but I don't know. I have no factual information about that.
Q And you tend to think he did because they were using the same script as you?
A No, because we actually had litigation with him, and one of the complaints that we had in that litigation was that they actually had some of our IP. We had thought they took our ATS tool kit, which is a tool kit that our own technicians built to help us clean up machines.

So part of our complaint with them was that they had that, so it could be true that they had other things like a script, but I don't know for sure.
Q And you considered OMG a competitor of yours; isn't that right?
A Yes.
Q And there were other competitors, like Fast Fix 123 and ASAP and First Choice, right? Those were competitors of yours?
A I don't know if I would classify them exactly as competitors. They were groups that were popping up in South

Florida to provide tech support services. How they did it, the avenues that they went to make the phone ring, I wouldn't consider us competitors. I don't believe they partner with software companies like we did. But they were providing tech support space, and they were in South Florida.

Q And you had a meeting with Blair Williams on November 12th, 2014; is that right?

A Yes.

Q Who is Blare Williams?

A William Blare.

Q William Blare, excuse me.

A They're an investment group out of Chicago.

Q And what was that meeting about?

A We have some investors in our company, and they had been communicating with them about potentially taking an investment. They were the majority owners of our company, and they wanted us to meet with them to see if there was anything there with regards to them getting an investment or selling the company.

Q So you were thinking about maybe either selling the company or having investors come in?

A Yes.

Q You said in your declaration that you've read virtually every complaint from the BBB that you've received or reviewed?

A Yeah.
Q Was that a "yes"?
A It is virtually every complaint. I mean there were complaints that I skimmed through. There were ones that I read in detail. Some of them were lengthy. So, I mean, to sit here and say that I've read every single one thoroughly, no. But I did review them.
Q Okay. So in your declaration, when you say you personally responded to every complaint or made sure you reviewed and acted upon every complaint, is that accurate?
A It is.

If you remember how the BBB is set up, there's the initial correspondence that they received from the consumer or the caller. Then the notification is sent to the company, of which I would do that communication. Normally, it was very brief. Sorry for the inconvenience. We want to make sure that we keep you happy. If there was a refund, we let them know that we refunded you, but we're going to have somebody call you to find out what happened. That's kind of the part that I would handle.

And then I would pass it off to the appropriate division in the company to -- for them to look into it.
Q Okay. So you know, then, from your review of these complaints, that people would frequently complain about the initial software that was purchased prior to them activating

that software and being led to your company; is that true?
A What was the complaint?
Q So in the BBB complaints, did you ever see in the text consumers complaining about the software they had downloaded prior to making the phone call to you?
A That they weren't happy with that software?
Q Correct.
A I can't recall. I remember the majority of the Better Business Bureau complaints were that the consumers weren't happy with the state of their computer when we were done with it.
Q Okay. So when you -- your recollection is that the complaints were primarily about your business but not necessarily about the software products, is that what you --
A Again, I can't remember every single complaint. The pattern of complaints that we discussed when I went to the Better Business Bureau was that the computer was not fixed to their satisfaction, or in some cases, unfortunately, it was in worse shape, which was upsetting to us.
So that's really -- the pattern of complaints that we discussed with the Better Business Bureau was that the machine wasn't fixed properly.
Q Do you recall reading any complaints that dealt with PC Cleaner Pro and the complaints about that product and then the complaint also about your company within the same text?

A I don't recall.
Q But yet you did say in your declaration that you responded to every complaint prior to May 2014; is that right?
A I did.
Q Okay.
A Again, the initial, which was a notification that there was a complaint, not necessarily on the merits of what happened. So that there was a complaint, here's the complaint. I would then -- you need to respond to the consumer. So one of the reasons why I held onto it for so long because I didn't want, God forbid, something to happen with the Better Business Bureau and somebody just forgot to respond. You could lose your accreditation with them just simply by not responding.

So that's why I held onto it. I felt like it was important, so I handled that initial response with the BBB to the customer.
Q So do you recall seeing any complaints prior to May 2014 that had to do with PC Cleaner Pro and Advanced Tech Support?
A The two together I don't recall.
Q Okay. Would anything refresh your recollection?

MS. ROBBINS: Actually, Your Honor, may I refresh his recollection with a complaint that is prior to May 2014?

THE COURT: You can try.

BY MS. ROBBINS:
Q Mr. Deignan, that's a Better Business Bureau complaint, isn't that right?
A It looks like it. I don't see anything that notifies it's a BBB complaint. Yeah, it is, here at the end, yeah.
Q And isn't it true that that complaint has to do -- number one, isn't it true that that complaint is from prior to May 2014?
A Yeah, this is July 2013.
Q Okay. And isn't it true that that complaint is about PC Cleaner Pro and Advanced Tech Support?
A Yes.
Q And isn't it true that you -- the business responded, ICE responded to that complaint?
A Yes.
Q So that would have been you responding to that complaint; isn't that true?
A Yes.
Q And can you --
MS. ROBBINS: Your Honor, I'd like to introduce that into evidence as Plaintiffs' exhibit 42.
THE COURT: Any objection?
MR. FERGUSON: As long as it's with our response, Your Honor. We understand that the response is a party opponent statement anyway. We just want it in context.

Again, our objection to the hearsay and our interpretation of your requirement that any consumers that were going to be used against us at this phase of the proceeding be here to be cross-examined, I believe that we're crossing that line, but, you know, I'm in a difficult position, because we're dealing with 323 total complaints out of over half a million customers. I don't want the Court to perceive that we're hiding the ball.

So the complaints exist. We've got no problem with the Court taking notice of 323 complaints. We do think, if we're called to task about every single complaint without an ability to cross-examine the Complainant, that we would be prejudiced, but I don't think we've crossed that line right here yet, but I'm worried that we could easily.

THE COURT: Okay.

MR. FERGUSON: Long objection. No objection.

MR. NICHOLSON: What he said.

THE COURT: Fine.

MR. NICHOLSON: If this is going to be a string of these --

MS. ROBBINS: No.

MR. NICHOLSON: If it's one for an example, which, by the way, I would like to see it first, at least. I don't have a problem with that. Again, the total number is not an issue. I don't want it to seem like, you know, one, after

one, after one that we don't have a chance to rebut.

As to this one, no objection as long as it's --

THE COURT: Admitted without objection.

(Plaintiffs' Exhibit No. 42 entered into evidence.)

MS. ROBBINS: Your Honor, I have copies for them.

THE COURT: The longest non-objection I've ever heard.

BY MS. ROBBINS:

Q Mr. Deignan, can you please read the first line of the details, the nature of the dispute?

A "Nature of dispute: Pop-up on computer tricked me into thinking something was wrong with computer and they would fix it."

Q Okay. Actually, read the first down to here.

MR. FERGUSON: Is this when he was just reading?

MS. ROBBINS: Yes.

THE WITNESS: You want me to read the entire paragraph?

BY MS. ROBBINS:

Q Yes, please.

A Okay. I'll start over.

"Pop-up on computer tricked me into thinking something was wrong with my computer and they would fix it. Browsing the Internet, my computer, so I thought popped up a message that said my computer was infected and running slow.

The pop-up suggested I install PC Cleaner Pro. It looked legit, and they offered a phone number to call to start the process. I called the number, and indeed it seemed very legit. I provided a credit card number, and they used a software called Log Me In to take control of my computer.

"Over the next hour or so I watch as they remotely move my mouse around, deleted and un-installed various softwares and installed their softwares, PC Cleaner Pro, My PC Backup and Advanced Tech Support. When they were done, the computer seemed to work fine. A day later the machine became incredibly slow, and I started receiving pop-ups that I needed to buy the subscription to fix the slow issues."

Q Now, so you, in responding to this complaint, had information about consumers' complaints on the software products that were -- consumers would download to -- and then call into Inbound Call Experts?

THE COURT: Can you say that again?

MS. ROBBINS: Maybe I should restate that. Sorry. I'll rephrase that.

MR. FERGUSON: Your Honor, before we get past this, if we're talking about the response, do you have copies of the response that we could see? I thought it was attached, but it's not.

MS. ROBBINS: They are.

BY MS. ROBBINS:

Q So as you testified earlier, you reviewed and responded to complaints prior to May 2014; isn't that right?
A In some cases I responded, then reviewed.
Q Okay. And have you ever purchased PC Cleaner Pro before?
A I have not.
Q You've never purchased PC Cleaner Pro ever?
A You know, I may have done a test order, so I -- I don't recall, but I would lean more towards yes, just to do a test to see if the phone number was being displayed.
Q So would you -- did you ever test the software products that you were partnering with?
A We had teams that did that. I don't think we did it for every single product, but there were times that we would -- you know, we would run the product and see how it -- to see how it interacted up at the computer, so on and so forth.
Q So --
A But I didn't do it personally.
Q So you never did it personally. Did you ever direct anyone, then, to, as a procedure, download and test products that you were -- with companies that you were partnering with?
A I didn't create a procedure for that, no.
Q Okay. So even though you had a complaint, at least one complaint that you saw about one of those products that you partnered with, you didn't test it or download it or see what

happened with it?
A I did not. A lot of the times when I got these complaints, I tend to scratch my head. And this one, as I was reading it, I virtually did that.
I provided a credit card number, and then they used a software called Log Me In. We would never -- we remoted on for free. So when I read something like that, we didn't ask somebody for their credit card number so that we can remote in, so . . .
Q But my question is, so -- well, if you received a complaint about a software product that you were -- with a company that you were partnered with, would you then go out and see exactly what that product was doing, test it, see if your phone number displayed?
A Yeah, I agree. I've run some test purchases.
Q So do you run test purchases on every single product that you're partnered with?
A No.
Q How many do you think you've run tests on?
A Probably five or six.
Q Okay. And isn't it true that you have about 50 software products that you are partnered with?
A I don't recall exactly how many.
Q I'm showing you exhibit 37, page 1279.
Is that a list of all of the products that your

company has partnered with?
A Yes.
Q And does that look like it could be about 50 on that list?
A You're going to make me do that?
Q Would you agree with me that that looks like about 50?
A I'm going to count.
Q Okay. Go ahead.
A Yeah, it's about 50.
Q Okay. Now, you mention -- well, it's been mentioned, and actually, you mention it in your declaration, that you have a very low charge-back rate; is that right?
A Yes.
Q And, in fact, actually, in your declaration you say that it was an exceptionally low charge-back rate; is that right?
A I believe so, yes.
Q Okay. So you said actually it was .55 percent, and that's less than the one percent allowed by Visa and MasterCard; is that right?
A Yeah, about a half a percent.
Q Isn't it true that you use Revenue Wire as your processor for consumer payments?
A Yes.
Q And Revenue Wire also has set you up with other software partners, right? So sometimes -- like that's how you came

into contact with PC Cleaner Pro; isn't that true? PC Cleaner, Inc.?

A Yeah, that's correct.

Q Okay. And Revenue Wire is owned by Elton Perrera and Don Warren; is that right?

A That's correct.

Q And those two also own ICE Venture Capital Corp, correct?

A Correct.

Q And ICE Venture Capital Corp actually owns now 80 percent of ICE; is that right?

A That's correct.

Q And in July 2014, you and your partners actually sold your -- some more shares to Ice Venture Capital Corp, and you each made $4 million on that sale; is that right?

A That's correct.

Q And that was in July of 2014, correct?

A That's correct.

Q And you also have a policy that you have to sell the tech support and the software separately, that the charges show up on the credit card statements separately; is that right?

A No, there's transactions that are all -- we call them SKUs. So you would see -- there's -- many times there's a SKU where it has our support services and the actual product on it, but most of the transactions went down that way, yes.

Q Okay. So one charge for the tech support and one charge

for the product after the fact, either Panda Security or PC MRI or whatever product they bought after the fact?

A Yes.

Q And isn't it your policy to try to refund customers if they complained?

A If somebody's not happy with our services, we will refund them, yes.

Q And when you give refunds to consumers, then they have no reason to charge-back the sale; is that right?

A I would hope not.

Q And yesterday -- strike that.

So the receiver filed a report in this case and included 12 cash withdrawals that were made between October 14th and November 10th, and I will show you what they look like.

MS. ROBBINS: Your Honor, I'm just going to give defense counsel a copy of what was from the -- this is actually . . .

BY MS. ROBBINS:

Q So in the receiver's report, the receiver mentioned that you had made -- that you had withdrawn 12 cash withdrawals between October 14th and November 10th, and --

Did I hand you one?

A No.

Q I'm sorry. And all of these were marked as entries as

either spiff or cash.

What is a spiff?

A Well, I'm on the third one, and I don't see an entry as spiff or cash.

Q No, I'm sorry. In the receiver's report he mentioned -- these are just the underlying transaction activity.

A Yeah, I'm on the third one right now, and that definitely wouldn't be a spiff or cash. That was a payment to a gentleman we called Papi for his -- the food that he makes for the guys on the weekends.

Q So that's the 1645?

A I just know that number. That definitely wouldn't be a spiff.

Q And all of the other numbers, though, are even amounts, 6000, 7000, 5000, 5000, 5000, 8000, 8000, 5000, and they're all under the $10,000 amount; isn't that right?

A Yes.

Q And they're all in even amounts except for that one that you said is not a spiff, number 3.

A Yeah, I'm not finished with it.

Okay.

Q So what are spiffs?

A Well, I mean -- okay. Spiffs, there was a mention of the wheel that we had. And so to create a fun atmosphere, we had a wheel that if somebody did 2500 a day in sales on the sales

end, they would get the opportunity to spin the wheel either the next day or when their shift started again. If they spun the wheel, if I can recall correctly, if they -- there were numbers on the wheel, just like one through, I believe 18. If they hit the actual number 1, they got $500 cash. Which they signed off on they got $500 cash, and then we process it through HR so they could take it out of their paycheck with ADP.

If they landed on an odd number, I believe it was 50 bucks, and if they landed on an even number it was a hundred bucks.

Q And isn't it true that prior months prior to October 2014, that the cash withdrawals made for spiffs was not merely near 12 withdrawals, that in other months it was usually, like, three or four withdrawals?

A I don't know if it was that low. It's always been a significant amount. But I think what we have going on here is a misclassification of spiff, which was something that Briana may have put in the lower left-hand corner. Some of them don't say spiffs, some say 5000 in fifties and hundreds.

So how it works with regards to our business is as the summer kind of slows down with software sales and we take the activation calls, and as winter starts to come into play, we start to get more phone calls. My estimation is because in Minnesota in the summer you can be out throwing the ball

with your son, and in November, especially this year, you may not be, so you're online more, you're buying software more.

And so one of the things that we -- that was always something that was difficult for us was getting the weekend shift covered. So in this timeframe we were aggressively getting people -- we were giving them 50-dollar bonuses to come in on the weekend.

So they were -- give you an idea, there were five shifts amongst the sales divisions and upwards of 40 people on a Friday night, 40 or 50 on a Saturday day, you have Saturday night the same amount, you have Sunday day a little bit lower amount and Sunday night a little bit lower amount.

It could be as high as 150 to 200 people that would receive a 50-dollar cash bonus to come in at that time to help with us the calls.

Q Okay. But it wasn't typical that in a typical month that you would make 12 withdrawals of dollar figures, like 6000, within three days of each other, two days of each other, 6000, 7000, 5000, 8000? That wasn't typical, was it?

A Again, I think this got accelerated because of the fact that we were getting people to come work on the weekend.

And to be honest with you, there wasn't much rhyme or reason associated with the amounts. That's why they were kind of flat amounts. We wanted to make sure that we had the money in case somebody hit $500 on the wheel, we wanted to

make sure we had it for them, right?

