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 - Alan Korwin
 - Colleen Marie McCarthy

Exhibit A

JUL-16-2010 01:10PM FRI

AZ Corp. Commission



03196034

ARTICLES OF ORGANIZATION

1. The name of this limited liability company is:

TrainMeAZ, LLC

2. This limited liability company is organized to transact any and all lawful business for which a limited liability company may be organized under Arizona law.

3. The address of the known place of business is:

4848 E. Cactus Rd. #505-440
Scottsdale, AZ 85254

4. The name and business address of the agent for service of process are:

Alan Korwin
5440 E. Bloomfield Rd.
Scottsdale, AZ 85254

5. Management of this limited liability company is vested in its manager, whose name and business address are:

Alan Korwin
4848 E. Cactus Rd. #505-440
Scottsdale, AZ 85254

6. The names and addresses of each member who will own a twenty percent (20%) or more of the ownership interests in this limited liability company are:

Alan Korwin
4848 E. Cactus Rd. #505-440
Scottsdale, AZ 85254

7. This entity shall have perpetual life.

Alan Korwin
Alan Korwin

7/16/10
Date

Alan Korwin, having been designated to act as agent for service of process for TrainMeAZ, LLC, hereby consents to act in that capacity until removal or resignation is submitted in accordance with the Arizona Revised Statutes.

Alan Korwin
Alan Korwin

Exhibit B



City of Phoenix
Public Transit Department

TRANSIT ADVERTISING STANDARDS
12/08/2009

- A) The Public Transit Director, or his/her designee, shall reject advertising that does not comply with the standards set forth in subparagraph C).
- B) The subject matter of transit bus, shelter, and bench advertising shall be limited to speech which proposes a commercial transaction.
- C) The following standards for advertising have been adopted and advertising copy may not be displayed which:
 - 1) Is false, misleading or deceptive
 - 2) Relates to an illegal activity
 - 3) Is explicit sexual material, obscene material, or material harmful to minors as these terms are defined in Title 13, Chapter 35, A.R.S.
 - 4) Advertises tobacco products
 - 5) Advertises beer, wine and/or alcohol products: on the exterior or interior of Phoenix Neighborhood Circulator vehicles; on the interior of any transit vehicle; or in instances in which transit furniture is located less than 600 feet near a school or church
 - 6) Depicts violence and/or anti-social behavior
 - 7) Includes language which is obscene, vulgar, profane or scatological
 - 8) Relates to instruments, devices, items, products or paraphernalia which are designed for use in connection with "specified sexual activities" as defined in the City of Phoenix Zoning Ordinance

Exhibit C



City of Phoenix

PUBLIC TRANSIT DEPARTMENT

Public Transit Department

TRANSIT ADVERTISING STANDARDS

March 7, 2011

A. It is the intent of the City that all transit advertising panels on city buses and on transit furniture are non-public forums and are to be set aside for commercial advertisements or for transit information as provided by the City. The City's primary purpose for the transit advertising panel is generating revenue.

B. It is a guideline of the City of Phoenix Public Transit Department that no advertising will be accepted for use on any city bus or transit furniture that does not comply with the following standards:

- 1. A commercial transaction must be proposed and must be adequately displayed on the transit advertising panel.**
- 2. The advertising may not:**
 - a. Be false, misleading, or deceptive.**
 - b. Relate to an illegal activity.**
 - c. Advertise or depict the use of tobacco or smoking products.**
 - d. Advertise or depict the use of *spirituous liquor* as that term is defined in Section 4-101, Arizona Revised Statutes:**
 - i. On the exterior or interior of Phoenix Neighborhood Circulator and Reserve-a-Ride vehicles.**
 - ii. On the interior of any transit vehicle.**

- iii. On transit furniture that is located less than 600 feet from a church or similar structure of worship, or school building.
- e. Represent, by language or graphics, violence or anti-social behavior.
- f. Advertise or depict language, gestures, conduct, or graphical representations that are obscene, pornographic, vulgar, profane, or scatological.
- g. Represent, by language or graphics, a *nude* or *seminude* person, as those terms are defined in Section 11-821, Arizona Revised Statutes, or the exposed buttocks of any person.
- h. Depict, relate to, or reference a website or other medium that relates to *specified sexual activities* or *specified anatomical areas* as those terms are defined in Section 11-821, Arizona Revised Statutes.

Exhibit D

No. 97-16821

FILED

OCT 28 1997

CARLY A. GINTERSON, CLERK
U.S. COURT OF APPEALS

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CHILDREN OF THE ROSARY, KATHERINE A. SABELKO, and
ARIZONA CIVIL LIBERTIES UNION,**

Plaintiffs-Appellants,

vs.

**THE CITY OF PHOENIX, RICHARD C. THOMAS, in his official capacity
as Public Transit Director for the City of Phoenix, NEAL MANSKE, in
his official capacity as Deputy Director, Phoenix Transit Department,
City of Phoenix, ATC/VANCOM MANAGEMENT SERVICES, INC., and
TRANSPORTATION DISPLAYS, INCORPORATED,**

Defendants-Appellees.

**On Appeal from the United States District Court
for the District of Arizona**

BRIEF OF PLAINTIFFS-APPELLANTS

Jay Alan Sekulow
THE AMERICAN CENTER FOR
LAW AND JUSTICE
1000 Thomas Jefferson St.,
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Children of the Rosary and
Katherine A. Sabelko**

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**Attorneys for Plaintiffs-Appellants
Arizona Civil Liberties Union**

ADDENDUM B
New "Advertising Standards"

ADVERTISING STANDARDS

- a) The City's Public Transit Director shall reject advertising that does not comply with the standards set forth in subparagraph (c).

All full bus advertising graphic designs must be submitted in sufficient detail to determine content and final general appearance to PTS for review and approval before application.

- b) The subject matter of bus advertising shall be limited to speech which proposes a commercial transaction
- c) The following standards for advertising have been adopted and advertising copy may not be displayed which:
- (1) Is false, misleading or deceptive
 - (2) Relates to an illegal activity
 - (3) Is explicit sexual material, obscene material, or material harmful to minors as these terms are defined in Title 13, Chapter 35, A.R.S.
 - (4) Advertises alcohol or tobacco products
 - (5) Depicts violence and/or anti-social behavior
 - (6) Includes language which is obscene, vulgar, profane or scatological
 - (7) Relates to instruments, devices, items, products or paraphernalia which are designed for use in connection with "specified sexual activities" as defined in the City of Phoenix Zoning Ordinance.

Exhibit E

LAW OFFICES
UDALL, SHUMWAY & LYONS, P.L.C.
30 WEST FIRST STREET
MESA, ARIZONA 85201-6695
Telephone: (480) 461-5300
Fax: (480) 833-9392

Bradley D. Gardner - # 011211
bdg@udallshumway.com

David R. Schwartz - #009264
das@udallshumway.com

Attorney for Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

ALAN KORWIN and TRAINMEAZ, LLC, NO. CV2011-009838

Plaintiffs,

v.

DEBBIE COTTON and CITY OF
PHOENIX, ARIZONA, a municipal
corporation and political subdivision of the
State of Arizona,

Defendants.

**DEFENDANT CITY OF PHOENIX'S
ANSWERS TO PLAINTIFFS' FIRST SET
OF INTERROGATORIES AND
PRODUCTION REQUESTS**

(Assigned to the Honorable Mark H. Brain)

Defendant City of Phoenix hereby responds to Plaintiffs' First Set of Interrogatories
and Production Requests as follows:

INTERROGATORIES

Interrogatory No. 1: Identify full names, current employment, title, last known addresses
and telephone numbers, all persons with knowledge of any of the incidents, events or
occurrences alleged or referred to in Plaintiffs' Complaint and state the nature and substance
of each person's knowledge.

Response:

See the information provided in the Defendants' Initial Disclosure Statement
concerning the people with relevant knowledge.

1 **Interrogatory No. 2:** Identify all witnesses you may rely on in defense of this case and
2 state the nature and substance of each person's knowledge and anticipated testimony.

3 **Response:**

4 See the information provided in the Defendants' Initial Disclosure Statement
5 concerning the people with relevant knowledge.

6 **Interrogatory No. 3:** With respect to each and every person who may be used to present
7 expert evidence regarding this action pursuant to Rule 26 of the Arizona Rules of Court,
describe in detail and/or identify:

- 8 a. all opinions to be expressed (the description should be sufficiently complete to
9 include all of the information in your possession or control about such
10 opinions);
- 11 b. the specific allegations of the parties' pleadings to which such opinions are
12 relevant (identified by pleading title and paragraph number);
- 13 c. the basis, reasons, underlying data and other information considered and relied
14 upon by the witness in forming the opinions to be expressed;
- 15 d. all publications authored by the witness within the preceding ten years;
- 16 e. all correspondence between the witness and Defendants; and
- 17 f. all drafts of the report produced for this proceeding.

18 **Response:**

19 The Defendants have not yet retained an expert witness in this case. Should they do
20 so, they will provide an appropriate supplementation under the disclosure rules.

21 **Interrogatory No. 4:** Identify by date, time, location and participants, any and all City
22 Council meetings and hearing relating to the drafting and consideration of bus, shelter and
23 bench advertising standards, restrictions and/or guidelines from 2009 to the present. To the
24 extent Defendants have already disclosed and produced documents responsive to this
25 request, please identify such responsive document by Bates number.

26 **Response:**

27 See documents Bates-numbered KORWIN1201-1205, 1207-1213, 1486-1488.

28 **Interrogatory No. 5:** Identify by date all City Council meeting minutes, agendas, notes or
other recordings relating to the drafting and consideration of bus, shelter and bench
advertising standards, restrictions and/or guidelines from 1009 to the present. To the extent
Defendants have disclosed and produced documents responsive to this request, please
identify such responsive documents by Bates number.

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2 **Response:**

3 See the Defendants' Initial Disclosure Statement for documents referenced as Bates-
4 numbers KORWIN880-883, 864-865, 886-887, 1201-1205, 1207-1213, 1375-1379,
5 1486-1488.

6 **Interrogatory No. 6:** Identify each and every person who was and is currently involved in
7 the review process for proposed transit advertising and the determination of whether such
8 advertising is compliant with City of Phoenix standards, rules, regulations and/or
9 ordinance(s), from 2009 to the present.

10 **Response:**

11 Marie Chapple would be the employee handling most of the day-to-day review.
12 Notwithstanding the foregoing, it is likely since 2009 this process has also involved
13 Debbie Cotton and Kim Gathers. Matthew Heil and Don Phillips may also have
14 played a role.

15 To the extent that legal advice was necessary, input would have been received from
16 Ted Mariscal and Jim Hayes. It is also possible that additional legal guidance may
17 have been provided by one or more other attorneys in the Law Department of the
18 City of Phoenix.

19 Yvette Roeder also reviewed ads when Marie Chapple was on vacation. She was a
20 public information specialist under Marie Chapple's supervision who left the
21 Department in June 2010 to go over to the Aviation Department. She is currently a
22 City employee.

23 **Interrogatory No. 7:** Identify the person or persons who make or have made the final
24 determination of whether a proposed advertisement complies with the City of Phoenix
25 standards, rules, regulations and/or ordinance(s), from 2009 to the present.

26 **Response:**

27 Marie Chapple typically will make the day-to-day determinations with Matthew Heil
28 as her back up when she is on vacation. If legal questions arise, she may receive
input from Ted Mariscal. In addition, as head of the department, Debbie Cotton may
also be involved in this process. In 2009, the people most likely to have been
involved were Kim Gathers, Herbert Muñoz, Carl Montgomery and former employee
Reed Caldwell. All of the foregoing are current City employees with the exception
of Reed Caldwell, whose last known business address is North County Transit

1 District, 810 Mission Avenue, Oceanside, California 92054. Yvette Roeder was also
2 involved in the process as Marie Chapple's backup when she was on vacation.

3 **Interrogatory No. 8:** Identify the person or persons involved in the review process for
4 Plaintiffs' proposed transit advertising and the determination that it was not compliant with
5 City of Phoenix standards, rules, regulations and/or ordinance(s).

6 **Response:**

7 Marie Chapple would have been in the person principally involved in this
8 determination along with Matthew Heil. Legal advice would have been attained
9 from Ted Mariscal. Debbie Cotton would have given final approval. Also involved
10 in the review process would have been Jane Morris of the City Manager's Office and
possibly additional legal review from one or more attorneys in the City of Phoenix
Law Department.

11 **Interrogatory No. 9:** State each and every reason why Plaintiffs' advertising was found
12 not to be in compliance with the City of Phoenix standards, rules, regulations and/or
13 ordinance(s).

14 **Response:**

15 It was found not to be in compliance because it did not propose a commercial
16 transaction (did not sell a product or a service). In an email to Steve Chatham, Marie
17 Chappel stated that the ad read like a public service announcement. Ted Mariscal
might have also characterized it as a public service announcement in the phone call
that Korwin taped and transcribed.

18 **Interrogatory No. 10:** Identify any and all training materials used and training sessions
19 held by the City of Phoenix in training its employees on the application and enforcement of
20 the City's Transit Advertising Standards, from 2009 to the present.

21 **Response:**

22 The City of Phoenix does not utilize training materials as identified in the foregoing.
23 Employees such as Marie Chapple will have on-the-job training. This would consist
24 of discussions with the legal representatives of the City of Phoenix, a thorough
25 review by her of the "Children of the Rosary" case, a review by her of sites of other
26 cities, attendance at the American Public Transportation Association meetings, a
27 review of a publication known as Legal Research Digest (Vol. 33) dated August
28 2010, relating to Transit Cooperation Research Programs, and general review of the
websites of other cities and municipalities, a review of a publication entitled
"Synthesis of Transit Practice 32, Transit Advertising Revenue: Traditional and New

1 Sources, and Structures." In addition Marie Chapple subscribes to *Advertising Age*, a
2 trade publication for the advertising business, which provides her with a magazine
3 and emails. Furthermore, Marie Chapple was formerly employed as the Public
4 Service Director for KOY Radio in the late 1980s. It was her job to choose (or
reject) the public service announcements the radio station for use on the air.

5 **Interrogatory No. 11:** Identify any and all communications between the City of Phoenix
6 and CBS Outdoors from 2009 to the present, including but not limited to electronic mail,
oral communications and written correspondence.

7 **Response:**

8 **Objection:** Objection is made to the foregoing in that the request is vague, overly
9 broad and not likely to lead to the discovery of admissible evidence. Irrespective of
10 the foregoing, see those documents provided in the Defendants' Initial Disclosure
11 Statement Bates-stamped KORWIN230-300, 302-304, 305-306, 867-870, 979-980,
1013-1036).

12 **Interrogatory No. 12:** Identify by name, address, phone number, current employment and
13 title each and every person who provided information needed to respond to any
14 interrogatory or request herein and identify by number which interrogatory or request was
addressed by each such person respectively.

15 **Response:**

16 Marie Chapple
17

18 **Interrogatory No. 13:** What was redacted from the Bates numbered document Korwin859-
19 861, and on what basis was that information redacted?

20 **Response:**

21 Unknown at this time. This Interrogatory will be supplemented.

22 **Interrogatory No. 14:** Defendants produced to Plaintiffs Bates numbered documents
23 Korwin 920-978, Korwin1069-1075, Korwin1076-1144, Korwin1289-1327, which are
24 documents dating back to the 1950s, 1960s, 1970s, 1980s and 1990s. Identify the relevance
25 of each of these documents to this case, including how these documents regard and relate to
Plaintiffs' Complaint and/or Defendants' defense thereof.

26 **Response:**

27 These documents produce historical context to the dispute.
28

1
2 **Interrogatory No. 15:** Identify the person or persons who drafted the bus shelter and
3 vehicle advertising restrictions/guidelines, which are contained in Defendants' Bates
4 numbered document Korwin1207.

5 **Response:**

6 This was a collaborative effort, with Marie Chapple eventually preparing the final
7 version with legal input from Jim Hayes and Ted Mariscal. Kim Gathers had a part
8 in the alcohol/zoning changes, but not the full scope of changes. Those changes
came from multiple staff and reports.

9 **Interrogatory No. 16:** Identify the person or persons who drafted the bus shelter and
10 vehicle advertising restrictions/guidelines contained in Defendants' Bates numbered
11 document Korwin1215.

12 **Response:**

13 This was a collaborative effort, with Marie Chapple eventually preparing the final
14 version with legal input from Jim Hayes and Ted Mariscal.

15 **Interrogatory No. 17:** Identify each and every way in which the Bates numbered
16 document Korwin1207 was amended, as reflected in the Bates numbered document
17 Korwin1215, the reason why the amendments were made and the person most
knowledgeable about the purpose of the amendments.

18 **Response:**

19 Objection. Defendants objects to this Interrogatory in that it is vague and overly
20 broad. The regulations speak for themselves. Notwithstanding the foregoing, the
21 two principal differences would have been a stricter definition of ads relating to sex
22 and also changes in the regulations as they apply to alcohol and tobacco advertising.
23 The people most knowledgeable would be Marie Chapple. Ted Mariscal and Jim
Hayes may also have knowledge concerning these changes, but any input from them
would be protected by the attorney-client privilege.

24 **Interrogatory No. 18:** State the definition of "commercial transaction" as is used in the
25 Bates numbered document Korwin1207, and identify where in any City of Phoenix
26 document this term is defined.

27 ///

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2 **Response:**

3 While the definition of "commercial transaction" is not incorporated in that
4 document, the accepted definition would be any exchange of consideration for the
5 purchase of a product or service.

6 **Interrogatory No. 19:** State the definition of "commercial transaction" as used in the Bates
7 numbered document Korwin1215-1216, and identify where in any City of Phoenix
8 document this term is defined.

9 **Response:**

10 While the definition of "commercial transaction" is not incorporated in that
11 document, the accepted definition would be any exchange of consideration for the
12 purchase of a product or service.

13 **Interrogatory No. 20:** Identify the person or persons who determine whether a proposed
14 transit advertisement for City of Phoenix buses, shelters and benches, proposes a
15 commercial transaction.

16 **Response:**

17 Generally, this is a collaborative effort on the part of Marie Chapple, Matthew Heil
18 and Debbie Cotton with input from the Law Department as to the legal aspects of the
19 purposed commercial transaction.

20 **Interrogatory No. 21:** Identify all proposed transit advertisements that were rejected by the
21 City of Phoenix, and the bases for their rejection from 2009 to the present. Further, identify
22 the person or persons most knowledgeable about the bases for the rejections.

23 **Response:**

24 See attached Bates-stamped documents KORWIN1-34, 866-867. The person most
25 knowledgeable is Marie Chapple. For bus shelter ads submitted prior to August
26 2010, the persons most knowledgeable would be Kim Gathers and Herbert Muñoz.

27 **Interrogatory No. 22:** Identify all proposed transit advertisements that were accepted by
28 the City of Phoenix and the bases for their acceptance, from 2009 to the present. Further,
identify the person or persons most knowledgeable about the bases for the acceptance of
such advertising.

1 ///

2 **Response:**

3 See attached Bates-stamped documents KORWIN1049-1068.

4
5 **Interrogatory No. 23:** Identify all documents and other tangible items Defendants may use
6 in defense of this action.

7 **Response:**

8 See the Defendants' Initial Disclosure Statement.

9
10
11 **REQUESTS FOR PRODUCTION**

12 **Request for Production No. 1:** Produce all transit advertising standards in effect from
13 1990 to the present.

14 **Response:**

15 See the Defendants' Initial Disclosure Statement and attachments.

16
17 **Request for Production No. 2:** Produce all documents related to the development and
18 enforcement of the City of Phoenix's Transit Advertising Standards, from 2005 to the
19 present, including but not limited to regulations, policies, guidelines, manuals, ordinances,
20 resolutions and non-privileged correspondence with your attorneys.

21 **Response:**

22 See the Defendants' Initial Disclosure Statement.

23 **Request for Production No. 3:** Produce all documents related to the training of City of
24 Phoenix employees, agents and contractors relating to the enforcement of the City's Transit
25 Advertising Standards, from 2005 to the present.

26 **Response:**

27 See the Defendants' Initial Disclosure Statement, the Response to Interrogatory No.
28 10, and attachments.

1 **Request for Production No. 4:** Produce all communications between Defendants and CBS
2 Outdoors, relating to Plaintiffs' proposed transit advertising.

3 **Response:**

4 See the Defendants' Initial Disclosure Statement and attachments.

5 **Request For Production No. 5:** Produce a copy of any and all communications between
6 Defendants and any person, with the exception of Defendants' legal counsel, regarding
7 Plaintiffs' proposed advertising that is the subject of Plaintiffs' Complaint.

8 **Response:**

9 **Objection:** Objection is made to the foregoing in that the request is vague, overly
10 broad and not likely to lead to the discovery of admissible evidence. Irrespective of
11 the foregoing, see those documents provided in the Defendants' Initial Disclosure
12 Statement Bates-stamped KORWIN230-300, 302-304, 305-306, 867-870, 979-980,
1013-1036).

13 **Request for Production No. 6:** Produce any and all proposed transit advertisements that
14 were accepted or rejected by the City of Phoenix from 2007 to the present. To the extent
15 some or all of these documents were already produced, identify them by Bates number.

16 **Response:**

17 Objection. The request as to the City's policy in 2007 to the present is vague,
18 overbroad and not reasonably calculated to lead to the discovery of admissible
evidence. Notwithstanding the foregoing, see attachments.

19 **Request for Production No. 7:** Produce any and all documents identified in Defendants
20 responses to Plaintiffs' Interrogatories.

21 **Response:**

22 See the Defendants' Initial Disclosure Statement as well as the documents attached to
23 these discovery requests.

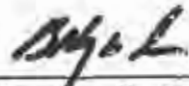
24 ///

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26 ///

1 DATED: November 7, 2011

2 UDALL, SHUMWAY & LYONS, P.L.C.

3
4 By 
5 Bradley D. Gardner
6 David R. Schwartz
7 30 West First Street
8 Mesa, AZ 85201
9 Attorneys for Defendants

10 Original of the foregoing mailed
11 this 7th day of November, 2011, to:

12 Clint Bolick
13 Christina M. Kohn
14 Goldwater Institute
15 500 E. Coronado Rd.
16 Phoenix, AZ 85004
17 Attorneys for Plaintiffs

18
19 By 
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VERIFICATION

STATE OF ARIZONA)
) ss.
County of Maricopa)

Marie Chapple Camacho, being first duly sworn, states as follows:

1. I am the Public Information Officer for Defendant City of Phoenix, and as such am authorized to sign this Verification on behalf of it.

2. I have read the foregoing Plaintiff's Plaintiffs' First Set of Interrogatories and Production Requests and state that the contents thereof are true and correct to the best of my knowledge and belief.

Dated this 7 day of Nov., 2011.

CITY OF PHOENIX

By Marie Chapple
Name: Marie Chapple Camacho
Its: Public Information Officer

SUBSCRIBED AND SWORN to before me this 7th day of November, 2011, by Marie Chapple Camacho, Public Information Officer for the City of Phoenix.

Wendy J Miller
Notary Public

My Commission Expires:

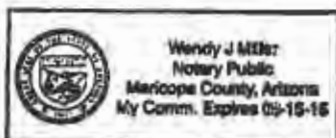


Exhibit F

ADVERTISER AGREEMENT

CONTRACT NO.: 0864216

DATE: 10/04/10



CBS Outdoor
3150 S. 4th St
Suite 200
Phoenix, AZ 85040
(602) 246-9569
(480) 839-9367

ADVERTISER: Train Me AZ, LLC

SALESPERSON: Candace Bennett (174)

Client Supplies Production: Yes

Copy must meet Production specifications and be received 10 working days prior to each advertising period.
THIS AGREEMENT AND THE COPY TO BE DISPLAYED HEREUNDER IS SUBJECT TO THE APPROVAL OF CBS OUTDOOR'S
MARKET GENERAL MANAGER AND THE OWNER OF THE LOCATION AS APPLICABLE

ADVERTISER:
Train Me AZ, LLC
cbs Broadcast Press
4948 E. Camel #505-440
Scottsdale, AZ 85254
802-206-4020
Attn: Alan Korwin

Subject to the terms of the Production Information Addendum Page and the CBS Outdoor Terms and Conditions of Advertising Service each attached hereto and made a part hereof, "ADVERTISER/AGENCY" hereby contracts with CBS Outdoor ("Company") for the installation and maintenance of advertising Copy ("Copy") on the outdoor advertising display(s) described below, commencing approximately on the commencement date of the Advertising Period listed below. Advertiser/Agency shall provide the Copy in the form and type specified by Company.
See Production Information Addendum page for shipping quantities and addresses.

Market	Bar Shelters	Media Location(s)	Size	GRP/ DEC	Units	Advertising Period	No. of Periods	Period Cost
Phoenix Bus Shelters			70" H X 48" W	UNIT	50	10/4/10-12/4/10 <i>(10/4/10-12/4/10)</i>	2.00 4W	\$5,000.00

Special Instructions:
LOCATIONS SUBJECT TO ADVERTISER'S APPROVAL BEFORE POSTING.
30 SHELTERS ARE INSIDE LOCATIONS / 20 SHELTERS ARE OUTSIDE
CLIENT REQUESTS ILLUMINATED SHELTERS

Net Agreement Total: \$10,000.00

THIS AGREEMENT IS NON-CANCELABLE BY ADVERTISER/AGENCY EXCEPT AS SET FORTH IN THE TERMS AND CONDITIONS ATTACHED HERETO WITH RESPECT TO TRANSIT DELAYS ONLY. THIS AGREEMENT CONSISTS OF THIS PAGE, THE PRODUCTION INFORMATION ADDENDUM PAGE, AND THE CBS OUTDOOR TERMS AND CONDITIONS OF ADVERTISING SERVICE INCORPORATED HEREIN. ALL OF WHICH ADVERTISER/AGENCY HEREBY ACKNOWLEDGES RECEIVING AND APPROVING. ANY MISSING PAGES OF THIS AGREEMENT MAY BE OBTAINED OR REQUESTED THROUGH ANY CBS OUTDOOR OFFICE OR REPRESENTATIVE IF LOST OR NOT RECEIVED BY ADVERTISER/AGENCY. FACSIMILE SIGNATURES SHALL HAVE THE SAME FORCE AND EFFECT AS ORIGINAL SIGNATURES. THIS AGREEMENT MAY BE EXECUTED IN SEVERAL COPIES, EACH OF WHICH SHALL CONSTITUTE ONE AND THE SAME COPY. AGENCY AND/OR THE SIGNATORY HERETO REPRESENTS AND WARRANTS THAT THEY ARE AUTHORIZED TO EXECUTE THE SAME ON BEHALF OF AND BIND THE ADVERTISER AND THAT THE ADVERTISER APPROVES SAME.

