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IN THE COURT OF COMMON PLEAS
OF SUMMIT COUNTY, OHIO

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MEMBER WILLIAMS, et al.,

Plaintiffs,

vs. Case No. CV-2016-09-3928

KISLING, NESTICO & REDICK, LLC, et al.,

Defendants.

~~~~~

Deposition of
ETHAN WHITAKER

February 1, 2018

10:01 a.m.

Taken at:

Cohen Rosenthal & Kramer, LLP

3208 Clinton Avenue

1 Clinton Place

Cleveland, Ohio 44113

Tracy Morse, RPR and Notary Public

1 APPEARANCES:

2

On behalf of the Plaintiffs:

3

The Pattakos Law Firm, LLC, by
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On behalf of the Defendants Kisling
Nestico & Redick, LLC:

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On behalf of the Defendant Minas Floros,
D.C./Akron Square Chiropractic:

19

20

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22

23

Buckingham Doolittle, by
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~ ~ ~ ~ ~

ALSO PRESENT:

24

John J. Reagan, Esq.

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1 ETHAN WHITAKER, of lawful age, called for
2 examination, as provided by the Ohio Rules of
3 Civil Procedure, being by me first duly sworn,
4 as hereinafter certified, deposed and said as
5 follows:

6 EXAMINATION OF ETHAN WHITAKER

7 BY MR. PATTAKOS:

8 Q. Good morning.

9 A. Good morning, sir.

10 Q. Would you please state your name
11 for the record.

12 A. Ethan Whitaker.

13 Q. Would you please state your date of
14 birth.

15 A. December 14, 1978.

16 Q. And your home address?

17 A. 74 Nestico Drive, Cuyahoga Falls,
18 Ohio 44333.

19 Q. Thank you, Mr. Whitaker. I'm
20 Attorney Peter Pattakos. I represent the
21 plaintiffs in a lawsuit in the Summit County
22 Court of Common Pleas captioned Member Williams
23 v. Kisling Nestico & Redick. Do you understand
24 that you are here to provide sworn testimony in
25 this case?

1 A. Yes, sir.

2 Q. Are you on any medications or any
3 other substances today that would impair your
4 ability to recall events accurately or testify
5 truthfully?

6 A. No.

7 Q. Are you aware of any other reason
8 you might not be able to recall events
9 accurately or testify truthfully today?

10 A. No.

11 Q. Have you ever had your deposition
12 taken before?

13 A. No.

14 Q. Okay. Have you ever testified in
15 court before?

16 A. No.

17 Q. You hesitated. Why?

18 A. I was recalling my divorce trial,
19 if I had spoken or not.

20 Q. Okay. Fair enough. Have you ever
21 provided sworn testimony in any forum before?

22 A. No.

23 Q. Okay. Well, welcome.

24 A. Thank you.

25 Q. So given that, I want to make sure

1 you understand the process here. I'm sure your
2 attorneys have advised you. I just want to be
3 clear from my own perspective. I ask the
4 questions. You answer them as truthfully and
5 accurately as you can. Okay?

6 A. Okay.

7 Q. It's important that you please
8 provide an audible answer that will be clear in
9 the transcript. What I mean is especially to
10 make sure to use the words, "Yes," or, "No," as
11 opposed to mumbling, "Uh-huh," or, "Um-hum."

12 A. Understood.

13 Q. While the attorneys in the room,
14 including your own, may lodge their objections,
15 you are still required to answer the question
16 unless your attorney specifically instructs you
17 not to answer it. Do you understand?

18 A. Understood.

19 Q. Okay. Is any of that inconsistent
20 with your understanding coming in?

21 A. No.

22 Q. Who is representing you in this
23 room today?

24 A. Mr. Popson.

25 Q. Okay. And only Mr. Popson?

1 A. Yes.

2 Q. Okay. Do you know who Mr. Mannion
3 is representing?

4 A. No.

5 Q. Okay. Do you know who Ms. Kinlow
6 is representing?

7 A. No.

8 Q. Do you have an understanding of why
9 you are here to testify in this case today?

10 A. Yes.

11 Q. Please explain what that
12 understanding is.

13 A. My understanding is, I'm here to
14 offer expert or authoritative testimony on how
15 KNR systems work and their capabilities,
16 specifically IT systems.

17 Q. Do you understand why you're here
18 to give that particular testimony?

19 A. No, apart from you wanting to ask
20 me.

21 Q. Okay. Are you employed by KNR?

22 A. No. I own an IT company that
23 contracts IT services to KNR.

24 Q. How long have you been contracting
25 IT services to KNR?

1 A. 2006 --

2 Q. For a while now then.

3 A. -- 2007, maybe. I can pull an
4 exact date, if it's important to you, but a
5 very long time.

6 Q. For now it's not. Thank you. When
7 did you form this IT company?

8 A. October 2006.

9 Q. So to the extent that your IT
10 company began contracting IT services to KNR in
11 2006 or 2007, your testimony is that it was
12 either in late 2006 or early 2007.

13 A. Again, if you're asking me the
14 exact date, I would have to go find it, but
15 it's going to be -- it's been ten years or
16 more.

17 Q. Well, it would be more than ten
18 easily --

19 A. Um-hum.

20 Q. -- but I guess what I'm wondering
21 is: How long after you established this
22 company in 2006, did you begin contracting with
23 KNR?

24 A. Oh, contracting? Well, explain --
25 can you describe; like are you talking about

1 working relationship or specifically
2 contracting?

3 Q. Let's talk about a working
4 relationship.

5 A. Working relationship, within that
6 year. It wasn't right away. Again, I would
7 have to look at the information to find out,
8 but I formed the company and within several
9 months, less than a year, we began an hourly
10 work relationship; and then sometime after that
11 it became a contractual relationship.

12 Q. And how did that start?

13 A. How did what start?

14 Q. The relationship.

15 A. I work with a gentleman named Rob
16 Orben, who does telephone work --

17 Q. How do you spell that?

18 A. R-o-b, O-r-b-e-n.

19 Q. O-r-v-e-n?

20 A. O-r-b-e-n.

21 Q. Thank you.

22 A. -- Rob did their telephone work. I
23 also do IT work for the Hilton. Rob and I
24 shared that client and were talking. KNR was
25 looking for someone and Mr. Orben had overheard

1 them and recommended me to talk to them.

2 Q. Do you know who worked with KNR in
3 this capacity before you did?

4 A. No.

5 Q. What's your IT company called?
6 That's an important question.

7 A. Whitaker Networks.

8 Q. Okay. How many people work for
9 Whitaker Networks?

10 A. I just hired a part-timer. Apart
11 from him including myself three others, so
12 three and a half total.

13 Q. Okay. So two other besides you.

14 A. Two other besides me, plus a shiny
15 new part-timer.

16 Q. Three others are full-time. You
17 and the other two are full-time.

18 A. Correct.

19 Q. Do you all basically do the same
20 thing or --

21 A. No.

22 Q. Can you describe what the different
23 positions are in your company?

24 A. We model it after what's typical in
25 IT. We call them levels 1, 2, 3. Level 1 may

1 be password resets. Level 2 is a little bit
2 further complexity. And then 3 would be, you
3 know, servers, super complex problems, that
4 kind of thing.

5 Q. Okay. So 3 is higher?

6 A. Yes. That would be like your
7 senior administrators kind of thing.

8 Q. So everybody in the company is a
9 network administrator.

10 A. Our lowest guy -- well, we have one
11 person in each position --

12 Q. Well, 1, 2, 3.

13 A. Exactly.

14 -- level 1 is just help desk, basic
15 stuff, menial tasks. Level 2 sort of helps out
16 level 1 and then helps out level 3. And then 3
17 is like -- you know, where if your computer
18 isn't working and no one can figure it out,
19 level 3 is where it goes to die, if that person
20 can't figure it out.

21 Q. I understand. You're a level 3.

22 A. At the moment, yes.

23 Q. And who is level 2?

24 A. Zachary Peterson.

25 Q. Okay. And who is level 1?

1 A. Justin Yeagler.

2 Q. How do you spell the last name?

3 A. Y-e-a-g-l-e-r.

4 Q. Thank you. How much does KNR pay
5 you every year?

6 A. Around \$70,000, \$75,000.

7 Q. Is that a flat fee?

8 A. Yes, sir.

9 Q. And they pay expenses of course as
10 well.

11 A. No.

12 Q. Okay.

13 A. Define, "Expenses."

14 Q. Like if you need to buy equipment
15 for them --

16 A. Oh.

17 Q. -- they'll pay for that.

18 A. They purchase their own equipment,
19 yes, yes.

20 Q. That's what I meant. I'm sorry.
21 Does this amount get increased, if you have to
22 do extra work that was unanticipated?

23 A. No.

24 Q. No. Okay. How many other clients
25 do you have at Whitaker Networks? You can

1 ballpark it.

2 A. Seventy.

3 Q. And obviously these contracts vary
4 with your seventy other clients. Or your
5 relationships with these seventy other clients
6 aren't really all exactly the same, correct?

7 A. That's correct.

8 Q. Some contracts are bigger than
9 others.

10 A. Depending on how you judge them,
11 yes, network size or invoice size or --

12 Q. Yeah. Okay.

13 A. Yeah.

14 Q. So network size and invoice size
15 would be two ways to evaluate how big a client
16 is.

17 A. Sure. How many resources they
18 consume, what have you.

19 Q. Sure. So just because a particular
20 client has a particularly high network size,
21 doesn't necessarily mean that you're going to
22 be billing them a lot based on that. It would
23 just depend on the amount of work that would be
24 necessary.

25 A. That's exactly correct, yes. They

1 are a corollary but not directly.

2 Q. Do you track the hours you spend
3 with each client?

4 A. I try.

5 Q. How do you try?

6 A. There's only three of us.

7 Q. Yeah, believe me, I understand.

8 A. Yeah. We use a ticketing system.
9 And then to the best of our ability, depending
10 on the workload of that day, we track and log
11 what we performed, how long it took, that kind
12 of thing.

13 Q. Okay. Would you say KNR is one of
14 your bigger clients?

15 A. Yeah.

16 Q. Who is your biggest client?

17 A. In what sense?

18 Q. Invoice size.

19 A. Invoice size would be KNR --

20 Q. Okay.

21 A. -- if we're speaking about gross
22 invoice size.

23 Q. As opposed to?

24 A. Profit margin or what have you.

25 Q. Okay, because you spend a lot of

1 time on KNR.

2 A. Right. They're one of our least
3 profitable clients but our largest invoice.

4 Q. I'm sure they appreciate that. I
5 know I would.

6 A. I don't know.

7 Q. So you've had this contract since
8 about 2006. Has the contract paid around 70 to
9 \$75,000 since then or --

10 A. No.

11 Q. Can you describe to me how it's
12 changed?

13 A. As the network grows, we'll
14 increment the price based on the surface area
15 that we're supporting.

16 Q. So what would you say the range of
17 the contract price has been over the years?

18 A. It began at \$1100 --

19 Q. \$1100?

20 A. Um-hum.

21 -- and has grown close to 7,000.

22 Q. Don't you mean \$70,000?

23 A. No. It's about \$6700 a month.

24 Q. Monthly, you're talking about.

25 A. I'm talking about monthly, yeah.

1 When the contract relationship began, it was
2 about \$1100 a month. I don't remember how many
3 systems or users there were in place then, but
4 over time it's grown to \$6700 a month.