In addition, if somebody did come in on that weekend, to be able to give them that bonus at that time. That was important for us to be able to recruit them in the future, as well.

Q Okay. And isn't it true that on September 29th, 2014, that the -- that you were aware that the FTC obtained a temporary restraining order against a tech support company named Pairsys in upstate New York?

A I was.

Q And you knew that the FTC obtained an injunction that included an asset freeze, isn't that true?

A Yeah, I believe that's what it -- can I see it?

Q Because on your desk, isn't it true that you had both the press release from the Federal Trade Commission and a copy of the complaint?

A Yeah, I had it on my desk because Robby came in that day, and we were going to -- I wanted to discuss that with him.

Q So that's a yes, that you knew about it?

A I did know about it, yes.

MS. ROBBINS: I don't have anything further.

Oh, wait.

Oh, Your Honor, this exhibit is actually exhibit 43, the one we just entered.

Redirect Examination

BY MR. FERGUSON:
Q Do you know who Nathan Scott is?
A I do.
Q What does he do for the -- is he an employee of the company?
A He is.
Q What are his job duties?
A He was mostly focused on development of software products for us.
Q Did he do any testing for the company?
A I believe he did.
Q Anybody else help him with that?
A Testing?
Q Of the products.
A I believe he did some testing of the products.
Q When you were asked if you did testing, you said you've tested a few, but that wasn't your job to go test the software products?
A No, that wasn't my job.
Q Are there any folks in addition to him at the company that were involved in that, to your knowledge?
A With regard to the testing, Edwin Ramirez may have been involved with some of that.
Q What about Mr. Herdsman?
A Mr. Herdsman would be, yeah.

Q But product testing wasn't in your silo of responsibilities?
A No.
Q The list of 50 or so products -- you don't need to go to it -- well, go ahead and look at it. Were all of those active products being supported by ATS at the time the TRO was served?
A Well, the first one wasn't, I can tell you that.
Q We don't need to go line by line. I just want to know if you have an appreciation for whether that list, it would be a current list of --
A This seems like an old list.
Q All right. We heard about the Better Business Bureau letter that was sent to you the same day that Ms. Taylor was filling out the declaration that was subsequently filed by the Plaintiffs in this action. You said you spoke to Sara Taylor after that letter. What did she tell you?
A I left her a few messages. We finally had a chance to speak. She told me that if I wanted to send her any information with regards to the -- to the suspension, that I could send it to her, and that if I wanted to -- I believe, I believe she told me to have it in before Thanksgiving, which unfortunately I didn't get a chance to do.
Q Tell the Court why you didn't get a chance to do that.
A Because on November 13th we had a TRO.

Q You got locked out of the business?
A We got locked out of the business, yeah.
Q And since that day, you've spent a great deal of time preparing for this very event, this proceeding?
A That's all I've been focused on.
Q Okay. Had not the TRO and receivership been dropped over the company, was it your intention to fully respond to that inquiry?
A One hundred percent.
Q And you had done so in the past?
A Yes.
Q Successfully?
A Yes.
Q Were you hopeful that you would be able to achieve the same result?
A I was.

As a matter of fact, through my conversation with Ms. Taylor, she told me that she was actually on the committee from the first time with regards to us going in and explaining who we were and them realizing that we had a significant customer base, and that the number of complaints was actually relatively low.

I think Mr. Colemeyer (phonetic), who was senior vice president at the time, said, wow, that's low. I think that was his actual words in the meeting. And then they

broke and they had a board of directors meeting, of which I learned on that call that Sara Taylor was part of it, who gave the thumbs up that when you looked at the number of complaints relative to the number of customers that we had, that it was meritorious to turn us back on.

So when she told me that, I felt good that we would be going down the same path we did before and be able to get turned back on.

Q In the letter Sara Taylor sent you, she didn't mention that simultaneous with this letter, or on this very date I've also signed a declaration to be filed against you in an FTC action, did she?

A No.

Q When you called, she didn't say you can get this stuff in by Thanksgiving if you want to rebut, but you're about to get sued by the FTC?

A No.

MS. ROBBINS: Objection, Your Honor. He doesn't know that.

MR. FERGUSON: I'm asking him if he --

THE COURT: Overruled.

THE WITNESS: What was the question?

BY MR. FERGUSON:

Q When you spoke to her on the phone, she led you to believe you'd have an opportunity to get the material in, but

she didn't mention that there was any FTC action coming your way?

A No.

Q Was it your intention to put together the information you thought would assist the BBB in evaluating the suspension in a timely fashion?

A I did. I actually thought it would be easier, because as of November, in the month of November, or even in October, I think we had five Better Business Bureau complaints, which was substantially down. So I felt like it would be actually easier to do. I believe in November we had one at the time of the TRO, so . . .

Q So you believe the complaints going through the BBB were trending down?

A I do.

Q You didn't get a response in by Thanksgiving?

A No.

Q And what happened after that?

A They suspended the business I believe on November -- it was two weeks after, maybe, November 26th-ish.

Q Again, after the lawsuit was filed and after you were locked out of the facility?

A Yes.

Q We talked -- we heard about the BBB complaint, the specific one where I launched possibly the longest

non-objection objection that the judge has heard.
A Yeah.
Q That one involved -- if I'm right, did it involve you weren't able to fix the machine?
A I was skimming through it. I believe I read that.
Q That's what I heard you read?
A Okay.
Q Let's assume that that's truthful and that's what the customer was complaining about.
A Okay.
Q Is ATS able to fix all machines?
A No.
Q Does ATS claim to be able to do so?
A No.
Q Why aren't you able to fix all machines?
A Computers are complicated. There's times that there may be a hardware issue that we don't detect until after the sale is made and after our technicians are trying to clean things up. So it can be a hardware issue, which, really, you can only get resolved by what we call a truck roll or if you were to bring your computer to Staples or Geek Squad.

Sometimes there's infections that are pretty nasty. There's rootkits that are out there that can get below the kernel level of the operating system and it can cause a problem for our guys to be able to remove it. Sometimes we

just didn't do a good job, you know, but we stood behind it and we would give them a refund. But to say that we could fix every single problem, we couldn't.

Q How does it make you feel when you hear that you were not able to fix a customer's computer to their satisfaction?

A It makes me feel bad.

MR. FERGUSON: I don't have anything further, Your Honor.

THE COURT: All right.

MR. FERGUSON: Thank you.

THE COURT: Anything?

MR. NICHOLSON: No.

THE COURT: Anything else?

Anything else, Ms. Robbins?

MS. ROBBINS: No, Your Honor.

THE COURT: Thank you, sir.

THE WITNESS: Thank you.

THE COURT: All right. What are we going to do the rest of the day, if anything?

MR. FERGUSON: Let me consult with co-defense counsel real quick.

Your Honor, I believe the Defendants have two more witnesses to go, Mr. Herdsman and Mr. Myricks, the last two witnesses.

MS. BURTON: Just to clarify, you will not be

putting on your additional expert?

MR. NICHOLSON: Not necessary.

MS. BURTON: Okay.

THE COURT: All right. Well, let's try and finish up then, at least with the witnesses.

Are you going to have any rebuttal witnesses?

MS. ROBBINS: No, Your Honor.

THE COURT: Let's take five minutes, and we'll try and finish up the witnesses. All right?

MR. FERGUSON: Very well.

(A recess was taken from 12:02 p.m. to 12:11 p.m., after which the following proceedings were had:)

THE COURT: Please be seated, everyone.

Next witness.

MR. FERGUSON: Your Honor, the Defendants call Paul Herdsman.

MR. STREISFELD: He's tab 3 in the notebook, Judge.

THE COURT: Sir, raise your right hand.

Paul Herdsman, Defendants' witness, sworn.

THE COURT: Please be seated.

THE WITNESS: I'm sorry. I have a cough.

THE COURT: No problem.

Tell us your name, sir, and spell your last name, please.

THE WITNESS: First name's Paul, last name's

Herdsman, H-e-r-d-s-m-a-n.

THE COURT: Thank you.

Cross-examination.

MS. ROBBINS: Thank you, Your Honor.

Cross-examination

BY MS. ROBBINS:

Q Good afternoon, Mr. Herdsman. My name is Colleen Robbins, and I'm an attorney with the Federal Trade Commission, and I'm going to ask you some questions.

So your payment processor is a company called Revenue Wire, correct?

A Correct.

Q And Revenue Wire contacted you about a company called PC Cleaner; is that right?

A Correct.

Q Okay. And Matt Humphreys at Revenue Wire, he's the one that set up the meeting between you -- between Advanced Tech Support and PC Cleaner; is that right?

A I never actually had an introduction meeting. I think Matt was the liaison between Advanced Tech Support and PC Cleaner.

Q But he sent you an e-mail introducing you to each other in March 2013?

A Yes.

Q And according to your contract with Revenue Wire, Cashier

Myricks receives 40 percent from the tech support sales that are made from his lead generation; is that correct?

A He does receive 40 percent. That was a rate negotiated between Revenue Wire and PC Cleaner.

Q Okay. And is it your understanding that all of the software companies that you partner with, do they also receive 40 percent cut from the sale made from a lead, or do you not know?

A Not all of them. Some get less.

Q And what would be an average percentage that they would receive?

A I'd be guessing; 33 percent.

Q Okay. So some may receive 20, some receive 40 percent?

A There's a range.

Q Is that accurate?

Now, you stated in your -- on page 5 of your declaration that -- it's the end of paragraph 17, the last sentence.

A Page 5.

Q And it says: "We also learned that software was a main driver of phone calls due to post-purchase activation issues, download installation issues and software compatibility issues."

So when you say that software was a main driver of the phone calls to ICE, can you estimate what percentage of

phone calls were driven by software activation?
A Total phone calls coming into ICE per day?
Q The percentage of calls coming in that had to do with activating software.
A Yeah, versus total amount of calls?
Q Sorry, yes.
A Oh, 40 percent.
Q Okay. And so what was the other 60 percent made of?
A Other 60 percent were made of current customers, customers that would call for non-activation issues, such as infection issues, customers calling for billing questions, customers calling for inapplication (phonetic) issues, a range of those types of calls.
Q And when you say that customers call due to post-purchase activation issues, what did you mean by that?
A I think I wrote this in context of what we learned while when we were at iS3, STOPzilla. So basically, sometime in 2007, 2008, we started seeing the shift from malware creating more problems than just getting on the box or getting on the computer and doing whatever. I don't want to try to get too technical, but malware would get on the box, we would identify it, we would remove it, and we would be good.

As it started evolving, malware would get on the box, start causing major issues with regards to widespread issues, and then we would remove the malware, but the other

issues were still lingering, and I think that's what caused people to call back and say, hey, something's still wrong.

Q Okay. But that's different from what you're saying here is that the software is the main driver of phone calls due to post-purchase activation issues.

Do you mean there that the person who downloads the software has to call a phone number to activate the software?

A No, what I mean is that through our -- you know, our research and development of what we learned at iS3, that, you know, someone would say -- someone would say my computer's still running slow, and they may download a registry cleaner to try and speed that up, and the fact was that they still had a piece of malware on there. And just because they type in "a slow computer" doesn't mean they didn't know that there was a -- you know, some underlying issue that was causing the computer to run slow.

So, again, it relates back to the evolution of malware in 2008.

Q Now, have you ever seen the post-purchase activation screen that consumers receive when they download a product like PC Cleaner Pro?

A I have.

Q Okay. And I'm showing you what's marked as exhibit 37, page 1777. So I'm going to show you this exhibit. This is actually an activation page that was found in your office.

A Okay.
Q Does that look like an activation page that a consumer would see when they've downloaded software?
A On some of the products, yes.
Q Okay. And is your phone number -- is ICE's phone number on that page?
A I would have to confirm that phone number, but there is a phone number on this page.
Q Okay. But if it was in your office on your computer, is it likely that it would be ICE's phone number on that page?
A No.
Q No? So you would -- so did you test other products and download them that were not associated with ICE?
A Sure.
Q Okay. But if we could -- if we showed you a list of the phone numbers from Five9 that ICE paid for, would that refresh your recollection if that was a phone number that belonged to ICE?
A Yeah, I can match it up what's in the Five9 records, sure.
MR. FERGUSON: If it's on there, we --
THE WITNESS: Yeah.
BY MS. ROBBINS:
Q Does it say on that page how a consumer can use that -- or let me step back.

On that page, is there a license key?
A I do see a key on here, but I'm not sure if it's for -- I'm not sure which product it's for. But I would like to elaborate that we don't design the thank you pages. We have no -- we leave that up to the software provider.
Q Okay. So -- but your phone number goes on those pages, though, for people to call?
A Yes, it does.
Q Okay. And on that page, isn't it true that there is no instruction on there for a consumer to actually activate the software themselves?
A There is no instruction on this page, no.
Q Now, turning to page 7 of your declaration, and I just wanted to go through a little bit of your timeline just to clarify.
So you said that Super PC Support was used originally.
A Oh, page 7?
Q Page 7, paragraph -- well, whole page 7, starting at paragraph 24.
A Okay.
Q So in April of 2012, you started using, it looks like from here, your scripts, or what you refer to in your declaration as a sales guideline; is that correct?
A Correct.

Q And you said in your -- in here that you updated the sales guideline approximately six times. Or, no, you said six times, or approximately six times.
A Yeah. It says on or about. We've had limited access to our data to really collect everything, so this is to the best of my knowledge.
Q Okay. And to -- but -- so on or about April 12th you had your initial script.
A Uh-huh.
Q And then you updated the script six times; is that correct?
A Approximately.
Q Okay. And so on November 12th, you added ID Watchdog, correct?
A Uh-huh.
Q And that was a product that you would sell after you'd sell the tech support?
A Or, you know, we could sell it by itself. You know, if someone came in with an infection, and, you know, infections want to try and steal your identity, we would let them know that, and some would take advantage of it.
Q Okay. And then on April 15th, 2013, on or about, you added in a reminder about using Notetaker, right?
A Yes.
Q And then on or about July 10th -- and, I'm sorry, and the

Notetaker, that was just to take notes for the technician, correct?

A That was to take everything we've learned from the start of the call to the end of the call, to pass onto the technician.

Q Okay. And then the next one is on July 10th, 2013, you -- for step one of a diagnosis, you increased the amount of processes that you would tell the salespeople were run -- were for a normal computer. So, for example, originally the script said 30 to 60, and then you changed the script to say 40 to 80; is that correct?

A Yes.

Q And that was the only change in terms of step one that you made on July 10th, 2013; is that correct?

A You know, I tried to go through them line by line. That's the best of my recollection, yes.

Q Okay. And then -- and then on or about February 5th, you updated the script to address the new remote access software, which was provided by Support.com, and that's your nexus platform; is that correct?

A Correct.

Q So that was the platform that your salespeople would use to take the calls, I guess, to identify the calls coming in and catalog all the information they were getting from the consumers?

A That was what we used to remote on the computers. It also served as our CRM.

Q Okay. Then on or about May 1st, 2014, you updated your order summary process. So that was the wrap-up process after a sale was already made; is that correct?

A No. The order summary process is, basically, we explain to the customer exactly what they're purchasing, exactly what it costs, when they're going -- and our extended maintenance program, when they're going to be rebilled, and we have to ask their permission to process the order. If they don't get the permission, they can't process the order.

Q Then on or about August 15th you decided to change the Event Viewer to System Advisor, which is step five of the diagnostic, but that didn't actually end up being completed in terms of the rollout until September 26th, 2014; is that correct?

A That's correct.

Q Okay.

A You know, rolling things out in a 24/7 environment is very difficult, and we learned our lesson from Nexus. So that has to be done in a very calculated way.