ACCEPTED AND AGREED TO BY: CBS OUTDOOR

ADVERTISER/AGENCY

AUTHORIZED SIGNATURE - TITLE

DATE: 10/5/10

BY: *[Signature]* DATE: 10/5/10

PLEASE PRINT

Alan Korwin

NAME - TITLE

* Period Codes: M=Monthly; W=Weekly; 4W=4 Weekly; D=Daily; OT=One Time; TF=Two Forbid

10/10/10

CBS OUTDOOR TERMS AND CONDITIONS OF ADVERTISING SERVICE

1. As used in this herein, Company shall mean CBS Outdoor and Advertiser shall mean and be deemed to include, in addition to Advertiser, any advertising agency or any other agent or licensee of Advertiser (collectively "Advertiser").
2. At least ten (10) working days before the estimated start date, Advertiser, at its sole expense, shall furnish and deliver to Company or to service points designated by Company, sufficient supply of advertising copy, in form and type specified by Company along with written notice to Company setting forth required pasting instructions. If copy is not so received, a loss of service may occur or additional costs may be charged by Company although commercially reasonable efforts will be used to post copy as promptly as practicable after receipt from Advertiser. If Advertiser requests expedited installation within five working days of receipt of late received copy, a fee of not less than \$650 per location will be payable. In any event, if copy is not received in a timely manner, Company may use subject locations in any manner, without limiting Advertiser's liability to pay for such space prior to posting the late received copy. If Copy is furnished and delivered as required above and such Copy is not rejected by Company pursuant to the terms hereof (i) the Copy shall be posted, and (ii) in the case of showing based programs the Copy shall be Significantly Posted (as hereinafter defined) by Company within five (5) working days of the date for the commencement of the Advertising Period set forth on the first page of this Agreement. For the purposes hereof, a program shall be deemed to be Significantly Posted if at least 85% of the program has been posted. Nudity, pornography, profane or obscene copy shall not be permitted. The character, design, text and illustrations on advertising copy and the material used shall be subject to approval by Company and by location owner, transit company/authority or third party controlling location ("Owner"). If copy is rejected, Advertiser shall continue to be liable for the full term of this Contract and Advertiser shall be responsible for providing an acceptable replacement copy within ten days of notification that a previous copy was rejected. If production is received after the date specified by Company, Company shall be entitled to full payment for the contract period even if partial or no display results. Advertiser shall indemnify, defend and save harmless Company and Owner against all claims and liabilities arising out of the advertising material displayed under this Contract, including but not limited to any claims for defamation, or infringement of any copyright, trademark, or other intellectual property or privacy right and reasonable attorneys' fees and expenses incurred in defending any such claims.
3. Should Advertiser's copy be damaged, defaced, or deteriorated for any reason whatsoever, including ordinary wear and tear, or if lost or stolen, Advertiser shall furnish a replacement copy, upon Company's request, without liability or expense to Company. If Advertiser fails to provide such replacement copy, Company may use the location involved in any manner, without releasing Advertiser from obligation to pay for such location. Unless otherwise specified on the face hereof, there will be a service charge for all installations on walls and for any changes in any display material after initial placement. All designs for displays produced by Company will be faithfully reproduced. Company will maintain displays in good condition to the extent of matters reasonably within Company's control or assumed responsibilities. Any repainting or repasting requested by Advertiser in addition to that specified herein, if any, shall be paid by Advertiser in advance per Company's current quoted prices.
4. If for any reason whatsoever during the term hereof (i) Company is unable to secure any specified location or loses the right to use any location, or (ii) any location becomes obstructed, destroyed or defaced, or (iii) Company fails to timely meet its posting requirements hereunder, any resulting loss of advertising shall not be deemed a breach or termination of this Contract. Company shall have the option to replace lost locations with locations of equal value per Company's prices and/or classifications, or to issue a pro-rated credit. Any delay in commencing service and/or posting of fewer locations than specified and/or resulting loss of advertising service caused by any reason whatsoever, shall not render Company liable for any damages or offsets of any kind and shall be remedied solely by extending the Advertising Period of this Contract to provide an equivalent amount of advertising service at the contracted location or a replacement location of equal value, or at Company's option, result in a pro-rated credit, with all other remedies at law or equity being expressly waived by Advertiser. Notwithstanding anything contained herein to the contrary, if any location is lost for any reason whatsoever, Company shall also have the option to terminate this Contract and receive payment in full for services through the termination date.
5. Where illuminated displays are provided, illumination will be from dusk to midnight. If illumination is halted or reduced for any reason, including but not limited to operation of law or malfunction of equipment, Advertiser shall receive a credit for the period of reduced or non-illumination at the rate of fifteen percent (15%) of the contract price for the impacted period, provided Advertiser shall have first given written notice to Company of the illumination problem and same continues for more than five (5) days after Company's receipt of such notice.
6. Advertiser shall inspect the display within three (3) days after installation. Unless within such period Advertiser gives written notice to Company specifying any defect, the display shall be conclusively presumed to have been inspected and approved by Advertiser for all purposes whatsoever, including content and location of displays. If after installation of display Owner disapproves any advertisement, or if adverse publicity results from any display, Company shall have the right to remove advertisement and, at its option, either terminate this Contract or request a new acceptable advertisement copy pursuant to paragraph 2 above. Company and Advertiser accept this Contract subject to all federal, state and municipal laws and regulations. In the event any advertisement becomes illegal, Company reserves the right to terminate same upon notice to Advertiser. Acceptance of this Contract is subject to credit check and approval by Company. Company, in its sole discretion, may extend or reject credit, or at any time during the term, withdraw credit and Company may thereupon require partial or full payment of the remaining contract amount in advance. In the event of any termination under this paragraph, Advertiser's obligation shall cease as of the effective termination date.
7. Agency and Advertiser shall be jointly and severally liable for payment of the amounts owed under this Contract. In the event of default or material breach by Advertiser/Agency, in addition to other remedies available at law, Company may: (a) cancel this Contract without prior notice and demand payment of all amounts remaining due and owing; (b) without terminating this Contract, declare the entire balance of payments to be made hereunder immediately due and payable; (c) remove all of Advertiser's displays without limiting Advertiser's liability hereunder; and/or (d) declare Advertiser in default under any other agreement with Company. Waiver by Company of any breach by Advertiser/Agency hereunder shall not prejudice the rights of Company with respect to any breach not specifically waived by Company. In the event of legal action arising out of this Contract, Company shall be entitled to recover its reasonable attorneys' fees and out of pocket expenses. This Contract and all related claims shall be construed according to the laws of the State of Arizona and Maricopa County, Arizona shall be the proper and exclusive legal jurisdiction and venue for any resulting legal action.
8. Invoicing will be rendered monthly in advance dating from the commencement date. Invoices rendered to Advertiser shall be conclusive as to the correctness of the items stated unless Company receives written objection within fifteen (15) days thereof. Non-receipt of invoices or lack of invoicing, shall not impact Advertiser's liability hereunder. Any discounts given shall be forfeited/reversed for invoices not paid within sixty (60) days from the date thereof. All rates and adjustments are computed on the basis of thirty (30) days to the month, unless a different period is specified on the face thereof. Invoices shall be due thirty (30) days after the date of invoice and failure to pay within such timeframe shall result in a default hereunder and shall further be deemed a default under any other agreements with Company. Invoices not paid when due shall accrue interest at the rate of one and one-half percent (1.5%) per month (18% annual), or such lesser rate permitted by law.
9. Company shall not be held responsible for unused posters, displays or other copy provided by Advertiser and Company may dispose of any such materials. Company may promote Company's own business through the use of Advertiser's posters or displays in any manner whatsoever. Company is an Equal Opportunity Employer.
10. This Contract contains the full agreement of the parties, and no prior representation or assurance, verbal or written not contained herein, shall affect or alter the obligation of either party hereof. This Contract is not cancellable or assignable by Advertiser, nor may the subject of the advertising be changed without the consent of Company. Notwithstanding the foregoing, agreements for transit displays may be cancelled by Advertiser upon providing at least 90-days written notice prior to affected posting date, with Advertiser paying, upon invoicing, short rate for actual length of term.
11. The following provisions shall be applicable in the event that this Contract shall be for the display of advertising copy on a LED, LCD or other digital display sign ("Digital Sign"): Notwithstanding anything herein to the contrary, the Company shall be not obligated to display the copy for more than 91% of the display time provided hereunder (the "Guaranteed Display Time"). If the Company displays the copy for at least the Guaranteed Display Time, there shall be no reduction in the fee paid hereunder or extension of the term hereof. If the Company displays the copy for less than the Guaranteed Display Time, the Company shall, in its sole discretion, either (i) terminate this Contract and reimburse the Advertiser for fees paid relating to the period for which the copy was not displayed for at least the Guaranteed Display Time, (ii) equitably extend the Advertising Period of this Contract at the contracted location or a replacement location of equal value, or (iii) issue to Advertiser a pro-rated credit for advertising services equivalent to the period for which copy was not displayed for the Guaranteed Display Time. The Advertiser hereby expressly waives all other remedies at law or equity, and the Company shall have no other liability to the Advertiser as a result of any failure to display the copy for at least the Guaranteed Display Time. In addition to the foregoing, the Company shall have the right at any time to pre-empt the display of copy in order to utilize the Digital Sign(s) for public service messages in connection with (j) an Amber Alert, or (ii) at the request of any Federal, State or local authority, any public emergency (including but not limited to emergencies related to homeland security) (an "Emergency Interruption"). In such event, the Company shall not be in breach of this Contract and the Company shall have no liability to the Advertiser pursuant to the preceding paragraph or otherwise as a result of any such Emergency Interruption. The Advertiser hereby expressly waives any remedies at law or equity to which the Advertiser might otherwise be entitled as a result of such Emergency Interruption. For the purposes of the provisions hereof pertaining to the display of advertising on a Digital Sign, "copy" shall be deemed to mean any advertisement displayed on such sign whether the same is animated, static or otherwise, specifically including, but not limited to, streaming content or digital images, as applicable.
12. Agency/Advertiser hereby represents, warrants and confirms that it is aware of the requirements of 18 U.S.C. §§ 2257-2257A and that it fully complies with them either by certifying to the U.S. Attorney General, in the form required by 28 C.F.R. § 75.9, that Agency/Advertiser collects and maintains individually identifiable information relating to models used in the advertisement to be displayed pursuant to the terms hereof (including but not limited to their names, addresses, and dates of birth) in accordance with applicable Federal and/or State tax and labor or other law, or that Agency/Advertiser creates, maintains, cross-indexes and makes available for inspection records as required by 28 C.F.R. §§ 75.3-75.5. Upon request, Agency/Advertiser will provide Company with proof of its compliance.

Proof of Performance



Contract/Showing: Train Me AZ, LLC
 Client PO/Contract#: 0864216
 Account: Train Me AZ, LLC
 Agency:

Market: Phoenix
 Operator: CBS Outdoor
 Product Type: Transit Shelters
 Status: Remain (Regular)

Sales Office: PHOENIX
 Account Manager: Bennett, Cameron

Showing Start: 10/11/10
 Showing End: 10/17/10
 Average D.E.C.: 9.44
 Total D.E.C.: 472.24
 Average 7-Day EOI 18+: 0
 Total 7-Day EOI 18+: 0
 #Units Sold: 50
 #Units Posted: 50
 % of Qty: 100.00

Location	Location Description	Area	Actual Start	Actual Finish	Scheduled Design
OPH10830	WB Broadway Rd F/S 34th St (NWC) Face: W	South	N 10/18/10	10/20/10	GUNS SAVE LIVES
OPH11241	EB Van Buren St F/S 5th St (SEC) Face: W	Central	Y 10/18/10	10/19/10	GUNS SAVE LIVES
OPH11651	EB Peoria F/S 23rd Ave (SEC) Face: W	North	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH11731	SB Cave Creek F/S Heam (SWC) Face: N	North	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH11831	WB Van Buren St F/S 11th St (NWC) Face: E	Central	Y 10/18/10	10/19/10	GUNS SAVE LIVES
OPH12031	SB 16th St F/S Buckeye Rd (SWC) Face: N	Central	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH12111	NB Cave Creek F/S Hatcher (NEC) Face: S	North	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH12350	WB Indian School Rd F/S 13th Ave (NWC) Face: W	Central	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH12431	NB 16th St F/S McDowell Rd (NEC) Face: S	Central	Y 10/18/10	10/19/10	GUNS SAVE LIVES
OPH13101	NB Tatum Blvd F/S Thunderbird Rd (NEC) Face: S	Northeast Valley	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH13600	EB Bell Rd F/S 43rd Ave (SEC) Face: E	Northwest Valley	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH13721	WB Camelback Rd F/S 12th St (NWC) Face: E	Central	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH14201	NB Paradise Village Pkwy F/S Cactus Rd (NEC) Face: S	North	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH15381	WB Shea Blvd F/S Tatum Blvd (NWC) Face: E	Northeast Valley	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH16241	EB Washington St F/S 44th St (SEC) Face: W	Central	Y 10/18/10	10/19/10	GUNS SAVE LIVES
OPH16361	SB 7th St F/S Victory St (SWC) Face: N	South	N 10/18/10	10/20/10	GUNS SAVE LIVES
OPH16420	WB Southern Ave F/S 16th St (NWC) Face: W	South	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH17040	NB 7th St F/S Greenway Pkwy (NEC) Face: N	North	N 10/18/10	10/20/10	GUNS SAVE LIVES
OPH18070	SB 7th St F/S Lincoln St (SWC) Face: S	Central	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH18300	SB 32nd St F/S Desert Cove Ave (SWC) Face: S	North	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH18340	EB Cactus Rd F/S 42nd St (SEC) Face: E	North	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH19061	WB Southern Ave F/S 48th St (NWC) Face: E	East Valley	Y 10/18/10	10/19/10	GUNS SAVE LIVES
OPH19091	NB 32nd St F/S McDowell Rd (NEC) Face: S	Central	Y 10/18/10	10/19/10	GUNS SAVE LIVES
OPH19271	NB 32nd St F/S Bell Rd (NEC) Face: S	North	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH20171	EB Thomas Rd F/S 38th St (SEC) Face: W	Central	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH20250	NB Central Ave F/S Dunlap Ave (NEC) Face: N	North	N 10/18/10	10/20/10	GUNS SAVE LIVES
OPH21100	EB Thomas Rd F/S 3rd St (SEC) Face: E	Central	Y 10/18/10	10/19/10	GUNS SAVE LIVES
OPH21431	NB Central Ave N/S Adams St (SEC) Face: S	Central	Y 10/18/10	10/19/10	GUNS SAVE LIVES
OPH22411	EB Bell Rd F/S 15th Ave (SEC) Face: W	North	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH22501	EB Northern Ave F/S 71st Ave (SEC) Face: W	North	Y 10/18/10	10/20/10	GUNS SAVE LIVES
OPH23231	WB Cactus Rd F/S 27th St (NWC) Face: E	North	N 10/18/10	10/20/10	GUNS SAVE LIVES
OPH24170	SB 19th Ave F/S Indian School Rd (SWC) Face: S	Central	N 10/18/10	10/20/10	GUNS SAVE LIVES
OPH25361	WB Baseline Rd F/S 35th Ave (NWC) Face: E	West Valley	N 10/18/10	10/19/10	GUNS SAVE LIVES
OPH26181	WB Buckeye Rd F/S 43rd Ave (NWC) Face: E	West Valley	N 10/18/10	10/19/10	GUNS SAVE LIVES
OPH27070	EB Greenway Pkwy F/S 19th Ave (SEC) Face: E	North	N 10/18/10	10/20/10	GUNS SAVE LIVES
OPH27081	SB Tatum Blvd F/S Gold Dust Ave (SWC) Face: N	Northeast Valley	Y 10/18/10	10/20/10	GUNS SAVE LIVES

Location	Location Description	Area	III	Actual Start	Actual Finish	Scheduled Design
0PH2733I	WB Southern Ave F/S 27th Ave (NWC) Face: E	South	N	10/18/10	10/19/10	GUNS SAVE LIVES
0PH2739O	SB 7th Ave F/S Colter St (SWC) Face: S	Central	N	10/18/10	10/20/10	GUNS SAVE LIVES
0PVD005O	Paradise Valley Community College NL W/O ADM Building NWS Face: NE	North	Y	10/18/10	10/20/10	GUNS SAVE LIVES
00PH116I	WB Indian School Rd F/S 20th St (NWC) Face: E	Central	Y	10/18/10	10/20/10	GUNS SAVE LIVES
00PH168O	WB Thomas Rd F/S 33rd Ave (NWC) Face: W	West Valley	Y	10/18/10	10/19/10	GUNS SAVE LIVES
00PH162O	NB 7th Ave N/S Luke Ave (SEC) Face: N	Central	Y	10/18/10	10/20/10	GUNS SAVE LIVES
00PH239O	EB Glendale Ave F/S 7th St (SEC) Face: E	North	Y	10/18/10	10/20/10	GUNS SAVE LIVES
00PH337O	NB Central Ave F/S Camelback Rd (NEC) Face: N	Central	Y	10/18/10	10/20/10	GUNS SAVE LIVES
00PH438O	WB Indian School Rd F/S 53rd Ave (NWC) Face: E	West Valley	Y	10/18/10	10/20/10	GUNS SAVE LIVES
00PH447I	SB 16th St F/S Bethany Home Rd (SWC) Face: N	Central	Y	10/18/10	10/20/10	GUNS SAVE LIVES
00PH521I	NB 44th St F/S Washington St (NEC) Face: S	Central	Y	10/18/10	10/19/10	GUNS SAVE LIVES
00PH580I	SB 7th Ave F/S Indian School Rd (SWC) Face: N	Central	Y	10/18/10	10/20/10	GUNS SAVE LIVES
00PH965O	EB Jefferson St N/S 13th Ave (SWC) Face: E	Central	Y	10/18/10	10/19/10	GUNS SAVE LIVES
00PH993I	EB McDowell F/S 16th St (SEC) Face: W	Central	Y	10/18/10	10/19/10	GUNS SAVE LIVES

Exhibit G



GUNS SAVE LIVES

In Arizona, marksmanship matters. "The TrainMe State" knows that a nation, trained to arms, is an American. Tradition of freedom, and it's respected in Arizona like nowhere else. The Arizona legislature has enacted violent protection of the Second Amendment right to keep and bear arms. We in Arizona seem destined to set models for the nation—in this case, a shining example of gun rights for all free peoples of the Earth.

The Grand Canyon State has Constitutional Carry. This gives any law-abiding adult here—not just residents—to discreetly enjoy the right to bear arms envisioned in the Constitution. We have a super-strong Castle Doctrine, coupled with robust burden of proof, a defensive-display statute, statewide preemption law restricting local freedom from gun-rights abuse, and a spore-to-burst ban—a law, mislabeled—protecting honest people from false charges by criminals and their kin. We even have a High School Marksmanship law on the books for one credit towards a diploma; now if we can just move the obstructive out of the way. Our Arizona Firearms Freedom Act joins a growing nationwide movement to repeal federal intrusion on states' rights, and end intolerable abuse of the Interstate Commerce Clause. TrainMeAZ is a non-partisan, joint educational effort of the firearms community.

The TrainMeAZ Campaign is designed to teach and bring gun safety and knowledge to every Arizona. In this state, we take it for granted that you know how to shoot, know how to handle guns safely, how to use guns for self defense and all legal purposes, and that you know and respect our laws. Criminals with guns receive harsh punishment, so be it. Citizens with guns earn respect, and help keep Arizona a safe and wonderful place to live. Robert Heinlein correctly noted that an armed society is a polite society, and in Arizona this is both personalized and enshrined. Come to an "Open Carry Banquet," and see how the Arizona Buy-Back. See how we do it at azcd.org and saipa.com and for our sisters in arms, Bakers.org. Go to TrainMeAZ.com, download this statement, learn how you can participate and improve your skills.

This is why the TrainMeAZ Campaign exists. Acting as one, the state rises up to encourage and a state gun-safety training, gun shoots, special training days at the range, a coordinating point for the state's thousands of certified trainers—with a web-intensive and printed manual for the people. Soak up family days where the shooting sports are honored and enjoyed, with that freedom smell of gunpowder and a good hot dog. Arizona is an American playground of the culture of marksmanship, where the decent, reasonable and lawful pursuit of the shooting sports, and the precious right to keep and bear arms is honored and enjoyed. How do you think so many trainers and shooting sports thrive here? Should your state honor our rights this way?

Visit Arizona, and breathe her air. Come experience "The Living Trail of Pioneers" the right you have as an honest adult to enjoy your right to arms.

Use the TrainMeAZ.com website to find training opportunities, shooting ranges, and classes for any level of skill—from your first-time shooting experience (as still you will always remember, just like the rest of us did), to the kind of tactical training the world's elite special forces get—an experience few of us get to experience. In Arizona, marksmanship matters. Learn to shoot straight. Teach your children well. Join us, as a nation trained to arms, confident in our exercise of the Second Amendment right of the people to keep and bear arms, which shall not be infringed. Extending liberty's torch has a positive impact on the political environment.

TrainMeAZ is sponsored by:

Arizona Citizens Defense League • Arizona State Rifle and Pistol Association • Caswell's Crossroads of the West Gun Shows • Front Sight • GalleryOfGuns.com • GunLaws.com • Gunsite Second Amendment Store • Wide World of Maps

ARIZONA SAYS: EDUCATE YOUR KIDS

TrainMeAZ.com

Exhibit H



**TO
EDUCATE
YOUR KIDS
ON HOW**



***go to*
TrainMeAZ.com**

Transit Shelter		
	Mechanical (HxW)	Actual (HxW)
Safety:	13.2" x 9.0"	66.0" x 45.0"
Trim:	14.0" x 9.6"	70.0" x 48.0"
Bleed:	14.1" x 9.7"	70.5" x 48.5"
Scale:	5:1 - 500% Enlargement	

Exhibit I



City of Phoenix

PUBLIC TRANSIT DEPARTMENT

ADVERTISING REVIEW PROCESS

Through its Transit Advertising Standards, the Phoenix Public Transit Department intends to establish guidelines for the display of advertisements only within the Department-controlled portion of the Valley Metro transit system.

The Public Transit Department reserves the right, from time to time, to suspend, modify, or revoke the application of any all of the Transit Advertising Standards as it deems necessary to comply with legal mandates or to facilitate its primary transportation function.

Initial Review by Advertising Contractor

The Advertising Contractor is the initial reviewer of advertisement content for this Agreement. All advertisements to be posted to transit furniture should be reviewed by the Advertising Contractor's liaison to the City of Phoenix Public Transit Department. A current copy of the Transit Advertising Standards is provided to the Advertising Contractor who is expected to apply those standards to all advertisements submitted by their clients. If an advertisement is questionable as to whether or not it is in compliance it will be forwarded for review to the designated Public Transit Department's Contract Manager who is responsible for the daily administration of the transit advertising program.

In any case, all advertisement to be posted to transit furniture will be sent to the department prior to installation as outlined in the Agreement between the Advertising Contractor and the Department.

Review by Department Designated Contractor Manager

The contractor's liaison shall send the actual advertisement under question to the Public Transit Department's designated Contract Manager who will determine its compliance with the Transit Advertising Standards. The contract manager may engage the contractor liaison in the review and discussion of suggested changes to the advertisement to bring it into compliance. A written determination will be sent to the contractor's liaison who is responsible for communicating to its client about the determination.

The Contract Manager may also include the department's general counsel in a review of the advertisement if the compliance issue may warrant a legal review.

Review with Department's General Counsel

The department's general counsel for the Public Transit Department will advise the contract manager as to legal issues that may arise to help determine the compliance or non-compliance of an advertisement. After a determination is made, the contract manager will notify the contractor's liaison in writing.

The Contract Manager will notify the Department Director of the decision and reasoning of an advertisement determined to be non-compliant because of legal issues.

Appeal to the Department Director

In the event that an advertisement is rejected, the client proposing the advertising may request in writing the reason why the advertisement is in compliance with the Transit Advertising Standards and that the decision be reconsidered.

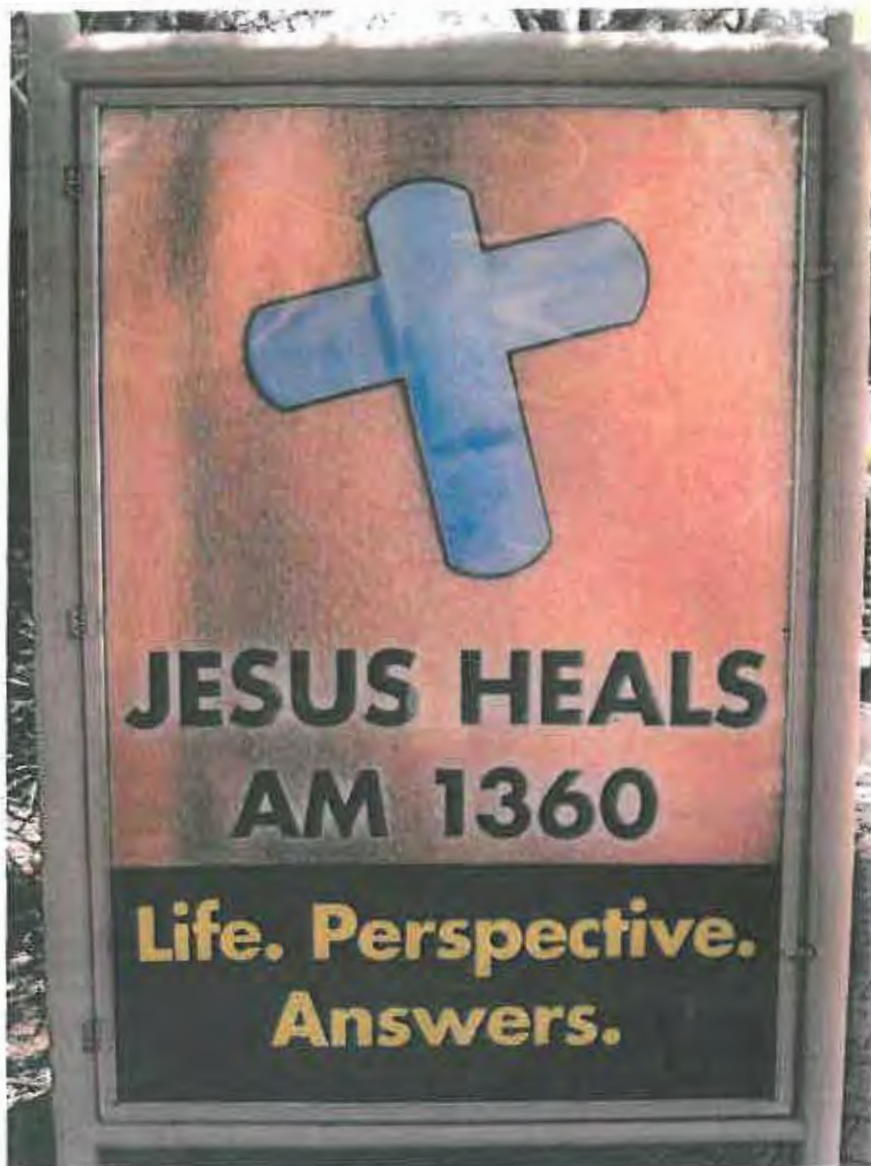
The Director's decision on the appropriateness of the advertisement is final.

Advertisements Submitted for Documentation May be Deemed Necessary for Review

All advertisements accepted by the contractor for posting to City assets are to be forwarded to the designated Contract Monitor within specified time-line noted in the Agreement between the Contractor and the Department for documentation purposes. If any advertisement submitted for documentation is deemed questionable, it will be subject to the Advertising Review Process.

Created April 13, 2011

Exhibit J



Location: East side of Tatum Boulevard, south of Bell Road

Date: July 25, 2011

Taken By: Alan Korwin



JESUS HEALS
AM 1360

Life. Perspective.
Answers.