5 Q. I see. Okay. First we were
6 talking about yearly and now we're talking
7 about monthly, so I was confused there.

8 A. Oh, okay.

9 Q. So KNR is not your biggest client
10 in terms of network size or you just -- I
11 should ask. Who is your biggest client, if
12 you're measuring by network size?

13 A. Network size, they would be the
14 largest.

15 Q. So they're both your biggest client
16 by network size and invoice size.

17 A. Correct.

18 Q. Okay. Who are your other biggest
19 clients?

20 A. Gervasi Vineyard, RDA Management.

21 Q. How do you spell that?

22 A. RDA. It stands for Rennick
23 Andreoli. They own a series of hotels
24 nationwide. I'm thinking.

25 National Settlement Services. It's a

1 title services company in Virginia. RLE
2 Phoenix Properties. They own the buildings
3 around Acorn Alley in Kent. What else? Oh,
4 Stark & Knoll.

5 Q. The law firm?

6 A. Yeah, on Ridgewood, right. I guess
7 I can keep thinking, if you wanted to know --

8 Q. That's a good sampling. I'm just
9 trying to get an idea of what your business is.
10 I know this will be difficult or I can imagine
11 that it would be, but can you estimate what
12 percentage of your company's time is devoted to
13 serving KNR?

14 A. It would be an estimate.
15 Percentage of time, if I'm summing up all
16 available man-hours across all employees, what
17 percentage of that --

18 Q. Yes.

19 A. -- if we're scoping it that way?

20 Q. Yes.

21 A. I would say a third, maybe over a
22 half depending.

23 Q. Okay. What other way would you
24 scope it? You know, you were thinking of
25 different ways. What other way would you

1 measure this?

2 A. Well, if you're speaking of just
3 one technician -- like I try not to be there as
4 much as possible, only when my skill-set is
5 needed to maintain profitability on the
6 account --

7 Q. Right.

8 A. -- but also enough to maintain a
9 business relationship --

10 Q. Right.

11 A. -- so that's why I was trying to
12 qualify, do you mean across all three and a
13 half of us or that kind of thing --

14 Q. I understand.

15 A. -- or do you mean financially
16 speaking out of payroll? Do you know what I
17 mean? Like in what way?

18 Q. This is fine. Thank you. I
19 appreciate that. Okay. We're moving right
20 along here. Let's get more into your personal
21 background. What did you do, before you
22 started Whitaker Networks?

23 A. I worked for a company called
24 Welfley Technologies.

25 Q. Welfley?

1 A. Welfley.

2 Q. Welfley, how do you spell that?

3 A. W-e-l-f-l-e-y.

4 Q. Where is that company located?

5 A. They are no more. It was located
6 on Smith Road on the other side of the mall,
7 Summit Mall.

8 Q. What did you do there?

9 A. Networking, network administration,
10 computer repair, training.

11 Q. How long were you there?

12 A. A little under three years.

13 Q. What was your salary?

14 A. Forty. I think I left at fifty,
15 but he had just risen me to fifty before we
16 parted ways.

17 Q. What did you do before that?

18 A. I worked at a Fortune 300. It was
19 called May Company. You would know them as
20 Kaufmann's, David's Bridal, Hecht's, Lord &
21 Taylor.

22 Q. I remember when it was May Company
23 at Summit Mall.

24 A. Yeah. They became a parent company
25 for the brands.

1 Q. How long did you work there?

2 A. Also about three years.

3 Q. Doing the same type of things you
4 did at Welfley, network administration,
5 networking, computer repair, training?

6 A. Specifically help desk. As time
7 grew, I was multitasked all over the place.

8 Q. So you sort of went from level 1 to
9 level 2, so to speak.

10 A. Kind of, yeah, yeah.

11 Q. Whereas maybe at Welfley, you were
12 more a level 2, maybe moving up to level 3.

13 A. Um-hum. At that time I thought of
14 it as getting off of a cruise ship and getting
15 on to a fishing boat.

16 Q. Sure. You had more responsibility
17 on the fishing boat, though.

18 A. Sure, sure. You have more
19 influence but less security.

20 Q. Okay. And what about before May
21 Company?

22 A. Sopko Construction.

23 Q. Where is that located?

24 A. Berea, Ohio. It's a home repair,
25 remodeling company.

1 Q. What did you do for them?

2 A. Construction: framing, plumbing,
3 electrical, siding, roofing, windows, drywall,
4 floors, a little bit of everything.

5 Q. How long were you there?

6 A. Two years.

7 Q. Was this while you were in school?

8 A. Um-hum, yes.

9 Q. Where did you graduate from?

10 A. University of Akron.

11 Q. What year?

12 A. 2008, is when I finally finished.

13 Q. With what degree?

14 A. Bachelor's in management
15 information systems.

16 Q. When did you graduate from high
17 school?

18 A. 1996.

19 Q. Where did you go to high school?

20 A. Columbia Station.

21 Q. I graduated in '96 as well. '96
22 kicks. Okay. When did you start at the
23 University of Akron?

24 A. 2000. I graduated from Lorain
25 County Community College in 2000. Well, maybe

1 2002, I think. So I started at the data center
2 in 2000 and realized that you don't go very far
3 without a bachelor's degree in a Fortune 300.

4 Q. But you continued to work, while
5 you were going to Akron.

6 A. True.

7 Q. Then your career didn't really take
8 off, so to speak, until you got your bachelor's
9 degree from Akron with the MIS degree.

10 A. Actually, the bachelor degree is
11 meaningless. It's toilet paper on the wall --

12 Q. That's interesting.

13 A. -- no one's ever asked me,
14 literally ever asked me until now if I had a
15 bachelor's degree or not.

16 Q. I'm a little confused by this,
17 because you just said -- I appreciate it, but
18 before you said that the -- and I'm not going
19 to remember exactly what you said, but that you
20 needed to get the bachelor's degree because for
21 some reason, that nobody takes you seriously.
22 Or what was your testimony about that?

23 A. About working at May Company?

24 Q. No, no, no, no.

25 A. That you don't go very far without

1 one?

2 Q. Yes. Is that what you said?

3 A. Um-hum, yeah.

4 Q. I'm a little confused. On one hand
5 you say you don't go very far unless you have
6 one, but on the other hand, you're saying it's
7 worthless. I just want to --

8 MR. POPSON: Object to form.

9 Go ahead.

10 A. The chronology may help you
11 understand. So in a Fortune 300, a bachelor's
12 degree is everything --

13 Q. I see.

14 A. -- you need that to break the HR
15 policy to gain access to the department. When
16 you leave and get on that fishing boat, no one
17 really cares --

18 Q. I see. Okay.

19 A. -- they hire you for your skill or
20 your knowledge, your personality.

21 Q. Understood. Thank you. How did it
22 come to be that you started Whitaker Networks?

23 A. My boss at Welfley Technologies
24 was -- is -- I believe still is a professor at
25 the University of Akron. He didn't like the

1 stress of entrepreneurship and decided to go
2 back to teaching full-time.

3 Q. So he closed Welfley Technologies.

4 A. He closed the office. Specifically
5 he just wanted to do training when and where he
6 saw fit. He didn't want employees. He didn't
7 want customers beyond -- he needed to bring it
8 down to a level he understood. It got too
9 large.

10 Q. So did you end up taking some of
11 those clients then?

12 A. We made a deal. I agreed to pay
13 him 10 percent of whatever revenues I brought
14 in from them for three years just because I
15 felt like it was the right thing to do.

16 Q. It sounds like it worked out.

17 A. You could say that from the outside
18 looking in, yes.

19 Q. Okay. I mean, do you think you'll
20 be in business for the foreseeable future?

21 A. Yes, sir.

22 Q. That's good news, right?

23 A. Yes.

24 Q. Okay. First, why don't you tell me
25 what KNR has asked you to do in terms of

1 responding to the document requests that the
2 plaintiffs have made in this lawsuit.

3 A. KNR hasn't asked that of me. The
4 requests I got in relation to this case were
5 from Brian Roof.

6 Q. And what were they?

7 A. Oh, I don't recall them all.

8 Q. Do you recall any of them?

9 A. They would email me and ask for
10 something to be searched or to furnish the --
11 actually, they were all searches -- can you
12 furnish these search results, can you take a
13 screen-shot of this, that kind of thing.

14 Q. So they asked you just to run
15 specific searches. They did not turn over our
16 document requests and say, Find us these
17 documents. Is that right?

18 A. No, sir. What I would get is a
19 list of numbered bullet points with search
20 terms that my understanding was negotiated
21 between you to be searched and I would perform
22 those and would furnish the results.

23 Q. Have you ever helped any of your
24 employers or clients at Whitaker Networks
25 respond to litigation requests before?

1 A. Respond to? Yes.

2 Q. How many times?

3 A. A handful, two or three maybe.

4 Q. Okay. Were these extensive
5 projects or --

6 A. No. This is far and away the most
7 extensive, in terms of what I've been asked to
8 look up.

9 Q. Okay. We'll come back to that. So
10 a handful of times, like two or three times?

11 A. Yes, sir.

12 Q. Okay. Does KNR have its own IT
13 people in-house that you ever work with?

14 A. No.

15 Q. Are you aware that they have anyone
16 who specializes in computers or IT in their
17 office?

18 A. No.

19 Q. How often are you in the office?

20 A. My company?

21 Q. Start with your company and then
22 you.

23 A. My company is physically in the
24 office, I would say, three to five times a
25 week --

1 MR. POPSON: We're talking about
2 KNR's office?

3 THE WITNESS: Well, KNR's Akron
4 office.

5 MR. POPSON: Okay.

6 A. -- yeah, I would say, three to five
7 times a week, typically limited engagements. A
8 scanner is broken. You can't fix that
9 remotely, that type of thing.

10 Q. How often are you in their office?

11 A. So in what time period, a month,
12 three months? In three months, I might be
13 there twice. I might be there once. I might
14 be there ten times, if a server has gone down.
15 It depends.

16 Q. Understood. What would you say; in
17 a normal three months, how many times would you
18 be there?

19 A. Probably once, maybe twice, maybe.

20 Q. So is it your level 1 guy or your
21 level 2 guy or person that --

22 A. Who usually goes?

23 Q. They're both male, right?

24 A. Correct.

25 Q. Okay.

1 A. It's the level 2 guy. Historically
2 it's been the level 2 guy, Zach. Lately the
3 level 1 guy has been going more.

4 Q. Because he's getting better?

5 A. He's getting better, exactly.

6 Q. All right. Do you have any
7 understanding of what this case is about?

8 A. Not really.

9 Q. None at all?

10 A. Apart from what I read online.

11 Q. What have you read online?

12 A. I've read online that they're
13 accused of, I believe the term is, quid pro quo
14 with chiropractors.

15 Q. Anything else?

16 A. No.

17 Q. Do you understand this to be a case
18 involving allegations of fraud?

19 A. No.

20 Q. So you don't understand this case
21 to involve allegations of widespread consumer
22 fraud.

23 A. No.

24 Q. Okay. Have you read the complaint
25 in this case?

1 A. No.

2 Q. Are you personally familiar with
3 the individuals named in the complaint?

4 A. Those names would be?

5 Q. Good question. I assume you're
6 personally familiar with Mr. Nestico.

7 A. Yes.

8 Q. Are you familiar with Mr. Redick
9 personally?

10 A. Sure.

11 Q. Okay.

12 A. Understanding you mean,
13 "Personally," as a business relationship,
14 worked with him for ten years kind of thing?