Q So in the six changes or six updated iterations that you talk about in paragraph 24, there were two times that you changed the script that salespeople used in terms of the diagnostic, it looks like from what you've listed.

So in D, step one of the diagnostic, we talked about, you changed the number of processes run on a normal computer, and G, you removed the Event Viewer and replaced it with System Advisor. Those are the only two changes in this list that had to do with the actual script that salespeople would read in terms of the diagnostic; is that correct?

A That we would have used on the floor exclusively, yes.

Q Okay.

A Yeah.

Q And you were involved with the scripts, right, with writing the scripts; is that true?

A I didn't write the scripts. I would look them over and make some general edits to the scripts.

Q Right.

So you would go in and you would look at the script, and you would type in changes and make red line copies of those scripts?

A Sure.

Q And did you write the script with the Event Viewer in it?

A I did not. I was -- I was part of that. Our technical team wrote that, or our head tech.

Q Who was that?

A Edwin Ramirez.

Q So he wrote that script?

A He wrote the technical piece, yes.

Q What do you mean by the technical piece?
A The piece where we talk about the diagnosis. We relied on his expertise to guide us through that, and he took -- he's the one who put that together for us.
Q And is he still with the company?
A Yes, he is.
Q But he didn't come in and testify about this script?
A No, he didn't come in.
Q So on~-- who is Barry Dodd?
A Barry Dodd works for a company by the name of ParetoLogic. I think he's currently the CEO.
Q And what is ParetoLogic?
A ParetoLogic is a software developer. They develop software.
Q So do they develop software products that you would partner with?
A Sure.
Q And how often would you deal with Barry? Would you deal with him directly?
A Yeah, I dealt with Barry directly.
Q And is that -- did you deal with him in terms of the contracts you had with the software products, or what were your dealings with him?
A I've dealt with him probably a dozen times, and it would be about various issues. It would be, you know, if we had a

complaint where one of our agents may have been rude to a customer, we'd have to research that and find out what happened. We'd talk about things on the business side of what they're doing versus what we're doing, and we'd talk about preparation for the upcoming season. If their software sales went up, calls would probably go up. We would have to make sure we're properly staffed so we're not dropping calls. Operational items.

Q Did you ever talk to him about your sales scripts?

A It's possible. I've known him for a few years now, so I don't want to say no. It is possible.

Q Isn't it true that on October 5th, 2012, you received an e-mail from Barry Dodd sending you a link to a news story about the FTC's action against six tech support companies?

A If he did, yes, then I got it.

Q Well, let me show you --

MS. ROBBINS: Your Honor, I'd like to show him Plaintiffs' exhibit 44, and I have a copy.

BY MS. ROBBINS:

Q Isn't it true that on October 5th, that Barry Dodd sent you a link to a news story about the FTC's action against six tech support companies?

A Yes, it is.

Q And isn't it true in that case that the FTC was granted temporary restraining orders, including injunctions and asset

freezes?
A If that's what it says. I read it, yes.
Q Well, isn't it true, though, that you stated at the e-mail exchange that you read the FTC ruling yesterday?
A Yes.
Q And when you said FTC ruling, did you mean the complaint or the temporary restraining order?
A I can't remember.
Q And isn't it true that when he sent you this e-mail, that he also told you, FYI, using Event Viewer as a sales tactic?
A He wrote that in there, but that's not -- that was nothing new to us. I mean, we came from, like Justin expanded on, at iS3 we ended up with Smart Support, our technical support group, and we've known about India for a long time, and we've known -- and we consider it a Microsoft scam, you know, where they have people sitting in a room like this, dialing someone at home that, you know, doesn't have a problem with their computer and telling them, hey, you have serious problems, I'm from Microsoft, I need to get on your computer.

We've known that all along. We didn't consider it -- Event Viewer as the scam. The scam was them representing themselves as Microsoft and telling people they have a problem when they don't.

Q Did you read the FTC's complaint? You said you read the

FTC's ruling. Did you receive -- did you read the complaint?
A Probably not, because I knew about -- I knew about India. I knew about the things they were doing.
Q Did you know that the FTC alleged in its complaint that the Event Viewer was used as a deceptive diagnostic tool?
A No, I hadn't read that, you know, and I've never 'til this day -- you know, I don't know who made the opening remarks, but I think one of you said they've been on notice about the Event Viewer for a long time, and I wrote in my notes, sitting down, I said, we've been on notice, question mark, because, again, we've known about India, but we've known that they're using several tools.

You know, they get on your computer and open up command prompt and make lines go all over the place and shake the screen. We consider that the Microsoft scam.
Q But I'm not talking -- what I'm talking about is the FTC ruling that you say you read. Isn't it true that the FTC, in those cases, alleged that the Event Viewer was used as a deceptive tool?

MR. FERGUSON: Objection, asked and answered, Your Honor.

THE COURT: How is he supposed to know?

MS. ROBBINS: Well, he said he read the FTC ruling.

THE COURT: Okay.

MS. ROBBINS: Okay.

THE COURT: What does that . . .

BY MS. ROBBINS:

Q But you knew that the Event Viewer was being used as a sales tactic?

A No.

Again, I knew that groups in India were calling people sitting at home in their living room, eating dinner, picking up the phone and saying, hi, I'm John, from Microsoft. I need to get into your computer right now, because your computer is reporting back to us there's a virus, and your computer is going to blow up, or whatever it is, I need to get on there.

And we considered that the Microsoft scam. They used numerous tactics. And we've known this because we've come from this industry. We knew this for a long time.

We've never equated an FTC ruling to the Event Viewer or anything of that nature. We looked at it from a group doing an outbound call to someone that didn't have a problem, using various tactics.

Q But isn't it true that on October 5th, 2012, Barry Dodd sent you an e-mail that said, FYI, using Event Viewer as a sales tactic? Did he send you that e-mail?

A Yes, that's what Barry sent me. That's what Barry said.

Q Okay. And from that date, October 5th, 2012, until sometime between August and September 2014, you were using a

script that had the Event Viewer in it? Isn't that true?
A Yes, our script had the Event Viewer in it.
Q And isn't it true that in that script, it says, when you get to the Event Viewer part of the diagnostic, do not say Event Viewer?
A It does say do not say Event Viewer.
MS. ROBBINS: I don't have anything further.
THE COURT: Thank you.
Any redirect?

Redirect Examination

BY MR. FERGUSON:
Q When you open up the Event Viewer, what does it say across the top of the window?
A Event Viewer.
MR. FERGUSON: No further questions, Your Honor.
MR. NICHOLSON: I just have one.

Cross-examination

BY MR. NICHOLSON:
Q Where that's log-on screen?
A It's not yours.
Q Thank you. That's one I want to get to.
Ms. Robbins showed you, I don't see it having a separate exhibit number, but it's PX37, page 1777, an activation screen, and asked you about that, this document here that I just took from you, right?

A Yes.
Q Is that a PC Cleaner Pro activation screen?
A No, it is not.
Q Okay. Which software program is that?
A It says PC Health Fix.
Q Do you know of any relationship between PC Health Fix and PC Cleaner Pro?
A I do not.

MR. NICHOLSON: No further questions.

MS. ROBBINS: I don't have any questions.

THE COURT: Thank you, sir.

MR. FERGUSON: Your Honor, I have one question.

Did you move this welcome page into evidence?

MS. ROBBINS: I did not.

MR. FERGUSON: Your Honor, one thing we would ask is --

MS. ROBBINS: You can admit it. That's fine.

MR. FERGUSON: Without objection, we just want to give you the document that was referred to, the activation page, in color, because it actually is in color. I think we would just like you to see it in its actual state.

THE COURT: That's fine.

MR. STREISFELD: Your Honor, just further on that, based upon the fact that it's in color, the way we printed it from the Court's docket when it was filed, it should be in

color already in the record, but we just would like you to be able to see the colors.

THE COURT: Okay. You can step down, sir.

MR. FERGUSON: Your Honor, we're going to make this Defendant's 51.

THE COURT: All right.

MR. FERGUSON: The color version of the welcome page.

THE COURT: Admitted without objection.

(Defendant's Exhibit No. 51 entered into evidence.)

THE COURT: Thank you.

Next witness.

MR. FERGUSON: Your Honor, my clients rest. We're turning it over to PC Cleaner.

MR. EDMONSON: Your Honor, PC Cleaner is going to call Cash Myricks and in the beginning of doing so, would ask to move the two declarations that Mr. Myricks submitted into evidence. There's one from December 11th, which we've marked as PC Cleaner's Defendant's 3, and there's one from December 15th, which we've marked as Defendant's 4. That one we will move in, with the exception of exhibit D to the declaration, which was erroneously printed incorrectly.

And so we have the correctly printed version of that exhibit, which we would add as Defendant's exhibit number 7.

I've provided copies of that to the Government.

THE COURT: You lost me with the numbers there.

MR. EDMONSON: Okay. So the first declaration, the one from December 11th, exhibit 3. The second one from December 15th is exhibit 4. But we will strike the last exhibit to the declaration, which is a large set of printouts from the Internet. There was an error in the printing of that, so in substitution for it, we have the correct copy, which we can either attach to that, or I would suggest we could mark it as number 7 for clarity.

THE COURT: Any objection?

MS. BURTON: Well, I believe actually the exhibits are positive reviews of the company, and they're sort of -- we intend to respond to them as part of our reply to the motion in limine, because this is part of their opposition to the motion in limine. So we do have objections, but I understand that for the purposes of today you're planning on considering those issues later.

THE COURT: So you want to admit the criticisms but not the positives, is that --

MS. BURTON: No.

THE COURT: The complaints are admissible, but the positive comments are inadmissible?

MS. BURTON: Well, as you'll see in our reply, the complaints are admissible because they fall under 807. It is our position that these do not fall under that exception, but

for purposes --

THE COURT: The catchall?

MS. BURTON: The catchall, yes.

THE COURT: Yours come into the catchall but their's don't?

MS. BURTON: Yes, I believe that is the case.

THE COURT: All right. I'll deal with it later.

MR. FERGUSON: Your Honor, if I may make a suggestion? We've referenced them in our declarations, the 16,000-plus customer endorsements. Rather than burn up a lot of time about arguing don't take in the Better Business Bureau complaints, and literally, it could take an hour and a half to go through Aiken's declaration and cull out every footnote and everything, what I would request, and we've given them a copy, but I would request that you take our positives, their positives, and take the negatives that they put into the record.

We trust that you'll sort through this and come to the right conclusion and weigh these hearsay documents accordingly.

But I can't, for the life of me, fathom why their's come in and ours wouldn't, as you're asking them now. And I just -- we're running out of time today. I just don't think it will be productive to go --

THE COURT: I'm going to do the same with yours as I

did with hers. I'll accept them now and decide whether I'm going to give them any weight and admit them later.

MR. FERGUSON: If I may, we would like to, if it's going to be argued further later, but I would like to tentatively have our 16,000 as Defendant's 52.

THE COURT: Okay. Well, again, I'll accept it with the same caveat that I did with their complaint letters.

MR. FERGUSON: We appreciate that.

THE COURT: And what was your number?

MR. NICHOLSON: It's number 7, Judge. Defense 7.

THE COURT: I'll take 7 with the same caveat.

Do you have any objection to the declarations 3 and 4?

MS. BURTON: Pardon?

THE COURT: Do you have any objections to the declarations 3 and 4?

MS. BURTON: No.

THE COURT: Those will be admitted without objection.

(Defendants' Exhibit No. 7 entered into evidence.)

Cashier Myricks, Defendants' witness, sworn.

THE COURT: Sir, if you could tell us your name and spell your last name, please.

THE WITNESS: Cashier Myricks, last name is M-y-r-i-c-k-s.

THE COURT: Why don't you spell your first name also?

THE WITNESS: Cashier, C-a-s-h-i-e-r.

THE COURT: Thank you. Cross-examination.

Cross-examination

BY MS. BURTON:

Q Good afternoon, Mr. Myricks.

So this isn't the first time the FTC has sued you, is it?

A No.

Q In 2005, the FTC sued you for deceptive Internet advertising; is that correct?

A Correct.

Q And did those advertisements promise consumers that downloading music, movies and games using your software would be a hundred percent legal guaranteed?

A Yes.

Q And did you settle that case with the FTC in March of 2006?

A Correct.

Q And as part of that settlement, were you subject to certain compliance reporting requirements?

A Yes.

Q And how long were you required to report to the FTC regarding your compliance?

A I don't remember the exact date, but from --
Q Does three years sound right?
A Sounds about right, yeah.
Q Okay. I can refresh your recollection if you'd like by showing you the document.
A Yes.
Q Would you like to see the document?
A Yes, please.
Q Okay. I am giving you a copy of -- actually, let me, while I'm up there, I'm going to give you a copy of your declaration, too, all of your declarations.
A Okay.
Q Does that look like a copy of the settlement agreement that you signed with the FTC?
A Yes.
Q And if you flip -- I wish I knew what section, but towards the back there's a compliance reporting section. It's in the last, maybe, three pages, and it specifies there that you're required to report for three years from the date of entry.
A Yes.
Q So you agree it's three years?
A Yes.
Q So your compliance period ended March of 2009; is that correct?

A Correct.
Q And how soon after that compliance period ended did you start selling PC Cleaner products?
A PC Cleaner products, 2011.
Q Okay. Prior to that, had you sold any other registry cleaner products?
A Yes, I did.
Q And what were the names of those?
A Netcom3 Smart -- I'm sorry, Netcom3 Smart Cleaner and Intellinet Security.
Q Okay. I'm going to now hand you something marked Plaintiffs' exhibit 29. This is page 460 through 471.
What do those documents appear to be?
A Incorporation.
Q Okay. So if you look at page 460.
A Yes.
Q It's an incorporation document for which company?
A PC Cleaner, Inc.
Q And who is listed as the incorporator?
A The agent of service? Which part are you referring to?
Q Is there someone listed as the incorporator on that document?
A M-f-o-n-i-s-o-e-k-a? Correct.
Q Do you know who that is?
A My accountant.

Q So your accountant actually was the incorporator for your company?
A Right, right.
Q What was your role at this time?
A What was my role?
Q With the company, yes.
A The CEO, starting the company.
Q And flip to page 462, which is a Statement of Information that's filed with the Secretary of State for California. And that document I believe references PC Cleaner, correct?
A Correct.
Q PC Cleaner, Inc.?
A Correct.
Q And it lists the -- what address is listed for PC Cleaner, Inc.?
A 220 Newport Center Drive.
Q Okay.
A Newport Beach, California, 92660.
Q But, in fact, that's a mail drop, correct, not an actual business premises?
A Right.
Q Flip to page 464. This is Netcom3, Inc.'s Articles of Incorporation. And here you're listed as the corporation's incorporator on this document; is that correct?
A Yes.

Q And the address that's on this form, is this also a mail drop?
A Yes.
Q Flip to page 466. This is an amendment statement of information for Netcom3, Inc., and the address listed on it, could you read that back to me, for the corporation?
A Yes, 30025 Alicia Parkway, number 106.
Q And you also used that same address throughout the entire form for the address for the principal executive office, the principal business office and even for your own address; is that correct?
A Correct.
Q And that, in fact, is also a mail drop.
A Yes.
Q A few days earlier on the statement of information filed for Netcom3 Global, Inc., which you also have, you filled it out the same way; is that correct, with a mail drop as all relevant addresses?
A Correct.
Q Thank you.
In August of 2013, a group of plaintiffs filed a class action against PC Cleaner, Inc.; is that correct?
A Correct.
Q And the Plaintiffs' allegations in that case are very similar to what the FTC is alleging here, correct?