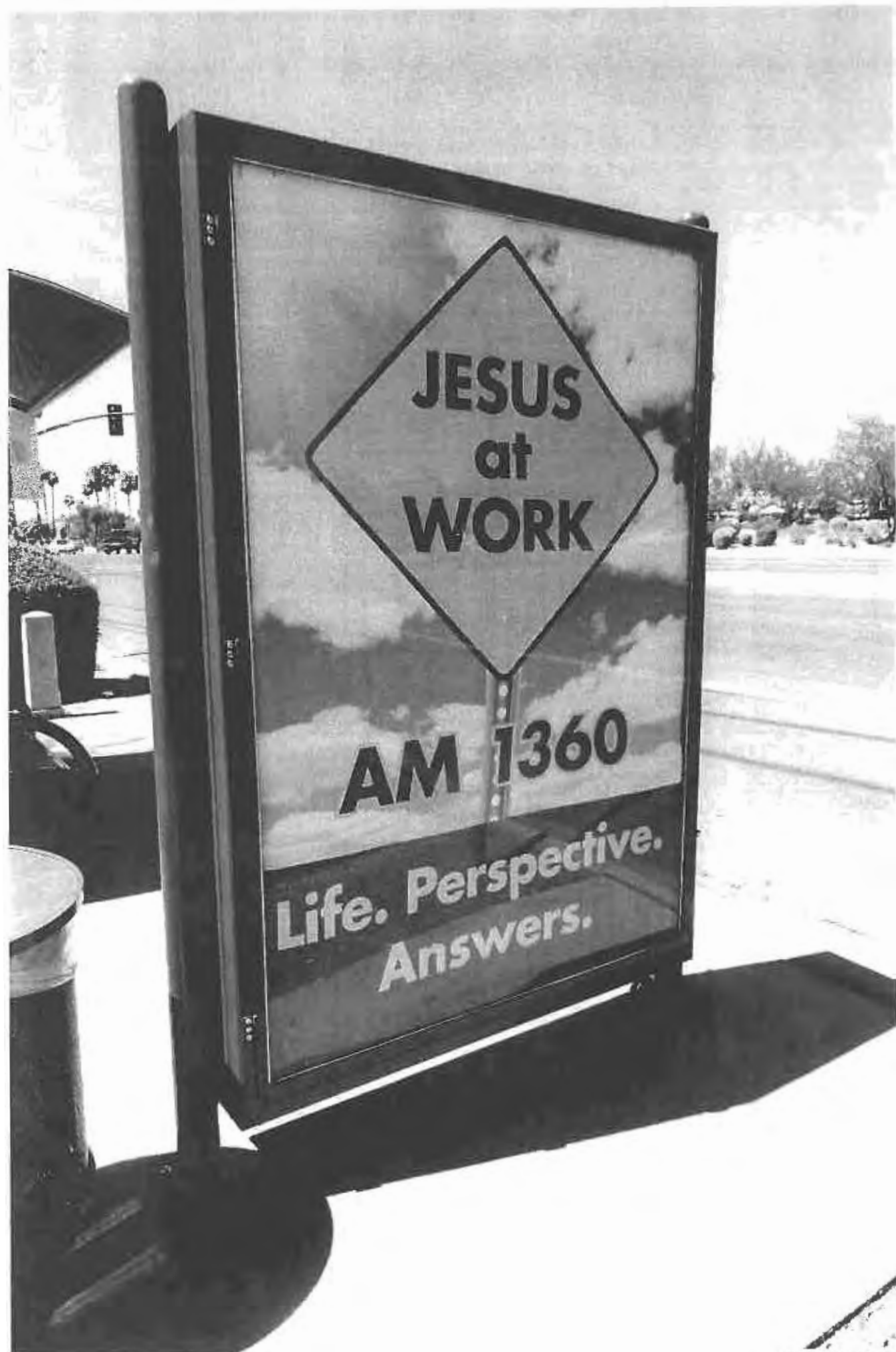


Exhibit K



FREE
Pregnancy Test
602-241-1717

BETHANY AUTO REPAIR

602-941-1394
Auto Sales & Repairs
Affordable
Quality Work

N
PARKING

Newly diagnosed with HIV
and unsure of what to do next?



Text: Spring1 to 35842
or call 1.877.425.9448
www.spring1go.com

Spring1

Exhibit L



*Are you
pregnant?
You have
choices.*

We can provide free adoption services.*

Assistance Includes:

- Rent
- Electricity
- Bus Passes
- Food
- Water
- Cell Phone

**For pregnant women who qualify.*

Se Habla Español

BUILDING ARIZONA FAMILIES ADOPTION AGENCY

24 hour line: (623) 695-4112

or (800) 340-9665

www.buildingarizonafamilies.com

Transit Shelter		
	Mechanical (HxW)	Actual (HxW)
Safety:	13.2" x 9.0"	66.0" x 45.0"
Trim:	14.0" x 9.6"	70.0" x 48.0"
Bleed:	14.1" x 9.7"	70.5" x 48.5"
Scale:	5:1 - 500% Enlargement	

Exhibit M

602-246-9559

©1995

CARPENTERS
UNION



"Build Your Future"

602-484-0444


Exhibit N

Love is...

Binding




It's Valentine's Day
@ FASCINATIONS[™]



Love is...

Sensual

It's Valentine's Day @
FASCINATIONS™



Love is...

Sweet

It's Valentine's Day @
FASCINATIONS™

Exhibit O

Mccarthy, Colleen

From: marie.chapple@phoenix.gov
Sent: Friday, July 01, 2011 9:46 AM
To: Mccarthy, Colleen
Cc: don.phillips@phoenix.gov; matthew.heil@phoenix.gov; Chatham, Steve; ted.mariscal@phoenix.gov
Subject: RE: Phoenix Transit Ad - Common Ground Broadcasting; AM1360

The key words that made the others work were such as "Get Connected" and "Answers" that engaged people to listen to the radio. We are looking for something similar.

Marie Chapple
Public Information Officer
Phoenix Public Transit Department
(602) 261-8254
marie.chapple@phoenix.gov

"Mccarthy, Colleen" <colleen.mccarthy@cbsoutdoor.com>

07/01/2011 09:40 AM

To: Marie Chapple/PTD/PHX@PHXENT
cc: Don Phillips/PTD/PHX@PHXENT, Matthew Heil/PTD/PHX@PHXENT, "Chatham, Steve" <steve.chatham@cbsoutdoor.com>, Ted Mariscal/LAW/PHX@PHXENT
Subject: RE: Phoenix Transit Ad - Common Ground Broadcasting; AM1360

Hi Marie, can you be more specific because of the 16 ads sent; these four ads are very similar to the others that you have already approved. For example you approved "AM1360; Get Connected - Get Inspired" but not "AM1360; Jesus at Work - Get Inspired" or "AM1360; Jesus Heals - Get Inspired."

You also approved "AM1360; Get Connected - Real Life Applications" but not "AM1360; Jesus at Work - Real Life Applications" or "AM1360; Jesus Heals - Real Life Applications."

You also approved two other "Jesus Heals..." and "Jesus at Work..." ads in this series so I honestly have no idea on what content to tell the advertiser that the City wants modified so if you could be more specific with your response and let me know exactly what it is that they need to change, that would be most appreciated.

Thanks Marie,
Colleen

From: marie.chapple@phoenix.gov [mailto:marie.chapple@phoenix.gov]
Sent: Friday, July 01, 2011 9:23 AM
To: Mccarthy, Colleen
Cc: don.phillips@phoenix.gov; matthew.heil@phoenix.gov; Chatham, Steve; ted.mariscal@phoenix.gov
Subject: RE: Phoenix Transit Ad - Common Ground Broadcasting; AM1360

Colleen:

Ted was in, so we talked. Can you work with our client for modification? As the other posters had wording that drew in the listener to participate, can **these** be changed a similar way? Thanks.

Marie Chapple

CBS-0423

Public Information Officer
Phoenix Public Transit Department
(602) 261-8254
marie.chapple@phoenix.gov
"McCarthy, Colleen"
<colleen.mccarthy@cbsoutdoor.com>

06/30/2011 04:31 PM

To: Marie Chapple/PTD/PHX@PHXENT
cc: Don Phillips/PTD/PHX@PHXENT, Matthew Heil/PTD/PHX@PHXENT, "Chatham, Steve"
<steve.chatham@cbsoutdoor.com>, Ted Mariscal/LAW/PHX@PHXENT
Subject: RE: Phoenix Transit Ad - Common Ground Broadcasting; AM1360

Hi Marie, just a quick reminder, today is day 10 of your review process and the advertiser is anxious to get these ads to the printer. Our office is closing at 1:00 pm for the 4th of July holiday. Hopefully we can move forward on this tomorrow.

Thanks Marie,
Colleen

From: marie.chapple@phoenix.gov [mailto:marie.chapple@phoenix.gov]
Sent: Thursday, June 30, 2011 10:32 AM
To: McCarthy, Colleen
Cc: don.phillips@phoenix.gov; matthew.heil@phoenix.gov; Chatham, Steve; ted.mariscal@phoenix.gov
Subject: RE: Phoenix Transit Ad - Common Ground Broadcasting; AM1360

Colleen,

Not yet, I'll try to get to you tomorrow.

Marie Chapple
Public Information Officer
Phoenix Public Transit Department
(602) 261-8254
marie.chapple@phoenix.gov

"McCarthy, Colleen"
<colleen.mccarthy@cbsoutdoor.com>

06/29/2011 05:14 PM

To: Marie Chapple/PTD/PHX@PHXENT
cc: Don Phillips/PTD/PHX@PHXENT, Matthew Heil/PTD/PHX@PHXENT, "Chatham, Steve"
<steve.chatham@cbsoutdoor.com>, Ted Mariscal/LAW/PHX@PHXENT
Subject: RE: Phoenix Transit Ad - Common Ground Broadcasting; AM1360

CBS-0424

Hi Marie,

I'll be out of town all next week and have a short day on Friday so I was hoping to wrap-up any outstanding items before I leave. Did you have a chance to finish your review on the last 4 Common Ground Broadcasting; AM1360 ads (copies attached)?

Thanks,
Colleen

From: marie.chapple@phoenix.gov [mailto:marie.chapple@phoenix.gov]
Sent: Tuesday, June 21, 2011 12:50 PM
To: Mccarthy, Colleen
Cc: don.phillips@phoenix.gov; matthew.heil@phoenix.gov; Chatham, Steve; ted.mariscal@phoenix.gov
Subject: RE: Phoenix Transit Ad - Common Ground Broadcasting; AM1360

I only have four left in my folder to review, the Life Perspective Answers is good to go.

Marie Chapple
Public Information Officer
Phoenix Public Transit Department
(602) 261-8254
marie.chapple@phoenix.gov

"Mccarthy, Colleen"
<colleen.mccarthy@cbsoutdoor.com>

06/21/2011 11:42 AM

To: Marie Chapple/PTD/PHX@PHXENT
cc: Don Phillips/PTD/PHX@PHXENT, Matthew Heil/PTD/PHX@PHXENT, "Chatham, Steve"
<steve.chatham@cbsoutdoor.com>, Ted Mariscal/LAW/PHX@PHXENT
Subject: RE: Phoenix Transit Ad - Common Ground Broadcasting. AM1360

CBS-0425

Thanks Marie,

On your last email you sent back 11 ads, which leaves the 5 ads attached to this email; did you mean to say you're reviewing 5 more or was it really 4 and one of these is already on the approved list?

Thanks Marie,
Colleen

From: marie.chapple@phoenix.gov [mailto:marie.chapple@phoenix.gov]
Sent: Tuesday, June 21, 2011 11:18 AM
To: Mccarthy, Colleen
Cc: don.phillips@phoenix.gov; matthew.heil@phoenix.gov; Chatham, Steve; ted.mariscal@phoenix.gov
Subject: RE: Phoenix Transit Ad - Common Ground Broadcasting; AM1360

Colleen:

There are four of the ads I'd like to review more; but these are good to go.

Marie Chapple
Public Information Officer
Phoenix Public Transit Department
(602) 261-8254
marie.chapple@phoenix.gov

"Mccarthy, Colleen"
<colleen.mccarthy@cbsoutdoor.com>
06/20/2011 10:21 AM

To: Marie Chapple/PTD/PHX@PHXENT
cc: Don Phillips/PTD/PHX@PHXENT, Matthew
Heil/PTD/PHX@PHXENT, "Chatham, Steve"
<steve.chatham@cbsoutdoor.com>, Ted
Mariscal/LAW/PHX@PHXENT

Subject RE: Phoenix Transit Ad - Common Ground
Broadcasting; AM1360

Hi Marie,

Yes, this is a commercial radio station; they do not rely on donations for their source of income.

Thanks,
Colleen

From: marie.chapple@phoenix.gov [mailto:marie.chapple@phoenix.gov]
Sent: Monday, June 20, 2011 10:14 AM
To: Mccarthy, Colleen
Cc: don.phillips@phoenix.gov; matthew.heil@phoenix.gov; Chatham, Steve; ted.mariscal@phoenix.gov
Subject: Re: Phoenix Transit Ad - Common Ground Broadcasting; AM1360

Colleen,

I have yet opened all the ads because I first have a question: Is this a commercial station? Do they sell commercials or do they rely on donations?

Marie Chapple
Public Information Officer
Phoenix Public Transit Department
(602) 261-8254
marie.chapple@phoenix.gov

"Mccarthy, Colleen"
<colleen.mccarthy@cbsoutdoor.com>
06/20/2011 09:54 AM

To Don Phillips/PTD/PHX@PHXENT, Marie
Chapple/PTD/PHX@PHXENT, Matthew
Heil/PTD/PHX@PHXENT
cc "Chatham, Steve" <steve.chatham@cbsoutdoor.com>
Subject Phoenix Transit Ad - Common Ground Broadcasting;
AM1360

CBS-0427

Hi Marie,

Attached you'll find 16 ads for Common Ground Broadcasting, also known as AM1360, and their associated contract for posting in the Phoenix shelters. The ads are categorized into 3 basic styles with different slogans at the bottom of each ad.

Thanks Marie.

Colleen McCarthy
CBS Outdoor, Inc
3150 S 48th St, Ste 200
Phoenix, AZ 85040-1724
Direct: 602-411-3094
Fax: 480-829-9377
colleen.mccarthy@cbsoutdoor.com

Exhibit P

Mccarthy, Colleen

From: marie.chapple@phoenix.gov
Sent: Thursday, March 17, 2011 1:31 PM
To: Mccarthy, Colleen
Cc: don.phillips@phoenix.gov; matthew.heil@phoenix.gov; Chatham, Steve
Subject: RE: Phoenix Transit Ad - Better Business Bureau

Good to go.

Marie Chapple
Public Information Officer
Phoenix Public Transit Department
(602) 261-8254
marie.chapple@phoenix.gov

"Mccarthy, Colleen" <colleen.mccarthy@cbsoutdoor.com>

03/17/2011 01:13 PM

To: Marie Chapple/PTD/PHX@PHXENT, "Chatham, Steve"
<steve.chatham@cbsoutdoor.com>
cc: Don Phillips/PTD/PHX@PHXENT, Matthew Heil/PTD/PHX@PHXENT
Subject: RE: Phoenix Transit Ad - Better Business Bureau

Hi Marie,

After speaking with the BBB, their response was that the ads are to promote awareness to business owners and drive them to the website to get them to become members of the BBB.

Thanks,
Colleen

From: marie.chapple@phoenix.gov [mailto:marie.chapple@phoenix.gov]
Sent: Wednesday, March 16, 2011 4:21 PM
To: Mccarthy, Colleen; Chatham, Steve
Cc: don.phillips@phoenix.gov; matthew.heil@phoenix.gov
Subject: Re: Phoenix Transit Ad - Better Business Bureau

Steve / Colleen:

Are they advertising for the business accreditation or for the consumer information part of their agency?

Marie Chapple
Public Information Officer
Phoenix Public Transit Department
(602) 261-8254
marie.chapple@phoenix.gov

"Mccarthy, Colleen"
<colleen.mccarthy@cbsoutdoor.com>

03/16/2011 10:02 AM

To: Don Phillips/PTD/PHX@PHXENT, Marie Chapple/PTD/PHX@PHXENT, Matthew Heil/PTD/PHX@PHXENT
cc: "Chatham, Steve" <steve.chatham@cbsoutdoor.com>
Subject: Phoenix Transit Ad - Better Business Bureau

CBS-0295

Hi Marie,

Attached are an ad and its associated contract for the Better Business Bureau for posting in the Phoenix shelters.

Thanks Marie.

Colleen McCarthy

CBS Outdoor, Inc

3150 S 48th St, Ste 200

Phoenix, AZ 85040-1724

Direct: 602-477-3094

Fax: 480-829-9377

colleen.mccarthy@cbsoutdoor.com

Exhibit Q

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF MARICOPA

3 ALAN KORWIN, et al.,

4 Plaintiffs,

5 vs.

6 DEBBIE COTTON, et al.,

7 Defendants.
8

No. CV2011-009838

9
10 DEPOSITION OF MARIE CHRISTINE CHAPPLE CAMACHO
11 (Volume II)

12
13 Phoenix, Arizona
14 April 12, 2012
15 10:00 a.m.
16
17
18
19

20
21 PREPARED FOR:
22 MS. DIANE COHEN
23 ATTORNEY AT LAW
(COPY)

24 Reported by:
25 HALEY WESTRA, RPR
Arizona CCR No. 50762



Ottmar & Associates, Inc.
2800 North Central Avenue, Suite 150
Phoenix, AZ 85004
T 602.485.1488
F 602.485.1605
Toll free 1.866.485.1444

Page 211		Page 213	
10:44:38AM	1 A. A contract based on this document.	10:48:16AM	1 Q. And how are you aware of that?
10:44:41AM	2 Q. Okay. And is there something missing from	10:48:17AM	2 A. I am now the contract manager.
10:44:44AM	3 this document, is that why you're unable to identify	10:48:19AM	3 Q. When did you become the contract manager?
10:44:46AM	4 what this document is?	10:48:22AM	4 A. January 1, 2012.
10:44:47AM	5 A. I'm not the person who handled this document,	10:48:24AM	5 Q. Who was the contract manager before you?
10:44:50AM	6 so I don't know whether or not it turned into a	10:48:26AM	6 A. I believe Herb Muñoz was the contract manager
10:44:52AM	7 contract or what would constitute a contract,	10:48:30AM	7 before me.
10:44:55AM	8 Q. Have you seen the full -- fully executed	10:48:30AM	8 Q. What does a contract manager do?
10:44:59AM	9 contract between the City and CBS Outdoor that is	10:48:32AM	9 A. They -- the contract manager is responsible
10:45:07AM	10 currently in effect?	10:48:37AM	10 overall, for the contract --
10:45:08AM	11 A. I don't recall.	10:48:38AM	11 Q. And what does that mean?
10:45:09AM	12 Q. Were you involved in any of the -- any	10:48:39AM	12 A. -- and the compliance.
10:45:11AM	13 negotiations or discussions, if any, between the City	10:48:41AM	13 That means you see that the terms of the
10:45:14AM	14 and CBS Outdoor regarding the contract that is	10:48:46AM	14 contract are followed for all portions of the contract.
10:45:18AM	15 currently in effect?	10:48:52AM	15 Q. And does that include the transit advertising
10:45:20AM	16 A. No.	10:48:55AM	16 program in relation to determining whether
10:45:21AM	17 Q. And do you have any -- did you -- have you	10:48:59AM	17 advertisements comply with the City standards?
10:45:24AM	18 looked at this contract, the contract between the City	10:49:03AM	18 A. Which contract?
10:45:27AM	19 and CBS, within the last four months?	10:49:05AM	19 Q. The two -- the one in effect prior to 2012?
10:45:31AM	20 A. Yes.	10:49:09AM	20 A. As the contract monitor for that portion, that
10:45:32AM	21 Q. When?	10:49:14AM	21 was left to me to do.
10:45:34AM	22 A. I can't give you a date.	10:49:15AM	22 Q. So you were the contract -- did you call
10:45:38AM	23 Q. Can you estimate?	10:49:18AM	23 yourself a "monitor"?
10:45:39AM	24 A. I can't estimate.	10:49:19AM	24 A. Monitor.
10:45:40AM	25 Q. Can you tell me whether it was before	10:49:20AM	25 Q. Okay. So prior to 2012, you were the contract
Page 212		Page 214	
10:45:43AM	1 Christmas or after Christmas?	10:49:23AM	1 monitor who was -- who was responsible for ensuring
10:45:46AM	2 A. I don't know.	10:49:28AM	2 that the transit advertising program -- let me strike
10:45:57AM	3 Q. Was it in the last month?	10:49:35AM	3 that.
10:46:04AM	4 A. Yes.	10:49:36AM	4 What was your job as the contract
10:46:05AM	5 Q. Okay. And what circumstances led you to look	10:49:38AM	5 monitor?
10:46:08AM	6 at Exhibit 22 in the last month?	10:49:39AM	6 A. As the contract monitor, I was overseeing the
10:46:11AM	7 A. Agenda meetings or meetings with CBS to look	10:49:44AM	7 compliance of the transit advertising standards.
10:46:18AM	8 at the scope of work.	10:49:46AM	8 Q. Okay. And do you still do that currently?
10:46:19AM	9 Q. And what scope of work came up that led you to	10:49:49AM	9 A. As the contract manager for the new contract,
10:46:24AM	10 look at Exhibit 22 during these meetings?	10:49:52AM	10 I oversee the compliance to standards.
10:46:27AM	11 A. Putting together a contract review process.	10:49:56AM	11 Q. Do you do the same job that you did last year
10:46:31AM	12 Q. What does that mean, "a contract review	10:50:02AM	12 this year?
10:46:33AM	13 process"?	10:50:02AM	13 A. I have -- I have new duties with this new
10:46:33AM	14 A. That means that when -- in this document, CBS	10:50:06AM	14 contract.
10:46:41AM	15 has certain duties they need to perform, and so we	10:50:07AM	15 Q. What about the old duties, do you still do the
10:46:46AM	16 monitor those duties and we set up a plan to monitor	10:50:11AM	16 same things you did --
10:46:50AM	17 those.	10:50:13AM	17 MS. COHEN: Can you read back the answer
10:47:29AM	18 Q. Let me see your Exhibit 22, see what's	10:50:14AM	18 that she gave to my question about what she did as a
10:47:32AM	19 attached there.	10:50:18AM	19 contract monitor?
10:48:00AM	20 Are you aware of the contract that was in	10:50:51AM	20 (The requested portion was read by the
10:48:03AM	21 effect prior -- or I'm sorry -- do you know when this	21 reporter as follows:	
10:48:06AM	22 Exhibit 22, the contract, became effective?	10:50:52AM	22 "QUESTION: Okay. And do
10:48:10AM	23 A. I know when the contract became effective.	23 you still do that	
10:48:13AM	24 Q. When was that?	24 currently?	
10:48:14AM	25 A. January 1, 2012.	25 ANSWER: As the contract	

Page 215		Page 217	
1	manager for the new	10:52:32AM 1	Q. So how would you describe the portion of the
2	contract, I oversee the	10:52:34AM 2	contract that deals with the transit advertising review
3	compliance to standards.")	10:52:38AM 3	process or standards? To ensure the process where ads
4	MS. COHEN: Before that, the answer --	10:52:44AM 4	are -- have to comply with the City standards, can
5	THE COURT REPORTER: Oh, before that?	10:52:49AM 5	you -- how would you describe what your duties are in
6	MS. COHEN: Um-hmm, when I said what does	10:52:52AM 6	terms of the portion of the contract that deals with
7	a contract manager do.	10:52:59AM 7	the enforcement of the transit advertising standards?
8	(The requested portion was read by the	10:53:05AM 8	A. I am the liaison with CBS Outdoors. They send
9	reporter as follows:	10:53:13AM 9	me ads to review, as well as other documentation, and
10	"QUESTION: What was your	10:53:19AM 10	we go through the review process for those ads.
11	job as the contract	10:53:23AM 11	Q. So it's accurate to describe you as the
12	monitor?	10:53:28AM 12	liaison from the City with CBS?
13	ANSWER: As the contract	10:53:31AM 13	A. Yes.
14	monitor, I was overseeing	10:53:32AM 14	Q. Okay. And this was true in 2011?
15	the compliance of the	10:53:35AM 15	A. For a portion of the contract, I was the CBS
16	transit advertising	10:53:40AM 16	liaison.
10:50:53AM 17	standards.")	10:53:41AM 17	Q. What portion?
18	BY MS. COHEN:	10:53:42AM 18	A. The advertising compliance review portion.
10:50:53AM 19	Q. So do you do the same duties this year in 2012	10:53:45AM 19	Q. And that's the portion that's relevant to this
10:50:57AM 20	under the new contract?	10:53:48AM 20	case; is that fair to say?
10:50:59AM 21	A. I oversee the compliance for the transit	10:53:51AM 21	A. That is the portion we're discussing.
10:51:01AM 22	advertising standards for this new contract.	10:53:54AM 22	Q. It's about the City's transit advertising
10:51:02AM 23	Q. My question is: Do you do the same duties --	10:53:58AM 23	standards, correct?
10:51:07AM 24	maybe you do more, but do you at least do the same	10:53:59AM 24	A. That is the portion we're discussing.
10:51:12AM 25	duties this year as you did last year as the contract	10:54:01AM 25	Q. Were you the liaison with CBS in 2010 as well?
Page 216		Page 218	
10:51:14AM 1	monitor?	10:54:05AM 1	A. Yes, I was a liaison for a portion of that
10:51:14AM 2	A. The duties to oversee the advertising transit	10:54:12AM 2	year.
10:51:20AM 3	advertising compliance are my duties and they are still	10:54:14AM 3	Q. What portion?
10:51:23AM 4	the same.	10:54:14AM 4	A. From approximately summer 2010 onward.
10:51:29AM 5	Q. So in terms of the contract in effect in 2011	10:54:25AM 5	Q. So in terms of your duties, responsibilities
10:51:38AM 6	versus 2012, have your duties changed in any way?	10:54:29AM 6	as the contract liaison with CBS, have your duties and
10:51:43AM 7	A. Please repeat that question.	10:54:35AM 7	responsibilities changed in any way looking at the old
10:51:56AM 8	MS. COHEN: (Indicating.)	10:54:42AM 8	contract versus the contract that is currently in
10:51:56AM 9	(The requested portion was read by the	10:54:45AM 9	effect?
10	reporter as follows:	10:54:46AM 10	A. With the new contract, I have more duties as
11	"QUESTION: So in terms of	10:54:54AM 11	far as managing the contract.
12	the contract in effect in	10:54:55AM 12	Q. And we're going to just talk about -- that's
13	2011 versus 2012, have your	10:54:58AM 13	why I'm trying to get your definition of how you would
14	duties changed in any	10:55:02AM 14	explain what your role is in terms of just the transit
10:51:57AM 15	way?")	10:55:05AM 15	advertising standard-related parts of the contract.
10:51:57AM 16	A. My duties as -- to the contract have changed	10:55:11AM 16	Okny?
10:52:02AM 17	because I'm now the contract manager.	10:55:12AM 17	A. So...
18	BY MS. COHEN:	10:55:13AM 18	Q. Your duties as the liaison with CBS, in terms
10:52:08AM 19	Q. As contract manager, you've taken on	10:55:17AM 19	of the transit advertising program. And I mean, I know
10:52:10AM 20	additional duties, correct?	10:55:19AM 20	it's a big program, right? There's all sorts of
10:52:12AM 21	A. As -- yes.	10:55:23AM 21	provisions in the contract about the program; is that
10:52:13AM 22	Q. Okay. And what additional duties have you	10:55:25AM 22	right?
10:52:16AM 23	taken on?	10:55:25AM 23	A. Various things about the contract, yes.
10:52:17AM 24	A. To monitor the full -- or to manage the full	10:55:27AM 24	Q. Okay. So what I want to just focus for
10:52:24AM 25	contract.	10:55:30AM 25	purposes of this deposition, on the portion of the