15 Q. Yeah, of course.

16 A. Okay.

17 Q. You've had several conversations
18 with Mr. Nestico and Mr. Redick over the years.

19 A. Oh, yeah.

20 Q. Do you consider it to be a good and
21 friendly business relationship that you have
22 with them?

23 A. I consider it to be a healthy
24 business relationship at the present.

25 Q. Okay. Who does your company deal

1 with the most at KNR?

2 A. Which employee?

3 Q. Let's go down the list.

4 A. Myself, I'm typically dealing with
5 higher level KNR employees would be -- the most
6 would be Brandy --

7 Q. Brandy Gobrogge?

8 A. Yes.

9 -- on rare occasion, I would deal with
10 Rob, although I've been dealing with him more
11 since they have activated me for searches and
12 stuff in this case. Occasionally I'll deal
13 with Kevin.

14 Q. Kevin?

15 A. Thompson.

16 Q. Who is Kevin Thompson?

17 A. That's a good question.

18 Q. Do you know what position he's in
19 at the firm?

20 A. No, actually.

21 Q. Do you know if he's a lawyer?

22 A. He is not a lawyer that I'm aware
23 of.

24 Q. Okay. When you deal with Kevin
25 Thompson, what is it that you're dealing with?

1 A. The stuff Brandy doesn't have time
2 to handle.

3 Q. And Brandy is the office manager.

4 A. Her title is, director of
5 operations.

6 Q. Is there anyone else you deal with
7 as frequently as Rob, Brandy or Kevin?

8 A. No.

9 Q. Is there anyone else you deal with
10 at all there?

11 A. At all, of course. Frequently, no.

12 Q. Okay.

13 A. In your earlier question, you
14 wanted a stepdown by employee.

15 Q. Sure, please.

16 A. So Zach would deal with Brandy far
17 more often really than anyone else in the
18 company. The goings-on of fixing computers and
19 fixing trouble tickets, that kind of thing, the
20 production of that, a lot of communication goes
21 back and forth between Brandy and Zach. I took
22 care of this ticket. Okay, thank you. That
23 sort of thing.

24 Q. And then your other employee?

25 A. Justin?

1 Q. Yes.

2 A. Justin does not speak with Brandy
3 unless he's spoken to. That's not by
4 direction. It's happenstance --

5 Q. Sure.

6 A. -- Justin deals with users directly
7 in reference to a problem that they've
8 reported.

9 Q. Help desk?

10 A. Help desk stuff, exactly.

11 Q. I understand. Thank you. So would
12 you say you see Brandy pretty much every time
13 you go into the office?

14 A. No. Me personally, no. Zach, yes.

15 Q. I understand. Are you familiar
16 with the KNR investigators that are named in
17 the complaint, Michael Simpson and Aaron
18 Czetli?

19 A. I know of them, yes.

20 Q. How do you know of them?

21 A. Through KNR.

22 Q. Can you please explain that?

23 A. I've seen them around the office.
24 Over ten years, you get to know people's names
25 and stuff like that.

1 Q. So you've regularly seen them
2 around the office over ten years.

3 A. Not so much in the last few years.
4 Earlier on, I would see them often, but I was
5 also in the office more often, so I'm not sure
6 one correlates to the other.

7 Q. What did you understand their job
8 to be at the firm --

9 MR. POPSON: Objection.

10 You can answer, if you know.

11 Q. -- if any?

12 A. To be honest, I don't know.

13 Q. Did you ever see them doing
14 anything, when you were there?

15 A. Eating, literally eating.

16 Q. Anything else besides eating?

17 A. I've seen them create -- or not
18 create -- stuff envelopes. That was years and
19 years ago.

20 Q. Okay. Is there anything else?
21 They're just around.

22 A. They're around.

23 Q. I'm going to back up. I have to
24 ask this question. How is it that you came to
25 be living on Nestico Drive?

1 A. That directly correlates to the
2 aforementioned divorce. Rob has real estate
3 holdings through a separate company. I was in
4 a very hard time. I have five children. I did
5 not take the divorce lightly. So Rob was being
6 a good human being, from my estimation, in
7 helping me find someplace to live. My wife and
8 I are still in court. So while I get back up
9 on my feet -- I mean, that living relationship
10 has a lease company and I pay his company.
11 It's separate and it needs to be separate for
12 all kinds of reasons --

13 Q. I understand, sure.

14 A. -- but it was helpful to have
15 someplace to go --

16 Q. Of course.

17 A. -- so that's how that came to pass.

18 Q. I understand. Is your divorce
19 final?

20 A. Yes.

21 Q. But you're still litigating over
22 issues.

23 A. Yes, living arrangement of children
24 and that kind of thing.

25 Q. I don't need to get into that. I

1 understand. My wife was in a contentious
2 divorce with children, so.

3 A. I'm sorry.

4 Q. It's fine. You move past it --

5 A. Um-hum.

6 Q. -- just got to give it time, from
7 my perspective.

8 A. Yeah.

9 Q. Time heals a lot, for what it's
10 worth.

11 A. Just focus on the kids.

12 Q. There you go. I appreciate that.
13 Thank you.

14 A. Um-hum.

15 Q. Okay.

16 MR. POPSON: Let's take a break.

17 MR. PATTAKOS: Okay.

18 (Recess taken.)

19 BY MR. PATTAKOS:

20 Q. So we're back from break. I asked
21 you before if you had been asked to gather
22 documents in a lawsuit before. You said, a
23 handful of times, about two or three. Then I
24 asked you if it was anything extensive and you
25 said, no, this is far and away the most

1 extensive in terms of what I've been asked to
2 look up, so I want to ask about that.

3 A. Um-hum.

4 Q. When you say, In terms of what I've
5 been asked to look up, are you referring just
6 to the searches?

7 A. I was speaking more wholistically,
8 but, yes.

9 Q. Okay. Explain, please.

10 A. Explain?

11 Q. Explain from a more wholistic
12 perspective your statement that this is far and
13 away the most extensive, in terms of what
14 you've been asked to look up.

15 A. In the other instances, I was also
16 asked to for search email or search a hard
17 drive for documents, something like that, and
18 produce them if they exist or not exist. It
19 was usually just one request, sometimes two.
20 I've lost count of how many requests I've
21 searched for this one.

22 Q. Okay. Just in terms of different
23 searches using different terms, the number of
24 different searches you've been asked to run?

25 A. The frequency that I've been

1 requested. Usually the email comes through.
2 It says, For this, this and this, and then I do
3 that and then I don't hear from them again.

4 Q. But, like you said, all you're
5 doing is that, is you're getting searches from
6 Brian Roof.

7 A. Correct.

8 Q. He's asking you to run them and
9 then show you the screen-shots of what the
10 results come up with.

11 A. That's correct.

12 Q. Okay. And then maybe sometimes
13 pulling the documents. Are you responsible for
14 pulling the documents?

15 A. If I'm requested to pull them.

16 Q. All right. In these other previous
17 instances where you had to help a client or
18 employer respond to document requests, did you
19 ever run into problems with the volume of data
20 the search was returning or that you were being
21 asked to pull?

22 A. No.

23 Q. So this is the first time you've
24 ever had to deal with that particular issue.

25 A. Correct.

1 Q. I realize I'm making a few
2 assumptions here, but I'm going to ask you more
3 specific questions here -- I'm going to ask for
4 more specific information here from you
5 shortly. First I want to ask: What did you do
6 to prepare for this deposition?

7 A. I spoke to Mr. Popson.

8 Q. How many times?

9 A. Yesterday and then again this
10 morning.

11 Q. How long did you speak with him?

12 A. Which time?

13 Q. Each time.

14 A. Yesterday was an hour or two.

15 MR. POPSON: It was the day
16 before yesterday.

17 THE WITNESS: Was it?

18 MR. POPSON: It was Tuesday.

19 THE WITNESS: Wow.

20 A. Yeah, sorry. Yeah, I would guess
21 an hour or two. And then this morning about an
22 hour.

23 Q. Did you speak with anyone else?

24 A. No.

25 Q. Did you review any documents?

1 A. A notice of deposition.

2 Q. That's the only document you
3 reviewed to prepare for this deposition?

4 A. Correct.

5 Q. Have you spoken with Mr. Nestico or
6 Mr. Redick about this case?

7 A. In what way?

8 Q. In any way.

9 A. I've spoken with him about
10 complying with Mr. Roof's searches,
11 Mr. Nestico. I've not spoken to Mr. Redick at
12 all about the case.

13 Q. Tell me about these conversations
14 with Mr. Nestico about complying with
15 Mr. Roof's searches.

16 MR. POPSON: Object to form.

17 Go ahead.

18 A. Tell you about the conversation.
19 An average conversation would go something like
20 this: Hey, I know you're busy, but Brian needs
21 those documents. Please get them over. Or,
22 What do you mean there's too much data? Can
23 you take a screen-shot for me then, something
24 like that in a facilitatory manner.

25 Q. Okay. So you didn't get any

1 specific instructions from Mr. Nestico about
2 today's deposition.

3 A. No.

4 Q. As far as scheduling this
5 deposition, did you ever advise anyone that you
6 were not available for a deposition on any
7 given day?

8 A. I don't think so, no.

9 Q. Okay. Great. We're moving right
10 along here. Let's mark Exhibit 1.

11 - - - - -

12 (Thereupon, Deposition Exhibit 1,
13 Notice of Deposition Under Civil
14 Rule 30(b)(5), was marked for
15 purposes of identification.)

16 - - - - -

17 Q. Please take a look at Exhibit 1.
18 Do you recognize this document?

19 A. I do.

20 Q. Is this the notice you reviewed?

21 A. It looks like it, yes.

22 Q. Okay. I can confirm this is the
23 notice of deposition that I served on the KNR
24 defendants. You'll see here, the second half
25 of the first paragraph says, "Under Civil Rule

1 30(b)(5), KNR is required to designate and
2 fully prepare one or more officers, directors,
3 managing agents or other persons who consent to
4 testify on behalf of KNR, and whom KNR will
5 fully prepare to testify regarding the
6 following designated matters and as to such
7 information that is known or reasonably
8 available to KNR's organization." Have I read
9 that correctly?

10 A. Yes.

11 Q. Okay. And then I list 13 numbered
12 subjects going forward. Do you see that?

13 A. Yes.

14 Q. You understand that you're here to
15 testify about some of these subjects, correct?

16 A. Correct.

17 Q. Okay. I want to go down this list
18 and ask you about these particular subjects.

19 MR. POPSON: I just want to put
20 something on the record real quick, or find
21 out, I guess first. Did you receive our
22 written response?

23 MR. PATTAKOS: I did, Jim. Thank
24 you.

25 MR. POPSON: Okay. And just for

1 the record, the party has the right to
2 designate their representative for each of
3 these topics; and our designation is set forth
4 in the response that I sent to you yesterday.

5 MR. PATTAKOS: I surely understand
6 that.

7 MR. POPSON: Okay.

8 MR. PATTAKOS: Thank you.

9 MR. POPSON: Sure.

10 BY MR. PATTAKOS:

11 Q. So, Mr. Whitaker, did you review
12 this document and advise KNR as to which of
13 these subjects you would be able to testify to?

14 A. I spoke with Mr. Popson about which
15 ones I could serve as an authority on.

16 Q. So for number 1, "The existence of
17 the documents and/or electronically stored data
18 requested in Plaintiffs' discovery requests" --

19 A. Um-hum.

20 Q. -- do you believe you could serve
21 as an authority on that?