A Correct.

MR. EDMONSON: Objection, calls for legal conclusion.

THE COURT: Overruled.

BY MS. BURTON:

Q And you settled that case in August of 2014, right?

A Correct.

Q And the settlement --

A I'm sorry, what did you say? What year? August --

Q I might have said 2002, I'm sorry. You settled that in August 2014, correct?

A I'm not sure if it was -- I am not sure of the exact date.

Q It was recently, though, several months ago?

A Okay.

Q And the settlement, part of the terms of the settlement, is that it requires you, your company, PC Cleaner, to eliminate the term "damage level" to refer to the harm posed by things that were detected during a scan; is that correct?

A Correct.

Q Did you make that change to get rid of the phrase "damage level" before the TRO was entered in this case?

A Yes.

Q You had made that change prior to the TRO being entered in this case?

A For the 2015 version we were developing, yes.
Q So you were developing it, but what was available on your website at the time the TRO was entered, did that still contain the phrase "damage level"?
A When the software was scanning it did say damage still.
Q Okay. So who decided that the scan would use that term, "damage level," in the first place?
A I did, based on industry software leaders that's doing the same thing. So I decided it was something I thought was, you know, I can be -- I can use also.
Q Do you recall an e-mail correspondence in December of 2011, back when you were developing this software, between you and someone named Alexander Keroski (phonetic)?
A Uh-huh.
THE COURT: Is that a "yes"?
THE WITNESS: I'm sorry. I'm not sure yet. I'm not sure what the e-mail is.
BY MS. BURTON:
Q Do you know who Alexander Keroski is?
A One of my developers.
Q I'm going to hand you a document. I've got copies for everyone that I believe is a copy of that e-mail.
MS. BURTON: Plaintiffs would like to admit this into evidence as Plaintiffs' exhibit 46.
THE COURT: Any objection?

MR. EDMONSON: There's no foundation for it, but assuming she can lay one . . .

THE COURT: All right.

MR. EDMONSON: And excepting the fact we haven't had a chance to read it, there's no objection right now.

THE COURT: Lay a foundation.

BY MS. BURTON:

Q Do you use the e-mail address cash@Netcom3.com?

A Yes, I do.

Q And do you recognize this e-mail chain?

A Yes.

Q Is this one of the documents that you produced to the Federal Trade Commission?

A Whatever's in my e-mail address, yes.

Q Okay. So did you produce e-mails --

A Yes.

Q -- from this address to the Federal Trade Commission?

A Correct.

MS. BURTON: I'd like to admit this into evidence.

MR. EDMONSON: No objection.

THE COURT: All right. Admitted without objection. What was the number again? I'm sorry.

MS. BURTON: Forty-six.

THE COURT: Thank you.

(Plaintiffs' Exhibit No. 46 entered into evidence.)

BY MS. BURTON:

Q If you could turn back to page -- well, actually, we'll just start on page 1, even though that will be reading the chain backwards.

Do you see in the middle of the page it says that on December 15th, you wrote: "Please make identical to what I showed on screen shot," and then if you skip down a bit: "I changed the content, quote, security level, to, quote, damage level."

Is it accurate to say that you were involved not only in choosing that but in generally designing the look of the entire results screen?

A I helped, yeah.

Q And what was your motivation in making the change from severity level to damage level?

A I'm not sure.

Q What was your motivation in making any types of adjustments to the screen? What was your end goal?

A I think damage and severity is similar, you know. I probably changed the damages, looking at my competitors and seeing that they were doing the same thing.

Q So you did it to match what your competitors were doing?

A My top competitors, yeah. Norton, they did the same thing, and McAfee. I've always watched them. I want to be just like the big guys, yeah.

Q So if you skip down a couple more lines, it says: "On the results screen I changed the description title, quote, system performance, to performance problems."
A Where are you at again? Same page?
Q Same page, just a couple lines down from the line I read before. Do you see that?
A Okay.
Q So changing the description title from system performance to performance problems, that was a decision that you made, I believe you testified, also to mirror what your competitors were doing?
A Yes, uh-huh.
Q Flip over to the next page. In the middle of the page you say: "Can we please have an important discussion? I'll be back online in five hours. It regards one of the main reasons conversions are much lower than Speedy PC."
What do you mean by conversions?
A Conversions is a sale. Well, a conversion is how well the software is converting to a sale.
Q Okay. So it's how frequently someone who sees that screen purchases the product, correct?
THE COURT: What was the answer?
THE WITNESS: Correct, yes.
BY MS. BURTON:
Q Is Speedy PC one of these top competitors that you're

referring to?
A They're one of my competitors.
Q Are they like the Norton or the big guys that you were just referring to?
A No. Yeah, they're comparable. They're comparable, but they're not -- I don't, you know, say that they're comparable to Norton. They may be. I'm not saying they're not good.
Q Okay. Flip over to page 9. And if you see -- I apologize. This is the way it was produced to us. You got it?
A Hold on a second.
Okay.
Q This appears to be a discussion where you're discussing how to make it look more like Speedy PC. You say: "Also, I notice how Speedy PC when it loads up, it does this."
Maybe just glance through that page.
Was the goal of your changes at this point in time to mirror what Speedy PC looked like?
A No, my design was if -- no, not exactly. I mean, you know, like a certain feature to have, like a certain part may looks more appealing, but I'm not saying I mocked it completely, no.
Q Okay. So at the bottom of page 10 it says: "BTW, the reason I'm basing a lot of changes to be similar to Speedy PC is because they are as of now converting about .5 percent

better than PC Cleaner as of last week."

And, again, these conversions you're talking about, that's how many sales they're making, correct?

A Yes, correct.

Q So were you tracking your competitors' sales?

A Yes, basically. Yes, I was.

Q And then making adjustments to your screen to look more like their's, correct?

A Similar, yes.

Q And the goal of that was to increase your own conversions, as well, correct?

A Correct.

Q As one of the things that you asked Alexander Keroski to do, back on the first page, it was to change the content severity level to damage level.

A Uh-huh.

Q And you ask him to do that in a day?

A (No Response.)

Q Um, is there a reason that it now would take you many months to change -- to get rid of the term "damage level" on your screen shot, on your results screen?

A Well, we did -- we had made a lot of improvements in development in -- using different platforms. So it's not as easy to make some changes now. It would be a little bit more difficult.

Q So you waited to make any changes until you could make them all at once; is that correct?
A I'm sorry, repeat that again?
Q In making the adjustments that were required by the class action settlement, you decided to wait and make a series of changes at the end rather than changing -- getting rid of damage level, for example, right after you agreed to that settlement; is that correct?
A No. There was other changes that were required, and I changed it before we even settled. I made changes right away as we were discussing with the other side. It was other changes that they were asking to make, and I made them.
Q But the change regarding getting rid of the phrase "damage level" was not made as of the time of the TRO; is that correct?
A No, not correct. Not completely. Damage level was on a scan results page and also when it's scanning. We made a change. It was a bug. So that bug is being fixed. 2015, it is fixed. But if you look at the scan, when it's scanning it still said damage. When it stopped scanning it was gone. It was supposed say concern level. But it didn't say concern level or damage level. So that was a bug. We did fix it.
Q Thank you.
Did you ever sell a product called PC Cleaner 2007?
A 2007? No.

Q Okay. Is it fair to say that you were concerned about the online reputation of your company?
A Yes.
Q And did you ever offer to pay a company or an individual to help you improve your ratings or rehabilitate your reputation online?
A I don't recall, no. I'm not sure.
Q Do you recall having an e-mail exchange in October of 2012 in which you sought assistance rehabilitating your status with the Web of Trust Community?
A Now, yes, I do.
Q I'm going to hand you a document.
A You said Web of Trust?
Q Web of Trust.
A Let me take a peek at it.
Oh, yeah.
Q Do you use the e-mail address cash@PC-cleaners.com?
A Yes.
Q Does this appear to be an e-mail from you to Ridley (phonetic) Ruth at stopthehacker.com?
A Yes.
Q Was this among the e-mails that you would have produced to the FTC?
A Yes.
MS. BURTON: Plaintiffs request that this be

admitted into evidence as Plaintiffs' exhibit 47.

THE COURT: Any objection?

MR. EDMONSON: No objection.

THE COURT: Admitted without objection.

(Plaintiffs' Exhibit No. 47 entered into evidence.)

BY MS. BURTON:

Q Can you turn to page 4 of the document?

A Okay.

Q And in the middle of the page, could you start reading with "I understand they are your partners?"

A Yes.

Q Have you read through that?

A Yes.

Q Okay. The document asks for assistance getting your site, PC Cleaner, to a good green status so that you can get a My WOT Seal of Trust.

A Right.

Q What was your status at the time you wrote this e-mail?

A I don't know the exact -- I'm not sure.

Q It was not green?

A It could have been not green or it could have been not rated. I'm not sure.

Q And what is WOT, if you know?

A Web of Trust, I guess. Web of Trust.

Q Okay. But do you know what it is?

A It's similar to -- I mean, it's just a reporting -- a site that kind of give a status on different customer reviews that come to the site and post and give you a rating.
Q So does it aggregate customer reviews and then give a product a rating based on customer reviews?
A If they're true reviews, yes.
Q And then you say: "I'll be happy to pay you $10,000 to assist me at this," correct?
A Correct.
Q And you say: "My site and software is used by many million happy customers for over 10 years now."
Did you, in fact, have millions of customers at that point?
A No, not million customers. Maybe I should say a million people downloading the software, yeah.
Q So in 2012 you had already had more than a million downloads of PC Cleaner?
A No. I mean, maybe I kind of exaggerated the 10 years. I should -- but this -- yeah.
Q So how many years had you actually been selling this product at this point?
A This point now, I've been in business over 10 years, but not selling this product. So that's why I said 10 years, but . . .
Q Okay. And then just flip over to page 2. In the first

e-mail on that page, you again assert you would be willing to pay at least $10,000 to get you to a green status; is that correct?

A Yes.

Q And on the first page, Ridley Ruth then responds to you, and she provides the Web of Trust's advice about what you should do to help your status, correct?

A Yes.

Q And that advice quoted from Web of Trust is: "For example, if users find scareware advertising unethical, changing the marketing tactics and informing the community about it would most likely result in an improved reputational rating," correct?

A What part again?

Q This is in the third paragraph of their response.

A Page 2?

Q Sorry, page 1. I'll hold it up so you can see where I've highlighted.

A All right. I see.

Q You see that language?

And did you, in fact, at that point take that advice and change your sales tactics?

A I'm not sure what the next step was, but that's what it shows here.

Q Okay. Do you remember taking any steps after receiving

that e-mail to change the way your product was sold?
A Yeah, it shows that I made changes based on some of the community posts, yeah.
Q But after receiving that advice, did you make any changes?
A I offered a 30-day free trial, complete trial where you can actually use the product to see, and just to prove that my software does work. Yeah, I did that.
Q Okay. Did you ever threaten to sue companies or individuals who gave you bad ratings -- gave PC Cleaner bad ratings or reviewed it negatively online?
A Sue companies? No, I don't --
Q You don't believe you ever threatened to bring legal action against a company that denigrated your product's reputation?
MR. EDMONSON: Asked and answered almost identically.
THE COURT: Overruled.
THE WITNESS: I'm not sure, no.
BY MS. BURTON:
Q You're not sure? You may have, or you're --
A I don't think I have -- sue the person who give me a bad rating, no.
Q I didn't ask if you had sued them. I asked if you had threatened to sue them.

A I don't recall.
Q And who is David Holt?
A David Holt is a company I get my domain names from.
Q In January 2013 do you recall Go Daddy warning David Holt that your domain, PC Cleaner dash update was sending spam e-mails?
MR. EDMONSON: Objection, assumes facts not in evidence.
THE COURT: Overruled.
THE WITNESS: Yes.
BY MS. BURTON:
Q Did he send you an e-mail to that effect?
A Yes.
Q Did you use the merchant descriptor safe cart --
A I'm sorry. Go back.
What was the domain name again?
Q The domain name involved was PC Cleaner dash update.
A Yes, and we resolved it, and it was still working up to today, the Go Daddy. It was a typical mistake that Go Daddy made that resolved.
Q Did you use the merchant descriptor safecard.com asterisk PC Cleaner?
A Did I use the domain name?
Q A merchant descriptor for MasterCard.
A That's who processed my credit cards.

Q Right.

And do you -- is one of your merchant descriptors safecard.com * PC Cleaner?

A I'm not sure what your question is.

Q Does your company use different merchant descriptors -- when a consumer purchases PC Cleaner, on their credit card bill the charge will show up with a descriptor of who made those charges.

A Right, correct, Safe Card.

Q And is one of the descriptors that you use for PC Cleaner safecard.com * PC Cleaner?

A I'm not sure. I think so. If they purchase the Safe Card it should show the statement Safe Card, yes.

Q Okay. I'm going to --

A I don't know if I'm getting the question right.

Q You're fine.

Let me give you -- this might help refresh your recollection. Let me give you Plaintiffs' exhibit 29. This is page 665.

So in April 2013, do you recall being notified that that particular descriptor we have been discussing had been flagged for violating MasterCard's excessive charge-back program rules?

A You said do I recognize this? Okay. Yes.

Q And do you have an understanding of what a --

A I'm not sure if this -- you know, there's most of PC Cleaner -- there's multiple softwares that's named PC Cleaner. I'm not sure if this is pertain to my --
Q Well, I believe that document designates a particular merchant descriptor that it is about, and that merchant descriptor I believe on that document is safecard.com * PC Cleaner.
A Yeah, I see that.
Q Is that one of your merchant descriptors?
A Yes, Safe Card is.
Q And do you recall being notified that that descriptor had been flagged for having excessive charge-backs?
A It's possible.
Q Do you have other merchant scripters that you use besides that one?
A I've used others, yeah.
Q Have any of those been flagged by MasterCard for excessive charge-backs?
A No.
Q What about with Visa, have any of your merchant scripters been flagged?
A No.
Q Um --
A I say, no, I don't recall.
Q You don't recall?

A No, you don't.
Q Before your company became involved with Inbound Call Experts -- so prior to, I believe, March of 2013 -- you were directing purchasers of PC Cleaner to call a different call center to activate their software; is that correct?
A Correct.
Q What was the name of that call center?
A TLC.
Q And what does TLC stand for?
A Tech Live Connect.
Q Any others?
A No, that's it.
Q When did you start directing calls to Tech Live Connect?
A Don't know the exact date. I think around 2012, early 2012. I think it was around there.
Q Did you ever use another call center before that in connection with PC Cleaner software?
A No.
Q Did the excessive charge-back rate notification that you received there have anything to do with your decision to end your relationship with TLC?
A I don't remember, but it could possibly be.
Q Where is TLC located?
A TLC, where were they located? I have to look at the contract. I'm not sure.

Q Are they in the United States?
A Yes.
Q They are not -- you believe they're in the United States, not in India?
A No, the office is -- I know they have offices in the United States. They did have an office -- call centers in India, and that's why I ended the relationship because complaints came in.
Q So you were receiving complaints from people who had purchased PC Cleaner about Tech Live Connect; is that correct?
A Yes, regarding the clarity of conversation. It wasn't the best.
Q Is that the only thing consumers were complaining about?
A That was one of the main complaints.
Q And when consumers called Tech Live Connect and were connected with someone in India, do you know what happened at that point in the call?
A I'm sorry, say that again?
Q Do you know what happened when your customers called that number? Did you ever test the number?
A At the beginning I did do some tests and I monitor occasionally.
Q And what happened when customers called that number to activate their software?