		Page 227			Page 229
11:22:43AM	1	whole contract --	11:25:12AM	1	A. You're holding it away from me. That's the
	2	A. I am.	11:25:17AM	2	date on it.
11:22:44AM	3	Q. -- in order to determine that, page by page?	11:25:18AM	3	Q. And it says, "I declare under penalty of
11:22:46AM	4	A. Yes.	11:25:21AM	4	perjury that the above statements are true and
11:22:59AM	5	Q. Okay. How often did you look at this contract	11:25:25AM	5	correct."
11:23:02AM	6	as the contract liaison?	11:25:25AM	6	Do you see that?
11:23:04AM	7	A. This contract from 2007?	11:25:25AM	7	A. I do see that.
11:23:06AM	8	Q. Yes.	11:25:26AM	8	Q. So does that mean that on February 15, 2012,
11:23:07AM	9	A. I couldn't tell you when I looked at the	11:25:30AM	9	you signed this declaration and declared that under
11:23:12AM	10	2007 --	11:25:34AM	10	penalty of perjury that what you were signing was true
11:23:13AM	11	Q. So --	11:25:38AM	11	and correct?
11:23:14AM	12	A. -- how often.	11:25:38AM	12	A. Yes.
11:23:17AM	13	Q. And boy, it's -- how many pages is this	11:25:41AM	13	Q. Okay. And, in fact, in this declaration that
11:23:20AM	14	contract? It's about -- well, it's hard to tell	11:25:44AM	14	is Exhibit 24, you referenced what is now in front of
11:23:22AM	15	because they're all different Bates numbers, but it's a	11:25:47AM	15	you as Exhibit 23, correct?
11:23:26AM	16	good 30 pages, at least. Let's see. It's over 50	11:26:00AM	16	Let's look at, for example, paragraph 19
11:23:34AM	17	pages, right?	11:26:03AM	17	where it refers to Exhibit F. Do you see that?
11:24:11AM	18	A. (Witness reviewing the document.)	11:26:20AM	18	A. (Witness reviews the document.)
11:24:13AM	19	Q. Are you looking for something, Ms. Chapple?	11:26:22AM	19	Q. Actually, let's look at -- yep, it's 19.
11:24:16AM	20	A. The answer to your question. It looks like	11:26:27AM	20	A. Exhibit F, it references that.
11:24:18AM	21	there's -- I see 55, that's the last one --	11:26:30AM	21	Q. Okay. And so you are asking -- actually, by
11:24:19AM	22	Q. Okay. More than 50 was my question.	11:26:34AM	22	signing this declaration, you are -- you are -- you are
11:24:20AM	23	Okay. And, in fact --	11:26:36AM	23	supporting what you are stating in your declaration by
11:24:21AM	24	A. I'm still looking.	11:26:39AM	24	citing to the exhibit that is 23. Do you see that?
11:24:22AM	25	Q. Well, I'm going to ask you a few more	11:26:43AM	25	A. I'm sorry. Again?
		Page 228			Page 230
11:24:25AM	1	questions and then I will allow you to -- I'm	11:26:46AM	1	Q. By signing your declaration -- in your declaration,
11:24:27AM	2	withdrawing my question.	11:26:50AM	2	to support the statements in paragraph 19, you say,
11:24:29AM	3	MR. GARDNER: She's going to withdraw all	11:26:54AM	3	"Look at Exhibit F." Do you see that?
11:24:32AM	4	her question.	11:26:56AM	4	A. Yes.
11:24:32AM	5	THE WITNESS: Okay.	11:26:57AM	5	Q. Okay. And Exhibit F is the contract that was
	6	BY MS. COHEN:	11:27:04AM	6	at least initially bid in the year 2007, correct?
11:24:32AM	7	Q. And so you actually submitted an affidavit --	11:27:09AM	7	A. That is what is associated with Exhibit F,
11:24:34AM	8	a declaration in support of defendants' summary	11:27:16AM	8	yes.
11:24:37AM	9	judgment that was filed in February of 2012, correct?	11:27:16AM	9	Q. Okay. And that was the contract that was in
11:24:40AM	10	A. I don't know the date.	11:27:18AM	10	effect in 2010 and 2011, correct?
11:24:41AM	11	Q. Okay. Well, here's your declaration; do you	11:27:22AM	11	A. I don't know.
11:24:44AM	12	see that? It's Exhibit 24; do you see that?	11:27:23AM	12	Q. Okay. All right. Well, in paragraph 19, you
11:24:47AM	13	A. I see Exhibit 24.	11:27:29AM	13	state that under the contract, CBS -- (as read): "Under
11:24:49AM	14	Q. And it says, "Declaration of Marie Chapple	11:27:35AM	14	the contract CBS, comma, all advertising is subject to
11:24:55AM	15	Camacho"; do you see that?	11:27:39AM	15	the City's transit advertising standards."
11:24:55AM	16	A. Yes, I do.	11:27:42AM	16	Do you see where you say that in
11:24:56AM	17	Q. And that's you, correct?	11:27:44AM	17	paragraph 19 of your declaration?
11:24:58AM	18	A. Yes.	11:27:46AM	18	A. Yes.
11:24:59AM	19	Q. And it's a nine-page document, isn't it?	11:27:46AM	19	Q. Which is Exhibit 24?
11:25:01AM	20	A. It has nine pages.	11:27:47AM	20	A. Yes.
11:25:03AM	21	Q. Okay. And your signature is on page 9,	11:27:48AM	21	Q. Okay. Well, what was your understanding about
11:25:05AM	22	correct?	11:27:50AM	22	the contract that you are referring to in that
11:25:05AM	23	A. It is.	11:27:53AM	23	paragraph?
11:25:06AM	24	Q. Okay. And it's dated February 15, 2012,	11:27:53AM	24	A. That what I'm referencing is that there were
11:25:12AM	25	correct?	11:27:55AM	25	other agreements with CBS, and I don't know the

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11:27:58AM	1 sequence of when those other agreements fall with this	11:30:38AM	1 Q. So it's your testimony that you cannot tell
11:28:01AM	2 one.	11:30:40AM	2 whether Exhibit F is a full and accurate and complete
11:28:01AM	3 Q. So in submitting this declaration in support	11:30:43AM	3 copy of a contract in effect from June 1, 2008, through
11:28:05AM	4 of defendants' summary judgment, did you know when this	11:30:50AM	4 December 31, 2011?
11:28:08AM	5 contract that you're referring to that is labeled	11:30:51AM	5 A. It was effective June 1, 2008.
11:28:12AM	6 Exhibit F was effective?	11:30:57AM	6 Q. Until you don't know when?
11:28:15AM	7 A. Well, this one and that reference would be	11:31:00AM	7 A. I am noting that I know there are other
11:28:19AM	8 effective June 1, 2008.	11:31:04AM	8 documents associated with the contract. I don't know
11:28:22AM	9 Q. Through what time period?	11:31:06AM	9 how that works into the sequence of events, whether
11:28:23AM	10 A. I'm not quite sure. I know there were other	11:31:11AM	10 they were before 2008 or after, that may have modified
11:28:29AM	11 agreements with CBS.	11:31:15AM	11 this agreement.
11:28:32AM	12 Q. So you're not sure whether the contract that	11:31:16AM	12 Q. All right. Well, we all know, right, there's
11:28:36AM	13 is Exhibit F was in effect as of December of 2011?	11:31:18AM	13 addendums to contracts, correct? Is that right?
11:28:40AM	14 A. I don't know that there were not changes made	11:31:22AM	14 A. There's other modifications to contracts, yes.
11:28:46AM	15 to that contract.	11:31:24AM	15 Q. There's modifications and there's addendums
11:28:46AM	16 Q. Where would those changes be?	11:31:26AM	16 sometimes to contracts, correct?
11:28:49AM	17 A. I don't know.	11:31:27AM	17 A. I -- I don't know.
11:28:54AM	18 Q. Have you produced -- have you looked to see if	11:31:29AM	18 Q. What do you mean you don't know?
11:28:57AM	19 there were any changes to the contract before you used	11:31:30AM	19 A. I don't know if there's an addendum to this
11:29:00AM	20 it as an attachment to your sworn declaration?	11:31:34AM	20 contract.
11:29:04AM	21 A. I think what I'm saying is that I understand	11:31:35AM	21 Q. Oh, I'm not asking about this contract, per
11:29:06AM	22 there are other agreements with CBS in a time period.	11:31:37AM	22 se, but there's a contract, and then sometimes it's
11:29:09AM	23 I don't know what the sequence is.	11:31:39AM	23 amended or modified, correct?
11:29:13AM	24 Q. All right. Well, you state in your	11:31:39AM	24 A. I understand it is a modification. I don't
11:29:15AM	25 declaration, "Under the contract, CBS" -- what contract	11:31:41AM	25 know the particular terms.
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11:29:19AM	1 are you referring to?	11:31:43AM	1 Q. Well, I don't want to talk about modifications
11:29:20AM	2 A. In number 19?	11:31:45AM	2 or addendums. Okay? What I want to talk about is the
11:29:26AM	3 Q. Uh-huh.	11:31:48AM	3 contract itself. Okay?
11:29:27AM	4 A. It references this particular contract,	11:31:49AM	4 This contract that's in front of you is
11:29:31AM	5 Exhibit F.	11:31:52AM	5 Exhibit F, is it currently in effect?
11:29:31AM	6 Q. Which is also Chapple Deposition Exhibit 23,	11:31:54AM	6 A. This contract is Exhibit F is not currently in
11:29:35AM	7 right?	11:31:57AM	7 effect.
11:29:35AM	8 A. Yes.	11:31:57AM	8 Q. When did it become not in effect?
11:29:36AM	9 Q. Okay. And but -- but is -- but what is -- is	11:32:01AM	9 A. Fully? I don't know if there were
11:29:39AM	10 what you're -- is it your testimony that you cannot	11:32:06AM	10 modifications that changed some of the terms.
11:29:40AM	11 state whether or not Exhibit F is a full and accurate	11:32:09AM	11 Q. So you cannot tell me the time period in which
11:29:45AM	12 copy of a contract that was in effect between the City	11:32:12AM	12 Exhibit F was in effect; is that correct? Except
11:29:49AM	13 and CBS relevant to the City's transit advertising	11:32:17AM	13 it's -- let me back up.
11:29:54AM	14 program?	11:32:19AM	14 You already testified that Exhibit F,
11:29:54AM	15 A. I think what I'm saying is that I know that	11:32:21AM	15 which is Chapple Exhibit 23, is no longer in effect,
11:29:58AM	16 other agreements came up between the City and CBS.	11:32:24AM	16 correct?
11:30:03AM	17 I couldn't tell you the time period, whether it was	11:32:24AM	17 A. As of January 1, 2012, it is not in effect.
11:30:05AM	18 before or after this. I don't know the sequence in how	11:32:29AM	18 Q. Okay. So my question is: At what point did
11:30:09AM	19 they individually affected this particular contract.	11:32:36AM	19 this contract terminate?
11:30:13AM	20 Q. My question is: Is Exhibit F a full and	11:32:37AM	20 A. I don't know if that contract, as it exists in
11:30:17AM	21 complete copy of the contract that was in effect from	11:32:44AM	21 2008, I don't know the termination date for that.
11:30:20AM	22 2008 until 2011?	11:32:48AM	22 Q. Do you know whether it terminated at all?
11:30:23AM	23 A. And this was in effect June 1, 2008. How any	11:32:50AM	23 A. It is not in effect as of now.
11:30:29AM	24 other agreement with CBS may have modified or may not,	11:32:52AM	24 Q. Can you estimate when it was terminated?
11:30:37AM	25 I don't know.	11:32:54AM	25 A. I don't know because I understand there may

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11:50:53AM	1 Exhibit E. Do you see that, page 40?	11:56:05AM	1 A. It does not say that they have to receive
11:50:56AM	2 A. Yeah, it refers to Exhibit E, yes.	11:56:09AM	2 approval prior to posting. It does say --
11:50:58AM	3 Q. Is that Exhibit E that I just handed you?	11:56:15AM	3 Q. That's all I asked you.
11:51:00AM	4 A. It says "Exhibit E" on it.	11:56:23AM	4 Now, you testified at your last
11:51:02AM	5 Q. Okay. So -- and this is the advertising	11:56:25AM	5 deposition that CBS has, in practice -- and you're
11:51:04AM	6 review process that you were just testifying about?	11:56:31AM	6 aware of it -- rejected ads, and that they are not
11:51:07AM	7 A. Yes.	11:56:35AM	7 required to send the City rejected ads. Do you
11:51:08AM	8 Q. Okay. And is there anything in there that	11:56:39AM	8 remember that testimony?
11:51:10AM	9 requires CBS to wait for the City to actually give	11:56:40AM	9 A. I recall that I testified that CBS has told me
11:51:13AM	10 approval on an ad before it's posted?	11:56:44AM	10 and had a discussion with me that they reject ads, and
11:51:15AM	11 A. The advertising review process requires all	11:56:51AM	11 that there is no requirement that they send their
11:52:49AM	12 ads to be reviewed by the advertising contractor	11:56:56AM	12 rejected ads to me.
11:52:54AM	13 liaison.	11:56:57AM	13 Q. And you don't require them to do that,
11:52:56AM	14 Q. And who is that?	11:57:00AM	14 correct?
11:52:57AM	15 A. That would be me.	11:57:00AM	15 A. I don't require them to do that -- or the
11:52:58AM	16 Q. But it does not require CBS to get any	11:57:03AM	16 contract, I should say, does not require them to do
11:53:03AM	17 approval from the City prior to posting, correct?	11:57:05AM	17 that.
11:53:05AM	18 A. It does not say that the City has to -- the	11:57:06AM	18 Q. And it doesn't require them to do that now,
11:53:13AM	19 words "approval" are not necessarily in here.	11:57:08AM	19 right?
11:53:16AM	20 Q. Does -- let me ask one more time: Does	11:57:08AM	20 A. It does not require them to do that now.
11:53:20AM	21 Exhibit E require CBS to get approval from the City	11:57:11AM	21 Q. And by "it," we mean the current contract
11:53:23AM	22 prior to posting an ad?	11:57:15AM	22 doesn't require them to send rejected ads to you; is
11:53:25AM	23 A. It says that they have to forward -- "All	11:57:19AM	23 that your testimony?
11:54:21AM	24 advertisements accepted by the contractor for posting	11:57:19AM	24 A. The current contract does not require them to
11:54:24AM	25 to City assets are to be forwarded to the designated	11:57:22AM	25 send rejected ads to me.
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11:54:28AM	1 contract monitor within specified timeline noted in the	11:57:24AM	1 Q. And you don't, in practice, require them, CBS,
11:54:31AM	2 agreement between the contractor and the department for	11:57:30AM	2 to send you ads that they reject, correct?
11:54:34AM	3 documentation purposes."	11:57:32AM	3 A. I don't require CBS to send rejected ads to
11:54:40AM	4 Q. Yeah, that does not require CBS to get	11:57:40AM	4 me, but we do require compliance with the transit
11:54:42AM	5 approval from the City prior to posting an ad; isn't	11:57:44AM	5 advertising standards.
11:54:46AM	6 that correct?	11:57:50AM	6 Q. Okay. Just want to look back at -- never
11:54:47AM	7 A. CBS is required to send us all advertisements	11:58:09AM	7 mind.
11:54:55AM	8 to be posted and within the timeline.	11:59:17AM	8 Does the City maintain records of all ads
11:54:58AM	9 Q. That's right. It doesn't seem to be disputed	11:59:21AM	9 that are posted at City of Phoenix transit stops?
11:55:02AM	10 that that's what you testified. But my question is,	11:59:25AM	10 A. I maintain records of advertising forwarded to
11:55:06AM	11 this fourth time, is that: -- and first of all, the	11:59:31AM	11 me or given to me by CBS.
11:55:12AM	12 paragraph that you just read, that was on the last	11:59:35AM	12 Q. Okay. And, according to your testimony,
11:55:14AM	13 page of Exhibit E; is that right?	11:59:36AM	13 that's supposed to be every ad before it's posted,
11:55:17AM	14 A. Yes.	11:59:40AM	14 right?
11:55:17AM	15 Q. And it's under the sub- -- under the heading	11:59:40AM	15 A. I -- I -- I receive from CBS ads before
11:55:22AM	16 "Advertisements submitted for Documentation May Be	11:59:47AM	16 they're posted, and I maintain those documents.
11:55:25AM	17 Deemed Necessary for Review." What does that mean?	11:59:50AM	17 Q. Where do you maintain those documents?
11:55:27AM	18 A. That means that needs to go through the review	11:59:52AM	18 A. On my computer.
11:55:32AM	19 process. That if they send an ad that we believe is	11:59:54AM	19 Q. Okay. And did you receive documents -- or did
11:55:34AM	20 not compliant or has questionable compliance with the	11:59:58AM	20 you receive ads from the time period of, say, May to
11:55:41AM	21 transit advertising standards, that we want further	12:00:04PM	21 August of 2011 from CBS?
11:55:45AM	22 discussion about it.	12:00:09PM	22 A. I received ads during that time period from
11:55:46AM	23 Q. So that doesn't answer my question. My	12:00:13PM	23 CBS.
11:55:48AM	24 question is: Does Exhibit E require CBS to receive	12:00:13PM	24 Q. And what did you do with them?
11:55:56AM	25 approval from the City prior to posting ads?	12:00:17PM	25 A. I typically save them to my computer file.

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12:05:45PM	1 ads, which are the ones to be installed. I maintain	12:07:50PM	1 MS. COHEN: No, no.
12:05:49PM	2 those on my computer.	12:07:51PM	2 THE WITNESS: The CDs were the records,
12:05:51PM	3 Q. Okay.	12:07:54PM	3 so those were given.
12:05:52PM	4 A. From everything I had from January 2011 to	12:07:56PM	4 MS. COHEN: Okay, stop because we can
12:05:57PM	5 December 2011, were sent.	12:07:58PM	5 talk about this after the dep but not right now.
12:05:59PM	6 Q. So the answer to my question is no?	12:08:01PM	6 My question is regarding what kind of
12:06:02PM	7 A. CBS takes pictures of the installations	12:08:02PM	7 records the City maintains. Okay?
12:06:06PM	8 because it is their duty to install the ads. They put	12:08:05PM	8 THE WITNESS: Okay.
12:06:12PM	9 them on a photo CD and send those to the contract	9 BY MS. COHEN:	
12:06:20PM	10 manager.	12:08:06PM	10 Q. And so it's simple. Maybe your answer is
12:06:21PM	11 Q. Who's that?	12:08:09PM	11 "yes"; maybe it's "no"; maybe it's "I don't know."
12:06:22PM	12 A. Herb Muñoz.	12:08:11PM	12 Maybe it will take a little more explanation, but
12:06:22PM	13 Q. Okay.	12:08:15PM	13 I need you to respond to my question and it is about
12:06:25PM	14 A. That practice, as I understand, is no longer	12:08:17PM	14 what kind of records the City maintains.
12:06:29PM	15 something CBS does.	12:08:20PM	15 Does the City maintain records of ads as
12:06:32PM	16 Q. So what does that mean?	12:08:26PM	16 installed at City of Phoenix transit stops? And by
12:06:34PM	17 A. From what I understand from CBS, they no	12:08:31PM	17 that I mean, photographers of ads as installed at City
12:06:40PM	18 longer take the photo CDs -- or they no longer take the	12:08:38PM	18 of Phoenix transit stops?
12:06:45PM	19 photos.	12:08:39PM	19 A. The City of Phoenix had in its possession CDs
12:06:46PM	20 Q. So the City does not maintain a copy of ads as	12:08:44PM	20 given to it by CBS of ads installed at bus stops.
12:06:49PM	21 installed at City of Phoenix transit stops, correct?	12:08:50PM	21 Q. And is that practice now ceased?
12:06:55PM	22 A. The City does not take photos of the 2000	12:08:54PM	22 A. I understand from CBS that they no longer do
12:07:02PM	23 advertising spaces.	12:09:01PM	23 that.
12:07:04PM	24 Q. It's a simple yes or no question. It	12:09:02PM	24 Q. So this --
12:07:07PM	25 really --	12:09:03PM	25 A. I have not seen such a CD from them.
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12:07:08PM	1 MS. COHEN: Counsel, we're wasting time.	12:09:05PM	1 Q. So CBS no longer sends CDs to the City of
12:07:10PM	2 Can you please direct your client to answer my	12:09:09PM	2 photos of installed -- ads as installed at City of
12:07:12PM	3 question?	12:09:15PM	3 Phoenix transit stops, right?
12:07:12PM	4 MR. GARDNER: Now, wait a second, wait a	12:09:16PM	4 A. CBS does not send me those CDs.
12:07:12PM	5 second.	12:09:19PM	5 Q. So the City, therefore, currently does not
12:07:13PM	6 MS. COHEN: No, the record will reflect	12:09:22PM	6 maintain copies of ads as installed at City of Phoenix
12:07:15PM	7 that I'm asking a yes or no question and I'm getting a	12:09:25PM	7 transit stops, correct?
12:07:19PM	8 completely nonresponsive answer.	12:09:26PM	8 A. We do not receive those.
12:07:20PM	9 MR. GARDNER: Do you want to cool down	12:09:32PM	9 Q. Do you otherwise get them?
12:07:22PM	10 for a second, I believe --	12:09:34PM	10 A. Not as installed.
12:07:22PM	11 MS. COHEN: Oh, don't start.	12:09:38PM	11 Q. Okay. Okay. Just some follow-up to your
12:07:23PM	12 MR. GARDNER: -- I can make this -- I can	12:10:31PM	12 interrogatory answers that we just got.
12:07:25PM	13 make this a little easier.	12:10:33PM	13 I'm pointing to Chapple Exhibit 10, okay,
12:07:27PM	14 MS. COHEN: Okay. Yes.	12:10:37PM	14 Ms. Chapple? Can you tell me whether Chapple
12:07:27PM	15 MR. GARDNER: Because I think you're	12:10:44PM	15 Exhibit 10 adequately displays a commercial
12:07:29PM	16 dancing around here.	12:10:48PM	16 transaction?
12:07:29PM	17 MS. COHEN: Go.	12:10:49PM	17 A. I can tell you that this was or is similar to
12:07:31PM	18 MR. GARDNER: In terms of the CDs that	12:11:00PM	18 an ad accepted by the City for posting on shelters.
12:07:33PM	19 were sent to Mr. Muñoz, did you ever have copies of	12:11:09PM	19 Q. Okay. So my question is not -- the answer to
12:07:37PM	20 what was on the CDs?	12:11:12PM	20 my question is not that.
12:07:41PM	21 MS. COHEN: That's not my question.	12:11:13PM	21 My question to you is whether Chapple
12:07:42PM	22 That's not my question.	12:11:16PM	22 Exhibit 10 adequately displays a commercial
12:07:43PM	23 MR. GARDNER: No, but I'm trying to	12:11:19PM	23 transaction?
12:07:45PM	24 clarify this because I want to make sure everything you	12:11:19PM	24 A. And the answer is that this was accepted by
12:07:48PM	25 have has been produced and I just want to know what --	12:11:26PM	25 the City.

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12:11:28PM	1 Q. Can you tell me whether Chapple Exhibit 10	12:13:57PM	1 that I need to have a discussion with.
12:11:33PM	2 adequately displays a commercial transaction?	12:13:59PM	2 Q. Okay. Well, no one else is here except your
12:11:35PM	3 A. I'm trying to recall whether or not this was a	12:14:03PM	3 lawyer. Okay? Your team is not here; isn't that
12:11:44PM	4 final accepted ad by the City of Phoenix. It looks	12:14:05PM	4 right?
12:11:53PM	5 similar to it.	12:14:05PM	5 A. My team is not here, right.
12:11:54PM	6 Q. Okay. Not my question. So it doesn't matter	12:14:08PM	6 Q. It's just you at the deposition. So it's a
12:11:57PM	7 what was or wasn't accepted.	12:14:10PM	7 yes or no question.
12:11:59PM	8 My question is: You have an ad before	12:14:11PM	8 As you sit here today, looking at
12:12:02PM	9 you. It is your job to review ads and determine	12:14:13PM	9 Exhibit 10, which you've also seen before at your first
12:12:05PM	10 whether they comply with City of Phoenix transit	12:14:16PM	10 deposition, can you tell me whether this ad adequately
12:12:08PM	11 advertising standards, right?	12:14:25PM	11 displays a commercial transaction?
12:12:09PM	12 A. Yes.	12:14:28PM	12 MR. GARDNER: Object to form.
12:12:09PM	13 Q. And so by looking at an ad, a reasonable	12:14:29PM	13 Go ahead.
12:12:12PM	14 person is supposed to be able to tell that an ad	12:14:30PM	14 MS. COHEN: Basis?
12:12:16PM	15 proposed a commercial transaction, correct? If it's —	12:14:31PM	15 MR. GARDNER: It isn't necessarily a
12:12:19PM	16 let me restate that,	12:14:33PM	16 "yes" or "no" answer. That's what she's saying.
12:12:20PM	17 According to the City's standards, a	12:14:36PM	17 MS. COHEN: Okay.
12:12:23PM	18 reasonable person is supposed to be able to look at an	18	18 BY MS. COHEN:
12:12:26PM	19 ad and determine whether it proposes a commercial	12:14:39PM	19 Q. Answer.
12:12:30PM	20 transaction, correct?	12:14:40PM	20 A. I would, again, discuss this with a team of
12:12:30PM	21 A. I'm not sure that language is in the City	12:14:46PM	21 people, as I usually do.
12:12:35PM	22 standards, in that manner.	12:14:49PM	22 Q. So isn't it true, then, Ms. Chapple, that as
12:12:36PM	23 Q. Okay. Well, can you look at this ad and tell	12:14:53PM	23 you sit here today, you cannot tell me whether or not
12:12:39PM	24 me whether it proposes a commercial transaction?	12:14:57PM	24 Exhibit 10 adequately displays a commercial
12:12:43PM	25 A. If I were to look at this ad, I would look at	12:15:00PM	25 transaction?
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12:12:45PM	1 it with my review team again.	12:15:02PM	1 A. I would take it through the review process.
12:12:49PM	2 Q. Okay. So today it's in front of you. On its	12:15:07PM	2 Q. Isn't it true, as we sit here today, that you
12:12:55PM	3 face, can you point to anything in this ad that	12:15:10PM	3 Ms. Chapple, cannot tell me whether or not Exhibit 10
12:13:00PM	4 proposes a commercial transaction?	12:15:15PM	4 adequately displays a commercial transaction?
12:13:02PM	5 A. This looks similar to an ad —	12:15:17PM	5 A. I would take it through the review process.
12:13:07PM	6 Q. Not my question.	12:15:21PM	6 I typically do not make a snap judgment on something
12:13:07PM	7 A. — accepted by the City of Phoenix.	12:15:29PM	7 before me, and I — like, I go through a discussion
12:13:10PM	8 Q. Not my question. Not my question.	12:15:36PM	8 with the review team.
12:13:10PM	9 MS. COHEN: Can you reread the question?	12:15:38PM	9 Q. Well, you've seen this ad before, correct?
12:13:24PM	10 (The requested portion was read by the	12:15:40PM	10 A. I've seen something that looks similar to it.
12:13:27PM	11 reporter as follows:	12:15:43PM	11 Q. Well, let's look at your declaration.
12:13:27PM	12 "QUESTION: Okay. So today	12:16:28PM	12 I'm showing you Chapple Exhibit 24 and
12:13:27PM	13 it's in front of you. On	12:16:32PM	13 it's your declaration that you submitted in support of
12:13:27PM	14 its face, can you point to	12:16:37PM	14 defendants' motion for summary judgment and I'm
12:13:27PM	15 anything in this ad that	12:16:38PM	15 directing you to paragraph 36.
12:13:27PM	16 proposes a commercial	16	16 A. (Witness reviews the document.)
12:13:27PM	17 transaction?"	12:17:18PM	17 Q. So looking at Chapple Exhibit 10, is that the
12:13:27PM	18 A. And if I were to maintain the practice that we	12:17:21PM	18 ad that paragraph 36 of your declaration is referring
12:13:32PM	19 use at the office, I would review it with the review	12:17:25PM	19 to?
12:13:39PM	20 team at the office.	12:17:34PM	20 A. The wording is the same.
12:13:40PM	21 BY MS. COHEN:	12:17:36PM	21 Q. All right. Well now, your declaration refers
12:13:40PM	22 Q. So you can't — you yourself, Ms. Chapple,	12:17:38PM	22 to Exhibit 1 to your declaration, correct?
12:13:45PM	23 cannot determine whether or not Chapple Exhibit 10	12:17:40PM	23 A. I'm sorry. Again.
12:13:49PM	24 proposes a commercial transaction; is that correct?	12:17:42PM	24 Q. You're looking at your declaration,
12:13:52PM	25 A. I am saying that I would review it with people	12:17:45PM	25 paragraph — I'm sorry — 35. Do you see?