22 MR. POPSON: Objection. Again,
23 our response to that request is set forth. If
24 you want to make it continuing, you can, but --

25 MR. PATTAKOS: That's fine. You

1 can just say that it's an objection. A
2 speaking objection, I don't think is
3 appropriate here.

4 MR. POPSON: Yeah, I'm not trying
5 to influence him. He can --

6 MR. PATTAKOS: That's fine.

7 MR. POPSON: -- he can say
8 whatever he wants to say. I just want the
9 record to be clear that the designation for the
10 topics that he speaks on behalf of the company
11 are limited to what's in our response.

12 MR. PATTAKOS: I'm not asking him
13 about that, Jim.

14 MR. POPSON: Okay.

15 MR. PATTAKOS: Okay.

16 BY MR. PATTAKOS:

17 Q. This is a subject, this number 1,
18 on which you believe you can speak with
19 authority, correct?

20 MR. POPSON: Read it and answer
21 his question the best that you can.

22 A. I don't know what just happened
23 between you two.

24 The existence of documents; I could tell
25 you if they're there or not there.

1 Q. I'm asking more generally. Is this
2 one of the subjects that you understand you're
3 here to testify as an authority on?

4 MR. POPSON: Objection.

5 Go ahead.

6 A. The electronically stored data, I
7 have the ability to search, yes.

8 Q. Okay. And you said that you told
9 Mr. Popson that you could -- you identified
10 certain ones of these categories on which you
11 could speak as an authority, correct?

12 A. Correct.

13 Q. And did you confirm with Mr. Popson
14 that you could speak as an authority on
15 number 1?

16 MR. POPSON: Objection. He's not
17 allowed to answer that. That's a communication
18 with me.

19 Let's go off the record for a second.

20 MR. PATTAKOS: That's fine.

21 (Discussion held off the record.)

22 BY MR. PATTAKOS:

23 Q. You have confirmed that you can
24 speak as an authority as to item number 1 here,
25 correct?

1 MR. POPSON: Objection.

2 Go ahead.

3 A. In part. I have the ability to
4 speak as an authority to what you've asked me
5 to search electronically as its existence at
6 that time.

7 Q. Okay. Number 2, "The systems,
8 process and purpose for the creation,
9 duplication and/or storage of the documents
10 and/or electronically stored data requested in
11 Plaintiffs' discovery requests." Do you
12 believe you can speak as an authority on that?

13 MR. POPSON: Objection.

14 Go ahead.

15 A. Also in part. I can speak toward
16 the systems that hold documents. I can't speak
17 to the process by which they're created,
18 duplicated, why they're put there, why they're
19 removed. That's not something I'm privileged
20 to or necessarily even have interest in.

21 Q. Do you know who would be?

22 A. No.

23 Q. Number 3, "Any and all document
24 and/or electronically stored data
25 retention/destruction policies that relate to

1 any of the documents requested in Plaintiffs'
2 requests" --

3 MR. POPSON: If that's a question.

4 Q. -- do you believe you can speak as
5 an authority on this item number 3?

6 MR. POPSON: Objection.

7 Go ahead.

8 A. In part. I can speak to the
9 electronically stored data retention policies
10 as they pertain to backups. In terms of
11 document creation, deletion, that kind of
12 thing, that's not within my control.

13 Q. But is it within your knowledge?

14 A. No.

15 MR. POPSON: Objection.

16 Q. Okay. Let's just go through item
17 number 4. "The location of the documents
18 and/or electronically stored data requested in
19 Plaintiffs' discovery requests." Can you speak
20 as an authority on this subject?

21 MR. POPSON: Objection.

22 Go ahead.

23 A. I can speak in part to the
24 electronically stored documents, where they're
25 physically held.

1 Q. Okay. Number 5, "The organization,
2 indexing and/or filing of the documents and/or
3 electronically stored data requested in
4 Plaintiffs' discovery requests." Can you speak
5 as an authority on this?

6 MR. POPSON: Objection.

7 Go ahead.

8 A. Also, I can speak to -- I can speak
9 toward the electronically stored documents and
10 how the systems would index those in a way that
11 you would then search them.

12 MR. PATTAKOS: Tracy, can you read
13 back his answer, please.

14 (Record was read.)

15 Q. Item number 6, "The method of
16 search for the documents and/or electronically
17 stored data requested in Plaintiffs' discovery
18 requests." Can you speak as an authority on
19 that?

20 MR. POPSON: Objection.

21 Go ahead.

22 A. I can speak also in part to the
23 electronically stored documents, the methods of
24 search that I used for the electronically
25 stored documents.

1 Q. Are you aware that anyone else was
2 asked to search for these documents?

3 A. No.

4 Q. To your understanding, you're the
5 only one that's been asked to search for these
6 documents, correct?

7 A. Correct.

8 Q. Okay. Number 7, "The completeness
9 of the documents and/or electronically stored
10 data produced in response to the requests in
11 Plaintiffs' discovery requests" --

12 MR. POPSON: Objection.

13 Q. -- can you speak as an authority on
14 that subject?

15 MR. POPSON: Objection. I don't
16 think we designated him for this one.

17 But go ahead.

18 MR. PATTAKOS: Jim, I would
19 appreciate you not make speaking objections.

20 MR. POPSON: Well, he can say
21 whatever he wants to.

22 MR. PATTAKOS: I understand that,
23 but you're suggesting an answer to him --

24 MR. POPSON: No, I'm not.

25 MR. PATTAKOS: -- and I want to get

1 his testimony without any kind of influence of
2 speaking objections. The local rules, Jim, are
3 clear on that.

4 MR. POPSON: Okay.

5 MR. PATTAKOS: I understand the
6 objection. You don't really have to even tell
7 us what the objection is to preserve it, so.

8 MR. POPSON: Go ahead. You can
9 answer the question.

10 A. What was your question, again?

11 MR. PATTAKOS: Tracy, can you --

12 MR. POPSON: Number 7, he was
13 asking you if you're an authority.

14 THE WITNESS: Okay.

15 A. Can you define, "Completeness"? I
16 don't believe I'm an authority on this because
17 I can't determine, "Completeness," as someone
18 else may appreciate it. What I could tell you
19 is that everything that I got back in the
20 search I then furnished to the person
21 requesting it in a complete fashion.

22 Q. I see. That's all I'm asking here.

23 A. Okay.

24 Q. I realize this is somewhat tedious.
25 I've just got to do some housekeeping here, so

1 we have to continue through this list.

2 A. Okay.

3 Q. Number 8, "KNR's electronic
4 document management system..., including but
5 not limited to what documents are stored in the
6 system, how those documents are organized, how
7 far back the records in the EDMS go and what
8 methods of search, query and reporting are
9 available to KNR through the EDMS or any
10 outside interface." Do you believe that you
11 can speak with authority on that subject?

12 MR. POPSON: Objection.

13 Go ahead.

14 A. KNR does not use a document
15 management system in the way a law office
16 might. An industry example would be Open Text
17 DM or Worldox. That sort of system doesn't
18 exist.

19 Q. What sort of system does exist?

20 A. Windows File Share.

21 Q. Okay. We can get into that. In a
22 way, Windows File Share is an electronic
23 document management system, is it not?

24 A. I would argue that it's a storage
25 location, but if you organize the folders,

1 perhaps.

2 Q. So you can speak with authority on
3 KNR's Windows File Share system, including what
4 documents are stored in the system, how the
5 documents are organized, how far back the
6 records in the system go and what methods of
7 search, query and reporting are available
8 through that system or any outside interface.

9 MR. POPSON: Objection, form.

10 Go ahead.

11 A. In part. I couldn't speak to the
12 contents of the directories. I could speak to
13 their structure, what sort of search utilities
14 we have available to us, but I don't -- I
15 don't -- from an IT perspective, whatever is in
16 there is for the lawyers. It's not -- the
17 content isn't mine to organize.

18 Q. I understand that, but you
19 understand what methods of search are
20 available.

21 A. Yes.

22 Q. And you also have an understanding
23 of what type of outside interfaces could be
24 used to reorganize and search this data in
25 other ways.

1 A. Can you clarify, "Outside
2 interface"?

3 Q. That's what you're here for --
4 MR. POPSON: Objection.

5 Q. -- I mean, you can move the data,
6 for example. You can use another program, for
7 example. You're aware that data can generally
8 be moved from this system to another type of
9 system and reorganized and searched in those
10 ways, correct?

11 MR. POPSON: Object to form.
12 Go ahead. You can answer.

13 A. I'm still not clear. My industry
14 is a very, very technical one. So the word,
15 "Outside interface," culminates a thousand
16 things to mind. "Outside," meaning outside the
17 system, the server, the network? "Interface,"
18 meaning programmatic interface, web interface?
19 I don't --

20 Q. Let's start with anything that's
21 not part of the existing Windows File Share
22 system.

23 MR. POPSON: Objection. Is there
24 a question?

25 MR. PATTAKOS: Yes, there's a

1 question.

2 MR. POPSON: Object to form then.

3 Go ahead.

4 A. I still don't understand the
5 question. I'm sorry --

6 Q. That's okay.

7 A. -- I'm trying to clarify what
8 you're asking.

9 Q. Sure. I guess I want to know --
10 you're an IT expert, correct?

11 A. Yes, sir.

12 Q. So you understand generally how
13 data can be taken from a Windows File Share
14 system and searched using other systems apart
15 from a Windows File Share system, correct?

16 MR. POPSON: Objection.

17 Go ahead.

18 A. I'm generally aware of that
19 capability.

20 Q. Okay. That's really all I was
21 asking.

22 A. Okay.

23 Q. So tell me about your general
24 awareness of that capability.

25 A. I would ask you to scope again.

1 Q. Just explain your general awareness
2 of that capability.

3 MR. POPSON: Object to form.
4 Go ahead.

5 A. My general awareness of a disparate
6 system to connect to another system and utilize
7 the information that it holds --

8 Q. Yes.

9 A. -- such as every computer and
10 network on the planet.

11 Q. Sure. Are you aware of particular
12 systems that are used in the context of
13 litigation to solve problems like this?

14 MR. POPSON: Object to form.
15 Go ahead.

16 A. Such as Open Text DM, like a
17 document management system?

18 Q. Sure.

19 A. That would otherwise organize
20 shared information and categorize it?

21 Q. Sure.

22 A. Yes, of course.

23 Q. Are you aware of any other systems
24 that could be used to accomplish that task?

25 MR. POPSON: Object to form.

1 A. Speaking specifically in reference
2 to a Windows File Share system?

3 Q. Sure.

4 A. Yes.

5 Q. Such as?

6 A. Worldox would be another one.

7 Q. Are you aware of any others?

8 A. Yes.

9 MR. POPSON: Objection to form.

10 Go ahead.

11 Q. And what are they?

12 MR. POPSON: Objection.

13 Go ahead.

14 Q. I'm sorry. Let me back up.

15 "Worldox," is what you said.

16 A. Worldox.

17 Q. W-o-r-l-d --

18 A. D-o-x.

19 Q. Is there one D or two Ds there?

20 A. That's a good question. I think
21 just one.