A They get the activation, the software activated, and they do a diagnostic to see if there's any other issues with the computer.
Q Did that diagnosis include the Event Viewer?
A I don't recall. I don't remember.
Q Did you get a percentage of the sales?
A Yes.
Q Of Tech Live Connect sales?
A Yes.
Q What percentage did you receive?
A I think around 45 percent.
Q Does Revenue Wire process payments for Tech Live Connect?
A They did.
Q So you would receive your cut, your 45 percent, directly through Revenue Wire?
A Yes, because Revenue Wire connected me with Tech Live Connect.
Q And they also connected you with Inbound Call Experts; is that correct?
A Correct.
Q Did you make the decision to switch from Tech Live Connect to Inbound Call Experts, or did Revenue Wire make that decision?
A Combined decision. It was a decision together because we -- you know, we -- I was having issues as far as customers

complaining about their -- they couldn't understand the agents, and Revenue Wire, a U.S.-based company, which I felt was a perfect match.

Q Is it fair to say that your years directing customers to Tech Live Connect were pretty profitable years for you?

A Yes.

Q In 2012, were Netcom3 Global's gross receipts over $20 million?

A Gross, yes.

Q And in 2013, were the gross receipts over $30 million?

A Gross, yes.

Q And your own personal income from Netcom3 Global was about $4.8 million in 2012; is that correct?

A Yes.

Q And about $5.3 million in 2013, does that sound about right?

A Yes.

Q And during this 2012-2013 period when you were sending calls to Tech Live Connect, did you own a Bentley?

MR. EDMONSON: Objection, relevance.

THE COURT: Overruled.

THE WITNESS: Say that again? I'm sorry.

BY MS. BURTON:

Q Did you own a Bentley? Was that one of your vehicles?

A In 2012?

Q Yeah.
A I think, yes, it is.
Q And a Porsche?
A Yes.
Q A Mercedes?
A Yes.
Q Any other luxury vehicles?
A When you say own --
Q Leased?
A Yes.
Q Could you look at paragraph 15 of your declaration? I just want to clarify some dates.

You said in paragraph 15 -- do you have it? On page 5.

A Okay.
Q You say that the PC Cleaner Defendants had no relationship with the ICE Defendants until March of 2013, correct?
A Correct.
Q In paragraph 16, you say that in December of 2011, Revenue Wire approached you about participating -- well, so you had this conversation, and then in 17 you say they emphasized to me that ICE had a strong reputation for quality customer service.

Are you saying that in 2011 Revenue Wire approached

you and told you positive things about Inbound Call Experts?
A I'm sorry, can I read it?
Q Sure.
A (Perusing document.)
Yeah, the date is correct when he first introduced me, was 2011 is when he introduced me to the call stream, and that's when I connected with TLC. That's when I first started.
Q But was it in 2011 that they talked to you about Inbound Call Experts, or was it 2013 that you're saying --
A Right. It's -- 2011 is when they introduced me to call stream. Around 2012, I'm not sure the exact date when I started with TLC. 2013, March, is when I connected with Inbound Marketing.
Q So it was much later than December of 2011 --
A Yes, it was.
Q -- that they said positive things about Inbound Call Experts to you?
A They said it -- yes, 2013 is when he said, yeah.
Q I just wanted to make sure I understood that.
In paragraph 19, you said that based on the recommendation of Revenue Wire and ICE's representations, you did not actively monitor the activities of any of ICE's call centers; is that correct?
A Yes, I said that. I mean, I monitored -- at the

beginning I did. I made calls, I checked it out and, you know, see the quality of the agents, and I was happy with it.

Q So you did, in fact, make sales calls -- make calls to Inbound Call Experts to see what kind of experience your customers would have if they purchased PC Cleaner and were directed to that call center?

A Correct.

Q Just as you had done with Tech Live Connect?

A Correct.

Q So did you hear the sales pitch?

A I -- partial, yeah, I did, but I never went through the full call as far as accessing my computer. I just called in to see how they react with the customer and just say I'm going to call back.

Q So you never let them remote access into your computer and go through the sales pitch?

A No.

Q Did you ever do that with Tech Live Connect?

A No.

Q Okay. So you called to make sure that the number worked --

A How they act with the customer, and I asked questions about my computer and see how they react with me as a customer, without having to go through the process of accessing my computer.

Q When you were deciding to switch your -- switch the calls to Inbound Call Experts, did you inquire about what was being sold by Inbound Call Experts?
A Subscription services I know they was selling, yes.
Q Did you get a list of other products that they might sell?
A I don't recall.
Q Did you review sales scripts?
A No.
Q Did you visit the site?
A No.
Q Did you meet in person with any of the individual defendants?
A I think at a affiliate summit I met one, once we met.
Q Who did you meet?
A I think it was Paul. We met at a affiliate summit, just briefly. Just introduce ourselves.
Q Did you look online for complaints about Inbound Call Experts?
A No.
Q Did you do any other due diligence or research about Inbound Call Experts before deciding to switch your customers to them?
A No, I trusted Revenue Wire. They -- you know, they -- we had a contract with Revenue Wire, so long as whoever I worked

with have a contract, that we have to abide by the rules and regulations.

Q But you had also trusted Revenue Wire's recommendation for TLC; is that correct?

A Right. That's why they recommended me to move on to a better company, and I took their advice and moved on.

Q What percentage would PC Cleaner receive by -- from ICE calls that -- from sales generated by Inbound Call Experts?

A Around 40 percent. Less than TLC, actually.

Q Okay. So I think you said TLC was 45 percent?

A Forty-five percent.

Q This is about 40 percent?

A Thirty-seven, 40.

Q And if Inbound Call Experts sold a plan that had recurring monthly charges, would you also get 40 percent of each monthly recurring charge?

A Yes.

Q Who was your main point of contact at Inbound Call Experts?

A I think it was Paul. I had -- Paul is who was the main person I was introduced to.

Q And did you exchange e-mails with him periodically to see how sales were doing?

A At the beginning.

Q Did you monitor call volume and revenue from the calls

that were forwarded to ICE on a regular basis?
A What do you -- did I monitor calls?
Q Sorry.
Did you just monitor the number of calls that -- on a daily or weekly basis?
A Daily basis, I could kinda see.
Q Throughout this whole relationship, you monitored on a daily basis how many calls were going to Inbound Call Experts?
A Yeah, maybe daily, yes, I'd come see.
Q And did you also monitor the revenue from all those calls on a daily basis?
A Somewhat, yeah.
Q About how many calls were forwarded, how many PC Cleaner purchasers then called Inbound Call Experts on a typical day on average?
A On average, probably -- I mean, it just depends, you know, like -- the last year or just overall?
Q Sure.
A The last year, maybe 30, 40 calls.
Q Thirty or 40 calls, is it, per day?
A Per day it was -- yes, not many calls. Now, at the beginning it was more.
Q How much more?
A I don't remember, you know. Probably 300, maybe, 340,

400 calls.
Q Do you know why it decreased so substantially from the early days until the present?
A You said why it decreased?
Q Right.
You said that originally they were getting about 400 calls a day from your purchasers, and now later in 2014; is that correct, you were getting more like 30?
A Less calls, right.
Q Do you know the reason for that change?
A I'm not sure why.
Q In 2013, how much would you estimate your company has earned from its cut of ICE's sales for PC Cleaner leads?
A 2013?
Q Uh-huh.
A Net, I'm thinking about 2 million, 2.5. I'm not sure exact numbers.
Q Okay. And I think you testified earlier that, for example, in 2013, you earned it was in excess of 20 million?
A Right. Gross or net?
Q Let's talk gross.
A Okay.
Q So what percentage of that came from what you received from Inbound Call Experts up-sells or sales?
A 2013, okay, probably around gross, maybe around

10 million.
Q So about half of your total came from your cut of the sales that ICE made?
A Right. About 40 percent, close to.
Q What percentage of PC Cleaner customers sought a refund?
A What percentage? Probably around anywhere from nine to 12 percent.
Q And what about cancellations?
A Cancellations, that's hard to say. I'm not sure.
Q Okay. What percentage of PC Cleaner's customers agreed to the auto renew every six months?
A The auto renew, agrees to it? Say about 60 percent. I mean, 50 to 60.
Q And on the purchase screen, would the box for auto renewal be pre-populated with a checkmark?
A At the very top?
Q Yes.
A Yes.
Q Did you review refund request e-mails?
A Yes, uh-huh.
Q What about e-mails seeking to cancel the auto renew feature?
A Yes, I seen some.
Q Did you review all the e-mails that came in?
A No, I have a team that review the e-mails, but I did go

over some of them to see what they were coming in, yeah.
Q So you were aware of the reasons that people were seeking refunds generally?
A Generally, yes.
Q And you were aware of the reasons that people were canceling generally?
A Yes.
Q Did you search online for reviews of the PC Cleaner product or the company?
A Say again? Did I --
Q Did you search online to see what people were saying about your company or your product?
A Yeah, I did research.
Q Did you receive civil investigative demands from state attorneys general offices over the -- over the course of the last two to three years?
A Have I did what again? I'm sorry.
Q Were you contacted by State Attorney Generals offices over the last several years?
A Yes, I've been contacted.
Q Were you served civil investigative demands? It's sort of like a document request where they ask you to answer questions and produce documents.
A I'm not sure.
Q Okay. Any other law enforcement agencies reach out to

you in the last couple of years?
A No, I'm not sure.
Q You're not sure, or no?
A I'm not sure what -- no, no.
Q Did you make any business -- any changes to your business practices based on these inquiries from State Attorney Generals?
A Did I do what again? I'm sorry.
Q Make any changes to your business practices?
A Like what changes? I'm not sure what -- no.
Q No, you did not?
A No.
Q Would you be able to sell the PC Cleaner Pro product without the free scan?
A You said without the free scan?
Q Yes.
A Yes.
Q And would you be able to stay in business if you let your customers enter the license key themselves and didn't forward them -- didn't offer them a phone number to call to activate the license key?
A Yes, I did before.
Q Before when?
A Before I started with TLC. I did it about a year. I think that's -- about a year, you know, selling without

support.
Q Okay. So it would be -- it would be feasible for you to continue to sell PC Cleaner Pro without directing customers to call an additional phone number?
A Yes.
MS. ROBBINS: Thank you. That's all I have, I think.
THE COURT: How long do you think this is going to be?
MR. EDMONSON: Maybe not a full half an hour, maybe 20 minutes.
THE COURT: Now, I have other hearings at 2:00 o'clock, and I haven't had a break all morning.
MR. EDMONSON: I'll go as quickly as I can.
THE COURT: So, you know, I thought we were going to be finished by 1:00 o'clock.
MR. NICHOLSON: Your Honor, pick back up at 3:30, then?
THE COURT: How much more are we going to have after that?
MR. EDMONSON: I have about 20 minutes with the witness, I believe, and then after that.
MS. BURTON: Then it's just closings.
THE COURT: Let's get back at 3:30, finish up.
(A recess was taken from 1:28 p.m. to 3:42 p.m., after

which the following proceedings were had:)

THE COURT: Please be seated, everyone.

All right. We're going to do some redirect?

MR. EDMONSON: Yes, Your Honor.

THE COURT: Okay.

Redirect Examination

BY MR. EDMONSON:

Q Afternoon, Mr. Myricks.

Have you ever testified before?

A No.

Q Have you ever been deposed?

A No.

Q So when Ms. Burton asked you questions prior to the break, that was the first time you had ever been examined as a witness?

A Correct.

Q Or answered questions under oath in person?

A Yes.

Q You nervous?

A Yes.

Q We're going to go back over a few of the things that she asked.

First is pertaining to the 2006 FTC action.

A Yes.

Q Can you turn to page -- I believe you have a copy of it.

It should be page 587 of the record, which is the judgment in the FTC action.

THE COURT: 587 of what?

MR. EDMONSON: Of the record. It's exhibit 29, attachment DD.

BY MR. EDMONSON:

Q Could you look down at the bottom of the page. Do you recognize this document?

A Yes.

Q Could you read the sentence that starts on line 27?

A Commission act, FTC?

Q The sentence that begins on the second part of that line. The word "defendant" is the beginning of the sentence.

A What page? I'm sorry.

Q It's the first page, line 27, the sentence that begins on that line with the word "defendant."

A Oh. "Defendant does not admit liability for the allegations in the complaint except jurisdictional facts, but agrees to the entry of the following stipulated final order for permanent injunction and other equitable relief."

Q So you didn't admit to liability in that case?

A No.

Q Do you think if you would have fought it you would have won?

A Yes.

Q So what -- Ms. Burton described that case as being about your software, but I don't know if that's right. Can you talk a little bit about what the case was about?
A I didn't have any software. This was a tutorial I had built to show users how to download music and file sharing, how to file share.
Q So you created a tutorial program that was an instruction manual for how to do certain things?
A Right.
Q And about how many customers were involved in this?
A About a thousand.
Q So at that time was that your own business, or did you have others?
A I had other businesses.
Q Was this a large part or a small part of your --
A Very small part.
Q If you could let me finish each question, the reporter has to take it down.
So this was a relatively smart part of your business?
A Yes.
Q If you were to estimate, approximately what percentage of your overall revenue for that year was related to this company with the FTC action?
A Maybe one percent or less.

Q And once you agreed to enter into this order, you had a compliance period that Ms. Burton talked about, right?
A Correct.
Q And what -- did anything happen during that compliance period? Did the FTC ever reach out to you?
A No.
Q Has the FTC ever given any indication, before filing a TRO in this case, that they believe that you were in any way not complying with the order?
A No.
Q Had they ever filed any kind of a contempt action or other action in the court in which the previous order was pending that would suggest that they believed you weren't following along?
A No.
Q Okay.
A I also want to mention that they didn't just -- they didn't shut me down. They said I could continue to do it, run the file sharing business, it just have to make a modification that I agreed to do. But I just decided not to run it anymore, although I did make a modification.
Q Okay. So the FTC agreed with you that you could continue to sell the tutorial, as long as you made a modification to the language of it?
A Correct, and I did.

Q And you did make that modification?
A Yes.
Q And you've never sold the tutorial without the modification since?
A No.
Q Have you ever heard had any involvement with fire sharing since entering into this order?
A No.
Q And had you ever sold file sharing software before or afterward?
A No.
Q Okay. Ms. Burton talked a little bit about the Web of Trust program.
A Yes.
Q Which, as I understood your testimony, was part of an overall strategy to try to create visibility for your company on the Internet?
A Correct.
Q In your understanding, this is a common strategy for companies that sell software over the Internet, to use different sources to try to generate --
MS. BURTON: Objection, Your Honor, testifying.
THE COURT: Sustained. Rephrase your question.
BY MR. EDMONSON:
Q What was your reason for getting involved with the Web of

Trust program?
A When I noticed it was a complaint on their site, and I was trying to get familiar with the site and why was complaints, you know, and was it true complaints or just competitors are posting stuff, you know.
Q So you were trying to figure out whether or not they were legitimate complaints to address or they were competitors trying to malign you?
A Correct.
Q We talked about the Safe Card merchant descriptor. Do you remember that?
A Yes.
Q What is Safe Card?
A A processing company to process credit cards for customers' transactions.
Q Is Safe Card its own company or part of another company?
A Part of Revenue Wire.
Q And Revenue Wire is the company you testified earlier is the company that put you in touch with your support companies?
A Correct.
Q So the merchant descriptor, Safe Card with the asterisk and then PC Cleaner, was that something that you created or that Safe Card created?
A Safe card created.