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12:17:48PM 1	A. Yes.	12:21:18PM 1	firearms training?
12:17:49PM 2	Q. Okay. And in paragraph 35 of your	12:21:20PM 2	A. A see it directs them to a website.
12:17:51PM 3	declaration, you say that (as read): "Attached hereto	12:21:22PM 3	Q. So my question is: Does this ad make clear
12:17:55PM 4	as Exhibit I -- Exhibit I, is a true and accurate copy	12:21:26PM 4	that the website offered a place to go get firearms
12:17:57PM 5	of my e-mail to Steve Chatham and all -- attached	12:21:31PM 5	training?
12:18:01PM 6	alternate advertisement that the City agreed to allow	12:21:31PM 6	A. It offers a website.
12:18:04PM 7	as compliant with the City standards."	12:21:34PM 7	Q. Not my question.
12:18:05PM 8	Do you see that?	12:21:35PM 8	My question is: Does the ad make clear
12:18:05PM 9	A. Yes.	12:21:37PM 9	that the website offers a place to go get firearm --
12:18:06PM 10	Q. Okay. And, in fact, this is Exhibit I,	12:21:41PM 10	training for firearms?
12:18:08PM 11	correct? You can see these are --	12:21:43PM 11	A. And as I see it, it offers a website.
12:18:13PM 12	A. Okay.	12:21:48PM 12	Q. So is the answer to my question no?
13	Q. Okay?	12:21:51PM 13	A. The answer is: It offers a website.
14	A. Uh-huh.	12:21:54PM 14	Q. So other than offering a website, does this ad
12:18:15PM 15	Q. Is Exhibit I to your declaration the same	12:21:58PM 15	make clear that you can get training for firearms at
12:18:18PM 16	thing as Chapple Exhibit 10?	12:22:03PM 15	that website?
12:18:20PM 17	A. Other than color, yes.	12:22:04PM 17	A. The ad directs people to a website.
12:18:22PM 18	Q. Okay. So you've seen Exhibit 10 at your	12:22:13PM 18	Q. Thank you. That's number three that I've
12:18:25PM 19	previous deposition, correct?	12:22:16PM 19	heard that answer. I got it. I understand it.
12:18:26PM 20	A. Yes.	12:22:20PM 20	So my question is, again: Does this ad
12:18:28PM 21	Q. And you have seen Exhibit 10 because you	12:22:28PM 21	say that you can go to the website to get information
12:18:37PM 22	completed a declaration under oath wherein you took	12:22:34PM 22	on training for fire -- getting training for firearms?
12:18:41PM 23	into account Exhibit 10, correct?	12:22:38PM 23	A. The ad says, "To educate your kids on how guns
12:18:43PM 24	A. If you're saying this referenced this, yes.	12:22:43PM 24	save lives, go to TrainMeAZ.com."
12:18:50PM 25	Q. So I guess my bottom line is, is that what I	12:22:49PM 25	Q. So does it make clear that the website offers
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12:18:52PM 1	was asking you to do here today was not asking you to	12:22:51PM 1	places to go get training for firearms?
12:18:55PM 2	make a snap judgment at all, was it?	12:22:55PM 2	A. The ad says go to a website that says
12:18:58PM 3	A. You were asking me what I would do.	12:23:02PM 3	"TrainMeAZ.com."
12:19:01PM 4	Q. No, that's not what I asked. I didn't ask	12:23:02PM 4	Q. Can you answer my question yes or no?
12:19:04PM 5	what you would do. I was asking you to tell me whether	12:23:05PM 5	A. I can answer what I see that the ad says.
12:19:07PM 6	by looking at Chapple Exhibit 10 you could tell me	12:23:08PM 6	Q. Can you tell me what it doesn't -- what you
12:19:10PM 7	whether it proposed a commercial transaction, and you	12:23:10PM 7	don't see?
12:19:12PM 8	could not do that.	12:23:12PM 8	MR. GARDNER: Object -- objection.
12:19:13PM 9	A. And I answered I would take it through a	9	BY MS. COHEN:
12:19:19PM 10	review process.	12:23:14PM 10	Q. If I ask you whether you see on Exhibit 10
12:19:20PM 11	Q. Nor could you tell me whether Exhibit 10	12:23:18PM 11	where it makes clear that the website offers a place to
12:19:25PM 12	adequately displays a commercial transaction, correct?	12:23:23PM 12	go get training for firearms, can you do that? Do you
12:19:27PM 13	A. I would take it through a review process.	12:23:30PM 13	see that somewhere?
12:20:13PM 14	Q. Let me ask you just a few more questions.	12:23:31PM 14	A. Could you frame your words in what you want me
12:20:14PM 15	MR. GARDNER: Is this a good time for a	12:23:34PM 15	to see?
12:20:17PM 16	break?	12:23:35PM 16	Q. Sure. Yeah. Yeah. I want you to tell me
12:20:18PM 17	MS. COHEN: After this line of	12:23:40PM 17	whether you see the following: Whether on this ad it
12:20:19PM 18	questioning.	12:23:50PM 18	directs readers that the website offers places to go
19	BY MS. COHEN:	12:23:58PM 19	get training for firearms?
12:20:20PM 20	Q. Looking at Exhibit 10, does Exhibit 10 -- does	12:24:01PM 20	A. It does not mention the word "firearms." The
12:20:51PM 21	Chapple Exhibit 10 make clear where a reader can go to	12:24:05PM 21	website has "TrainMeAZ.com."
12:21:00PM 22	get training for firearms?	12:24:12PM 22	Q. So does this ad direct readers that if they go
12:21:07PM 23	A. I see it directs people to a website.	12:24:16PM 23	to this website, they can find places where they can
12:21:11PM 24	Q. Okay. So is your answer that this ad does	12:24:19PM 24	get training for firearms?
12:21:14PM 25	direct people to a place where one could go get	12:24:21PM 25	A. The ad uses the word "educate"; the website

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12:24:27PM	1 uses the word "TrainMeAZ.com."	12:27:55PM	1 readers what they can find at the TrainMeArizona.com
12:24:30PM	2 Q. Okay. I see that. Not my question.	12:27:59PM	2 website?
12:24:33PM	3 Does the website say: "Go" -- does	12:28:00PM	3 A. The ad notes that you can find -- and I will
12:24:37PM	4 Exhibit 10 say, "Go to TrainMeArizona where you can get	12:28:06PM	4 just read from the ad. (As read): "Use the
12:24:41PM	5 information on where to get training for firearms?"	12:28:12PM	5 TrainMeAZ.com website to find training opportunities,
12:24:44PM	6 A. Using your words, those do not appear on the	12:28:14PM	6 shooting ranges, and classes of -- for any level of
12:24:49PM	7 ad.	12:28:19PM	7 skill - from your first-time shooting experiences (a
12:24:50PM	8 Q. Does the ad make clear that if you go to the	12:28:24PM	8 thrill you will always remember, just like the rest of
12:24:54PM	9 website "TrainMeArizona.com," you can find places to	12:28:27PM	9 us do), to the kind of tactical training the world's
12:24:59PM	10 get training for firearms?	12:28:32PM	10 elite special forces get - an experience few of us get
12:25:01PM	11 A. The ad does not note places. The ad does not	12:28:36PM	11 to experience."
12:25:05PM	12 use the word "firearms."	12:28:37PM	12 Q. Okay. And is that the end of that sentence?
12:25:09PM	13 Q. Okay. Just a few more questions, and then we	12:28:39PM	13 A. No -- well, it's the end of the sentence but
12:25:12PM	14 can take a break.	12:28:41PM	14 not the paragraph.
12:25:53PM	15 I'm showing you Chapple Exhibit 6. Do	12:28:43PM	15 Q. Okay. And then it continues on, right? Is
12:25:56PM	16 you recognize Chapple Exhibit 6?	12:28:45PM	16 that right?
12:25:59PM	17 A. It looks similar -- it looks similar to the ad	12:28:45PM	17 A. Yes, it talks about arming the nation -- or
12:26:00PM	18 that was submitted -- or I should say that we	18 training to arm -- "Nation trained to arm, confident in	
12:26:05PM	19 reviewed -- looked at with CBS.	12:28:51PM	19 our exercise of the Second Amendment right."
12:26:06PM	20 Q. Okay. And at your -- at your deposition last	12:28:51PM	20 Q. Oh, I'm sorry. That doesn't follow that. Are
12:26:13PM	21 time, we all agreed that it was hard to read the small	12:28:53PM	21 you going -- where is that?
12:26:17PM	22 language on either side of the heart, so we blew up	12:28:55PM	22 A. It says, in the same paragraph, I'm just
12:26:20PM	23 that language, and that is Chapple Exhibit 7.	12:28:58PM	23 reading the paragraph. I will read it word for word
12:26:23PM	24 So I want you to look at Chapple	12:29:01PM	24 if --
12:26:27PM	25 Exhibit 7, and look at the small language on the right	25 Q. No.	
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12:26:37PM	1 side of the heart at the bottom. Do you see the	1 A. -- it makes it easier.	
12:26:43PM	2 language that starts with "Use the TrainMeArizona.com	12:29:02PM	2 Q. That's not what I'm asking. I just thought it
12:26:47PM	3 website?" Do you see that?	12:29:03PM	3 was curious that you skipped that.
12:26:48PM	4 A. I do.	12:29:06PM	4 A. I didn't skip; it's what follows.
12:26:50PM	5 Q. Okay. Does -- and this is from the original	12:29:07PM	5 Q. Well, what follows, I thought, was "In
12:26:52PM	6 ad that the City -- this is the origi- -- Plaintiffs'	12:29:07PM	6 Arizona, marksmanship matters," but okay.
12:26:56PM	7 original ad that the City ordered removed, right?	12:29:10PM	7 A. I didn't read it word for word. I offered to
12:27:00PM	8 A. This is, looks like, an ad that was posted by	12:29:13PM	8 read it to you word for word.
12:27:06PM	9 CBS to a shelter.	12:29:15PM	9 Q. That's okay.
12:27:08PM	10 Q. And this is what you know to be the ad that's	10 A. Okay.	
12:27:11PM	11 at issue in this case?	12:29:16PM	11 Q. I think the point is, is that the "Use
12:27:12PM	12 A. This looks similar to the ad that is in issue	12:29:18PM	12 the TrainMeArizona, dot -- dot -- of the -- the
12:27:16PM	13 in this case.	12:29:18PM	13 Exhibit 7, which is a blowup of Exhibit -- of the
12:27:17PM	14 Q. Okay. Well, can you look back at 6,	12:29:21PM	14 language in Exhibit 6, does actually tell readers of
12:27:22PM	15 Exhibit 6? Do you understand Exhibit 6, Chapple	12:29:26PM	15 the ad, that if they go to TrainMeArizona.com, they can
12:27:29PM	16 Exhibit 6, to be the ad that's at issue in this case?	12:29:33PM	16 find places to go get training, right?
12:27:31PM	17 A. This ad looks similar to the ad that's at	12:29:39PM	17 A. The exact words are, "Use the web" -- "Use the
12:27:35PM	18 issue in the case.	12:29:47PM	18 TrainMeAZ.com website to find training opportunities,
12:27:36PM	19 Q. Is there some way that it looks different from	12:29:51PM	19 shooting ranges, and classes."
12:27:38PM	20 the ad that's at issue in this case?	12:29:58PM	20 Q. Now, in the statement that says (as read):
12:27:38PM	21 A. No. Unless I compare word to word, it looks	12:30:00PM	21 "Use the TrainMeArizona website to find training
12:27:42PM	22 similar.	12:30:03PM	22 opportunities," now that's not political, right?
12:27:42PM	23 Q. Okay. All right. And so Exhibit 8 is a	12:30:05PM	23 A. Well, what would you define as "political"?
12:27:45PM	24 blowup of the language that is on 7.	12:30:10PM	24 Q. Well, what would you define as "political"?
12:27:48PM	25 So does this ad -- does Exhibit 7 tell	12:30:12PM	25 A. I'm trying to answer your question based on

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01:02:30PM 1	A. I do.	01:05:34PM 1	A. It is a commercial radio station. This is the
01:02:31PM 2	Q. Okay. And you are familiar with the 2009	01:05:41PM 2	content of their commercial radio station.
01:02:33PM 3	standards, correct? Because you had to review ads when	01:06:07PM 3	Q. Where is the exchange of consideration on this
01:02:36PM 4	those standards were in effect, correct?	01:06:10PM 4	ad for the purchase of a product for service?
01:02:38PM 5	A. True.	01:06:13PM 5	A. This is a content of a commercial radio
01:02:39PM 6	Q. So that is what I'm asking you, to take that	01:06:19PM 6	station. Their product is the information, the show,
01:02:43PM 7	ad that is on the first page of Exhibit 26, and tell me	01:06:29PM 7	that they exchange with advertisers for the listeners
01:02:47PM 8	if it is compliant pursuant to the transit advertising	01:06:35PM 8	that participate or listen to their radio station.
01:02:53PM 9	standards that were enacted on December 8, 2009.	01:06:43PM 9	Q. What are the listeners exchanging with the
01:02:57PM 10	A. So you're asking me to take the two different	01:06:47PM 10	radio station?
01:03:00PM 11	time periods and take this one back as if it were	01:06:47PM 11	A. The radio station is selling to advertisers
01:03:03PM 12	proposed in 2009 and make a determination on that?	01:06:54PM 12	the number of listeners who are interested in the
01:03:09PM 13	Q. I -- well, I suppose that's one way of	01:06:57PM 13	content and who tune in to the radio station.
01:03:12PM 14	phrasing it, but I think a clearer way of phrasing it	01:07:01PM 14	Q. What is the radio station selling the readers
01:03:15PM 15	is: Take those 2009 standards and tell me if that ad	01:07:05PM 15	of this ad?
01:03:19PM 16	that's sitting in front of you complies with those	01:07:06PM 16	A. The radio station sells to the readers of the
01:03:25PM 17	standards.	01:07:09PM 17	ad commercial advertisement.
01:03:26PM 18	A. And if I had received this ad in 2009, I would	01:07:13PM 18	Q. So the readers are buying advertisement from
01:03:31PM 19	have done a review with our team on this one.	01:07:16PM 19	the radio?
01:03:38PM 20	Q. Why?	01:07:16PM 20	A. Let me rephrase that.
01:03:38PM 21	A. Because that's what we do when we have a	01:07:18PM 21	The advertiser -- or the radio station is
01:03:43PM 22	question on an ad.	01:07:23PM 22	proposing a commercial transaction to its listeners by
01:03:45PM 23	Q. Do you have a question on this ad?	01:07:30PM 23	listening to the radio station, which is a commercial
01:03:46PM 24	A. When I received this ad, we did take it	01:07:35PM 24	station. Their product is a Christian product.
01:03:52PM 25	through a team review.	01:07:43PM 25	Q. So if you listen to this station, what do the
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01:03:53PM 1	Q. Who was part of that team review?	01:07:46PM 1	readers get if they listen to this station?
01:03:55PM 2	A. Our lawyer and --	01:07:50PM 2	A. I myself haven't listened to the station, but
01:04:00PM 3	Q. Who is your lawyer?	01:07:53PM 3	the listeners listen to commercial advertisements,
01:04:01PM 4	A. His name is Ted Mariscal.	01:08:02PM 4	products to be sold in return for the ratings numbers,
01:04:08PM 5	And I don't recall everybody who reviewed	01:08:10PM 5	the number of listeners that tune in to the radio
01:04:11PM 6	it, but there was a review with our legal.	01:08:11PM 6	station.
01:04:16PM 7	Q. Okay. And that -- so but my question is: As	01:08:11PM 7	Q. So what do the readers give to the radio
01:04:19PM 8	you sit here today, and you look at the first page of	01:08:14PM 8	station in exchange for whatever it is they're getting
01:04:23PM 9	Exhibit 26, and you look at under -- you look at it	01:08:17PM 9	from the radio station?
01:04:27PM 10	under the 2009 standards, can you tell me whether it	01:08:19PM 10	A. The ratings, the count that is sold to the
01:04:31PM 11	complies with those standards?	01:08:25PM 11	advertiser. They are the product that the radio
01:04:32PM 12	A. And once again, the two different time	01:08:28PM 12	station sells to the advertiser, and in turn, the
01:04:38PM 13	periods, this was not -- I don't recall this being	01:08:37PM 13	advertiser purchases commercial time to sell products
01:04:42PM 14	received in 2009, but it was --	01:08:40PM 14	to them.
01:04:46PM 15	Q. If it had been, what would your answer have	01:08:40PM 15	Q. Okay. The readers aren't exchanging any money
01:04:51PM 16	been?	01:08:43PM 16	or services to the radio station, right?
01:04:51PM 17	A. My answer would have been to review it with	01:08:48PM 17	A. The listeners or the readers are the product
01:04:54PM 18	our legal -- with legal and with other people that	01:08:53PM 18	that the radio station sells to an advertiser for the
01:05:00PM 19	might be appropriate in our department.	01:09:00PM 19	commercial exchange of -- well, exchange of money or --
01:05:03PM 20	Q. Okay. And so as you look at this ad today,	01:09:07PM 20	well, money. And so the potential listeners -- or the
01:05:15PM 21	page 1 of Exhibit 26, can you point to the proposed	01:09:14PM 21	listeners are the product the radio station sells to
01:05:21PM 22	commercial transaction on this ad?	01:09:18PM 22	the advertiser, and the advertiser in turn sells a
01:05:23PM 23	A. AM 1360 is a commercial radio station. They	01:09:22PM 23	product to those listeners.
01:05:31PM 24	sell ads.	01:09:35PM 24	Q. So what are the readers of this ad getting in
01:05:32PM 25	Q. Where is the commercial transaction?	01:09:39PM 25	exchange for something -- what are the readers giving

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01:09:44PM	1 in exchange for listening to the radio?	01:13:02PM	1 Q. I understand that. So I'm asking you to cover
01:09:48PM	2 A. The readers become potential listeners, if	01:13:04PM	2 the rest of the ad and just have the crucifix showing
01:09:52PM	3 they are interested in the product and they become the	01:13:08PM	3 and if that's all that was on the ad, would that be
01:09:56PM	4 ratings numbers for the radio station to sell to the	01:13:11PM	4 proposing a commercial transaction?
01:10:01PM	5 advertiser.	01:13:12PM	5 A. I would take this to a review team and we
01:10:02PM	6 Q. Okay. So the readers aren't paying for	01:13:16PM	6 would look at that ad, if it were actually submitted to
01:10:06PM	7 anything, right?	01:13:21PM	7 us, and make a determination.
01:10:07PM	8 A. The readers also -- the readers buy things	01:13:23PM	8 Q. Wait. Did I get this right? So your
01:10:15PM	9 from the commercial advertiser, and this is the medium	01:13:26PM	9 testimony is you can't look at an ad that consists of a
01:10:21PM	10 in which those propositions are made.	01:13:29PM	10 cross or a crucifix and tell me whether it proposes a
01:10:32PM	11 Q. By the way, this ad that's page 1 of	01:13:34PM	11 commercial transaction or not in accordance with the
01:10:35PM	12 Exhibit 26, is this compliant with the 2011 standards?	01:13:38PM	12 City's transit advertising standards, whether from 2009
01:10:38PM	13 A. This was accepted during that time period. It	01:13:41PM	13 or 2011?
01:10:41PM	14 is compliant with our standards.	01:13:42PM	14 A. I'm detailing -- or I'm noting the practice
01:10:43PM	15 Q. Okay. And do you -- can you -- okay, when	01:13:45PM	15 when we receive an ad that is questionable and that we
01:10:48PM	16 I asked you where does this ad propose a commercial	01:13:50PM	16 follow so that I can communicate with CBS about its
01:10:50PM	17 transaction, you pointed to "AM 1360," correct?	01:14:02PM	17 compliance to our advertising standards.
01:10:55PM	18 A. That is a commercial radio station.	01:14:11PM	18 Q. But on your own, just looking at an ad that
01:10:58PM	19 Q. Okay. Now, looking at -- okay, what -- what	01:14:16PM	19 just contains this blue crucifix, you could not look at
01:11:11PM	20 else is on this ad? What's -- is this a blue crucifix	01:14:20PM	20 it on its face and determine whether or not it proposed
01:11:17PM	21 that's made out of Band-Aids?	01:14:23PM	21 a commercial transaction pursuant to the 2009 or 2011
01:11:19PM	22 A. It's a Band-Aid in the shape of a cross.	01:14:29PM	22 City of Phoenix transit advertising standards; is that
01:11:23PM	23 Q. And do you know what the size of this -- is	01:14:32PM	23 right?
01:11:26PM	24 this called a "kiosk" that this ad's on in this photo?	01:14:32PM	24 A. I have a process that I follow --
01:11:30PM	25 A. It can be known as that.	01:14:39PM	25 Q. Not my question.
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01:11:32PM	1 Q. Okay. How large is this kiosk?	01:14:40PM	1 A. That's my process.
01:11:34PM	2 A. I forget the exact size.	01:14:42PM	2 Q. Well, honestly, I've heard your process.
01:11:37PM	3 Q. Estimate?	01:14:44PM	3 A. Okay.
01:11:38PM	4 A. I think the height is 72 inches.	01:14:44PM	4 Q. And at this point, I'm not interested in your
01:11:41PM	5 Q. And the width?	01:14:47PM	5 process for the purpose of this question.
01:11:42PM	6 A. I'm thinking 48, but I could be wrong.	01:14:49PM	6 My question is: As you sit here today,
01:11:46PM	7 Q. Okay. You're estimating?	01:14:54PM	7 as the contract liaison manager who makes
01:11:47PM	8 A. I am estimating.	01:14:58PM	8 determinations on whether ads comply with the City's
01:11:48PM	9 Q. Okay. How large is this crucifix on the ad?	01:15:03PM	9 transit advertising standards, you can look at an ad --
01:11:52PM	10 A. Well, it looks like it takes up, possibly,	01:15:05PM	10 and I'm -- at the ad that is the first page of
01:11:57PM	11 50 percent of the ad.	01:15:08PM	11 Exhibit 26, and remove all the language and just leave
01:11:58PM	12 Q. Okay. And is that proposing a commercial	01:15:10PM	12 the blue crucifix and tell me whether that proposes a
01:12:03PM	13 transaction, the crucifix?	01:15:13PM	13 commercial transaction pursuant to the City's current
01:12:04PM	14 A. Their product they sell is a Christian	01:15:15PM	14 and former transit advertising standards?
01:12:10PM	15 product.	01:15:21PM	15 A. And I'm telling you what my process would be,
01:12:11PM	16 Q. So is the crucifix proposing a commercial	01:15:25PM	16 to question the ad, to review it with people.
01:12:19PM	17 transaction?	01:15:29PM	17 Q. Okay. So you don't -- but by yourself, here
01:12:21PM	18 A. An ad is taken in its totality and we look at	01:15:32PM	18 today, you cannot tell me whether or not that just --
01:12:27PM	19 the overall ad and the design. And the information,	01:15:36PM	19 an ad with this blue crucifix would propose a
01:12:34PM	20 along with that design, meets the compliance, the	01:15:40PM	20 commercial transaction; is that correct?
01:12:40PM	21 standards.	01:15:42PM	21 A. Yes.
01:12:51PM	22 Q. So in and of itself, if the ad just had the	01:15:45PM	22 Q. Thank you.
01:12:56PM	23 blue crucifix on it, would that be proposing a	01:15:50PM	23 So what -- now, looking at this ad, first
01:12:59PM	24 commercial transaction?	01:15:53PM	24 page of Exhibit 26, what are the largest letters of
01:13:00PM	25 A. That wasn't an ad submitted to us.	01:15:58PM	25 this page? What words are -- made up -- make up -- I'm

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01:16:01PM	1	01:19:36PM	1
01:16:05PM	2	01:19:41PM	2
01:16:05PM	3	01:19:46PM	3
01:16:13PM	4	01:19:46PM	4
01:16:16PM	5	01:19:51PM	5
01:16:19PM	6	01:19:53PM	6
01:16:23PM	7	01:19:57PM	7
01:16:27PM	8	01:19:58PM	8
01:16:31PM	9	01:20:00PM	9
01:16:32PM	10	01:20:01PM	10
01:16:37PM	11	01:20:06PM	11
01:16:40PM	12	01:20:13PM	12
01:16:43PM	13	01:20:19PM	13
01:16:47PM	14	01:20:25PM	14
01:16:49PM	15	01:20:29PM	15
01:16:53PM	16	01:20:34PM	16
01:16:54PM	17	01:20:42PM	17
01:17:03PM	18	01:20:50PM	18
01:17:17PM	19	01:20:53PM	19
01:17:21PM	20	01:20:55PM	20
01:17:23PM	21	01:21:01PM	21
01:17:28PM	22	01:21:05PM	22
01:17:31PM	23	01:21:05PM	23
01:17:35PM	24	01:21:06PM	24
01:17:36PM	25	01:21:09PM	25
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01:17:39PM	1	01:21:11PM	1
01:17:42PM	2	01:21:16PM	2
01:17:42PM	3	01:21:19PM	3
01:17:46PM	4	01:21:21PM	4
01:17:50PM	5	01:21:25PM	5
01:17:58PM	6	01:21:27PM	6
01:17:59PM	7	01:21:33PM	7
01:18:03PM	8	01:21:34PM	8
01:18:06PM	9	01:21:38PM	9
01:18:07PM	10	01:21:41PM	10
01:18:11PM	11	01:21:48PM	11
01:18:19PM	12	01:21:48PM	12
01:18:26PM	13		13
01:18:30PM	14		14
01:18:32PM	15		15
01:18:37PM	16	01:21:49PM	16
01:18:43PM	17		17
01:18:51PM	18	01:21:50PM	18
01:18:51PM	19	01:21:52PM	19
01:18:57PM	20	01:21:53PM	20
01:19:05PM	21	01:21:56PM	21
01:19:17PM	22	01:22:00PM	22
01:19:21PM	23	01:22:07PM	23
01:19:29PM	24	01:22:10PM	24
01:19:33PM	25	01:22:14PM	25