22 Q. I interrupted you. You were going
23 to name other interfaces or systems that would
24 be available such as Worldox --

25 MR. POPSON: Objection to form.

1 Q. -- go on.

2 A. Sure. Gosh, the number of ways you
3 can organize information in Windows File Share
4 in a litigation sense --

5 Q. Sure.

6 A. -- I believe was your question.

7 Q. Sure.

8 MR. POPSON: Objection.

9 Go ahead.

10 A. Do you mean in terms of search?

11 Q. That would be helpful.

12 A. Your question is incredibly
13 broad --

14 Q. It's really --

15 A. -- I would answer it with a Google
16 search, like what products are available to
17 organize Windows File Share information and
18 2,000 products may come up.

19 Q. So there are a lot of different
20 products you could use to organize the data
21 that you have in this Microsoft file share
22 system to search it and come up with responsive
23 information, correct?

24 MR. POPSON: Object to form.

25 Go ahead.

1 A. Absolutely.

2 Q. Okay. That's really the point.

3 Thank you.

4 A. Okay.

5 Q. Okay. Let's go back to this list.
6 Number 9, "KNR's use of Needles, including but
7 not limited to what information is stored in
8 the system, how that information is organized,
9 how far back the records in Needles go and what
10 methods of search, query and reporting are
11 available to KNR through Needles..." Can you
12 speak as an authority on that?

13 MR. POPSON: Objection.

14 Go ahead.

15 A. I can speak as an authority in
16 part, the system's functionality, the type of
17 things it has available. Its contents I can't
18 necessarily speak toward.

19 Q. I understand. Okay. Number 10,
20 "KNR's e-mail system, including but not limited
21 to how messages are stored, how messages are
22 backed up, whether messages are regularly
23 copied to the EDMS, the period of time e-mail
24 messages are stored in individual accounts, the
25 period of time messages are stored through

1 system backups or any other manner, what
2 methods of search, query and reporting are
3 available to KNR through its e-mail system or
4 any outside interface" --

5 MR. POPSON: Objection, form.

6 Q. -- can you speak as an authority on
7 this subject?

8 MR. POPSON: Object to form.

9 A. I can speak as an authority to part
10 of this --

11 Q. Which part?

12 A. -- or parts.

13 I can speak toward the system, how the
14 system stores its messages. I could not speak
15 to how the users choose to organize their
16 messages. I could speak to how the system is
17 backed up. I could speak to the methods of
18 search and query available. And I could speak
19 in part generally to the methods of outside
20 interface you might otherwise get to the email
21 system from.

22 Q. Okay. So it's my understanding,
23 from my communications with Mr. Popson, that
24 you cannot speak as an authority to number 11,
25 "KNR's paper file system...", correct?

1 A. That's correct.

2 Q. And the same goes for the firm
3 accounting system, number 12.

4 A. Also correct.

5 Q. You have no involvement with that
6 at all.

7 A. Unless it throws an error message,
8 no.

9 Q. As for number 13, "KNR's document
10 retention policies including the format in
11 which documents are to be maintained and the
12 time for which they are to be kept," can you
13 testify as an authority on that subject?

14 MR. POPSON: Objection.

15 Go ahead.

16 A. No.

17 Q. Okay. You can speak to how the
18 documents are stored on the computer system,
19 correct?

20 A. Can you clarify what you mean by,
21 "How the documents are stored"?

22 Q. Well, as to number 3, you testified
23 that you could speak as an authority to the
24 electronically data destruction or retention
25 policies, did you not?

1 MR. POPSON: Objection.

2 Go ahead.

3 A. I can speak toward that in
4 reference to retention in terms of backup --

5 Q. Okay.

6 A. -- if you're asking something more
7 specific than that, I need you to elaborate.

8 Q. Okay. Do you understand that the
9 duty to preserve evidence can be triggered
10 under the law by the likelihood that this
11 evidence could be relevant to litigation?

12 MR. POPSON: Objection.

13 A. Can you say that in nonlegal terms?
14 Do you mean, don't delete stuff?

15 Q. Sure.

16 A. Yes, I'm aware.

17 Q. Were you advised to place any holds
18 on any information in KNR's system for this
19 lawsuit?

20 A. Yes.

21 Q. And did you do that?

22 A. Yes.

23 Q. Can you describe what you did in
24 this regard?

25 A. The items asked, I took backups of

1 and then made a copy of those backups so that
2 the original was preserved in its entirety. A
3 copy of that backup was then used for -- excuse
4 me. A copy of that record was then placed in a
5 shared directory with very restricted file
6 permissions.

7 Q. What items were you asked to take
8 backups of?

9 A. A folder containing information
10 related to a gentleman named Member Williams.

11 Q. Anything else?

12 A. That's my recollection, Member
13 Williams' information.

14 Q. You were not asked to place a hold
15 on any other information?

16 A. Not to my recollection.

17 If I could add to that?

18 Q. Please.

19 A. We did keep a copy of the Needles
20 case also.

21 Q. What's the Needles case?

22 A. Needles is a case management
23 software.

24 Q. What do you mean by, "The Needles
25 case"?

1 A. The Needles case concerning Member
2 Williams was also.

3 Q. What do you mean by, "The Needles
4 case"? Is that a file --

5 A. Um-hum.

6 Q. -- for Member Williams?

7 A. Yes.

8 Q. Okay. You were not asked to store,
9 save information in Rob Nestico's mailbox.

10 A. No.

11 Q. Or any other individual at KNR.

12 A. No.

13 Q. You were not asked to do anything
14 to ensure that emails were not deleted.

15 A. No.

16 Q. You were not asked to put any type
17 of place-hold on any information that would
18 ensure that that data could not be deleted.

19 A. No. In respect to -- well, let me
20 clarify. What system are you speaking toward?

21 Q. Any system.

22 MR. POPSON: Object to form.

23 A. The answer to that question would
24 be, yes, we did set aside the files, the case
25 notes -- or the Needles case.

1 Q. For Member Williams only, correct?

2 A. Yes.

3 Q. You were not asked to preserve
4 individuals at KNR's email boxes or other files
5 that would be stored electronically.

6 A. No.

7 Q. Okay. Are there ways that you
8 could ensure that certain information in KNR's
9 email boxes is not deleted?

10 MR. POPSON: Object to form.

11 Go ahead.

12 A. Are there ways?

13 Q. Yes.

14 A. Yes.

15 Q. Okay. And are these ways workable
16 and practicable, from your perspective as an IT
17 professional?

18 A. Technically speaking, yes.

19 Q. Tell me what you would do if you
20 were asked to preserve, let's say, for example,
21 all of the information in Rob Nestico's email
22 box. What would you do?

23 A. I would ask the requester in what
24 way they want it preserved.

25 Q. What if they left that up to you?

1 A. I guess I would look at the context
2 around the request and either take a backup
3 or -- there's a feature in Exchange that not
4 many people are aware of called, "Litigation
5 hold," but unless that is specifically
6 requested I won't enable it because it turns
7 all production of the mailbox off. It becomes
8 directly harmful to whoever is using that
9 because they no longer receive email --

10 Q. Okay.

11 A. -- so it's not asked for often.

12 Q. I understand. So you said,
13 "Exchange." Are you referring to a Microsoft
14 Exchange server?

15 A. Sorry. Trade term. Yes.

16 Q. Okay. And that's what KNR uses, is
17 a Microsoft Exchange server.

18 A. Correct.

19 Q. And it's on site at their office.

20 A. Correct.

21 Q. What's the relationship of the
22 Windows File Share system to that?

23 A. In what way?

24 Q. Well, please explain it to me.
25 You're the expert. You said they use the

1 Windows File Share system --

2 A. Um-hum.

3 Q. -- and they also use a Microsoft
4 Exchange server. What is the relationship
5 between that Windows File Share system and the
6 Microsoft Exchange server?

7 A. Oh, understood. There isn't one.
8 They're on separate servers on the same
9 network. I mean, you have a shared drive,
10 right, and then you have email. Excuse me.
11 From a system's approach, there is no
12 relationship.

13 Q. From a more wholistic approach,
14 what is the relationship --

15 MR. POPSON: Object to form.

16 Q. -- between the Windows File Share
17 system and the Microsoft Exchange server?

18 MR. POPSON: Object to form.

19 Go ahead.

20 A. I still don't know if there is one,
21 apart from perhaps a user pulling email out of
22 and dropping it in or grabbing an attachment
23 from the shared drive and plopping in an email
24 and sending the attachment someplace.

25 Q. So Windows File Share is just a way

1 to share files. Is it a cloud?

2 A. No. It's a shared drive.

3 Q. So it's a physical drive where
4 information is stored and can be accessed by
5 various users, correct?

6 A. Correct.

7 Q. Okay. You said before that you're
8 aware of a litigation hold that can be
9 implemented through the Microsoft Exchange
10 server, correct?

11 A. Yes.

12 Q. And you've not been asked to do
13 that in this litigation, correct?

14 A. Correct.

15 Q. You said that once that hold is
16 placed on a mailbox, that mailbox cannot be
17 used, correct?

18 A. Correct.

19 Q. But a backup copy of that mailbox
20 could be made, correct?

21 A. Correct.

22 Q. And you could place a hold on that,
23 correct?

24 A. Incorrect.

25 Q. Why?

1 A. Perhaps it's a trade term. The
2 hold goes against the active production
3 database mailbox. If I enable a litigation
4 hold, that mailbox and all its transactions
5 freeze. The backup copy isn't under the
6 auspice of a litigation hold. It's a separate
7 file in backup.

8 Q. So basically what you're saying is
9 you would not use that hold function if you
10 were asked to preserve all of the information
11 in a given mailbox; you would use other means.

12 A. Yes.

13 Q. But those means are, as you
14 testified, workable and practicable from your
15 perspective as an IT professional.

16 A. Yes.

17 Q. Okay. We're moving through this
18 outline here. We're going to get into some of
19 the more technical aspects of the system. But
20 first I want to talk about your participation
21 in the defendants' search for documents
22 responsive to plaintiffs' requests. I'd like
23 you to provide a detailed description of your
24 involvement starting at the very beginning of
25 the process and ask you questions as

1 necessary --

2 MR. POPSON: Objection.

3 Q. -- please go ahead and start from
4 the beginning about your involvement here.

5 MR. POPSON: Objection.

6 Go ahead.

7 A. In the search for documents?

8 Q. Yes.

9 A. I was asked to comply with Brian
10 Roof's request to search for documents. And
11 then subsequently spoke with Brian Roof mostly
12 via email to produce those requests and help
13 him understand the results.

14 Q. And as you testified before, when
15 you say you were asked to comply with Brian
16 Roof's request to search for documents, that
17 means that Brian Roof would give you specific
18 searches to run and you would run those
19 specific searches, correct?

20 A. Correct.

21 Q. Then you would go back to Brian
22 with the results.

23 A. That's correct.

24 Q. And you would tell him what the
25 results were, correct?

1 A. I would give him the results in the
2 way he asked for them.

3 Q. Which way would he ask for them?

4 A. As an example, when he asked to
5 search for email, I would ask him if a
6 screen-shot was okay because the enumeration of
7 items is so large, and he said that would be
8 okay, something like that.

9 Q. So you've confirmed that KNR's
10 emails are hosted on an on-site Microsoft
11 Exchange server, correct?

12 A. Correct.

13 Q. Is this information stored anywhere
14 else, to your knowledge?

15 A. Backups only, also on site.

16 Q. What are the backups stored on?
17 How are the backups stored?

18 A. Physically or programmatically
19 speaking?

20 Q. Both.

21 A. Programmatically speaking, they're
22 stored in server images held on a network
23 attached storage device referred to as a NAS.