Q And Safe Card is the one that actually processes the transactions, correct?
A Correct.
Q Okay. So you're not really familiar with the ins and outs of exactly how they do that because you essentially are in the business --
MS. BURTON: Objection.
THE COURT: Sustained.
Please don't lead the witness.
BY MR. EDMONSON:
Q What, if anything, do you know about how Safe Card decides what merchant descriptors to use or how to process the credit cards?
A Just based on the product, yeah, of the company.
Q Understood.
Why did you -- why did you switch from TLC to ICE?
A Well, quality customer service is what I've heard from Revenue Wire would be much better, and they did mention bringing down, you know, better on charge-back and refunds, you know, customer satisfaction, and overall, it's better service.
Q And where did you get the impression that they were doing those things better than TLC?
A Feedback from other partners and just, you know, just general research.

Q Were you aware of -- putting aside whether any of it's correct or not, were you aware of any of the allegations that you've heard during this last three days pertaining to ICE when you decided to retain them?
A No.
Q Did you become aware of it at any point when you were using their services?
A Never.
Q So did you learn about any of it before the Court entered the TRO?
A No.
Q If you had, what would you have done?
A I would have -- stopped, terminated and stopped using it, just, you know -- software only.
Q When did you terminate your relationship with ICE, if at all?
A After I found out about the TRO.
Q Do you have any intention of working with them again?
A No.
Q Do you have any intention of working with any other support companies?
A Not at this point. I just want to focus my software and focus on improving whatever I got to do to get it in compliance and so I can move forward, and, you know, just keep making it a better product. That's my goal now.

Q Do you believe that the company can sell its product in a viable manner without any kind of a support company involved?
A Of course.
Q So you can operate as a stand-alone entity?
A Yes, yes.
Q You talked a little bit earlier about different businesses that you have been in in terms of when you started PC Cleaner and then other businesses.

Do you have technical expertise?

A No. I mean, to a certain extent, yes.
Q Do you make most of the technical decisions yourself, or do you rely others to advise you as to how those decisions will be made?
A I rely on others and research.
Q We went back to 2003. What's your background prior to that?
A I've been selling auto auction directory, foreclosure data listings for the last, since 2001 or 1999.
Q So those are separate businesses from PC Cleaner?
A Correct.
Q Have either of those business, the foreclosure business or the auto auction business, ever had any involvement with the FTC or any other kind of law enforcement?
A No.
Q What about the PC antivirus product? Has that ever been

implicated by any kind of investigation?
A Never.
Q Speaking about complaints from earlier, let's talk for a minute about the BBB. In your declaration, you discussed the circumstances with regard to your BBB rating. Do you remember doing that?
A Yes.
Q What was your BBB rating shortly before the TRO was entered?
A It was A.
Q And to the extent that you had a lower rating earlier, what was the cause of that?
A After the TRO.
Q Prior to having an A rating, was there any sort of -- did you have a lower rating? And if so, why?
A That was because of the change of ownership between the BBB and the BCA, and a miscommunication.
Q So you did receive notice of some complaints at some time; is that correct?
A Correct.
Q And at another time, did you -- when you learned about the complaints, what did you do?
A I took care of them right away, although most of the customers were already taken care of. When I looked at the complaints and looked back, they were already taken care of.

Q We heard a little bit about two cars that you have. Do you have a family, Mr. Myricks?
A Yes, I do.
Q Do you have children?
A Yes, I do.
Q How many?
A Five.
Q How old are they?
A Two, eight, 15 and 16.
Q Are you the primary source of support for all of them?
A Yes, I am.
Q Are you married?
A Yes.
Q You talked earlier about a money back guarantee. Prior to the TRO, did you offer a money back guarantee?
A Yes, I did.
Q And why did you do that?
A I felt that customers should have a opportunity to try the product. If they're not satisfied, to give them time to, you know, get their money back.
Q How have you found your customers have received that? Are they pleased with it?
A Yes, yes.
Q Now, if we could talk for just a moment here about the log-in procedure when you do purchase the software.

Actually, scratch that.

Before that, can you tell me, is there a new version of PC Cleaner that's been recently created?

A Yes.

Q What is it called?

A PC Cleaner Pro 2015.

Q And when did development of that product start?

A It started probably around mid this year, about June, July.

Q So sometime during the summer of 2014?

A Correct.

Q At that time, did you have any indication that the FTC was considering suing you?

A No.

Q Had the FTC ever reached out to you to talk about any of the issues that have been raised during this hearing?

A No.

Q Have they reached out to you at all?

A No.

Q If the FTC had reached out to you, what would you have done?

A Made changes, you know, to comply.

Q So you would have been open to a discussion about how to make the product better?

A Correct.

Q And are you open to that discussion now?
A Yes.
Q Are you looking for ways to make the product better now?
A Of course, always.
Q Is one of those ways the PC Cleaner Pro 2015?
A Yes, it is.
Q And so that product differs from PC Cleaner Pro 2014 in some way?
A Yes.
Q How?
A Well, one, it blocks Active X, like it did before, but now it doesn't display all the numbers on the result screen. It's transparent, which it automatically blocks it for the customer. They can also go in the tools area and do it manually, but it doesn't display on the result screen as a high number.

We used to use color coded speedometer, now to show the severity or the concern level of each item.

What's the other? I'm a little nervous.

Concern level, we use concern level, we don't use damage. We have more descriptive information on each feature. They can click on view details and take them to the details and have more details than the 2014, so that way they can understand what they're cleaning and what the program's actually doing.

Q Okay.
A I'm sorry. Go ahead.
Q No, please finish.
A What they're doing.
We have free built-in tools they can also use along with the free version, the free scan version.
Q Okay. So one of those things you mentioned was the Active X blocker?
A Yes.
Q We've heard a fair bit about that during this hearing. Can you explain a little bit about how it worked in the 2014 version versus the 2015 version?
A Well, 2014, it scan and detect if you didn't have the blocker on your computer, the ones you did have, it would display the number to let you know that's important to block to keep the security of your computer.
In the 2000 (sic) version it still scan, but it doesn't show you in the result screen, so that way the number would not display of how many. It just block it regardless to give you security.
Before, we had 2014, I think we blocked 926. In the 2015, we now have collected 16,000 updated Active X controls.
Q Okay. So in the 2015 version, the Active X control number is not included in the total that appears at the end of the scan?

A Correct.

MR. EDMONSON: Your Honor, may I approach the exhibit table?

THE COURT: Yes.

MR. EDMONSON: May I now approach the witness?

THE COURT: Yes.

MR. EDMONSON: I've handed the witness exhibit number 10, Defendant's exhibit 10.

BY MR. EDMONSON:

Q Do you recognize exhibit 10?

A Yes.

Q What is that?

A This is a page that the users get right after they purchase the software.

Q Okay. And do you know where that document came from?

A After I found out, you know, the -- I guess the shopper who did the shopping, I went and put it up in a Revenue Wire database to put the receipt, the actual receipt, to see exactly what -- you know, was it really a license key, you know, was it a error where it didn't show up? I wanted to make sure.

Q And were you able to match that document with the Government's exhibit relating to the same customer by using the activation number, receipt number, on both documents?

A Yes.

MR. EDMONSON: Your Honor, we would ask now that exhibit number 10 be moved into evidence.

THE COURT: Any objection?

MS. BURTON: No, Your Honor.

THE COURT: Admitted without objection.

(Defendants' Exhibit No. 10 entered into evidence.)

BY MR. EDMONSON:

Q If you look at exhibit number 10 and you compare it with the Government's exhibit that's up on the white board, does it appear to be the same receipt, albeit putting aside whether both are complete or not? Is it for the same purchase?

A Same purchase.

Q Do you see any significant differences between the two?

A Significant differences, no. Just chopped off.

Q So when you say chopped off, one of them doesn't have the bottom of the screen?

A Correct.

Q Which one doesn't have the bottom of the screen?

A The board up here.

Q And is there anything important at the bottom of the screen?

A A license key.

Q And what does that mean?

A The license key is what they use to activate the

software.
Q So this is the code that, throughout the course of the proceedings, we've been hearing that in some cases the ICE personnel will enter in; is that correct?
A Say it again? Yes, yes, yes.
Q Is that the only way to activate the software, is by calling a phone number?
A No.
Q How else can you activate the software?
A You can activate it yourself once you get the license key, and the software is already opened up on your computer.
MR. EDMONSON: Just a moment.
I'd like to give the witness one page of an exhibit that the Government gave to their expert yesterday. In the interest of moving things along, they'll look for the exhibit number and we'll add it to the record afterward, if that's okay with the Court.
THE COURT: All right.
MR. EDMONSON: May I approach the witness?
THE COURT: Yes.
BY MR. EDMONSON:
Q Do you recognize the document that I just handed you, which is an exhibit that will be marked in a moment?
A Yes.
Q What is it?

A It's the -- when the user click clicks "all" on the software, this page pops up to let them know to register the software first, and it shows a box to put the license key also.
Q So that document contains a place to enter the license key?
A Yes.
Q And that screen is shown before or after the screen in exhibit number 10 that contains the license key?
A Before.
Q So you see a screen that says, already have a license key, enter it here?
A Yes.
Q And you see that prior to being given the license key?
A Correct.
Q So when the -- is it true that when the customer gets to the screen that in the full version contains the license key, they have already seen a screen that invited them to enter a license key if they have one?
A Correct.
Q And this is how a customer would enter in a license key -- is this how a customer would enter in a license key without calling anybody?
A Correct.
Q Okay.

MR. EDMONSON: For the record, the FTC's advising that the page we just examined is from Government's 41, Plaintiffs' 41.

THE COURT: Thank you.

MR. EDMONSON: I have here an exhibit that I'd like to mark as Defendant's exhibit 6 for identification.

THE COURT: Okay.

MR. EDMONSON: May I approach to pass?

THE COURT: Thank you.

BY MR. EDMONSON:

Q Do you recognize that document?

A Yes.

Q What is it?

A The new license key confirmation page after a purchase.

Q When you say the new, what do you mean?

A Replacing exhibit 10.

Q So is that for a particular version of the software?

A 2015 version.

Q Okay. And so in the 2015 version, that's the display page that you would propose?

A Exactly.

Q In the event that the Court doesn't enter a preliminary injunction, do you intend to sell only the 2015 version of this software or other versions, as well?

A Only 2015.

Q Okay. Does that page contain any phone number?
A No.
Q Do you intend to add a phone number?
A No.
Q Do you intend for the life of this case to proceed with a confirmation page that doesn't contain a phone number?
A Yes.
MR. EDMONSON: At this point I would ask that Defendant's 6 be moved into evidence.
THE COURT: Any objection?
MS. BURTON: No, Your Honor.
THE COURT: Admitted without objection.
(Defendants' Exhibit No. 6 entered into evidence.)
BY MR. EDMONSON:
Q Really quickly, we talked a little bit about the class action settlement when Ms. Burton was questioning you. Do you know whether or not that settlement requires you to have already made changes, or if it requires you to make them by a future date?
A Make them by a future date.
Q Do you intend to do so?
A Yes. I pretty much have already done most of everything, I think I've done it all.
Q In the 2015 version you've already made all the changes required by the class action settlement?

A Oh yes, yes.
Q Finally, I want to talk with you a little bit, I want to hear you talk a little bit about the software's capabilities. I believe you have a copy of your declarations. If you'd look at the first one dated December 11th. If you'd turn to exhibit A to the declaration.
A I'm sorry, what page?
Q Exhibit A. So after the declaration there should be exhibits. If your version doesn't have exhibits, we can switch.
A Yeah, I don't have it.
MR. EDMONSON: May I approach the witness?
THE COURT: Yes.
BY MR. EDMONSON:
Q Do you recognize exhibit A?
A Yes.
Q What is that?
A That's a tally report.
Q What's a tally report?
A It's a third party testing company that tests different software companies, comparison tests, performance tests and different type of benchmark tests.
Q And when was this report released?
A It was released about a week ago, a week, two weeks ago, but I started the process in July, testing it.

Q And what is it comparing your software to?
A It's comparing it to C Cleaner, CC Cleaner, which is a big cleaner software in the industry, Norton Utilities 16, RegClean Pro, Tune-Up Utilities by AVG software.
Q So this is a report that compares the performance of various types of software in the PC optimization industry?
A Correct.
Q And how did you do?
A I did very good.
Q How did you do compared to the other companies?
A Well, we outperformed them in each area we tested in. As far as the CPU utilization, we almost 50 percent better than each competitor.

Yeah, we tested in multiple areas, system clutter removal, privacy cleaner, CPU utilization, Windows ATK delete operation, and in each area we outperformed our competitors.

Q Okay. Could you look at exhibits B, C and D? You can look at them collectively. Each is a one-page certificate.
A Okay. I'm sorry. B?
Q B, C and D.
A I'm lost.

MR. EDMONSON: Can I show the witness?

THE COURT: Yes.

BY MR. EDMONSON:
Q Do you recognize these documents?

A Yes.
Q What are they?
A They're Ikos (phonetic) Lab's testing reports certifying PC Cleaner software.
Q What does that mean?
A It certifies that PC Cleaner truly detects the latest threats in the industry, viruses in malware industry.
Q So this is another third party that examines different companies' software?
A Yes. They're independent. They're actually part of Verizon. So, yes, they're a big company. They test all the leaders in the industry, Microsoft, Symantec, Norton, McAfee. We all use the same database, and they test it through the same database, and you have to test with a 92 percent or above detection rate or you fail, and you have to maintain that monthly, on a monthly basis. And we never failed since 2000 -- well, we never failed at all, but we started -- at 2012 we first started, and we test with anywhere from a 97 percent detection rate to a hundred percent for the last three years.
Q Okay. What is Trustee, if you know?
A Trustee is another certification company that certify you, your application. They base it on different behaviors, you know, that the software, you know, take you from the beginning of the download, installation, all the way up to

the running the program to make sure it have no behaviors where it's malicious or misleading the user.

Q Does Trustee examine the scan part of your program, the free scan?

A Yes.

Q And what have been the results of your Trustee examinations, if any?

A Certification, passed.

Q Have you ever failed?

A No.

Q So what -- as the principal of the company, having received the results of all these different studies, what do you think they say about your product's validity, value?

A Who? I'm sorry.

Q What do you think that all the third party tests say about your product's value?

A Think it's great, you know. They give me their compliments, and they think it's really -- they know it's a great product, they test it, and they confirm with the results, you know.

MR. EDMONSON: Just a moment, Your Honor.

Thank you, Mr. Myricks.

THE WITNESS: You're welcome.

THE COURT: Any other redirect?

MR. FERGUSON: None here, Your Honor.

THE COURT: Any recross?

MS. BURTON: No.

THE COURT: Thank you, sir.

MR. NICHOLSON: We would rest, Your Honor.

THE COURT: All right. Any other evidence?

MR. FERGUSON: None from us, Your Honor.

THE COURT: All right. You ready to argue the motion? You ready to make argument?

MS. ROBBINS: Sure.

THE COURT: How long do you need? How long are you going to need?

MS. ROBBINS: About 10 minutes.

THE COURT: Okay. You may proceed.

MS. ROBBINS: Good afternoon, Your Honor.

These Defendants, working in tandem, have collectively made over $250 million in the last three years by deceiving consumers into believing that they have problems on their computers and that they must repair them immediately.

One set of Defendants, PC Cleaner, sets the stage by offering a free scan that misleads consumers into thinking that they have thousands of problems on their computer. Then the ICE Defendants take over when consumers are told that in order to activate the software that they just purchased, they have to call an 800 number. And that 800 number leads to the

ICE Defendants. And it not only leads to the ICE Defendants, but it leads to their salesperson. And this salesperson is not required to have any computer training, and this sales agent is required to read verbatim from a script that always ends the same way, that consumers need tech support, at the end of the day.