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01:22:22PM 1	commercial transaction on the radio station.	01:25:16PM 1	"Perspective," and "Answers," in and of themselves
01:22:27PM 2	Q. So this ad, it contains language that I think	01:25:19PM 2	don't propose the commercial transaction, right?
01:22:33PM 3	you said in your other -- in your deposition that --	01:25:22PM 3	A. If you take words separately, but we don't, we
01:22:37PM 4	that an ad can have language that enhances the	01:25:28PM 4	look at this as a whole --
01:22:40PM 5	commercial transaction? Do you recall that testimony?	01:25:29PM 5	Q. If you take words separately, do those words
01:22:42PM 6	A. Yes.	01:25:33PM 6	"Jesus Heals" and "Life," "Perspective," and "Answers"
01:22:43PM 7	Q. Okay. So are you saying this "Jesus at Work"	01:25:37PM 7	propose a commercial transaction?
01:22:48PM 8	enhances the commercial transaction?	01:25:45PM 8	A. The ads are looked at in their totality.
01:22:49PM 9	A. "Jesus at Work" is the content of the radio	01:25:48PM 9	Q. I got that. Not my question.
01:22:54PM 10	station; what it sells. It is its product. It sells	01:25:50PM 10	Here's the ad. Take the "AM 1360" out
01:23:00PM 11	to its advertisers. It is what it uses to attract	01:25:54PM 11	and just read it without the "AM." My pen is covering
01:23:04PM 12	listeners to its content, which is both sold to the	01:25:57PM 12	"AM 1360." Does this ad propose a commercial
01:23:08PM 13	advertisers and, in turn, the advertisers propose their	01:26:02PM 13	transaction?
01:23:12PM 14	commercial transaction to the listeners.	01:26:02PM 14	A. But it's not the ad.
01:23:13PM 15	Q. So, in fact, the words "Life," "Perspective,"	01:26:04PM 15	Q. Yet I will stipulate to that.
01:23:17PM 16	and "Answers," do those -- what are those words? Do	01:26:06PM 16	A. Okay. It's a portion of an ad that's covered
01:23:21PM 17	those propose a commercial transaction?	01:26:09PM 17	up.
01:23:23PM 18	A. Those are the content of the radio station,	01:26:09PM 18	Q. No, it's a new ad that I'm putting in front of
01:23:31PM 19	and, as part of the ad as a whole, are what the radio	01:26:12PM 19	you because you -- you have the experience and training
01:23:35PM 20	station -- the radio station's product used to attract	01:26:45PM 20	to determine whether a -- proposed advertisements are
01:23:43PM 21	listeners; so in turn, they can sell those listeners,	01:26:49PM 21	commercial or not, right?
01:23:47PM 22	the number of listeners to their advertisers, and their	01:26:51PM 22	A. Yes.
01:23:52PM 23	advertisers can propose commercial transactions to	01:26:51PM 23	Q. Okay. So I'm showing you this ad. It's a new
01:23:52PM 24	them.	01:26:55PM 24	ad. It's called "Jesus Heals" and it says -- it's got
01:23:55PM 25	Q. So if a reader is looking to be healed, this	01:27:00PM 25	the -- I'm just showing it to you, so what I'm doing is
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01:23:59PM 1	ad is saying Jesus will heal you; is that fair to say?	01:27:03PM 1	I'm modifying the first page of Exhibit 26 and I'm
01:24:04PM 2	"Listen to AM 1360 and Jesus will heal you?"	01:27:07PM 2	covering -- and the only thing we're omitting is "AM
01:24:10PM 3	A. I don't know what a listener would think from	01:27:12PM 3	1360" and I want you to tell me if this proposes a
01:24:12PM 4	that ad or what they would attain from that ad, in that	01:27:15PM 4	commercial transaction?
01:24:20PM 5	respect.	01:27:16PM 5	A. If this were to come to me from you as a
01:24:24PM 6	Q. Well, okay, but -- so since you look at ads in	01:27:19PM 6	proposed ad, I would review this with our team and
01:24:28PM 7	the totality, I think that was your testimony, right?	01:27:25PM 7	discuss whether or not it met -- met our transit
01:24:30PM 8	A. Uh-huh.	01:27:32PM 8	advertising standards.
01:24:34PM 9	Q. Yes. You have to say "yes" or "no."	01:27:33PM 9	Q. So just by looking at its face, you can't tell
01:24:36PM 10	A. Yes.	01:27:36PM 10	me whether my proposed ad that has everything but "AM
01:24:37PM 11	Q. Okay. So when you look at this ad in its	01:27:40PM 11	1360" on it is compliant with the City's transit
01:24:39PM 12	totality, it contains language that is -- that you say	01:27:43PM 12	advertising standards?
01:24:44PM 13	proposes a commercial transaction and that's AM 1360,	01:27:44PM 13	A. I would take it to the review process.
01:24:49PM 14	right?	01:27:47PM 14	Q. Okay. Now, if I show it to you, just I take
01:24:49PM 15	A. Yes.	01:27:50PM 15	my pen away and this is the ad that's been approved, as
01:24:49PM 16	Q. And then there's language that isn't limited	01:27:57PM 16	you've said, first page of 26, under the 2011
01:24:52PM 17	to proposing a commercial transaction, right, and	01:27:59PM 17	standards, right? Right?
01:24:55PM 18	that's the "Jesus Heals" and the "Life," "Perspective,"	01:27:59PM 18	A. It was approved, yes --
01:24:59PM 19	and "Answers" language?	19	Q. Right?
01:24:59PM 20	A. It is the content of the radio station.	01:28:01PM 20	A. -- or accepted, yes.
01:25:00PM 21	Q. Right. So those words, "Jesus Heals," "Life,"	01:28:04PM 21	Q. So -- so showing you that ad, I mean, it's
01:25:05PM 22	"Perspective," and "Answers" are not limited to the	01:28:13PM 22	fair to say that it is -- well, let me ask you. Sorry.
01:25:07PM 23	proposing a commercial transaction?	01:28:15PM 23	I know what my question was.
01:25:09PM 24	A. I'm sorry. I don't understand your question.	01:28:17PM 24	Looking at page 1 of Exhibit 26, where is
01:25:13PM 25	Q. Well, the words "Jesus Heals" and "Life,"	01:28:20PM 25	the -- is the commercial transaction adequately

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01:28:23PM 1	displayed?	01:31:45PM 1	Q. Okay. But in -- almost in every ad that I've
01:28:24PM 2	A. Yes.	01:31:49PM 2	showed you today, you were unable to tell me whether or
01:28:24PM 3	Q. Where?	01:31:53PM 3	not it would comply with the City's standards; isn't
01:28:25PM 4	A. AM 1360, the content of the ad is revealed --	01:31:57PM 4	that right?
01:28:32PM 5	or the content of the radio station is revealed.	01:31:57PM 5	A. In the ads that you showed me -- well, excuse
01:28:36PM 6	Q. What does that mean, "the content of the ad"?	01:32:01PM 6	me -- in your proposition for what you would submit as
01:28:39PM 7	A. That means, the product that the radio station	01:32:09PM 7	an ad, my answer would be: I would review it.
01:28:42PM 8	sells is a Christian product that they sell to their	01:32:58PM 8	Q. Can you tell me what it means when -- in the
01:28:49PM 9	advertisers -- they sell to their advertisers -- well,	01:33:01PM 9	2009 standards, where it said -- where it says that,
01:28:50PM 10	they -- they -- they propose to their listeners, who	01:33:14PM 10	Section B, "the subject matter of the transit bus
01:28:59PM 11	are the product, that they sell to the advertisers, the	01:33:16PM 11	shelter in bench advertising shall be limited to
01:29:02PM 12	ratings; and in turn, those -- those advertisers sell	01:33:18PM 12	speech, which proposes a commercial transaction?"
01:29:08PM 13	their product to the listeners.	01:33:20PM 13	Can you tell me what it means, where it
01:29:09PM 14	It is the medium in which the commercial	01:33:22PM 14	says, "the subject matter shall be limited to speech,
01:29:14PM 15	proposition is done.	01:33:28PM 15	which proposes a commercial transaction?"
01:29:15PM 16	Q. Okay. So I have a -- I'm going to give you a	01:33:31PM 16	A. It means that the ad will propose a commercial
01:29:18PM 17	new ad to look at since you, according to your	01:33:37PM 17	transaction.
01:29:21PM 18	declaration, have the training and experience to	01:33:39PM 18	Q. But it can contain speech that doesn't, on its
01:29:23PM 19	determine whether proposed advertisements are	01:33:43PM 19	own, propose a commercial transaction; or must all the
01:29:26PM 20	commercial or not.	01:33:46PM 20	speech on the ad propose a commercial transaction?
01:29:28PM 21	If I take everything off this ad except	01:33:48PM 21	A. Does it say that every word on an ad has to
01:29:32PM 22	"AM 1360," okay? So I'm showing, Ms. Chapple, I have	01:33:54PM 22	propose a commercial transaction? It says that the
01:29:37PM 23	an ad and all it is is a big blank sign with the words	01:34:00PM 23	subject matter of the ad. And an ad is the full
01:29:41PM 24	"AM 1360"; does that propose a commercial transaction?	01:34:04PM 24	presentation of what is sent to us.
01:29:44PM 25	A. AM 60 (sic) is a commercial radio station, and	01:34:12PM 25	Q. So does it say that it can't contain language
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01:29:55PM 1	I would review it and discuss it before making that	01:34:16PM 1	that doesn't propose a commercial transaction?
01:30:03PM 2	decision with my team.	01:34:18PM 2	A. The ad says -- or the information says that
01:30:07PM 3	Q. So you couldn't tell me, as you sit here	01:34:26PM 3	the ad, in its totality, will propose a commercial
01:30:09PM 4	today, whether an ad that simply said "AM 1360" would	01:34:32PM 4	transaction.
01:30:13PM 5	comply with the City's current transit advertising	01:34:37PM 5	Q. Is the term -- does the term "Jesus Heals"
01:30:18PM 6	standards, right?	01:34:48PM 6	favor or disfavor any particular religious view?
01:30:18PM 7	A. I would review it first.	01:34:54PM 7	A. I think it states what that particular
01:30:20PM 8	Q. Why?	01:35:00PM 8	religion is.
01:30:21PM 9	A. That is the practice when we receive ads, to	01:35:03PM 9	(Pause in the proceedings.)
01:30:28PM 10	take a look at them.	01:35:44PM 10	Q. You're thinking, right?
01:30:31PM 11	Q. So when you stated in your declaration at	01:35:46PM 11	A. I thought I gave my answer.
01:30:35PM 12	paragraph 34 -- I'm sorry, that's statements of facts.	01:35:48PM 12	Q. Oh, no.
01:31:09PM 13	Okay. In the defendants' motion for	01:35:48PM 13	MS. COHEN: Can you reread the answer?
01:31:12PM 14	summary judgment, when they -- when they -- when the	01:35:50PM 14	I thought you paused.
01:31:14PM 15	defendants stated that, "Marie Chapple has experience	01:35:56PM 15	(The requested portion was read by the
01:31:17PM 16	and training in determining whether proposed	16	reporter as follows:
01:31:20PM 17	advertisements were commercial or not"; is that a true	17	"ANSWER: I think it states
01:31:23PM 18	statement, or should it read that (as read:) "You have	18	what that particular
01:31:26PM 19	the experience and training to determine whether	01:35:58PM 19	religion is.")
01:31:28PM 20	proposed advertisement -- advertisements were	20	BY MS. COHEN:
01:31:30PM 21	commercial or not as long as you can consult with other	01:35:58PM 21	Q. So it does favor a particular religion, this
01:31:33PM 22	people?"	01:36:05PM 22	ad?
01:31:36PM 23	A. It is a true statement, and part of the	01:36:05PM 23	A. It states what it is. It speaks to people who
01:31:40PM 24	practice is to consult with other people when	01:36:09PM 24	would be interested in the contents of the radio
01:31:45PM 25	necessary.	01:36:11PM 25	station and the product of the radio station, which is

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02:13:01PM	1 Q. But when you first saw it, you could not	02:16:10PM	1 looked like a public service announcement. It was not
02:13:03PM	2 determine whether or not the ad adequately displayed a	02:16:15PM	2 clear that it was a -- an event that you pay for. And
02:13:07PM	3 commercial transaction, correct?	02:16:23PM	3 so we asked for a modification on that one.
02:13:09PM	4 A. When I saw it, I did not realize that iRun was	02:16:27PM	4 Q. And what do you mean that "the ad looked like
02:13:12PM	5 the name of the business, and it was a confusing ad to	02:16:30PM	5 a public service announcement?"
02:13:15PM	6 me.	02:16:33PM	6 A. I cannot recall all the elements of the ad at
02:13:19PM	7 Q. Okay. So on its face, you thought the ad was	02:16:40PM	7 the moment, but it did not look like it was an event or
02:13:21PM	8 confusing, is that right?	02:16:46PM	8 a transaction was proposed.
02:13:23PM	9 A. On its face, I did not know that it was a	02:17:09PM	9 Q. And so by putting that there was a fee to
02:13:28PM	10 business, I did not understand what it was promoting.	02:17:12PM	10 participate in this event would make it compliant with
02:13:34PM	11 Q. Well, so by looking at it, you don't know what	02:17:19PM	11 the City's transit advertising standards?
02:13:37PM	12 they're promoting?	02:17:21PM	12 A. To put that there was a registration required
02:13:39PM	13 A. From my review of it, I did not know that iRun	02:17:23PM	13 or something to that effect would, in total,
02:13:46PM	14 was a business that -- that was the name of the	02:17:34PM	14 communicate there was a commercial transaction to it.
02:13:50PM	15 business.	02:18:30PM	15 Q. I want to show you Chapple Exhibit 11, and I'm
02:13:58PM	16 Q. And what are they promoting?	02:18:39PM	16 looking at the last -- these aren't Bates-numbered at
02:14:01PM	17 A. They are a --	02:18:47PM	17 all. The fifth page of Chapple Exhibit 11. Where is
02:14:03PM	18 Q. I'm sorry. What are they proposing?	02:19:03PM	18 the proposed commercial transaction in that ad?
02:14:05PM	19 A. They are proposing you go to their store,	02:19:07PM	19 A. I don't know.
02:14:09PM	20 which is called iRun, and they give the location of the	02:19:09PM	20 Q. Does it state that there's a fee for the
02:14:14PM	21 store.	02:19:11PM	21 pregnancy test that's stated -- that's put -- the
02:14:14PM	22 Q. I'm not a marathon runner. I never heard of	02:19:16PM	22 pregnancy -- I'm sorry -- is there a fee stated on the
02:14:28PM	23 this store.	02:19:19PM	23 face of that ad of how much it would cost to get a
02:14:31PM	24 Okay. So --	02:19:23PM	24 pregnancy test?
02:14:48PM	25 (Exhibit No. 33 was marked.)	02:19:24PM	25 A. It does not appear to be.
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02:14:50PM	1 BY MS. COHEN:	02:19:26PM	1 Q. In fact, it says, "Free pregnancy test,"
02:14:56PM	2 Q. I'm showing you what's been marked Exhibit 33.	02:19:29PM	2 doesn't it?
02:15:03PM	3 Can you just look through it? It's Korwin 2314, 2315,	02:19:29PM	3 A. Those are the words.
02:15:13PM	4 and 2316 and 2317; is that right?	02:19:39PM	4 Q. This same exhibit, different page, what is
02:15:13PM	5 A. Yes.	02:19:44PM	5 that? It's on a City of Phoenix transit stop. What is
02:15:17PM	6 Q. Can you just verify this is an e-mail exchange	02:19:50PM	6 that -- commercial transaction is that proposing?
02:15:17PM	7 between you and other people?	02:19:52PM	7 A. The commercial transaction on this -- well,
02:15:18PM	8 A. Yes.	02:19:56PM	8 there is the downtown commercial center of Phoenix.
02:15:21PM	9 Q. And on the first page there's a discussion	02:20:01PM	9 Q. What's the commercial transaction that it's
02:15:23PM	10 about an ad for a bike ride?	02:20:05PM	10 proposing?
02:15:27PM	11 A. Yes.	02:20:05PM	11 A. Well, that particular photo, which you have
02:15:28PM	12 Q. Okay. And you are giving an opinion about	02:20:17PM	12 shown me before in a prior discussion, is a museum in
02:15:32PM	13 what the ad needs to include in order to make it	02:20:22PM	13 the downtown area.
02:15:35PM	14 compliant with the City's transit advertising	02:20:25PM	14 Q. Okay. Is that ad promoting the museum in some
02:15:39PM	15 standards; is that right?	02:20:31PM	15 manner?
02:15:39PM	16 A. Yes.	02:20:31PM	16 A. The ad shows the museum and that it's in the
02:15:40PM	17 Q. And is it your position that an event needs to	02:20:36PM	17 downtown area, and it's promoting a commercial area of
02:15:42PM	18 state a fee on its face in order for an event -- an ad	02:20:41PM	18 the City.
02:15:48PM	19 proposing an event to comply with the -- that didn't	02:20:43PM	19 Q. Do I have to pay to go to that commercial area
02:15:53PM	20 make sense.	02:20:47PM	20 in the City?
02:15:54PM	21 Are you saying that an event that is	02:20:47PM	21 A. You pay to participate in what the downtown
02:15:59PM	22 advertised on an ad must state that there is a fee	02:20:55PM	22 area offers, such as museums and restaurants and other
02:16:02PM	23 charged for that event in order for it to comply with	02:20:59PM	23 businesses that are down there.
02:16:05PM	24 the City's transit advertising standards?	02:21:02PM	24 Q. But I don't have to pay, right? I can just go
02:16:08PM	25 A. In this particular case, the look of the ad	02:21:07PM	25 downtown.

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

ALAN KORWIN, et al.,
Plaintiffs,

vs.

DEBBIE COTTON, et al.,
Defendants.

}
}
}
}
}
} CV2011-009838
}
}
}
}

DEPOSITION OF MARIE CHRISTINE CHAPPLE CAMACHO

November 22, 2011
Phoenix, Arizona
10:00 a.m.

PREPARED FOR:

ATTORNEY AT LAW

(COPY)

REPORTED BY:

Mary Davis, RPR
Arizona CCR No. 50271

MARIE CHRISTINE CHAPPLE CANACHO,
 a witness herein, having been first duly sworn by the
 Captioned Reporter to speak the truth and nothing but
 the truth, was examined and testified as follows:

EXAMINATION

BY MR. CONNOR:

Q. Good morning, Ms. Chapple.

A. Good morning.

Q. How would you like to be addressed?

A. Ms. Chapple is fine.

Q. My name is Diane Connor and I represent the
 plaintiffs in this matter. I will be taking your
 deposition today. You sat through the deposition of
 Ms. Cotton, so you at least know how it's going to go
 today.

Can you state your full name for the record?

A. Yes, Marie Christine Chapple Canacho.

Q. Have you given a deposition before?

A. Yes.

Q. How many?

A. One.

Q. And what case was that?

A. The name of the case?

Q. Yes.

OTTMAR & ASSOCIATES 602-485-1488

case?

A. No.

Q. I am going to be asking you a series of
 questions today. If at any time you do not understand
 my question or you need me to repeat it, please let me
 know. Okay?

A. Yes.

Q. Otherwise, when I ask you a question, and you
 answer it, I will assume that you have understood my
 question and answered it fully and accurately and to
 the best of your ability. All right?

A. Yes.

Q. Now, I'm going to start then with the
 questions.

Can you just tell me where you are currently
 employed?

A. City of Phoenix.

Q. And what is your current position?

A. Public Information Officer.

Q. And how long have you held that position?

A. With public transit?

Q. As the public information officer with the
 Department of Public Transit?

A. Since -- 12 years. Since -- I'm sorry, 2006
 March 2006.

OTTMAR & ASSOCIATES 602-485-1488

A. I don't know.

Q. Were you a defendant?

A. I --

MR. GARDNER: Were you being sued?

THE WITNESS: Not me, personally, no.

BY MR. CONNOR:

Q. Was the City of Phoenix the defendant?

A. Yes.

Q. And do you recall the nature of the lawsuit?

A. Yes.

Q. And what was it?

A. It was a bus/pedestrian incident.

Q. Was it an injury case?

A. Yes.

Q. Okay. But you have given -- have you given
 testimony in any other form, whether deposition or
 trial?

A. If I went to a trial, for example?

Q. If you were a witness in a trial?

A. Yes.

Q. For the City of Phoenix?

A. No.

Q. Was it personal?

A. It was an accident I witnessed.

Q. Okay. Have you given testimony in any other

OTTMAR & ASSOCIATES 602-485-1488

Q. And how did you -- did you apply for that
 position?

A. Yes.

Q. And what are the duties of your position?

A. Media relations, public records coordination,
 records retention oversight, contract management for
 bus advertising, contract monitor for bus shelter
 advertising, web coordinator. Those are the main ones.

Q. And have you held these duties throughout the
 tenure of your employment as a public information
 officer?

A. No.

Q. Okay. For how long have you -- how long have
 these been your duties?

A. They vary.

Q. So have you been, for example, for

contract -- your duties regarding contract management
 for bus advertising, how long have you been responsible
 for that duty?

A. Since about August 2006.

Q. And how long have you been responsible for
 contract management for bus shelter advertising?

A. Contract monitoring.

Q. Okay. I'm sorry. You've been contract
 manager -- I'm sorry, can you --

OTTMAR & ASSOCIATES 602-485-1488

1 A. Yes. Contract monitor for bus shelter.
 2 Q. And how long have you held the duty of a
 3 contract monitor for bus shelter advertising?
 4 A. Summer of 2010.
 5 Q. And how did you come to start -- how did you
 6 come to be responsible for the duty of being the
 7 contract monitor?
 8 A. It was assigned to me.
 9 Q. By whom?
 10 A. Debbie Cotton.
 11 Q. And do you know who held that responsibility
 12 before you?
 13 A. I'm not sure.
 14 Q. Do you have a belief as to who held that job
 15 before you did?
 16 A. There's one of two people. I'm not sure of
 17 the sequence.
 18 Q. Who are they?
 19 A. Eileen Gathers and Herb Munoz.
 20 Q. And when you first started in 2000 as a public
 21 information officer, what were your duties?
 22 A. Media relations, web coordination, public
 23 outreach, public involvement. Public involvement, I
 24 still hold. I had various media channels that I was
 25 responsible for, for example, on programs, such as a

1 already handling contract management for bus
 2 advertising?
 3 A. Yes.
 4 Q. Prior to August of 2006, did either Herb or
 5 Kim consult you with -- consult with you regarding bus
 6 shelter advertising and whether it complied with city
 7 advertising standards?
 8 A. No.
 9 Q. Did anyone, prior to August of 2006, consult
 10 with you regarding bus shelter advertising and whether
 11 it complied with City of Phoenix transit standards?
 12 A. No.
 13 Q. Prior to August of 2006, what experience did
 14 you have with determining whether bus advertising or
 15 any transit advertising complied with City of Phoenix
 16 Transit Advertising Standards?
 17 A. None.
 18 Q. When you first were given the responsibility
 19 for contract management for bus advertising, did you
 20 undergo any training?
 21 A. Yes.
 22 Q. And when was that?
 23 A. Immediately.
 24 Q. And what training did you receive immediately?
 25 A. Started consultation with the legal

1 show on Channel 11. Things like that.
 2 Q. And is -- when was -- was 2006 the first time
 3 you were responsible for contract management for bus
 4 advertising?
 5 A. Yes.
 6 Q. Did you have any involvement with that such
 7 management before August of 2006?
 8 A. For public transit, no.
 9 Q. And did you have any involvement with being a
 10 contract monitor for bus shelter advertising before the
 11 summer of 2010?
 12 A. Yes.
 13 Q. And when was that?
 14 A. At various times facility staff that Herb and
 15 Kim belonged to, consulted me on various advertising.
 16 Q. And what does that mean that they consulted
 17 you on various advertising?
 18 A. When they reviewed ads, they would ask me, do
 19 I have something similar? They'd ask me questions
 20 about how I would decide on something.
 21 Q. What do you mean? Decide on what?
 22 A. Content of the ad; if it met compliance.
 23 Q. Compliance with what?
 24 A. The Transit Advertising Standards.
 25 Q. And did they consult with you because you were

1 Department.
 2 Q. And who did you consult with?
 3 A. At the time, his name was Alan Max.
 4 Q. And what other training did you receive?
 5 A. Through Alan, articles, reports, other things
 6 to review.
 7 Q. So did Alan then forward to you articles,
 8 reports, and other things to review?
 9 A. Yes.
 10 Q. Did anyone else forward to you articles,
 11 reports, and other things to you as part of your
 12 training?
 13 A. No.
 14 Q. And for how long did this consultation with
 15 Mr. Max continue?
 16 A. I'm not sure.
 17 Q. Was there a specified training period?
 18 A. No. It was continuous.
 19 Q. And what -- did you have any meetings with
 20 Mr. Max?
 21 A. Yes.
 22 Q. How many meetings did you have as part of --
 23 when I say, did you meet with him, did you have any
 24 meetings that were specifically geared towards training
 25 you about the City of Phoenix's transit advertising?

A. They tell us. It's discussed during our contract meetings.

Q. Now, you were here for Ms. Cotton's testimony and she had testified that CBS Outdoor may reject ads that you never see, your department never sees. Is that correct?

A. That's possible.

Q. So are you aware that CBS has the authority to reject ads without informing the department about those rejections?

A. They -- I'm aware that they apply the transit standards to ads submitted to them.

Q. My question was, are you aware --

MS. COHEN: I'm sorry, can you read back my question?

[The requested portion of the record was read back by the court reporter as follows:]

"QUESTION: So are you aware that CBS has the authority to reject ads without informing the Department about those rejections?"

THE WITNESS: I'm aware that CBS rejects ads.

BY MS. COHEN:

Q. And you're aware -- and CBS can reject ads without advising the department of those rejections.

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If the ad is presented to the department by CBS.

Correct?

A. No.

Q. Oh. What other ways?

A. Sometimes they'll talk to us prior to submitting an ad. They'll ask us about certain topics, et cetera.

Q. But other than if CBS -- I'll strike that.

MS. COTTON: Excuse me. It's getting stuffy in here.

MR. GARDNER: Yeah, it is.

(Off-the-record discussion.)

MS. COHEN: Actually, it's been an hour. This might be a good time for a five-minute break, or if you need a few more minutes, that's fine too.

(Recess taken from 11:05 to 11:14.)

(Exhibits 4 and 5 were marked for

identification.)

BY MS. COHEN:

Q. All right. Ms. Chapple, is there any City policy requiring CBS Outdoor to submit to the City proposed transit advertisement it rejects because the advertisement fails to comply with the City's Transit Advertising Standards?

A. Policy, no.

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Is that correct?

A. CBS does reject ads without informing the department.

Q. Can you explain how an ad becomes -- I was going to say, "how an ad becomes a law," but how an ad goes from a proposal to posted on a transit shelter or bus stop?

A. Well --

MR. GARDNER: In general on City of Phoenix?

MS. COHEN: City of Phoenix.

BY MS. COHEN:

Q. And if there's any question, my questions are pertaining to the City of Phoenix.

A. Okay. As you know, CBS solicits the ads and so the client works with CBS. Typically, then CBS sends the ads to us for review or just to note that this is an ad they want to post.

Q. And then what happens?

A. Then what happens? If we see that this is a compliance issue, we will discuss it further with CBS. If there is not a compliance issue, we note we received the ad and then they work with their client to post it.

Q. And, of course, the department will only be able to weigh in on whether there is a compliance issue

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Q. Is there any rule, anything other than a policy that -- is there anything other than a city policy that requires CBS to submit to the city transit ads CBS rejects because they fail to comply with the City's Transit Advertising Standards?

A. We require CBS to accept ads that are compliant with the Transit Advertising Standards.

Q. Okay. My question is not that. I asked you a question and that is not responsive.

My question is, is there -- you said there was no policy. There's no city policy that requires CBS to submit to the City transit ads it rejects for failure to comply with city Transit Advertising Standards. Is that correct?

A. Yes. There's no policy.

Q. Is there any rule, regulation, directive, order, or anything by the City that requires CBS to submit to the City transit advertisement CBS rejects for failure to comply with the City's Transit Advertising Standards?

A. No.

Q. And is it also correct that CBS can post advertisement without the review of your department?

A. No.

Q. So must every ad be approved by your

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1 explain to him what it is that you were calling him
2 about?

3 A. I said, Somebody noted an ad. Could we see
4 it?

5 Q. Somebody noted an ad. Can we see it?

6 A. Pretty much.

7 Q. And Mr. Chatham said what?

8 A. And I explained to him where it was.

9 Mr. Chatham said he wasn't aware of the ad or an ad
10 like it and that he would look into it.

11 Q. So when he said he wasn't aware of an ad like
12 it, what had you told him about the ad?

13 A. I don't recall.

14 Q. Okay. So I just want to clarify here, make
15 sure I got this right. You called Mr. Chatham and you
16 said something about an ad. Is that right?

17 A. An ad that was not a commercial transaction.
18 I don't recall the exact words I used.

19 Q. Did you tell him it was -- did you tell him
20 anything else about the ad, in terms of what it looked
21 like or what color it was or what it said?