24 And that NAS is then backed up to another NAS.

25 Q. In what form -- you said, "Images."

1 What type of images?

2 A. They're created by a program called
3 AppAssure, A-p-p, Assure.

4 Q. Is the Microsoft Exchange server
5 2010 or 2013?

6 A. '10.

7 Q. Does KNR use any cloud-based
8 information storage systems, to your knowledge?

9 A. No.

10 - - - - -

11 (Thereupon, Deposition Exhibit 2,
12 10/2017 Mailbox Searches With
13 Attachments, was marked for purposes
14 of identification.)

15 - - - - -

16 Q. Please take sometime to review this
17 document and let me know when you're ready.

18 A. Okay.

19 Q. I realize this is a compilation of
20 various documents --

21 A. Yeah.

22 Q. -- but they are related. These
23 were produced to me by KNR's lawyers,
24 Mr. Popson included here. Let's just look at
25 the first six pages here. And when I refer to,

1 "Page 2," I'm referring to the backside of the
2 first physical page. As you can see, this is
3 printed double sided --

4 A. Yes, sir.

5 Q. -- so page 2 is the backside of the
6 first physical page for clarity. Can you
7 please identify what these first six pages are?

8 A. They are the results of the search
9 terms that Mr. Roof had asked me to search for
10 you.

11 Q. Do these six pages represent all of
12 the searches that Mr. Roof asked you to run?

13 A. There are many searches he asked me
14 to run. I couldn't recall if these are all of
15 them. It looks like --

16 Q. Please review them and let me know
17 what you think.

18 MR. POPSON: Objection.

19 Go ahead.

20 A. I couldn't answer that without
21 reviewing what he actually asked me in
22 comparison to what you've given me.

23 Q. All right. But you said before
24 that it could be --

25 MR. POPSON: Objection.

1 A. Yeah.

2 Q. -- this could be all of them.

3 MR. POPSON: Objection.

4 A. Multiple pages.

5 Q. Yeah, the six different searches
6 that are reflected here, correct?

7 MR. POPSON: Objection.

8 Go ahead.

9 A. Correct. This could be all of
10 them?

11 Q. Okay.

12 A. I was asking for clarification.

13 Q. Yeah, that's what I'm asking.

14 A. Perhaps it could be all of them.

15 Q. So there was about six different
16 searches he asked you to run, give or take.

17 MR. POPSON: Objection.

18 Go ahead.

19 A. In looking at key terms, each of
20 these terms, these key words are different
21 searches. So this number of searches could be
22 everything. This is a matter of specificity,
23 spec -- if you need to be specific, I would
24 have to look at his requests.

25 Q. Of course. I understand that.

1 Well, we can get back to this. Let's look at
2 this first page here where it says, "#2 Status:
3 Search Failed," "Date: 10/19/2017 11:35 a.m."
4 under the "Results," heading, it says,
5 "DiscoverySearchMailbox...@knrlegal.com." Does
6 this confirm that you used a Discovery Search
7 Mailbox when you were conducting these
8 searches?

9 MR. POPSON: Objection.

10 Go ahead.

11 A. Discovery Search Mailbox is a
12 system account where searches on Exchange are
13 conducted from systematically. That would be
14 true of any Exchange server.

15 Q. So you would say this is a default
16 mailbox that's set up in Exchange for the
17 specific purpose of storing search results
18 pulled for the purposes of discovery, for
19 example, correct?

20 MR. POPSON: Objection.

21 A. Yeah, correct.

22 Q. By default this mailbox is only
23 allocated 50 gigabytes, correct, or about 50
24 gigabytes?

25 A. Incorrect.

1 Q. Okay. Please explain.

2 A. The mailbox has available to it
3 whatever hard disk the server has, which at the
4 time of this search was 50 gig free.

5 Q. So you're saying that you were
6 limited to the 49.84 gigabytes here on this
7 page of Exhibit 2 because that's how much space
8 was left on the server at that time, correct?

9 A. Correct.

10 Q. The Exchange server, correct?

11 A. Correct.

12 Q. And the main problem you were
13 having when you ran these searches was that
14 they were returning results in amounts that
15 were greater than the 49.84 gigabytes here,
16 correct?

17 A. Correct.

18 Q. I want to understand something
19 about this page. You have all these key words
20 here: Liberty, Liberty Capital, Ciro, Liberty
21 Finance and Cerato. When this says under
22 "Errors," the "Multi-mailbox search failed
23 because the estimated size of the search...is
24 greater than the available space...", does that
25 mean that every mailbox was searched for every

1 one of these key words that are listed here and
2 that that is the estimated size that this
3 document refers to?

4 MR. POPSON: Object to form.

5 Go ahead.

6 A. Yes.

7 Q. Okay. Let's say, for example, had
8 you just put in, "Liberty Capital," and
9 searched the same mailboxes, it would have only
10 returned 14,568 hits from 93 mailboxes and the
11 size of the search would have been smaller,
12 correct?

13 MR. POPSON: Object to form.

14 Go ahead.

15 A. Correct.

16 Q. Okay. So in large part, whether
17 the search is going to succeed or fail depends
18 on the size of the data that the search returns
19 versus the size available in the default
20 mailbox, correct?

21 MR. POPSON: Object to form.

22 Go ahead.

23 A. In this instance, correct.

24 Q. In this instance and in every one
25 of these instances on the first six pages here,

1 correct?

2 MR. POPSON: Same objection.

3 Go ahead.

4 A. Incorrect.

5 Q. Okay. Please -- oh, because you
6 are referring to the instance on the fourth
7 page here where it says, "An error occurred
8 when searching Rob Nestico. The message is,
9 'The process failed to get the correct
10 properties.'"

11 A. That's the page I'm referring to,
12 yes.

13 Q. But it is true for the other five
14 pages, correct?

15 A. That's correct.

16 Q. All right. I know this isn't a
17 technical term, but did you ever tell anyone in
18 connection with these searches that the system
19 crashed as a result of them?

20 A. "Crashed" is not a technical term.
21 The system did not crash. It did slow down
22 during this. It wasn't able to furnish the
23 results because of the hard drive space, is
24 what I told them.

25 Q. Did they ever ask you to run these

1 searches using additional hard drive space?

2 A. No.

3 Q. Did you ever suggest that?

4 A. It was spoken about.

5 Q. How was it spoken about?

6 A. I said, "If you must have these
7 searches, we would have to add approximately 3
8 terabytes to 4 terabytes of space to store the
9 search results."

10 Q. How much would that cost?

11 A. The cost will depend on the
12 timeframe it needs to be yielded. So the
13 longer the timeframe, the cheaper the cost.
14 Slower storage is cheaper. So in something
15 reasonable, it would cost 1 to \$2,000 probably
16 for additional hard drives to fit the server
17 and a couple hours of tech time to integrate
18 the disks.

19 Q. Had you done that, the problem here
20 would have been solved, would it not?

21 MR. POPSON: Object to form.

22 A. Which problem are you speaking
23 toward?

24 Q. The problems on these first six
25 pages of these documents of the search failing

1 because the estimated size of the search is
2 greater than the available space.

3 A. That's correct, they would have
4 been solved.

5 Q. Was there any further conversation,
6 after you advised KNR that they would need to
7 have approximately 3 to 4 terabytes of space to
8 store the results?

9 A. Between myself and KNR, no.

10 Q. Between you and anyone.

11 A. No.

12 Q. That was the end of the
13 conversation.

14 A. Yes, for the part I played in it.

15 Q. Sure. Did you ever tell anyone
16 that you could not do this or that you did not
17 think it was a good idea to do this?

18 A. Can you clarify?

19 Q. Did you ever tell anyone that it
20 was somehow unworkable or impracticable to add
21 this approximately 3 to 4 terabytes of space to
22 store these search results?

23 A. Yes, in a manner of speaking. What
24 I said was, It will be expensive to the tune of
25 1,000 or \$2,000, if you need them in a quick

1 timeframe. And I believe I alluded to the size
2 of the data also, that it seems impractical to
3 me to sort through that many emails in anything
4 short of two years. And if it was really
5 important, we would have the storage and
6 complete the searches.

7 Q. What do you mean, "In anything
8 short of two years"?

9 A. That's my estimation of how long it
10 would take to get through 3.2 million items.

11 Q. You mean just to lay eyes on them?

12 A. Correct --

13 Q. Sure, understand.

14 A. -- guesstimate.

15 Q. Now, apart from -- let me back up
16 one moment. What I'm trying to understand is
17 exactly how many searches you ran for KNR at
18 Brian Roof's request. I understand you said
19 that technically for each one of these terms,
20 it's considered a search, but what I'm
21 referring to is, Would you also agree -- strike
22 that. Would you agree that this first page
23 also in a sense reflects one search --

24 MR. POPSON: Object to form.

25 Go ahead.

1 Q. -- correct? In that you ran one
2 search for all documents including the terms,
3 "Liberty," "Liberty Capital," "Ciro," "Liberty
4 Finance" and, "Cerato," into one search and
5 this was your results as reflected on this
6 page 1 here.

7 MR. POPSON: Object to form.

8 Go ahead.

9 A. If that's how the search was
10 requested to be run, then that's how it was
11 performed.

12 Q. And that's what you did, correct?

13 MR. POPSON: Object to form.

14 Go ahead, answer if you can.

15 A. I don't recall this exact search.
16 I would have to look at how it was requested,
17 but I searched them exactly how they were
18 requested just in case I ended up doing this.

19 Q. Sure. I'm glad you did. So while
20 you can't say for sure if this document
21 reflects what it reflects, this is probably a
22 search that Brian Roof asked you to run,
23 correct?

24 A. This is a search Brian Roof asked
25 me to run, yes.

1 Q. The second page is also a search
2 that Brian Roof asked you to run, correct?

3 A. Yes.

4 Q. As are the third, fourth, fifth and
5 sixth pages, correct?

6 A. Yes.

7 Q. You think that the total number of
8 these searches was close to 6 or so, correct?

9 MR. POPSON: Objection.

10 Go ahead.

11 A. The total number of the searches --
12 I want to answer with specificity, but I can't
13 without looking at his search requests.

14 Q. I understand you cannot answer with
15 specificity, so I'm requesting you to answer to
16 the best of your recollection.

17 MR. POPSON: Objection.

18 Go ahead.

19 A. Okay.

20 To the best of my recollection, these are
21 searches he asked me to run. If they
22 encompassed everything he asked me to run, I
23 think is what you're getting at, I don't know.

24 Q. I'm just asking: Was it about this
25 many, if it wasn't exactly this many?

1 MR. POPSON: Objection.

2 Go ahead.

3 A. Perhaps context will help. Brian
4 Roof is the only person who asked us to run
5 searches. People lose stuff all the time, they
6 need something from us, something else. So we
7 get peppered with a lot of search requests. So
8 Mr. Roof --

9 Q. From KNR or from all your clients?

10 A. All clients --

11 Q. Okay.

12 A. -- as well as KNR.

13 Q. Okay.

14 A. Mr. Roof's request doesn't stick
15 out like a sore thumb. Does that make sense?
16 So I don't recall if it was six or eight or
17 thirteen or five.

18 Q. It wasn't a hundred, though, was
19 it?

20 A. No.

21 Q. It wasn't fifty either, was it?

22 A. No.

23 Q. Probably wasn't even twenty,
24 correct?

25 MR. POPSON: Objection.

1 Go ahead, answer if you can.

2 MR. PATTAKOS: What's the
3 objection?

4 A. I can't say.

5 Q. It probably wasn't twenty, was it?

6 MR. POPSON: Objection.

7 MR. MANNION: Asked and answered.

8 Q. Okay. You can't say. I'm just
9 asking for an estimated range of how many
10 searches, Mr. Whitaker.