It's no wonder that the BBB and the FTC don't have thousands of complaints, because consumers are first told they have problems that they may or may not have. Then they're sent to somebody to fix those problems. And consumers are none the wiser. They have no idea that they didn't have the problems to begin with.

And the issue in this case is not whether PC Cleaner's product after the sale, post-purchase, or what it does. And it's not whether ICE provides tech support after the fact. The issue in this case is the deceptive free scan and the script.

THE COURT: Well, let me ask you this, if that's the issue. If they actually sell a product that works, and they actually provide tech services and can adequately provide tech services, and the only issue is how it's marketed, why should the companies be put out of business completely as opposed to correcting the marketing issues?

MS. ROBBINS: Your Honor, we don't necessarily think the companies should be put out of business, and we don't

believe that a PI would put the companies out of business.

THE COURT: Well, if you put a receiver in charge of both of these companies for the remainder of the proceedings, you think the businesses are going to keep going?

MS. ROBBINS: Your Honor, what we believe is that if the companies really wanted to do tech support, they could do it in a way that doesn't deceive consumers.

THE COURT: That's my question to you. Why do we need to put them out of business as opposed to correct their marketing problems that you think exist?

MS. ROBBINS: Well, I guess I -- so if there's an injunction in place that tells them that they cannot mislead consumers, and if there's an asset freeze in place that preserves the money for consumer redress of the consumers that have been harmed, there's nothing in there that would prevent them from actually operating a legitimate business. But what it does is it -- these Defendants are not trustworthy. They're not -- I don't think that the Court can trust that going forward they're going to change their business practices.

So to monitor them and to make sure that they're going to change is something that is necessary, and an asset freeze here is very necessary, because there have been -- there's over $250 million in consumer harm here, and we have --

THE COURT: So you're assuming every customer was duped, defrauded? There isn't a single customer that needed tech services and needed and had problems on the computer that were corrected? Everyone is a victim?

MS. ROBBINS: Well, if the consumers -- the consumers for sure, if they came through after -- through a product activation code and were read the script, they are. Whether they needed tech service or not, they were deceived into and induced into purchasing that product.

The case law says that even if the product, the value of the product -- even if the product is valid and there's some value to it, you can't scare people and induce people into purchasing that product.

THE COURT: Okay. I can accept that.

But does that mean if you -- you sold a car with some kind of false advertising, you get the value of the car back? You get your entire purchase price back?

MS. ROBBINS: Yeah. I mean, that's what -- the case law is clear that it's the inducement into purchasing that product that you are then harmed.

THE COURT: So if you get a car that's worth $10,000 based on false advertising, you get to keep the car and you get your $10,000 back?

MS. ROBBINS: You -- well, if you kept the car, then the value -- you've received some value. Here, there is no

value that these consumers have received. In this case, they've been offered tech support services that they may or may not have needed in the first place.

THE COURT: Okay. But doesn't your approach assume that every one of them didn't need it?

MS. ROBBINS: It is, because they use a script, and the people have to read the script verbatim. And if the business model was that they didn't use a script and they didn't have to do the same thing every single time, then there may be customers that were not harmed and actually, you know, called in legitimately, and maybe that's something that ends up having to be parsed out throughout this litigation whether they were -- you know, how many calls actually came in through product activation, how many consumers were read the script. I mean, that's the issue here.

Because the script, the way that it was written and the way that it was used, the salesperson wasn't trained, and they were using a tool that was deceptive, and that's deception. So any person who purchased from that deception has been harmed.

THE COURT: Okay.

MS. ROBBINS: So if you find that the PC Cleaner free scan at issue in this case is deceptive, then the Plaintiffs are likely to succeed on the merits. And if you find that the scripts are deceptive, then we would be likely

to succeed on the merits as to the ICE Defendants.

And, now, you heard from two experts regarding PC Cleaner Pro. You heard from Ed Skoudis and William Easttom. And Mr. Skoudis told you that calling all cookies a problem is deceptive. He told you that counting the failure to block 926 old pieces of malware a problem is deceptive, that calling every temp file, every temp file is a problem, is deceptive. And also, that aggregating all of this together into one big number is deceptive.

And Mr. Skoudis analyzed the FTC's undercover calls, and he did a test of his own, and he concluded that the PC Cleaner free scan was deceptive. And under the law, solicitation is likely to mislead by virtue of the net impression it creates, even though it may contain some truthful disclosures.

And William Easttom testified for the defense, and he wrote a 43-page declaration, yet he failed to write about the issue in this case. He did not include a single screen shot of PC Cleaner Pro's free scan, the scan that induces consumers to purchase. And he claims to have also tested the full version and ran a scan, but he didn't include that one either. And given that the issue in this case are the deceptive scans, it's surprising that those were omitted.

And once consumers are induced to purchase the product, they download the product onto their computers, but

they can't readily activate it. And as the Court can see from the screen shots and from the other exhibits that have come in, the most prominent piece on that activation page is that box in the middle that says, activate your software by calling this 800 number. There may be a license key on some, there may not be a license key on some, but in every case there is a big box in the middle that tells consumers that they have to activate their software. And they do.

And so armed with the script, the telemarketers go through a diagnostic, and that diagnostic is not designed to diagnose that computer. Its purpose is to appeal to the emotions of the consumer, and it's designed to mislead them into thinking that they need something. And they may or may not need tech help, and that's not the issue. The issue is how they are induced to pay for this tech support.

And these salespeople, who are disguised as technicians, can't diagnose a computer with the script that they are given, and it's the wrong person using the wrong tool. That combination is deceptive.

And Mr. Skoudis went through all of the representations in his report. In the first report and the supplemental report, he went through all of the representations that the Defendants make in that script and concluded that those are deceptive, and ICE's expert didn't even look at script. So the testimony of Mr. Skoudis is

undisputed.

And the Plaintiffs have demonstrated through consumers, corroborated by three undercover calls and corroborated by a former employee, Phil Tomich, and the testimony of the Defendants, that the Plaintiffs are likely to succeed on the merits.

In order to issue a preliminary injunction, the Court must also find that injunctive relief is in the public interest. And there is nothing to stop the Defendants from continuing their scheme if the asset freeze -- or from continuing their scheme, and the asset freeze is necessary to preserve money for consumers.

And as for the PC Cleaner Defendants, Myricks already had another call center that he testified to that he has a contract with now, yet he testified he's done no due diligence with any of the call centers that he's already worked with. And both call centers have proven that they've had problems with their sales tactics.

And with this call center he will still have an incentive to generate leads. He makes 40 percent of a lead that's generated to the call center. He only makes $30 per product, yet he could make upwards of a hundred dollars per lead generating money -- or generating money from this call center practice.

He's also a recidivist with the FTC, and he had a

class action against him for the same practices. He has a 16 percent refund rate, which is way above the one percent that Visa and MasterCard have.

And the new product, as Mr. Skoudis testified yesterday, that initial scan still induces consumers to purchase by aggregating all of those numbers together into one number.

And as for the ICE Defendants, the price of their product varies depending on how much people are willing to pay for it. It has nothing to do with what's wrong with your computer. It has to do with what are you willing to pay. They have at least 50 other software partners generating leads to their call center, not just PC Cleaner.

They have an integral relationship with Revenue Wire who processes their payments, gets them hooked up with software partners; and that relationship still stands. And, in fact, the owners of Revenue Wire own 80 percent of ICE. And they have stated that they intend to -- they have not stated that they intend on changing the business model, the very business model that creates the misleading scripts and the misleading product activation leads that cause harm to consumers.

And also, their refund and charge-back rate is 12 to 20 percent. That means that close to one in five consumers end up calling for a refund or for a charge-back.

And you heard from the sales manager. He tells every salesperson who's a trainee, you are an actor, you are posing as a technician, you are to read this script verbatim.

And a PI with an asset freeze is warranted here.

The Defendants claim that they have seen the error of their ways and have intent to change, but they're not trustworthy. They submitted self-serving declarations that omitted important facts to suit their needs and to give the Court an impression of them. The Defendants claim also that the PI will shut them down, and as we just discussed, although the TRO provisions prohibited the Defendants from charging consumers, the FTC would not be seeking that in a PI, that they could still charge consumers post-TRO if they, in fact, change their practices.

And the PI will preserve money for consumer redress and will stop the deceptive marketing practices. And if they can't survive without engaging in deceptive marketing practices, then they shouldn't be operating in the first place.

THE COURT: What -- I know the receiver's filed a report, and I, you know, glanced at it, I didn't study it extensively, but what assets were frozen?

MS. ROBBINS: So just all the corporate assets, and there's about 6 million, I believe, 6.6 million that's been frozen for the ICE Defendants.

THE COURT: And it's in what form? Bank accounts and what kind of format is the money?

MS. ROBBINS: Bank accounts.

THE COURT: Are these operating accounts? What kind of accounts are they? So if you have an asset freeze but you say you want me to freeze the assets, enjoin them from engaging in fraudulent practices, but they can go on conducting the business, how are they going to do that without any operating capital or cash?

MS. ROBBINS: Well, each of the Defendants in July were paid $4 million each for the sale of part of their shares in the business. So -- and the individual Defendants' assets at this point are not frozen. So if they wanted to continue to operate, they have taken money from -- basically, from the corporation because of selling their shares.

THE COURT: They sold their shares.

MS. ROBBINS: Well, but that at least would -- they could get started and then use the money they make from sales to continue to grow their business. But they shouldn't be allowed to use money that was from -- you know, from deceiving consumers to continue on to their business. This money, there was over $200 million in the last three years that they've made from this business model, and there's only 6.6 million frozen. And so that's a lot of money that's not available for consumer redress.

THE COURT: But that's gross income, right? That's gross receipts.

MS. ROBBINS: That's minus refunds and charge-backs.

THE COURT: But they had to operate the business.

MS. ROBBINS: Right.

But under the case law, it's gross minus refunds and charge-backs is typically the consumer redress number.

THE COURT: Okay. But you're making it sound like they pocketed $200 million.

MS. ROBBINS: No, you're correct.

THE COURT: They didn't pocket $200 million. They generated $200 million in gross receipts. Do you know how much they expended to run the business and how much is profit?

MS. ROBBINS: I do not, but I do know that under the case law, though, that's not taken into consideration. But I understand. I do not know the number right now.

But the ICE Defendants knew in October of 2012 about the FTC's actions against other tech support companies, and they knew that the FTC alleged that the Event Viewer was a deceptive sales tactic. Yet, for two years after that, they still used that script with the Event Viewer, putting in there, do not say Event Viewer. They knew. They knew what they were doing was wrong.

THE COURT: How do you know they knew what the

allegations were, just because they knew there was a lawsuit out there?

MS. ROBBINS: Well, there's a lot of circumstantial evidence here. Because he received an article from someone at Revenue Wire telling him about the case. Paul Herdsman claimed that he had read the FTC's ruling. We know that the scripts --

THE COURT: What did the ruling say? It probably said what mine said.

MS. ROBBINS: It was a TRO.

THE COURT: So did it say what the allegations were in the complaint?

MS. ROBBINS: Well, in the complaint it said what the allegations were, and in the TRO --

THE COURT: Did the TRO say what the allegations --

MS. ROBBINS: Well, it has the findings of fact in the TRO.

THE COURT: Okay.

MS. ROBBINS: I think the fact that they had -- they knew about the tech support cases, Paul Herdsman testified he knew about the Microsoft scam, they have a script that says Event Viewer, and then it says, do not say Event Viewer, and it was an escalated -- people could be fired for using the term "Event Viewer."

Do I -- do I know for sure? But I think it's highly

suspect that they did not know.

And we don't believe that they changed their script because they wanted to stop deceiving consumers. We believe that they changed it because they were getting ready to try to get investors to come into the company, and they wanted to stay under the radar.

And this is not the behavior of a company that's ready to comply with the law. And we believe that a preliminary injunction is warranted in this case and is necessary to stop consumers from being harmed, and we request that the Court issue a preliminary injunction against all the Defendants.

THE COURT: Thank you.

MR. FERGUSON: Your Honor, when I'm preparing a closing I rarely can fight the temptation to go recap the entire case. I know you pay attention more than many, and I know you're a smart Judge, and you get it. I'm not going to insult you by spoonfeeding you what we've all lived for the last three days. But I want to start with answering some of the questions you raised to counsel.

A preliminary injunction will kill this company. When the TRO was served the payroll was pulled back. If we can't get it lifted, I'm not here to say if you are enter one we're going to give up, but it's going to be all but dead.

This whole investigation is, I'm sorry, but it's

sloppy, and they've come with a target on these guys for the industry they're in, and they want them dead. They asked you to freeze their personal assets. If you done that, I wouldn't even be able to be here to talk to you.

But I can talk about what was sloppy about the investigation, I can talk about misrepresentations in the case here, and you don't need to look any further than the closing argument that we just heard, where counsel conflates refund and charge-back rate. Starts talking about him and then pours it over to us and says, well, he's got a 15 percent refund rate, and that's well over the one percent credit card company threshold. That's the charge-back rate.

And it's the same stuff. It's we used Event Viewer, we didn't use it as of the time that the TRO and the complaint was filed. We're darned if we do, we're darned if we don't.

Oh, then they stopped using Event Viewer because "they just want investors." "They're not trustworthy people."

The evidence is the exact opposite. Receiver Schneider I think his testimony proves they are what they say they are. They're trustworthy guys. They're businessmen. They cooperated.

This case will continue on if you don't enter a preliminary. Through the receivership and the TRO that's

already been served they have all the discovery they need. My clients are not going anywhere. They're not going anywhere. And to just suggest that you've seen evidence that they're not trustworthy guys, and they're bad guys and the company won't be killed if you enter a preliminary injunction, and their refund rate is beyond the one percent threshold, which actually the charge-back rate, it's more of the same.

Counsel suggests to you that all of our consumers were mislead, all of them were tricked. Funny, but everyone that they brought in here didn't support that at all. Every one of them had malware, had problems. Like Ophelia Dees, I think it was, she had a virus. One of the consumers had a problem, we couldn't fix it, and then we actually saved her data for her. But she didn't like how one of our reps talked, so she got rid of us, called the Better Business Bureau. The data was wiped out by a third party who came to her home and wiped it out.

None of those witnesses said anything about, I got mislead, I didn't need these products, I didn't need these services. In fact, one of the most shocking moments I've had in, I don't know if it's -- I think I stopped counting at 21, maybe it's 23 years. I don't remember how long I've been a lawyer, but it's over 20 years. I'm preparing my cross for Mr. Linder, Dr. Linder who comes here, and I read the

declaration that they spoonfed to him. And it talks about how, after two times in a row he couldn't get them on the Internet and hated our service and was done with it. So I'm just walking him through that and he says to me, no, I tried to call them, and I got the message from the receiver on the line. I still need them. Their own witness who came here.

But there's no evidence before you that all of the consumers are being tricked or any of the consumers are being tricked.

THE COURT: Well, let me ask you this.

MR. FERGUSON: Yes.

THE COURT: Let's assume that I find that there's some problems in the marketing of these products.

MR. FERGUSON: Sure.

THE COURT: But I don't issue an injunction.

How do we solve the problem of potentially improper marketing techniques being used in the interim?

MR. FERGUSON: In the interim, Your Honor, we stand before you this moment and continue to work with you. We've already -- I read 50 times preparing for this -- not 50, probably 25 times your order in the Boost case, and when we prepped our declarations. These aren't self-serving declarations. These are sworn testimony from my clients of what they are already willing to do, which is they're out of the Event Viewer. They were out of it before this case was

filed. So if you're talking about the Event Viewer, that's fine, and we can talk about it as this case proceeds, but it's not the basis for a TRO.