22 A. No. We hadn't seen it.

23 Q. Did you tell Mr. Chatham generally what the ad
24 was promoting?

25 A. I don't recall the exact words.

1 MR. GARDNER: Object to form.

2 BY ME, COTHEM:

3 Q. Well, I didn't finish the question.

4 Are you saying it's possible or do you recall
5 whether, at the time that you spoke to Mr. Chatham, you
6 knew that the ad in question had the words "guns save
7 lives" on it?

8 A. I don't recall I knew those exact words.

9 Q. Did you know that it had any of those words on
10 the ad?

11 A. Possibly.

12 Q. Did you know that the ad had the word "guns"
13 on it?

14 A. Yes, I believe I did.

15 Q. How long did your conversation with Mr. -- how
16 long did your conversation with Mr. Chatham last?

17 A. It was brief.

18 Q. What did he say to you?

19 A. I don't know about the ad, or he didn't know
20 it was up. Something. He had to check into it.

21 Q. Did you direct him to do anything?

22 A. Send me a copy of the ad.

23 Q. And how long did it take you to -- for him to
24 send you a copy of the ad?

25 A. I don't know. I don't recall.

1 Q. I'm not asking for your exact words. I'm
2 asking for the sum and substance of what you told him.

3 A. Possibly. I don't recall.

4 Q. So somehow Mr. Chatham was able to say that he
5 wasn't aware of an ad like it, but you don't recall how
6 exactly it is that you described the ad to him?

7 A. Correct.

8 Q. So it's possible that you told Mr. Chatham
9 that there was an ad up that proposed weapons training
10 and that he needed to take a look at it?

11 MR. GARDNER: Is it possible? Object to
12 form. Go ahead and answer if you can.

13 THE WITNESS: I don't believe it was a
14 discussion on training because I don't believe at that
15 time we knew that.

16 BY MR. COTHEM:

17 Q. Was it -- did you tell Mr. Chatham that the ad
18 involved firearms education?

19 A. I did not know that at the time, what it
20 involved.

21 Q. Did you know at that time that the -- that
22 there was an ad -- that the ad included the words "guns
23 save lives"?

24 A. Possibly, or something like it.

25 Q. Possibly?

1 Q. Was it that day?

2 A. I don't recall.

3 Q. Was it the next day?

4 A. Possibly.

5 Q. Was it the next week?

6 A. No.

7 Q. Do you recall whether you talked to him on a
8 Monday or a Tuesday or a Wednesday?

9 A. No.

10 Q. -- or a Thursday?

11 A. I don't.

12 Q. And did you make any efforts to drive to this
13 location and see the ad?

14 A. No.

15 Q. Do you know whether the ad was posted in more
16 than one location?

17 A. No.

18 Q. Were you concerned about a non-compliant ad
19 being posted?

20 A. Yes.

21 Q. So what efforts did you take between the time
22 that you talked to Mr. Chatham the first time and the
23 time that he got back to you to make sure that this
24 purported non-compliant ad was taken down?

25 A. I called on CBS to bring me the information.

Q. Did you direct Mr. Chatham to take the ad down during your first conversation?

A. No.

Q. And when did he get back to you?

A. Either that day or the next day.

Q. And what did he tell you?

A. I believe he sent me an E-mail, actually, not a phone call, for review.

Q. What did the E-mail contain?

A. The ad.

Q. So he was able to figure out what ad it was?

A. Yes.

Q. Pretty easily?

A. I suppose.

Q. Based on your description?

A. I don't know how easy it was for him.

Q. But you think it took about a day for him to get back to you?

MR. GARNER: It isn't what she testified to and you know it. The question has been asked and answered. You don't have to do that again. That isn't what she testified to.

BY MR. COHEN:

Q. So it took about a day for him to get back to you?

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Q. And then at some other point, did you contact legal counsel?

A. Yes.

Q. When?

A. Probably immediately.

Q. Do you recall --

A. No.

Q. -- when you contacted legal counsel?

A. No.

Q. At some point, did you advise CBS Outdoor that they needed to take the ad down?

A. No.

Q. Who did?

A. I don't know.

Q. Was it under your direction?

A. I don't recall a conversation with them.

Q. Did you ever direct anybody to take the plaintiffs' ad down?

A. I don't recall that.

Q. Do you know whether anybody else directed CBS to take plaintiffs' ad down?

A. I don't know.

Q. Do you know whether or not plaintiffs' ad ever came down?

A. Yes.

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A. I don't know. It was fairly quick.

Q. Was it approximately a day?

A. I don't know.

Q. Could it have been less than a day?

A. Possibly.

Q. So what did Mr. Chatham tell you when he got back to you?

A. He sent me an E-mail.

Q. Okay. And what did he say in the E-mail?

A. I don't recall.

Q. And what did you do when you opened the E-mail?

A. What we do is, we review it to see if it is compliant. If I feel there's compliance issues, then I begin sort of a review process. One of the first things I do is talk to legal counsel.

Q. And is that what you did in this case?

A. Yes.

Q. So who was the first person you talked to once you --

A. It would be --

Q. -- reviewed the ad?

A. -- probably my coworker.

Q. Who is that?

A. Matthew Bell.

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Q. And when did you learn that?

A. I believe in the phone call with Mr. Korvin.

Q. And when was that?

A. I don't recall the date.

Q. So is it correct then that the person who advised you that the plaintiffs' ad had been taken down was the plaintiff, Mr. Korvin?

A. I recall that's my first time remembering hearing it.

(EXHIBIT 60-10 was marked for identification.)

BY MR. COHEN:

Q. I'm showing you what has been marked Chapple-EXHIBIT 6. Do you recognize this exhibit?

A. I do, yeah.

Q. What is it?

A. It is Mr. Korvin's ad.

Q. Now, is this the -- is this a copy of the ad that Mr. Chatham sent you when you had advised him that there was some ad that you heard about that might have a problem?

A. It either is or is similar to.

Q. Well, you had said you received an E-mail from Mr. Chatham in response to your advising him that there was a problem with an ad. Right?

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1 A. Yes.

2 Q. And the ad was attached to that E-mail?

3 A. Yes.

4 Q. And you're not sure whether this was the ad or

5 not?

6 A. Well, with the amount of wording on there, I

7 would have to go word per word to ensure that.

8 Q. Okay. And are you referring to the wording in

9 the smaller letters on either side of the heart?

10 A. Yes.

11 Q. Now, putting that language aside, looking at

12 the rest of the ad, is this a copy of the ad that

13 Mr. Chathan sent you, not including the configuration of

14 the language on the side?

15 A. There are elements in this ad that are a copy

16 of what Mr. Chathan sent me.

17 Q. Are there elements in the ad that Mr. Chathan

18 sent you that are not included in this document?

19 A. (No verbal response.)

20 Q. Okay. I'll state it differently.

21 A. Thank you.

22 Q. Sure. Is this -- how -- is this ad different

23 from the ad that Mr. Chathan sent you, aside from any

24 issues of whether the language on either side of the

25 heart is the same or different?

1 the heart, the smaller language, on the ad that

2 Mr. Chathan sent you?

3 A. The ad that Mr. Chathan sent me contained

4 small print.

5 Q. But your testimony is, you can't confirm

6 whether or not the small language is the same as the

7 language that was on the ad that Mr. Chathan sent you?

8 A. Yes.

9 Q. So other than that small language, everything

10 else on the ad was on the ad that Mr. Chathan sent

11 you. Is that right?

12 A. Yes.

13 Q. Now, when you received this ad, did you

14 believe that it was compliant or non-compliant?

15 A. When I received the ad, I read the ad through

16 and looked for compliance. I believed that it was not

17 compliant.

18 Q. And why did you believe that it was not

19 compliant?

20 A. I believed it was not compliant because there

21 was no evidence of a product or service for commercial

22 exchange and that there was other information or other

23 elements in the ad that made it noncommercial.

24 RE. COHEN: Can you read back the answer,

25 please.

1 A. The design is similar.

2 Q. It is similar. Is it the same?

3 A. The design is similar. The major words are

4 the same.

5 Q. And is it different in any way?

6 A. I would have to go word-for-word to see if it

7 were different.

8 Q. And when you say "word-for-word," which words

9 are you referring to?

10 A. I'm referring to the small print.

11 Q. Okay. What about the large print? Is the

12 "guns saves lives" wording, is that the same language

13 that was on the ad that Mr. Chathan sent you?

14 A. Yes.

15 Q. Is "Arizona says: Educate your kids" the same

16 language as the language that was on the ad that

17 Mr. Chathan sent you?

18 A. Yes.

19 Q. Is the language "TrainMeAZ.com" the same

20 language that was on the ad that Mr. Chathan sent you?

21 A. Yes.

22 Q. Is this symbol in the upper left-hand corner,

23 was that on the ad that Mr. Chathan sent you?

24 A. A QR code was on the ad.

25 Q. Okay. So was the language on either side of

1 (The requested portion of the record was

2 read back by the court reporter as follows:

3 "ANSWER: I believed it was not compliant

4 because there was no evidence of a product or service

5 or (sic) commercial exchange and that there was other

6 information or other elements in the ad that made it

7 noncommercial.")

8 THE WITNESS: For commercial exchange;

9 not "or," "for."

10 BY ME. COHEN:

11 Q. So you say that there was no evidence of a

12 product or service for commercial exchange on this ad?

13 A. Correct.

14 Q. And what does it mean to have evidence of a

15 product or service for commercial exchange?

16 A. That means that either there was a product

17 that was being proposed for an exchange of something

18 monetary or a service.

19 Q. Anything else?

20 A. The commercial aspect, what was being asked by

21 the reader in exchange. There are other things in

22 there that were noncommercial in the ad.

23 Q. And anything else?

24 A. Those were the basics.

25 Q. Any other minor details?

whether a commercial transaction is proposed or adequately displayed on the ad. Is that right?

A. Again, please?

Q. Sure. Sure. Is it relevant to your determination of whether a commercial transaction is proposed or adequately displayed on the ad as to where the QR code leads?

A. Where the QR code leads? As long as it's not non-compliant with the Transit Advertising Standards, we don't follow the code to where it goes necessarily.

Q. So, by the way, looking at Exhibit 1 and 5. Obviously, we know 5 is revised standards from the December 8th, 2009, standards. Right?

A. Correct.

Q. And just focusing on the issue of speech and that it's limited to a commercial transaction, so looking at section -- well, let me just ask you, how are these advertising standards different?

A. They are different in form. They have added language.

Q. Okay. Let me stop you. Let me refine the question.

Looking at Exhibit 3, Section B, and looking at Exhibit 5 Section B(1), can you tell me how these two provisions are different?

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of the 2009 standards and sections A, B, and B(1) of the 2011 standards?

A. Those are the, I think, essentials of it.

Q. Are there any nonessentials of it?

A. There are other words in here that are different. In fact, the sentences are constructed in a different manner, using additional words or not using similar words from previous.

Q. Anything else?

A. Those are what I can see at this moment.

Q. And what does it mean that an ad has to be -- I'm sorry, that a commercial transaction must be adequately displayed?

A. That means the reader must be able to determine from the graphics, the wording on it, that there is a product or service that would be proposed to them.

Q. Is there any other way in which you would define the word "adequately" as used in Exhibit 6?

A. Adequately could also mean sufficiently.

Q. What does it mean, "sufficiently"?

A. That means that it would show the commercial transaction or it would show the proposed product or service to the viewer.

MS. COTTON: I'm sorry, it's still warm

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A. Again, Section B in 2009 and Section B(1)?

Q. In 2011.

A. The language is changed.

Q. In what way is it changed?

A. I think it clarifies the intent of B in 2009.

Q. And what is that intent that it was clarifying?

A. That this should be a commercial transaction and that would be -- that no advertising would be accepted that didn't follow the compliance.

Q. Is there any other way that the 2011 standards are different in terms of B(1) and B? I'm sorry, B(1) of the 2011 standards and B of the 2009 standards? Did I get that right?

A. There is clarification language in there that clarifies the intent of B in 2009.

Q. And what specific language in 2011 clarifies the language or intent of the 2009 standards?

A. That no advertising will be accepted for use. It clarifies what the forums are for the City of Phoenix; bus, transit furniture. It -- it talks directly that it's an advertising panel. It talks about being adequately displayed.

Q. Any other way that the 2011 standards clarified the 2009 standards, just looking at Section B

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in here.

MS. KORN adjusts the thermostat.

MS. COTTON: Thank you.

MS. KORN: No problem.

MS. COTTON:

Q. Okay. And any other way that you would define "sufficiently" as used in Exhibit 9?

A. If you want -- in how we apply it, we want to see that it's not -- it's not hidden. It's -- it is in a sufficient manner that somebody would know what the product or service was.

Q. Is there any other way in which you would define "sufficiently"?

A. Part of the way "sufficiently" would be defined is in the actual ad itself and the way it was designed and created.

Q. Anything else?

A. I think that's what I can think of for now.

Q. And does it just depend on the ad itself?

A. In what manner?

Q. On determining whether something is adequately displayed. In your determination of whether a commercial transaction is adequately displayed, does it just depend on the ad that you're looking at?

A. I believe we talked about graphics and

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language also.

Q. So it just depends on what your view is of any particular ad that's in front of you?

A. It depends on the compliancy to the Transit Advertising Standards.

Q. Right. As you apply them?

A. As applied by a collaborative effort.

Q. Depending -- and this review depends on the particular ad in question?

A. Which review?

Q. When you're reviewing an ad, all of these things that you consider you will apply depending on whatever ad is in front of you?

A. We look at each ad and we look at it in its totality to make those determinations.

Q. Okay. So looking back at Phoenix -- I can take all of these. Just put it in front of you. Can I have the ones that are in front of you?

A. These too?

Q. Yes. I'll just get them out of your way.

A. (Witness complies.)

Q. Great.

So after you received this ad, you had a discussion with Mr. Heil. Is that right?

A. I had a discussion that we received it and

A. And the advertiser, yes.

Q. And what does it mean, "and the advertiser?"

What do you mean by that?

A. For example, "Arizona says," would that be the State of Arizona? Would that -- is that the advertiser? Who would that be?

Q. And was the -- was ~~Phoenix~~ indeterminate in other ways regarding what product or service was being advertised?

A. Yes.

Q. What other ways?

A. What the service was, in particular.

Q. Okay. Is there any other ways where the nature of what product or service was being advertised was indeterminate?

A. In the small print there is a lot of language that has many different topics, ideas, that -- many different topics and ideas.

Q. Okay. What's wrong with topics and ideas in an advertisement?

A. In general, it can --

Q. In terms of -- okay. What is wrong with topics and issues in an advertisement when determining whether the advertisement complies with Phoenix's Transit Advertising Standards?

that -- yes.

Q. And so what happened next?

A. We determined it needed further review with our legal.

Q. At that time, did you form -- you formed an opinion, though, that it was not compliant?

A. I formed an opinion there was compliancy issues.

Q. And the compliancy issues dealt with the small writing on either side of the heart. Is that right?

A. One of the things.

Q. And what else?

A. And the indeterminate nature of who the -- what the product or service was.

And may I correct something and go back?

After I received the ad, I actually e-mailed

Mr. Chatham back, asking him to work -- no, I'm sorry. That's probably not the sequence of events. Sorry.

Q. There was a time that you contacted him again?

A. Yes. But that was possibly after review with legal.

Q. Okay. So you just stated that there were compliancy issues because of the indeterminate nature of what product or service was being advertised? Is that right?

A. It depends on what is in the ad.

Q. And what in an ad would determine whether or not the issues or -- issues or topics --

A. What in an ad --

Q. -- were relevant?

A. -- were relevant or irrelevant?

Q. Uh-huh.

A. If it doesn't propose a commercial transaction, if it doesn't enhance the commercial transaction. It varies.

Q. It just depends on the ad?

A. Each ad is unique.

Q. So you will look at the topics and issues and determine whether or not they enhance. Enhance what?

A. Well, since I referred to topics and issues --

Q. Sure.

A. -- in this particular ad I would look to see whether or not it meets compliancy, if it detracts.

Q. And did you also look at whether or not the language enhanced the proposed commercial transaction?

A. I looked at whether or not there was language that was compliant.

Q. Did you also consider whether or not the topics and issues discussed enhanced the remainder of the ad?

1 A. Well, there were quite a few topics and issues
2 in here. And so since they were so varied, I had to
3 ask for further clarification on what the ad was.

4 Q. Further clarification from whom?

5 A. From CBS, so ask the client.

6 Q. So you needed more information from the
7 client?

8 A. About what the commercial transaction was. I
9 asked him to bring out the commercial transaction.

10 Q. But it is -- is it fair to say, though, that
11 you will look at the topics and issues covered in an ad
12 and determine whether or not those topics and issues
13 enhance a proposed commercial transaction or not, in
14 determining whether or not the proposed ad complies
15 with Phoenix's Transit Advertising Standards?

16 A. I will look at the ad in its total and I will
17 see whether or not there is language or graphics in
18 there that is compliant with the Transit Advertising
19 Standards and whether or not it may also detract.

20 Q. Okay. You used the word "enhancement"
21 before. Right?

22 A. Yes.

23 Q. So when is that an issue?

24 A. When is what an issue?

25 Q. When do you consider whether language enhances

1 would be neutral, because I want to make sure my ad is
2 compliant with the city's transit standards, how would
3 you describe them to me?

4 A. I probably wouldn't. I'd ask you to submit
5 what you're asking about.

6 Q. First?

7 A. Yes.

8 Q. Okay. So I would submit the ad to you first?

9 A. If you were going to ask me the question you
10 asked me, I would ask to see it first.

11 Q. So could you give me any guidance in
12 determining what kind of topics and issues I could
13 cover in my proposed ad before I submit it to you?

14 A. Yes.

15 Q. What would you tell me?

16 A. I would tell you to look at the Transit
17 Advertising Standards.

18 Q. Would you tell me to look at anything else?

19 A. A number of people look at other ads.

20 Q. Is that what you would tell me?

21 A. No. Not necessarily.

22 Q. So other than looking at the transit
23 standards, would you tell me to look at anything else?

24 A. I would tell you to first start there. It's a
25 process.

1 any ad or not?

2 A. It depends on the ad.

3 Q. So what do you look at? What is the question
4 you ask yourself in terms of enhancement when reviewing
5 an ad?

6 A. Exactly that; does it enhance the commercial
7 aspect of the ad?

8 Q. And if it does not enhance the commercial
9 aspect of the ad, what do you do?

10 A. We could ask for a modification. We could ask
11 for clarification. It varies.

12 Q. So is it likely that if -- well, let me ask
13 this question. If a topic or issue does not enhance
14 the commercial transaction; does that mean the ad will
15 not be compliant with City of Phoenix's transit
16 standards?

17 A. Not necessarily.

18 Q. When would it not be in noncompliance?

19 A. It could be neutral.

20 Q. So what does that mean? What is a topic or
21 issue that's neutral?

22 A. It depends. We have hundreds of ads. It
23 depends on the ad.

24 Q. Well, if I'm proposing an advertisement to you
25 and I ask you, well, what is a topic or issue that

1 Q. And then I give you an ad and you say, No,
2 this needs to be clarified or revised. And what would
3 happen then?

4 A. We'd discuss what is the need for
5 modification; why it doesn't fit the compliance. We'd
6 ask you to come back with something else.

7 Q. And would you tell me ways in which I could
8 make it compliant?

9 A. It depends.

10 Q. Sometimes you would and sometimes you
11 wouldn't?

12 A. Yes.

13 Q. And what would it depend on?

14 A. I don't know. It depends on the conversation
15 and the ad.

16 Q. So after -- okay. So you looked at this ad
17 and you thought there were compliance issues. Is that
18 fair to say?

19 A. Yes.

20 Q. And then you went -- did you then -- what did
21 you do next?

22 A. I usually talk to our legal counsel.

23 Q. Who was that at the time?

24 A. At the time of this, his name is Ted
25 Mariacal.

Q. Did you, in fact, talk to him about this ad?

A. Yes, I did.

Q. And what did you talk about?

MR. GARDNER: Object to form, privileged. Don't answer the question.

BY MS. COHEN:

Q. Did you rely on any advice that Mr. Mariscal gave you in how to proceed with this -- with the plaintiffs' advertising?

A. How to proceed in what manner?

Q. Well, did you rely on any advice that Mr. Mariscal gave you as to whether this ad, the plaintiffs' ad, which was ~~CHALLENGED~~, was compliant or non-compliant with Phoenix's City -- sorry -- with the City of Phoenix's transit standards?

A. Through a collaborative determination, we went back to CBS and asked for modification. We asked what the ad be changed.

BY MS. COHEN:

Q. My specific question was, did you rely on any advice that Mr. Mariscal gave you in determining whether or not the plaintiffs' ad, which is ~~CHALLENGED~~, was compliant with the City of Phoenix's transit standards?

MR. GARDNER: Object to form. The

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BY MS. COHEN:

Q. I didn't ask you what advice he gave you. I did not ask you what he said. I'm asking whether you relied on that advice.

MR. GARDNER: And I'm going to object to privilege. Don't answer the question.

MS. COHEN: I assure you will not be using that -- or his as your defense in this case then.

BY MS. COHEN:

Q. Are you going to rely on your -- are you going to follow your attorney's advice and not answer my question?

A. Yes.

Q. Okay. So after your collaborative effort with Mr. Mariscal, what did you do next?

A. Then we communicated with Steve Chathan that this ad -- And I believe the words, read like a PSA. Would he work with the client to bring out the commercial aspect of it.

Q. Who said that it read like a PSA?

A. I did.

Q. Why do you think ~~CHALLENGED~~ reads like a PSA?

A. PSA is a general term we use, even though there are definitions for it, that it's noncommercial

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question has been asked.

BY MS. COHEN:

Q. The question has not been answered. You're right, it has been asked; it has not been answered.

MR. GARDNER: It has been answered.

BY MS. COHEN:

Q. Please answer the question.

MR. GARDNER: You already answered it, but go ahead and say it again.

THE WITNESS: We discussed the ad with Ted Mariscal.

BY MS. COHEN:

Q. But that wasn't my question. That was not my question. My question is, did you rely on his advice in determining whether or not plaintiffs' ad, which is ~~CHALLENGED~~, was compliant with the City's Transit Advertising Standards?

MR. GARDNER: Now I'm going to object also on privilege.

Don't answer the question because I can see where she's going with it and that's going to invade the privilege.

MS. COHEN: No. You can't see where it's going. Either the question is privileged or it's not. ///

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and that they needed to bring out the commercial aspect to it.

Q. Have you defined what it means for an ad to read like a PSA anywhere?

A. Have I defined it?

Q. Yes.

A. If it doesn't have a product or service that's usually in a commercial exchange, if it brings out an issue or cause.

Q. Is that written down somewhere?

A. As far as where?

MR. GARDNER: Written down?

BY MS. COHEN:

Q. Anywhere.

A. I believe there are definitions out there, yes.

Q. Okay. My question is, have you memorialized the definition that you use in determining whether an ad reads like it's a PSA or not?

A. Have I memorialized "reads like a PSA?"

Q. What it means for an ad to read like a PSA?

A. Have I written that down somewhere? Is that the question?

Q. (No verbal response.)

A. Not that I can recall.

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Q. Have you ever communicated to CBS Outdoor what it means, in your opinion, when an ad reads like a PSA?

A. I don't believe we had that conversation.

Q. And the term "PSA" or "what a PSA ad would read like" is not referred to in Exhibit 1 or Exhibit 4. Is that right?

A. What a public service announcement is?

Q. Yes.

A. The definition is not referred to or in the Transit Advertising Standards.

Q. Okay. Either the Exhibit 4 or Exhibit 1. Right?

A. It does not refer to public service announcement.

Q. And when you determined that the ad was not compliant, were you relying on the transit standards from 2009 or 2011?

A. This was from 2010. It would be 2009.

Q. So assuming -- Now, Exhibit 4 that's in front of you, would your determination of this ad being non-compliant with City standards be any different under the March 7th, 2011, standards that are attached?

A. I don't believe so.

Q. Would you need to review it in order to make

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application of standards, possibly talking with CBS for clarification, and then possibly reviewing it with our legal counsel.

Q. So would you engage in that process if you knew, based on your experience since 2009 in reviewing ads, if you knew an ad was non-compliant, would you take it up and through the review process?

A. Yes.

Q. And what if -- and if you determine that it is non-compliant and the plaintiffs submitted this ad again next year, would you do the same thing?

A. Yes.

Q. Are there any other ways, other than what you've testified to, any other ways that the ad that is Exhibit 4 had compliance issues, in your opinion?

A. There's quite a bit of language that is not -- not discussing a commercial exchange, and that is a compliance issue. There's also a possibility...

Q. Are you trying to read the language?

A. I am.

MS. COHEN: We can mark this as Exhibit 5. It's a blow-up of that language.

(Exhibit 5 was marked for identification.)

THE WITNESS: There's discussion that

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that determination?

A. I would -- if this were presented to me today, I would take it through the review process again.

Q. So it's possible it could be compliant?

MR. BARKER: Object to form. Go ahead.

THE WITNESS: I would see that there's a compliance issue and I would take it through the review process.

BY MR. COHEN:

Q. Is there anything in the standards from March 7, 2011, which are Exhibit 5, that would indicate that the standard that was previously rejected by the City would now be compliant?

A. I would see there are compliance issues and that I would take it through the review process.

Q. Well, but to these any reason -- to these anything different about the ads in 2011 that would make Exhibit 5 compliant?

A. Are you saying, applying this ad to the 2011 standards? If I were given this today, and under those standards, I would still determine there were compliance issues and go through the review process.

Q. Okay. And what would that review process contain?

A. The review process would contain the

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talks about, once again, a variety of topics that are noncommercial that, on appearance, doesn't talk about a product or service. It talks about other -- let's see -- other -- I guess, if you want to call it actions to consider, other websites to consider. It presents other groups. Yes.

BY MR. COHEN:

Q. Okay. Anything else?

A. It talks about the legislature and legislative campaigns -- or actions, I should say. It covers a wide variety of topics that don't -- that don't seem to necessarily relate to a commercial transaction, product, or service.

Q. Anything else?

A. Those are the things, in general.

Q. So after -- I'm sorry. After you engaged in the collaborative effort at your department, what did you do next?

A. Then I wrote an E-mail to CBS, asking for modification, in effect, of the ad.

Q. And what specific directions did you give to CBS?

A. I didn't give specific directions to CBS on that E-mail.

Q. What did you do?

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1 A. I asked them to work with their client.
 2 Q. And did you say how to work with their client?
 3 A. No.
 4 Q. Did you advise CBS what needed to be worked
 5 out?
 6 A. No.
 7 Q. Did you address any particular part of the ad
 8 that you -- that your department felt was not
 9 compliant?
 10 A. Not in the e-mail.
 11 Q. Did you have any conversations with
 12 Mr. Chatham about the ad at that stage?
 13 A. No.
 14 Q. So in giving the ad to Mr. Chatham and saying,
 15 Discuss this with the client, is that all you
 16 communicated to him until there was a time when
 17 Mr. Chatham got back to you?
 18 A. At that point, that's what I recall.
 19 Q. And what happened next?
 20 A. As I recall the sequence of events, I believe
 21 Mr. Chatham called me and said that the client would
 22 like to discuss the ad.
 23 Q. And did you then have a discussion with the
 24 client about the ad?
 25 A. We set up a telephone conference call and had

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1 the advertisement?
 2 A. How we understood it. How we received the
 3 information that it existed.
 4 Q. You mean from Mr. Nail's friend or
 5 acquaintance?
 6 A. Uh-huh.
 7 Q. Yes?
 8 A. Possibly, yes. Uh-huh.
 9 Q. Do you recall anything else about the
 10 conversation?
 11 A. I recall Mr. Korwin talking about -- asking,
 12 What is a public service announcement, in that
 13 discussion. But the conversation did not include me, I
 14 believe.
 15 Q. Why? Had you dropped off from the
 16 conversation?
 17 A. I wasn't there. I'm sorry, I was there. I
 18 wasn't talking at that point, I believe.
 19 Q. Did you listen, though?
 20 A. I did.
 21 Q. So Mr. Korwin asked for the City to define
 22 what a public service announcement is?
 23 A. Mr. Korwin asked for Ted Mariscal to do so.
 24 Q. And was that provided to him, a definition?
 25 A. Not that I recall.