11 MR. POPSON: Objection.

12 Go ahead.

13 A. If I had to guess at it --

14 Q. Please.

15 A. -- this looks to be about it. I
16 mean, there probably wasn't more than this, if
17 there were more than this.

18 Q. Thank you. Okay. I just want to
19 confirm. You never placed any documents on a
20 review platform for KNR to review, did you?

21 MR. POPSON: Object to form.

22 Go ahead.

23 A. Clarify what you mean by, "Review
24 platform."

25 Q. Well, you pull documents from the

1 search results, for example, and then there are
2 programs like Logical or Nextpoint, for
3 example, where you would upload the documents
4 into it using a PST file, for example --

5 A. No.

6 Q. -- you never did that?

7 A. Nothing like that, no.

8 Q. Nothing like that. What did you do
9 with the search results that you were able to
10 pull? Some of these searches, you were able to
11 pull documents from, correct?

12 A. Some of the searches returned
13 documents --

14 Q. Yeah.

15 A. -- I did whatever the request
16 asked.

17 Q. What did they ask you to do?

18 A. If the request asked to --
19 oftentimes a request just asked for a number of
20 documents, which is why we have these
21 printouts. If the search request asked for,
22 send those to me in PDF form, please, then I
23 would have done that.

24 Q. Did they ask you to do that?

25 A. Once.

1 Q. What else did they ask you to do,
2 if anything?

3 MR. POPSON: Objection.

4 Go ahead.

5 A. Just what I described to you, to
6 perform searches.

7 Q. So there was only one occasion
8 where you actually pulled search results and
9 sent them to KNR.

10 A. Correct.

11 Q. And that was in PDF form.

12 A. Yes, those were PDF documents.

13 Q. And you sent them to Brian Roof.

14 A. I sent them to -- I put them on a
15 CD, yes, and sent them to Brian Roof. Or it
16 may have been a USB stick.

17 Q. When you did send those documents
18 in PDF form, do you remember how much data it
19 was?

20 A. No.

21 Q. Was it a lot?

22 MR. POPSON: Object to form.

23 Go ahead.

24 A. Not by comparison.

25 Q. You said it was sent either by

1 email or a thumb drive.

2 A. It was sent either by CD or thumb
3 drive. I don't recall which.

4 MR. PATTAKOS: Okay. Let's take a
5 short break.

6 MR. POPSON: Okay.

7 (Recess taken.)

8 BY MR. PATTAKOS:

9 Q. Mr. Whitaker, I want to go back to
10 these searches on Exhibit 2. Do you agree that
11 apart from the option of obtaining additional
12 space, the additional 3 or 4 terabytes to store
13 these results, that it would have been possible
14 for you to run each search on a limited number
15 of mailboxes and then export the contents out
16 of the discovery mailbox to -- anywhere else,
17 either into a PST file or onto a review
18 platform, then delete the information that was
19 in the discovery mailbox and then run the
20 search again on another group of custodians and
21 continue to repeat this process?

22 MR. POPSON: Object to form.

23 Go ahead.

24 A. Did you say, is it possible? Is
25 that what you're asking?

1 MR. PATTAKOS: Please read the
2 question back, please.

3 (Record was read.)

4 MR. POPSON: Objection.

5 Go ahead.

6 A. Technically speaking, yes, it's
7 possible. If I can elaborate.

8 Q. (Nodding.)

9 A. My experience would be that some of
10 those mailboxes by themselves will not fit in
11 that 50 gig available. Some of the mailboxes
12 being searched themselves are larger than 50
13 gigabytes.

14 Q. Sure, I understand. You could also
15 even break up -- say for Rob Nestico's email
16 box, for example, you could break up the
17 information in the mailboxes, too, right? It's
18 just a matter of either creating more space or
19 breaking up the searches into smaller pieces,
20 correct?

21 MR. POPSON: Object to form.

22 Go ahead.

23 A. Correct. That would technically
24 have been possible.

25 Q. Okay. Let's look back at page 1 of

1 Exhibit 2, again, please. For these key words,
2 I understand that, "Liberty," and "Liberty
3 Capital," were both used as key words for this
4 search here on page 1. Does that mean that you
5 put "Liberty Capital" in quotes so that you
6 would get results where the words, "Liberty
7 Capital," appeared in that precise order?

8 A. I searched exactly how they were
9 asked. In this case, I don't believe they were
10 put in quotes --

11 Q. Okay.

12 A. -- for reference, you might look
13 at page 4, which is where the key words do
14 appear in quotes.

15 Q. What happens when you put those key
16 words in quotes?

17 A. The system treats -- it looks for
18 that specific word. It treats it as a trade
19 term, what we call a string. It searches
20 within that string.

21 Q. Why would you put a single word in
22 quotes?

23 A. Because it was asked that way.
24 There wouldn't be a technical reason for it. A
25 single word in quotes or without quotes is the

1 same search.

2 MR. POPSON: (Inaudible.)

3 MR. PATTAKOS: Jim, I was thinking
4 the same thing.

5 MR. POPSON: Yeah.

6 Q. So if Liberty Capital here -- and
7 what I just overheard Mr. Popson say is it does
8 not really make sense, because if "Liberty
9 Capital," were put in without quotes, you would
10 have returned all the hits for the word,
11 "Liberty," as well as all the hits for the
12 term, "Capital," which would have left you with
13 more hits for "Liberty Capital," than you had
14 for, "Liberty." Wouldn't that be the case?

15 A. Presuming that Exchange search --
16 Exchange search is not like a regular SQL
17 database search. So presuming that Exchange
18 looks at that space between, "Liberty," space,
19 "Capital," and considers it a delimiter, which
20 is trade language, if it sees it as a
21 delimiter, it might systematically put quotes
22 around both search terms and do exactly that --

23 Q. I see.

24 A. -- it also may see them between
25 the, "Or," or the, "And," statement and assume

1 that they're the same and put quotes around
2 that.

3 Q. Okay. That makes sense. Do you
4 have any idea why on this page 4, quotation
5 marks were put around these words?

6 A. I know exactly why. They were
7 emailed to me in that way.

8 Q. I understand. Do you have any idea
9 why they were emailed to you in that way?

10 A. I don't ask. It's not mine to ask.

11 Q. Do you think this search might have
12 gone differently if you had not included those
13 quotation marks there?

14 A. In that search?

15 Q. Yes.

16 A. No.

17 Q. Do you think it's possible that,
18 for example, if we look at page 1, "Liberty
19 Capital," here without quotes returned 14,568
20 hits as opposed to the 126,000 hits that
21 "Liberty," returned that quotation marks were
22 automatically put in for, "Liberty Capital," as
23 you just testified might have been the case, do
24 you think it's possible that quotation marks
25 were automatically put around the quotation

1 marks on these terms on page 4 --

2 MR. POPSON: Object to form.

3 Go ahead.

4 Q. -- that would have caused a problem
5 with, you know, this error message here that
6 seems to be unique from the other error
7 messages on these other six pages where we're
8 getting, you know, a different error?

9 MR. POPSON: Object to form.

10 Go ahead.

11 MR. PATTAKOS: Fair enough.

12 A. That would be speculative, to
13 assume that it put quotes around the quotes --

14 Q. Okay, sure.

15 A. -- in my experience, Microsoft is
16 better at finding duplication than that.

17 Q. Okay. If you would have cut the,
18 "Liberty," term out from this first search,
19 this first one, that would have cut the results
20 from approximately 153,000 hits total here to
21 only about 27,000, correct?

22 A. Which page are you speaking to?

23 Q. The first page. If you would have
24 just cut this first word out, "Liberty," and
25 just searched for, "Liberty Capital," et

1 cetera, it would have cut the results by quite
2 a bit, correct?

3 A. We did search for, "Liberty
4 Capital," separate on the second line and it
5 returned less results --

6 Q. I understand.

7 A. -- but the term, "Liberty," also
8 appears in that search. So if, "Liberty,"
9 returns 126,773 hits and you add, "Capital," to
10 that, it would be that first number, 126,773
11 plus 14,568, but it wasn't, which tells me that
12 the system looked at that string between the,
13 "And," and the, "Or," or the, "Or," and the
14 "Or," however it was requested, looked it up
15 under the "Capital," string, ignored the space
16 and considered it a full search string. So it
17 searched for the whole word, "Liberty Capital,"
18 as it was entered.

19 Q. I see. But you could have just
20 searched for, "Liberty Capital," separately
21 and, "Liberty Finance," separately and not
22 included the results for, "Liberty," correct?

23 MR. POPSON: Objection.

24 Go ahead.

25 A. Well --

1 Q. I mean, look, I can do this in
2 LexisNexis where I only want to get results
3 for, "Liberty Capital." I don't want every
4 result that has the word, "Liberty," in it,
5 right? You could have done that, correct?

6 A. We did do that. One search was,
7 "Liberty," and then a second line item was,
8 "Liberty Capital," as a full search string.

9 Q. Right. But when we see the
10 estimated size of the search failed, you're
11 aggregating all those results and measuring
12 that size, correct?

13 A. I understand what you're saying.
14 So you're asking, could I have just searched
15 the word, "Liberty," and programmed a whole
16 separate search for just the word, "Liberty
17 Capital."

18 Q. Yes.

19 A. Yes, that wasn't the way it was
20 asked, though.

21 Q. Okay. What is the notation under,
22 "Items," at the top where it says in
23 parentheses, "3256925 unsearchable"? What does
24 that mean?

25 A. Items that are unsearchable --

1 Q. Yeah.

2 A. -- so to clarify, items in an
3 Exchange database are everything that might be
4 in the database. This would be contacts,
5 calendar appointments, drop-down list emails,
6 tasks, actual email messages. All of these
7 things might comprise or be designated as an
8 item as Exchange might look at it. So these
9 things that you noticed are unsearchable items
10 could be something as simple as expired
11 reminders or things that don't have text
12 property, calendar reminders, appointments,
13 whatever.

14 Q. Got it. Emails would not be
15 included there.

16 A. Emails are also items.

17 Q. Okay. They could have been
18 unsearchable.

19 A. Possible. Unlikely.

20 Q. Why is that?

21 A. Because they're text documents. So
22 for an email to be unsearchable, it would have
23 to be corrupt inside the database.

24 Q. So just to be clear: When you see
25 this notation that 3,256,925 items were

1 unsearchable, that doesn't concern you?

2 A. It's not alarming to me, not with a
3 database this size.

4 Q. I understand. Okay. Very good.
5 It's your opinion that all of the relevant
6 email boxes are in fact being searched here.

7 A. Yes.

8 MR. POPSON: Objection.

9 Q. Okay. Now, on page 2, number 3 at
10 the top, 10/20/2017 at 9:13 a.m., we see a lot
11 more hits for a lot more search terms that have
12 been entered than we saw on the first page,
13 correct?

14 A. There are different terms, but
15 you're correct.

16 Q. Yeah. So here we have on the
17 second page -- let me just do some quick and
18 dirty math. So 500,000, plus 400,000 is
19 900,000, plus another 800,000, it looks like
20 there are about 2.1 million hits here based on
21 these hit numbers. Is that correct?

22 A. I would have to do my own math --

23 Q. Sure.

24 A. -- there's a lot.

25 Q. Does that look about right, about

1 2.1 million? Take your time and see --

2 A. If you want an answer, hang on.

3 MR. POPSON: Can we just agree it
4 speaks for itself?