THE COURT: What about the activation phone number, which --

MR. FERGUSON: Your Honor, this is addressed -- I'm going to address everything.

THE COURT: Even though you might, you know, if you look at the first screen and it says, here's the key, and then you go to the second screen and then it says the activation number, but the key thing is down here below, and you got to scroll down to see it. And the average person is going to call the number and not worry about --

MR. FERGUSON: Not anymore. It won't happen again. You don't have to be worried about that, and I'll tell you why.

In the declarations of all three of my clients, they have all put in the same thing, that they're all willing and committed to doing, and I'm going to tell you what that is, and if that's -- if it needs further tooling, we're going to work that out, too. But here's what they've committed to do.

They've committed to never again partner with any software provider that does not have a prominent, sufficiently prominent activation key. And then when you get to the phone number, the phone number will say, call this

phone number for assistance in activating, and when you do so, you will also be talked to about additional services and products, which is even further than I think your concern was in the Boost case.

But my clients, I have the authority to commit for them, and they already have in their filings with this Court, that they will never use a single software provider who doesn't address those concerns, and dealing straight with that, that they will commit that they don't do any business with anyone who's not willing to meet that standard, but that the key has to be sufficiently prominent, right there, and that the phone number makes it clear that you don't have to call it because you've got access to the key. And if you do, you're going to get sold products and you're going to get talked to about additional products and service. Absolutely.

And, you know, if you want us to submit exactly what those pages, or work with the Court, whatever. But that's a commitment that they've made, and if they violate that, I think you know what to do because the case doesn't just disappear. It's not like you say, I'm not going to enter a preliminary injunction, we walk out the door and we never come back. We're still in this. We've still got to deal with this.

Look, my clients, they get called to the mat for working with the BBB. They get called to the mat for trying

to --

THE COURT: Well, let me ask you about the other issue that I think the Plaintiffs are concerned about, and that is, assuming at the end of the day there is a finding of liability and there's been a finding of harm to consumers. What's the -- what kind of security is going to be there if I release the TRO and don't issue a preliminary injunction and release the assets, what's going to preserve potentially for any damages that might later be found?

MR. FERGUSON: Well, at this time if you release the money, there would -- I would be making it up if I told you there's security sitting in any form anywhere.

What I suggest to you, though, is I believe on the merits, if we go through and parse this out, I doubt very seriously that we're looking at, they're going to be able to prove these huge damages. I believe the case will be resolved. But I've got no security to point to.

I can tell you this. These gentlemen, they run a good business, they provide a fine service, they intend to do so in the future, and they're going to continue earning, and they're committed to not going away and walking away. These aren't guys that came from securities industry, got their tickets punched, went into mortgage relief and now they're on to the next thing. This is what they've been doing all of their professional life. They're going to be here working.

They understand the FTC is a worthy agency. Sometimes they get it wrong, and we believe they got it wrong here. And I understand if I was a Judge and I got that packet and read it, TRO granted. But if I heard this, I don't believe a preliminary injunction would be appropriate.

But they still are accountable to the FTC in the space that they're in. We want to work this out. We say in the declarations had they contacted us about any of these problems, they would have been addressed.

Now, I understand they're not a counseling agency, they're an enforcement agency. But if they're truly concerned about the consumers a year ago about some things in our script and they had reached out to us, we would have irradicated it immediately.

I mean, but they hire compliance counsel. That's a problem. You hire compliance counsel because you know you're dirty. You get out of the Event Viewer. Because you know you're dirty. Well, which would you rather hear? Okay, we're still in it because we didn't want to get out of it because we didn't want to be accused by you of being dirty.

There's no way to, with the arguments that they're throwing, I believe they're, I don't want to say facetious, but it's not a legitimate argument to say, well, you got D listed by the BBB, when they know that they contacted the BBB, had her sign the suspension the same day she sent out --

signed her declaration, and then the receivership comes in for the last six weeks nonstop, they've been preparing here to put their best foot forward with you, yet somehow they're responsible for being suspended by the BBB because they didn't respond after the TRO was put in place.

These guys want to run the business. They want to -- they've made what I believe is sufficient suggestions and commitments to this Court that satisfy the very issues that you've pointed to in the Boost order. They're not in Event Viewer at all. They've got no intention of going back.

And they do sell good products, and they do provide an excellent service. And Dr. Linder, the Plaintiffs' witness, showed that.

There was a ton of work to do. I got a list. They wanted to bring in -- we had to bring live people, so I got a list of people who had done testimonials with phone numbers in this area. Called the first one, it was Dr. Cannon that you met here. Didn't spoonfeed him anything. He sent me an e-mail, and I typed it up and read it to him over the phone and sent it to him, and that was his declaration, and he came here.

If I close my eyes, it would have been hard to tell the difference between him and Dr. Linder at the end because they both like our service.

But it's not true that all of our customers are out

there getting no services and getting products that are of no value. It's the exact opposite.

Even Mr. Skoudis, Mr. Skoudis said his product is a great product. He said the Panda product that we sell is a great product. The FTC calls in with two machines that they falsely report as slow, and then their expert says, well, nothing you did fixed it. One of the third call, the guy calls in with no antivirus software on his machine, and we try to sell him Panda, which Mr. Skoudis sat right there and said was a good product, but yet that's a problem. That's a problem.

The poisoning of the well that they've attempted here and the attempt to argue that these guys, without any support at all, are bad guys, and you should just take them out of this business, Your Honor, we believe is completely unnecessary and not supported by this record, and we believe if you consider the balancing of the equities, you should allow these 800 employees who are still out there, who hasn't in the last six weeks found another job, come back. You should allow them to continue on with the corrected software page and disconnecting any relationship with any software providers that don't.

You shouldn't look back and decide that a preliminary injunction is appropriate because in the past the Event Viewer was used, and don't felt temptation of the

Plaintiffs that what they did is anywhere akin to what's happened in the past with the Microsoft Event Viewer scams. That's not what's going on.

When taken in its totality, the business model is there to provide real products and real services, and it's disingenuous to suggest that people calling in with real problems, like their own witnesses, are getting tricked to buy something they don't need. And if we were selling products that didn't work or selling people things they didn't need, we wouldn't have 323 complaints out of over half a million customers. This would be a much different case, Your Honor.

And we request that you deny the preliminary injunction. We request that you accept our representations that these pages are not going to look like that. And if you need some sort of further assurance or a status to deal with that, we're here. We're not going anywhere. We want to resolve it with the Plaintiffs. We have -- the case is still there. If not, we'll try it on the merits. But these aren't bad guys. These are guys who grew up in this industry and want to continue on, believe in their products and believe in their services, and the presentation that you've seen here we do not believe supports entering a preliminary injunction, and we request that you deny the motion, Your Honor.

THE COURT: Thank you.

MR. NICHOLSON: Thankfully, Mr. Ferguson left me a few minutes, Judge.

Judge, I was struck by a number of things that Ms. Robbins said to you in their closing, and the first was that the product doesn't matter. And I understand they have their legal argument, but to suggest in this case, given the record that you've heard, that the product doesn't matter, frankly, I find absurd.

You have heard from not only our expert, but their own expert, as well as seen evidence from third party independent testing companies that this is a really good product. It is not only comparable to Norton Utilities and the AVG product, it actually is better than those products. Their own witness on cross-examination, even before I could even get the point out, was saying, no, it's a fine product. It does what it says it does.

And we went through some of the pieces, and it does a lot of different things. And he acknowledged that there are valuable things that this software does that helps computers, that helps consumers.

Our own expert went through and even said, completely unsolicited on cross-examination, that he's thinking about putting it on his mother's computer. I think that is pretty significant.

One of the other points that I would ask the Court

to consider is there are a number of changes that were in the works for this software to address the very issues that the FTC raised in this complaint before their complaint even existed.

As you heard from Mr. Myricks, two very significant changes apropos to this trial were made. One is the activation phone number doesn't exist anymore. And I'm pointing to that one just because that screen is up there. But it is introduced as Defendant's exhibit number 6, which unfortunately, I have the only copy, but the Court will have access to it, which shows that the activation screen has been changed to remove the telephone number.

And although at the inception of this hearing it was contemplated that we would associate with what we believe is a above reproach tech support provider, based on the things we heard in this hearing and their commentary about people in this industry, as you heard from Mr. Myricks just a few moments ago, that he has made the business decision not to associate with another support company.

Perhaps Ms. Robbins did not hear that testimony, because she got up and argued to you that he was intending to do that. Maybe she was working on her closing and not listening to his testimony, but it was very clear he's not going to associate. He's going to sell the software as he did before, as he can do again, just on its merits. Not with

some third party tech support company, ICE, or anyone else.

I found it, as I'm sure the Court saw from my reaction, disconcerting at several point in times (sic) during this three-day hearing that the Federal Trade Commission introduced and pointed to an exhibit that is, on its face, misleading.

To show you a screen shot that cuts off just above the license key in a case where their argument, one of their principal arguments is premised on the notion that the consumer wasn't given the license key, I find disconcerting.

THE COURT: Well, even assuming the screen does show the license key, that screen is directing the reader's attention to the phone number.

MR. NICHOLSON: Indeed it is.

THE COURT: So that's where -- the average consumer is going to be, oh, this is the phone number I need to call.

And how many are going to actually understand that, oh, there's a key down here that will allow me to activate it without calling this number. Maybe some sophisticated people will understand that, but I'm not sure the average person's going to understand that there's an alternative to making the phone call.

MR. NICHOLSON: And, Judge, I'm certainly not trying to argue with you, but I think the numbers bear out that the majority of consumers did realize, because the predecessor

screen, as you heard from Mr. Myricks, says you can activate by entering your license key in the next screen. And if you actually read the instructions here, it tells where you to click and it gives the license's plate.

Is it possible that someone looked at the screen and made the assumption that you had to? It's possible. Not that there was a witness who testified to that in this hearing. In fact, the two consumers that the FTC called that even talked about our product, neither one said that they were deceived by that, and certainly neither one testified that the scan screen deceived them.

At bottom, this case as to PC Cleaner Pro boils down to two things. This screen, which we've told you is changed and was actually in the works before this case even existed, and the scan screen. Which I find it interesting that Mr. Skoudis, when I went through that with him, I went through very carefully and said, when it reports these numbers, are those numbers accurate? Multiple times we went through that, and on each case he said, yes, it accurately reports.

He even at times volunteered. I'm not saying that it doesn't accurately report the numbers. Yep, that number on this category is right, the number on this category, right, the number on this category, right. Now, he took issue with the relative importance of some of those issues,

but at bottom, their own expert admitted that the number was correct.

He then came to the conclusion that somehow if you add up truthful number 1, truthful number 2, truthful number 3, et cetera, it somehow becomes less truthful. And I don't know, it's concerning to me that we can be in a place where we're saying that the truth is misleading.

THE COURT: Well, it's because in his opinion all of the numbers are not equal weight, but they give the appearance of all being of the same weight.

MR. NICHOLSON: And I understand that perhaps was his opinion, but one of the other components of the scan screen in the exhibits is that they were also color coded to give them relative weights.

But in any event, to avoid even the appearance of an issue there, that item was also addressed in 2015, the specific item that Mr. Skoudis pointed to and is in the complaint was the malware number, the Active X -- I say malware -- the Active X number.

As Mr. Myricks has testified, although the software still checks for those malware issues, those Active X issues, which even their own expert said is relevant even to today, okay, their complaint suggested otherwise, but their testimony from their expert was, it's a real issue even today, that even though it still checks for those and blocks

them so that that number is less scary, if you will, it no longer reports that number. It just fixes it.

So the two items that they've pointed to have already been addressed and were already being addressed before this case even existed.

As I said, Judge, kind of at the beginning and to go back to some of those points, come back to the theme here. This is a real company. This isn't some fly-by-night Indian company or whatever company that's set up to do a get rich quick scheme or Ponzi scheme. This is a software company that's been in business for several years, which has hundreds of thousands of satisfied customers. Only a fraction of a percentage point was the -- of our customers was the FTC able to find had complained about the company.

Even in connection with the class action suit, less than one percent, less than one percent of the consumers in the class action suit, which essentially raised the same issues, responded and made a claim.

As I know the Court is well aware, at the end of a class action suit such as that, all the other class members, their claims or potential claims are deemed resolved.

So I'm kind of moving ahead there in terms of the damages issue. The vast majority of even potential -- I'm not going to use the word -- customers that might seek redress or the FTC would arguably be seeking redress on, have

already had their claims litigated, settled and discharged. And only a fraction of a percentage, less than one percent of all those customers even responded.

This company sells real software. I've already gone over this a lot, but I'm going to ask you to, when you're looking at this issue, look at the certificates that were introduced into evidence and look at the Tolly report which compares our software against the major competitors, names that you've already heard a million times through this trial and were probably familiar with the Court, and see how this third party independent testing company rated us, and yet the FTC is asking you to essentially shut this company down.

And that doesn't make sense to take a competitor product -- frankly, it's anticompetitive to take a competitor product of some of these other companies off the market that actually even works even by their own expert's estimation.

And the last thing, Judge, I would ask you to consider, I've got more points, but I'm sure the Court may have a question or two for me, is if you were to grant the preliminary injunction in this case, you wouldn't just be taking this good piece of software off the market, you wouldn't just be putting this company out of business, you would actually be hurting the consumers that purchased our product and rely upon us for tech support and rely upon us for the updates to the software that they've purchased.

So just across the board, the relief that the FTC is asking for has not been factually established, it's not been legally established, and it most certainly is not -- they have not met their burden in terms of the equities; and we would ask that you deny the preliminary.

2015 addresses the issues, and we think that that should be an adequate basis for the Court, along with the other evidence to deny the request for the injunction.

THE COURT: Thank you.

Anything else?

MS. BURTON: A bit of housekeeping. I just want to make sure that before this ends, that we get some clarity to make sure that the TRO is extended pending your decision on the preliminary injunction.

THE COURT: I thought that was agreed to.

MR. FERGUSON: Well --

MS. BURTON: It's not in the order --

MR. FERGUSON: If it's not documented, it is agreed to, whatever we need to do, Your Honor.

MR. EDMONSON: Yes.

THE COURT: I thought that was understood.

MR. FERGUSON: Oh, it's understood.

MS. BURTON: I just wanted something on the record. It makes me sleep better at night.

THE COURT: I wasn't going to write the order out

here while you were waiting.

MR. FERGUSON: We'll wait if you want, but we --

THE COURT: We don't have time for that.

MR. FERGUSON: We agree, Your Honor, that it's documented, and if we need to follow up, that's fine.

THE COURT: And the other Defendants agree?

MR. EDMONSON: We do.

THE COURT: Anything else?

MS. BURTON: Thank you.

MR. FERGUSON: Your Honor, we just want to thank you for all your time on behalf of all my clients and my colleagues. Appreciate your attention.

MR. EDMONSON: We do as well.

THE COURT: You're welcome. That's what I'm here for.

All right. I'm going to try and get an order out as soon as I can. I know everybody's waiting anxiously. It's not a good time of the year to have to deal with something like this, but we'll try and get something out next week if possible. Thank you.

(Proceedings concluded.)

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CERTIFICATE

I, Stephen W. Franklin, Registered Merit Reporter, and Certified Realtime Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated this 2nd day of JANUARY, 2015.

/s/Stephen W. Franklin

Stephen W. Franklin, RMR, CRR

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