5 A. It's a lot, yeah --

6 MR. PATTAKOS: Yeah, we can agree
7 to that.

8 A. -- somewhere between 2 and 3
9 million is probably accurate, yeah.

10 Q. Okay. Then on this first page, we
11 only have about 160,000 results, correct?
12 160,000 hits, correct?

13 A. That's correct.

14 Q. We see on the first page, the
15 estimated size of the search is 2.287 TB. As
16 you confirmed for us earlier, that is the size
17 of the hits that are returned on this search,
18 correct?

19 A. Is that your interpretation?
20 That's the size of the data returned, the
21 estimated size of the data. The estimated size
22 of the search is that big, so it needs that
23 much room to store it for you then to go
24 through and look at all the emails where this
25 stuff showed up --

1 Q. Absolutely --

2 A. -- right --

3 Q. -- that's what I meant.

4 A. -- okay. So we're clear.

5 Q. So this search of these five terms
6 returns 2.287 TB of data. If we look on the
7 second page, the same search returns 2.543 TB
8 of data, even though there are ten to twenty
9 times more hits.

10 A. I understand what you're asking.

11 Q. Yes.

12 A. They don't correlate obviously.

13 Q. Explain why?

14 A. I'll explain to you what hits are.
15 On this notice of deposition, for instance, you
16 might look at the word, "Document," how many
17 times does, "Document," appear in this Word
18 document. That would be your hits --

19 Q. Oh.

20 A. -- perhaps the word, "Document,"
21 appears 200 times, but this file size might
22 be 3 megabytes, it might be 3 gigabytes.
23 That's why the size of the data returned is so
24 much larger.

25 Q. Well, that's easy. Thank you. So

1 this isn't the number of documents --

2 A. No.

3 Q. -- this is just the number of times
4 the term appears.

5 A. Correct, across all 8 terabytes of
6 mail storage.

7 Q. See the light-bulb going over my
8 head right now? (Including.)

9 A. I do.

10 Q. Is there a way for you to run these
11 searches and tell us or tell KNR how many
12 documents these hits represent?

13 MR. POPSON: Object to form.

14 Go ahead.

15 A. In a manner of speaking. The
16 search would have to complete successfully and
17 then this size and item count up here would
18 tell us exactly how many items -- (Indicating.)

19 Q. Oh.

20 A. -- but we need the space for the
21 search to finish.

22 Q. I see. Okay. On page 4, we see
23 this page 4 is different from the other six
24 pages of search results, correct?

25 A. The error is different, yes.

1 Q. The error is different. Right.

2 Can you tell me what the error is here?

3 A. Process failed to get the correct
4 properties. I can't speak toward which
5 properties or what item was incorrect. When it
6 searched Robert Redick's mailbox, that's what
7 it's returning saying it failed to get the
8 correct properties in searching Rob's mailbox.
9 Property could be something as simple as a
10 phone number in a contact card or something
11 like that, is what it's in reference to. This
12 one did return search results. You can see up
13 there where it says "Size," a little under 24
14 gigabytes of information, 107,742 mailbox items
15 were --

16 Q. Stop there. Of that 33,886
17 unsearchable, is that inclusive of the 107,742
18 or is that in addition to the 107,742?

19 A. That's a good question. I don't
20 know the answer to that.

21 Q. Okay. So what do you think
22 happened here? What do you think the problem
23 is with this search, if it's not the size?

24 MR. POPSON: Object to form.

25 Go ahead.

1 A. What I think happened is exactly
2 what it tells us. Computers are great in that
3 way. They're very specific. Something about
4 the properties of some of the items, it
5 couldn't read or search. Why that's the case,
6 I don't know.

7 Q. What do you think it could be?

8 MR. POPSON: Objection.

9 Go ahead.

10 A. I can't necessarily speculate on
11 something that might cause that. I don't know
12 what would cause that.

13 Q. How would you solve this problem?

14 A. If I were asked to solve this
15 problem, excellent question, what I would do is
16 search the Microsoft knowledge base and perhaps
17 call Microsoft, if necessary. I would search
18 windows and error logs of those logs
19 surrounding the search for more context, error
20 messages, event IDs, that kind of thing looking
21 for what kind of issue the system had.

22 Q. You were never asked to solve this
23 problem, though, correct?

24 A. No.

25 MR. PATTAKOS: Tracy, can you

1 please read back his answer about how to solve
2 this problem.

3 (Record was read.)

4 Q. Okay. Let's turn the page, "Total
5 Universe of Documents." I believe this is now
6 the seventh page of Exhibit 2. Do you
7 recognize what this is?

8 A. I don't recognize the document
9 itself, but I do recall gathering a lot of this
10 information.

11 Q. Why did you gather a lot of this
12 information?

13 A. Mr. Roof requested it.

14 Q. He wanted to know the number of
15 Outlook mailbox items and the number of
16 electronic documents that were in each of these
17 seven mailboxes.

18 A. Yes.

19 Q. Did he ask you for this information
20 for any additional mailboxes?

21 A. Not to my recollection, no.

22 Q. Would you say that this spreadsheet
23 here on this page 7 is a reflection of what
24 appears on the following pages? I guess the
25 following seven pages, it looks like

1 screen-shots basically conveying the very same
2 information.

3 A. The pages that follow, I do recall
4 compiling this information.

5 Q. Great. So maybe Mr. Roof compiled
6 this or someone else compiled this just to
7 summarize.

8 A. Page 7?

9 Q. Yes.

10 A. That's what I'm seeing, yes.

11 Q. Is there anything else significant
12 about this summary of information that you
13 think that I should know?

14 MR. POPSON: Object to form.
15 Go ahead.

16 A. I don't think so. As it would
17 relate to what? The completeness of stuff?

18 Q. Sure. I'm just trying to make sure
19 we are engaging in reasonable searches and --

20 A. Yeah, yeah. This would be
21 everything electronic that I would be able to
22 go find for you. This is an accurate
23 representation of what was available at the
24 time of the request.

25 Q. Okay. I have recently received a

1 quote -- in fact, just yesterday I received a
2 quote from a representative of Logical, which
3 is a document review platform that's commonly
4 used in litigation. Are you familiar with this
5 platform?

6 A. No.

7 Q. Okay. But you're familiar that
8 these platforms exist and --

9 A. Yes.

10 Q. Okay. You've never worked with
11 them specifically, though, correct?

12 A. Correct.

13 Q. I had a representative of Logical
14 tell me that their price is \$40 per gigabyte
15 per month to host this information on this
16 platform with no upfront fee. Do you have any
17 reason to believe that's not true?

18 A. My experience would tell me that
19 you're probably going to also pay for upload
20 and download and time taken to search. You
21 only mentioned price for storage. There are
22 several other functions performed that use
23 system resources. That's how those companies
24 typically make their money.

25 Q. Well, they said no upfront fee, so

1 I wonder -- but I appreciate that.

2 MR. PATTAKOS: Okay. Let me take a
3 short break. I think we're done. I just want
4 to look at one thing.

5 MR. POPSON: Sure.

6 (Recess taken.)

7 MR. PATTAKOS: Okay. I'm done with
8 questions for Mr. Whitaker. I believe in light
9 of the information that Mr. Whitaker has
10 provided, what I'd like to do is exchange in
11 another meet and confer about what we can do
12 about these searches. I believe we'll need an
13 extension on our motion to compel that's due on
14 Monday. But we can take a week for starters
15 and see what we can figure out.

16 MR. POPSON: Okay.

17 MR. PATTAKOS: And I've got time
18 blocked off tomorrow to work on this, so I will
19 try to get you a letter by the end of the day
20 tomorrow, Jim.

21 MR. POPSON: All right.

22 MR. PATTAKOS: And hopefully you
23 can turn your attention to it first thing next
24 week and we can come to maybe some kind of
25 agreement on what searches we'll be run going

1 forward so we don't have to start where we were
2 with Brian's last letter, which is, you know --

3 MR. POPSON: Okay.

4 MR. PATTAKOS: Off the record.

5 (Discussion held off the record.)

6 MR. POPSON: Yes, we will agree
7 to meet and confer and we'll allow you
8 additional time to file your motion to compel.

9 MR. PATTAKOS: Do we want to agree
10 on a timeframe so we can present this to the
11 Judge? because I imagine the Judge is not going
12 to want us to take too much time on this. We
13 have the discovery hearing set for the 16th. I
14 imagine she will not want to move that if we
15 can avoid it. Do you want to plan on a week?

16 MR. POPSON: Sure, let's plan on
17 a week. And we'll talk about how we can meet
18 and confer or who you need to talk to in the
19 event that I'm not around. Okay?

20 MR. PATTAKOS: Thank you. That
21 sounds great.

22 MR. POPSON: Okay.

23 (Thereupon, the deposition
24 was adjourned at 12:55 p.m.)

25

1 Whereupon, counsel was requested to give
2 instruction regarding the witness's review of
3 the transcript pursuant to the Civil Rules.

4
5 SIGNATURE:

6 Transcript review was requested pursuant to the
7 applicable Rules of Civil Procedure.

8
9 TRANSCRIPT DELIVERY:

10 Counsel was requested to give instruction
11 regarding delivery date of transcript.
12 Peter Pattakos ordered the original transcript,
13 expedited 4-day delivery.
14 Copy--James Popson, regular delivery

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REPORTER'S CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

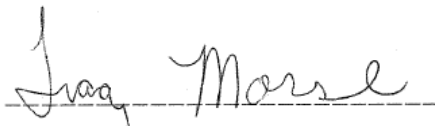
I, Tracy Morse, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, ETHAN WHITAKER, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

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I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 5th day of February, 2018.



Tracy Morse, Notary Public
within and for the State of Ohio
My commission expires 1/26/2023.

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Veritext Legal Solutions
1100 Superior Ave - Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

February 5, 2018

To: Mr. Popson

Case Name: Williams, Member, et al. v. Kisling, Nestico & Redick, LLC,
et al.

Veritext Reference Number: 2808516

Witness: Ethan Whitaker Deposition Date: 2/1/2018

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness
review the transcript and note any changes or corrections on the
included errata sheet, indicating the page, line number, change, and
the reason for the change. Have the witness' signature at the bottom
of the sheet notarized and forward errata sheet back to us at the
address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of
this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT NO: 2808516

CASE NAME: Williams, Member, et al. v. Kisling, Nestico & Redick, LLC, et al.

DATE OF DEPOSITION: 2/1/2018

WITNESS' NAME: Ethan Whitaker

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

_____ Date

_____ Ethan Whitaker

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

- They have read the transcript;
- They have listed all of their corrections in the appended Errata Sheet;
- They signed the foregoing Sworn Statement; and
- Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of _____, 20____.

_____ Notary Public

_____ Commission Expiration Date

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ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 2808516

PAGE/LINE(S) / CHANGE /REASON

20 Date Ethan Whitaker
21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
22 DAY OF _____, 20_____ .

23 _____
Notary Public

24 _____
25 Commission Expiration Date

[& - access]

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[accessed - attachments]

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Ohio Rules of Civil Procedure

Title V. Discovery

Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless examination and reading are waived by the witness and by the parties. Any changes in form or substance that the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. The witness shall have thirty days from submission of the deposition to the witness to review and sign the deposition. If the deposition is taken within thirty days of a trial or hearing, the witness shall have seven days from submission of the deposition to the witness to review and sign the deposition. If the trial or hearing is scheduled to commence less than seven days before the deposition is submitted to the witness, the court may establish a deadline for the

witness to review and sign the deposition. If the deposition is not signed by the witness during the period prescribed in this division, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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