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1 a discussion with the client about the ad.
 2 Q. And what -- how long was that conversation?
 3 A. I don't recall.
 4 Q. And what did you say in that conversation?
 5 A. The conversation was led by our legal counsel,
 6 Ted Mariscal.
 7 Q. Did you contribute to the conversation?
 8 A. A bit.
 9 Q. And what did you say?
 10 A. I believe one of the things I said was that --
 11 I'll go back. I'm sorry.
 12 I did have a conversation with Steve Chatham.
 13 And I don't recall what sequence it was, but he did
 14 tell me that Mr. Korwin was selling books. And, once
 15 again, I don't remember where that was in the sequence
 16 of events, but for saying that because, in the
 17 conversation with Mr. Korwin, I believe there was part
 18 of, at the beginning of the conversation where he
 19 discussed the selling of books.
 20 And I don't know if I said that or if
 21 Mr. Mariscal said that, but I remember, at least, I
 22 told Mr. Mariscal that was a conversation I had with
 23 Steve Chatham. And then I may have relayed how we got
 24 this information about the advertisement.
 25 Q. What do you mean? Got what information about

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1 Q. Do you know why not?
 2 A. No.
 3 Q. Did you attempt to provide a definition of
 4 "public service announcement"?
 5 A. At that time, no.
 6 Q. Do you know why he was asking?
 7 A. No.
 8 Q. Did you ever endeavor to provide an
 9 explanation to Mr. Korwin of what a public service
 10 announcement would entail?
 11 A. I don't recall.
 12 Q. Did you prepare for this deposition?
 13 A. In what manner?
 14 Q. Did you meet with your attorney and prepare?
 15 A. We met with our attorneys.
 16 Q. Okay. How many times?
 17 A. We had other attorneys, so I don't recall how
 18 many times.
 19 Q. And I'm referring just for your preparation
 20 for this deposition today.
 21 A. Oh, yes. Uh-huh.
 22 Q. So did you -- you met with more than one
 23 attorney?
 24 A. No.
 25 Q. Okay. You met with Mr. Gardener?

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1 BY MS. COHEN:
 2 Q. So in Exhibit 9 you report -- you state to
 3 Mr. Chatham, "this ad is acceptable." Correct?
 4 A. Correct.
 5 Q. And that's on Korwin 2115. Correct?
 6 A. Correct.
 7 Q. And the ad that you were referring to as being
 8 acceptable is Exhibit 10. Right?
 9 A. Correct. Yes.
 10 Q. So how is this -- why is -- how did it become
 11 acceptable when comparing it to Exhibit 9?
 12 Let me take those away from you.
 13 (Ms. Cohen removes documents from in
 14 front of the witness)
 15 THE WITNESS: I don't know.
 16 BY MS. COHEN:
 17 Q. Why? What do you mean, you don't know?
 18 A. The ad was not reviewed by me.
 19 Q. Who -- so you weren't -- it's not your opinion
 20 that -- do you think this is an acceptable ad, the
 21 Exhibit 10?
 22 A. I would review this with legal counsel --
 23 Q. So as you sit here --
 24 A. -- presented to me.
 25 Q. So as you sit here today, can you state

1 A. I received it and passed it along.
 2 Q. So did Steve Chatham send you Exhibit 10?
 3 A. Yes.
 4 Q. And then you sent it to Ms. Cotton, Exhibit
 5 10?
 6 A. That would be the sequence.
 7 Q. And then Ms. Cotton advised you that it was
 8 acceptable?
 9 A. Yes.
 10 Q. And then you advised Mr. Chatham that it was
 11 acceptable?
 12 A. Yes.
 13 Q. And did you have a discussion with Ms. Cotton
 14 about the ad that she found acceptable?
 15 A. No.
 16 Q. Did you ask her any questions?
 17 A. No.
 18 Q. Did she ask you any questions?
 19 A. Not that I can recall.
 20 Q. Did you have a belief at that time whether or
 21 not Exhibit 10 was compliant with the City of Phoenix's
 22 Transit Advertising Standards?
 23 A. I don't recall.
 24 Q. If you had an objection to Exhibit 10, would
 25 you have communicated it with Ms. Cotton?

1 Whether or not Exhibit 10 is compliant with the City of
 2 Phoenix's transit standards, whether it's Exhibit 9 or
 3 Exhibit 10?
 4 A. I would review -- I would go through the
 5 review process, if this ad were given to me.
 6 Q. Who told you it was acceptable?
 7 A. It was through Debbie Cotton.
 8 Q. So Debbie Cotton said the ad was acceptable?
 9 A. I don't know.
 10 Q. So Ms. Cotton reported to you that Exhibit 10
 11 was acceptable?
 12 A. Yes.
 13 Q. And "acceptable" means it's compliant with
 14 City of Phoenix standards?
 15 A. It was acceptable.
 16 Q. What does that mean, "acceptable"?
 17 A. That it was accepted by the City of Phoenix.
 18 Q. Ready for posting?
 19 A. Yes.
 20 Q. Okay. And so Ms. Cotton -- when did she tell
 21 you that it was acceptable?
 22 A. After it was received.
 23 Q. By whom?
 24 A. I don't know the time.
 25 Q. Who was it -- who received it?

1 A. No.
 2 Q. Why not?
 3 A. It wasn't mine to accept at this point.
 4 Q. I'm sorry?
 5 A. It wasn't mine to accept at this point.
 6 Q. So where in this ad in Exhibit 10 is a
 7 commercial transaction proposed?
 8 A. In its totality, I guess.
 9 Q. How is it proposing a commercial transaction
 10 in its totality?
 11 A. I did not review this ad and I did not have a
 12 hand in accepting it.
 13 Q. But you -- if I understood your testimony
 14 earlier, it's part of your duties to review ads and
 15 determine whether they're compliant with City
 16 standards. Correct?
 17 A. Correct.
 18 Q. Okay. So, in your opinion, how does this ad,
 19 Exhibit 10, propose a commercial transaction in its
 20 totality?
 21 A. I would, before rendering an opinion, review
 22 it with legal.
 23 Q. So there's no way to look at an ad and
 24 determine whether it's compliant unless you collaborate
 25 with the City's legal department? Is that right?

1 A. This ad or any ad?

2 Q. Any ad.

3 A. There are ways of determining ads are
4 compliant without consulting legal.

5 Q. And you, yourself, have found ads compliant
6 without consulting the legal department?

7 A. Correct.

8 Q. So why can't you determine whether Exhibit 10
9 is compliant with the City's legal standards or not?

10 A. Because --

11 Q. I'm sorry. Why can you not determine whether
12 Exhibit 10 is compliant with the City's Transit
13 Advertising Standards?

14 A. As is my practice and anything that has a need
15 for some review, I use a collaborative review effort to
16 review it.

17 Q. So are you saying that Exhibit 10 needs more
18 review?

19 A. I would do that as the process, yes.

20 Q. Why?

21 A. Because that is my practice when I'm looking
22 at ads that I have questions or concerns about or want
23 affirmation about.

24 Q. So you have questions or concerns or need
25 affirmations about Exhibit 10?

1 Q. Sometimes it's part of your review process?

2 A. If it's an ad in which we have begun a review
3 process, I would do that.

4 Q. Has there been a review process on Exhibit 10?

5 A. In what manner?

6 Q. Well, Exhibit 10 actually was accepted by the
7 director. Correct?

8 A. No.

9 Q. She told you it was accepted. No?

10 A. She told me it was accepted.

11 Q. Well, do you have the impression that the City
12 of Phoenix accepted it?

13 A. Could you define "City of Phoenix?"

14 Q. Well, any employee of the City of Phoenix,
15 was it your understanding that any employee of the City
16 of Phoenix accepted Exhibit 10?

17 A. It was my impression an employee of the City
18 of Phoenix accepted Exhibit 10.

19 Q. Was it your impression that a City of Phoenix
20 employee with authority to make such a decision found
21 Exhibit 10 acceptable and in compliance with City of
22 Phoenix Transit Advertising Standards?

23 A. Yes.

24 Q. So what -- why then do you have questions
25 about Exhibit 10 on whether it's compliant or not?

1 A. Yes.

2 Q. Okay. What are your questions, concerns, and
3 your need for affirmation?

4 A. That would be part of my review process with
5 the legal counsel, to discuss those things.

6 Q. Okay. What would you discuss?

7 A. The compliancy with the Transit Advertising
8 Standards.

9 Q. And what about this raises questions? What
10 about Exhibit 10 raises questions to you?

11 A. That it was part of a review process and that
12 we typically will review ads that have questions.

13 Q. What questions does Exhibit 10 have?

14 A. Those are the sorts of things I would discuss
15 with the legal counsel; ask him to bring up things that
16 I should be concerned about, review things with me.

17 Q. Well, you said there are times when you don't
18 need to confer with legal counsel to determine whether
19 an ad is compliant. Correct?

20 A. Yes.

21 Q. So what about this ad is leading you to
22 believe that you have to consult with legal counsel in
23 order to determine whether it's compliant or not?

24 A. It's part of my review process. That's what
25 we would do.

1 A. Because that's part of my review process.

2 Q. Sometimes it's part of your review process.
3 Correct?

4 A. For ads that we had concerns about, to
5 complete the review process. That's what I would do.

6 Q. But this ad has completed the review process.
7 Correct?

8 A. It hasn't complete the review process that I
9 do. It has completed another review process.

10 Q. What would you ask -- what questions do you
11 have about Exhibit 10?

12 A. I would ask that of legal counsel.

13 Q. Would you say, I'm concerned about the
14 language "To Educate Your Kids" and whether that
15 proposes a commercial transaction?

16 A. I would review various questions with them.

17 Q. Would that be one of them?

18 A. I would review whether or not it was compliant
19 with the Transit Advertising Standards. I would have a
20 variety of questions I would ask.

21 Q. Would you ask -- would you inquire as to
22 whether this Exhibit 10 rose to a level of a public
23 service announcement? Or can you tell that just by
24 looking at it, whether or not it rises to the level of
25 a public service announcement?

Q. If I thought it rose to the level of a public service announcement, I would have it reviewed with legal counsel.

Q. Do you think it would?

A. I would have a review with legal counsel to express any of my concerns.

Q. Do you have a concern that Exhibit 16 rises to the level of a public service announcement?

A. I would discuss that with counsel.

Q. Do you have no opinion?

A. I have, at this point, no opinion on it.

Q. Does Exhibit 16 describe the nature of the product or service that is being advertised?

A. I don't know.

Q. Does Exhibit 16 indicate who is the advertiser?

A. I don't know.

Q. Does the language surrounding the graphic or pictorial enhance a commercial transaction proposing the ad?

A. I don't know.

Q. Does Exhibit 16 propose a commercial transaction?

A. I don't know.

(Exhibit 16) was marked for

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Q. Do you see "CBS"?

A. Yes.

Q. Do you see above CB8 there is a bus with the word "Bus" next to it?

A. Yes.

Q. Okay. Is there anything about this bus stop that would indicate to you that it is a City of Phoenix bus stop?

A. It would indicate it's a Metro Phoenix bus stop.

Q. Does that mean it's a bus stop over which your department would regulate the transit advertising that could be posted?

A. Other cities have similar bus stops.

Q. So you can't confirm whether or not that this ad is from a City of Phoenix bus stop or not?

A. Correct.

Q. Okay. Look at the second photo. Actually, it has numbers. I don't know what these are, but maybe this is a Bates number. The second page of Exhibit 16 has "PH 1856." Do you have any idea what that number means?

A. I'm not familiar with that number.

Q. Are there designations for bus stops?

A. I don't know.

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identification.

BY MS. COHEN:

Q. Exhibit 16 is -- I just want to clarify. The first page of this exhibit is my handwriting. It says "10/09 K 1785" and a "CD." And it indicates that on this -- these pictures, photos, were taken from the City's production that was made on a disc with the Bates number 1785. The individual photos on the disc were not Bates-numbered, so that is why I did that.

Q. Okay. This exhibit contains six pages. Can you just confirm that?

A. Yes.

Q. Looking at the second page of Exhibit 16, does this look like an ad that -- is this an ad that's posted at a City of Phoenix bus stop?

A. I don't know.

Q. Did you review the CBS that were produced by the City in this case?

A. No.

Q. And did you see up at the corner, or up on this photo it says -- there's a phone number, 602-246-..., do you see that?

A. Yes.

Q. Do you know what phone number that is?

A. Yes.

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Q. Do bus stops have numbers?

A. Yes.

Q. And how are they designated?

A. I don't know.

Q. If you were to ask, Hey, I want to find out about the bus stop located at 24th and Lincoln, how would you describe it? Just like that?

A. I would describe the intersection and the corner.

Q. And looking at then the third page of Exhibit 16, can you tell whether or not this is a City of Phoenix bus stop?

A. No.

Q. Do these look like ads -- is this an ad that the City of Phoenix has approved?

A. I don't know.

Q. Okay. Let's look at the next page, fourth page of Exhibit 16. This is an advertisement at a bus stop. Is there anything about this photo that would indicate that it's a City of Phoenix bus stop?

A. No.

Q. Okay. Do you see the ad, "Only in Downtown Phoenix... Only on DowntownPhoenix.com?" Do you see that?

A. I'm sorry, I was on the wrong page.

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1 Q. Okay, is there anything about the ad "Only in
2 Downtown Phoenix... Only on DowntownPhoenix.com?" Do
3 you see that?
4 A. Yes.
5 Q. Is there anything in this photo that indicates
6 to you this is a City of Phoenix bus stop?
7 A. No.
8 Q. Looking at the numbers at the top of the
9 shelter, does this help you put in any way?
10 A. Which numbers?
11 Q. There's numbers around the roof. They are not
12 particularly legible, but...
13 A. (No response.)
14 Q. I'm sorry, did you answer?
15 A. No. I couldn't tell you where that bus stop
16 was.
17 Q. Does it look similar to a City of Phoenix bus
18 stop?
19 A. Yes.
20 Q. So looking at the ad in this -- at this bus
21 stop, is this compliant with City of Phoenix standards,
22 Transit Advertising Standards?
23 A. This one, I would review with legal counsel.
24 Q. And why is that?
25 A. Because I would have questions about it.

1 A. I don't know the location of the bench.
2 Q. It says "Bethany Auto Repair" behind it. Do
3 you see that?
4 A. Yes.
5 Q. Does that give you any more indication of
6 where the location is?
7 A. I'm not familiar with that business.
8 Q. Are you familiar with whether the 602 area
9 code is used outside of the City of Phoenix?
10 A. I don't know.
11 Q. Do you have any reason to dispute that this is
12 a City of Phoenix transit advertising bench?
13 A. I don't know.
14 Q. Okay. Looking at this ad that is on this
15 bench in ~~Phoenix~~ that says "Free Pregnancy Test," do
16 you see that?
17 A. Yes.
18 Q. And it has a phone number. Does this propose
19 a commercial transaction?
20 A. I would review that with the -- with CMS.
21 Q. Is it apparent on its face what the product or
22 service that's being advertised is?
23 A. I would review this with CMS.
24 Q. Does this ad indicate who the advertiser is?
25 A. It's not sufficient for me to see the full ad.

1 Q. What are your questions?
2 A. Is it a commercial transaction? What does it
3 refer to? I would have CMS review it again.
4 Q. Is it apparent, by looking at it, that it
5 promotes the exchange of a good or a service?
6 A. I don't know.
7 Q. Is it apparent, by looking at it, what product
8 or service is being advertised?
9 A. I don't know.
10 Q. Is it apparent, by looking at it, who the
11 advertiser is?
12 A. Downtown Phoenix.
13 Q. Downtown -- is that an entity?
14 A. That's the logo. That is the logo that is on
15 there.
16 Q. What is Downtown Phoenix?
17 A. It's the logo.
18 Q. Other than being a location, is there an
19 entity called Downtown Phoenix? Let me strike that.
20 Other than the location, is there a commercial
21 entity titled "Downtown Phoenix"?
22 A. I don't know.
23 Q. Looking at the next page, the fifth page of
24 exhibit A, can you tell whether this is a City of
25 Phoenix transit advertising bench?

1 Q. I'm sorry, you said it's not sufficient. What
2 is not sufficient?
3 A. That it's -- the Xeroxing, or whatever, does
4 not allow me to see everything that may be on the ad.
5 Q. So you think there might be more on the ad?
6 A. I don't know.
7 Q. Okay. Well, as it is, is it -- just looking
8 at what is on the ad, it says "Free Pregnancy Test,"
9 that's the only language that you can see on the ad.
10 Correct?
11 A. That is what I see.
12 Q. Right. And then you see a phone number.
13 Correct?
14 A. Correct.
15 Q. And then there's a picture of a pregnant
16 belly. Correct?
17 A. There is a belly.
18 Q. Does it look pregnant?
19 A. It's obscured.
20 Q. Okay. There are two hands nuzzling the belly.
21 Is that correct?
22 A. It appears so.
23 Q. And it's shaped in a heart. The hands are put
24 together such that they're shaped in a heart. Do you
25 see that?

1 A. The hands form a design. I guess.

2 Q. So just based on what you can see in this

3 photo, does this advertisement propose a commercial

4 transaction?

5 A. I would review this with legal. I would take

6 it through my review process.

7 Q. Okay. Looking at the last page of Exhibit 11,

8 it says -- it's a bus stop. Correct?

9 A. Yes.

10 Q. Can you identify whether that's a City of

11 Phoenix bus stop?

12 A. No.

13 Q. And can you -- do you see the ad that is on

14 the shelter?

15 A. Yes.

16 Q. And it says, "Newly diagnosed with HIV and

17 unsure of what to do next?"

18 A. Yes.

19 Q. And then there's language that says, "Text"

20 and it gives numbers to text or to call. Right?

21 A. Yes.

22 Q. And it also has a website you can go to?

23 A. Yes.

24 Q. And then in the left-hand corner it says

25 "spring-1." Right?

OTTMAR & ASSOCIATES 602-485-1488

1 Q. And when I say "City of Phoenix," you said

2 it's also -- your jurisdiction is larger. It's the

3 Metropolitan area?

4 A. No.

5 Q. Okay. What is -- in order to make sure that I

6 ask you a proper question, what is within your

7 jurisdiction?

8 A. Other cities have these bus stops and have

9 ads.

10 Q. But if I ask you if you know whether this is a

11 City of Phoenix bus stop, as I including every kind of

12 bus stop that would be within your jurisdiction? In

13 that inclusive, when I call it a "City of Phoenix bus

14 stop," or would there be other bus stops --

15 A. When you say "City of Phoenix," it would be

16 within the City of Phoenix boundaries.

17 Q. Okay. And within your jurisdiction?

18 A. Yes.

19 Q. Okay. All right. So looking at this ad, it's

20 an ad, the top of it says "1-800-273-TALK." Right?

21 A. Yes.

22 Q. It says "Press 1 for Veterans?"

23 A. Yes.

24 Q. And the language also says, "Not all wounds

25 are visible." Right?

OTTMAR & ASSOCIATES 602-485-1488

1 A. Yes.

2 Q. Does this ad propose a commercial

3 transaction?

4 A. I would review this with counsel and with CBS

5 to get their determination.

6 Q. Do you think this ad rises to the level of a

7 public service announcement?

8 A. I think it rises to a level of my talking to

9 CBS and legal counsel.

10 [Exhibit 11] was marked for

11 identification.

12 BY MS. CANNON:

13 Q. Okay. In front of you is Exhibit 11. It's

14 the same thing. The cover page of this exhibit says

15 "10/10 K 1796 CD" because I took this from a CD that

16 the City produced to plaintiff with the Bates number

17 1796 on it.

18 And as you can see, it's a five-page exhibit.

19 Do you see that?

20 A. Yes.

21 Q. The last -- one moment, please.

22 The last ad in Exhibit 11, it has last page.

23 does this look like a -- is this a City of Phoenix bus

24 stop?

25 A. I don't know.

OTTMAR & ASSOCIATES 602-485-1488

1 A. Yes.

2 Q. And there's a website?

3 A. Yes.

4 Q. And it indicates "Department of Veterans

5 Affairs" at the bottom?

6 A. Yes.

7 Q. It looks like "Department of Human Health and

8 Services" also next to that?

9 A. Yes.

10 Q. And then "Suicide Prevention," there's a block

11 and there appears to be a number below that?

12 A. Yes.

13 Q. Okay. So does this ad propose a commercial

14 transaction?

15 A. Yes.

16 Q. How?

17 A. Veterans are employees of the U.S. Military

18 and they are proposing a benefit available to them.

19 Q. What kind of benefit?

20 A. Health benefit, Counseling benefit.

21 Q. So how is that proposing a commercial

22 transaction?

23 A. It's an exchange of service.

24 Q. How do you know that?

25 A. Veterans.

OTTMAR & ASSOCIATES 602-485-1488

Q. No. How do you know this ad is compliant with the City standards?

A. This is an ad I reviewed.

Q. And why did you review this?

A. Because -- well, let me backtrack on that.

This was an ad similar to one I reviewed for bus advertising.

Q. So you remember reviewing this one?

A. I remember reviewing that one.

Q. And so did you consult anyone in your review process?

A. Yes.

Q. Who?

A. I consulted him -- and I did not review this for CBS. I consulted the Clear Channel Outdoor, who consulted the Veterans Administration, and I consulted legal.

Q. What did the -- it was a different company?

I'm sorry, which one?

A. Clear Channel.

Q. What did Clear Channel -- did Clear Channel report back to you the information that you requested of them?

A. Clear channel reported back to me that it was a benefit offered and what the benefit was.

Q. Why?

A. Because that doesn't necessarily mean there's a benefit to the city employees.

Q. What if you did research and you found that the city employees did have this benefit? Would it then be a commercial transaction?

A. I would have to review the ad.

Q. Well, if the ad was the exact same ad, but it said "Press 1 for City employees," and the City employees could take advantage of this service, would it be a commercial transaction?

A. I'd have to review the ad with legal.

Q. So would you also have to find out more information to make sure that there was a commercial transaction involved?

A. In what manner?

Q. Well, let me ask you this question. When you first were given this ad for review, you could not make a determination on its face on whether or not it was compliant with the City Transit Advertising Standards. Is that right?

A. It wasn't the ad we first received.

Q. All right. So what ad did you first receive?

A. I don't recall, but this is the modified ad. We'd asked for modifications.

Q. And what was that?

A. It was counseling for veterans.

Q. Do they have to pay for it?

A. There's a copay involved in -- there's a copay involved in receiving the services.

Q. Does this ad express on its face that there is a commercial transaction involved?

A. Yes.

Q. Where?

A. Veterans.

Q. But you didn't -- I'm sorry, where?

A. Veterans.

Q. Where. "Press 1 for Veterans"?

A. Yes.

Q. That expresses a commercial transaction?

A. Yes.

Q. How?

A. They are employees of the U.S. Military. They are paid benefits and compensation for their services.

Q. And that's why it proposes a commercial transaction?

A. Yes.

Q. So if it said "Press 1 for City employees," that would be included as well?

A. No.

Q. Okay.

A. And, once again, let me declare. It wasn't the shelter ad. It was one for bus advertisement.

Q. Okay. But looking on its face, does it indicate to you -- let me say that differently.

Does this ad indicate on its face that -- by someone reading it, that they could use their benefits to obtain this service?

A. The ad indicates that there was an exchange of service and there was an employer who is offering a benefit. And the employer is notifying their employee the benefit is available to them.

Q. And who is the employer making this notification?

A. U.S. Government or the Department of Affairs. I'm sorry, Veterans Affairs.

Q. Are all veterans current employees of the Department of Veterans Affairs?

A. Not all veterans. I should say of the U.S. Military or U.S. Government.

Q. Must an advertisement express a commercial -- I'm sorry. Must an advertisement propose a commercial transaction on its face?

A. On its face.

Q. So it can't be implied. Is that right?

non-compliant advertisement?

A. We started having contract meetings, monthly contract meetings in which we have a variety of discussions. They send me, as far as I know now, all ads that they are potentially accepting for shelter advertising. I review an invoice document they send monthly and look at the clients who are on there and question them about the clients who are on there.

For example, I found an ad for cerebral palsy on a client list. I questioned, I think it was Mr. Chailan about it. And it was a PSA they had put up on our shelters.

Q. Okay. But my question was -- that wasn't -- my question was regarding ads they found -- CBS found non-compliant and whether they forward those to you?

A. They forward all ads to me.

Q. Except ones that they reject outright?

A. They don't forward those to me. Sometimes they have a discussion with me about those.

Q. Sometimes?

A. Sometimes.

Q. All right.

MS. COHEN. Can you mark this one.

(Unclear) was marked for identification.)

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graphically as a person who is employed in that capacity and they have the name of their business.

Q. Well, where does it say, "Join the Carpenters Union"?

A. "Build Your Future" indicates that.

Q. Oh, "Build Your Future" means, to you, join the Carpenters Union?

A. Taken as a whole with the ad, it enhances the union's mission of membership.

Q. Unions also lobby, don't they?

A. I don't know if this one does.

Q. And unions also spend money on candidates, right?

A. I don't know if this one does.

Q. What if that's what they're proposing?

A. It doesn't seem to have any sort of political language to it.

Q. So is there anything other than -- other than "Build Your Future," what is indicating that this is a commercial transaction?

A. Carpenters are people who are in an employment capacity. A union is a membership organization that takes dues.

Q. And how do you know that?

A. How do I know?

OTTMAR & ASSOCIATES 602-485-1488

BY MS. COHEN:

Q. I'm showing you what has been marked as 19. Again, this is a cover page that indicates that these photos were taken from a CD produced by the City of Phoenix from -- the CD was dated on March 10th. The Bates number is 1791.

Looking at -- and it's Bates-numbered -- I'm sorry. Looking at the exhibit, it's five pages.

Correct?

A. Yes.

Q. Okay. And looking at the third page, it's an ad for the Carpenters Union.

A. Yes.

Q. Can you tell me what commercial transaction this ad is proposing?

A. Sure. Carpenters are people who work in a specific job category. A union is a membership organization.

Q. So what does that mean?

A. They are proposing that you join their organization.

Q. How do you know that?

A. How do I know that they are proposing it?

Q. Yes?

A. "Build Your Future." They kind of present it

OTTMAR & ASSOCIATES 602-485-1488

Q. That it's a membership organization that takes dues?

A. Because it's a union and unions are membership organizations that have dues-paying members.

Q. Do you know whether TrainMeAZ is an organization that has members?

A. I don't know whether or not that particular website has members.

Q. I'm asking you about TrainMeAZ. Do you know whether that is a group?

A. I don't know whether it's a group.

Q. Do you know whether they have members?

A. It's possible they have members from the language that was on the advertisement.

Q. Do you know whether TrainMeAZ has sponsors?

A. I don't know what their sponsorship capacity is.

Q. Do you know whether these sponsors pay to be a part of TrainMeAZ?

A. I don't know if they pay to be part of TrainMeAZ.

Q. Because you just don't know. You know about unions, but you don't know about TrainMeAZ sponsors, right?

A. It's unique, different than unions, which are

OTTMAR & ASSOCIATES 602-485-1488

1 kind of common knowledge.

2 Q. Well, I couldn't tell, by looking at that ad,
3 so it must not be common.

4 A. Okay. So looking at the last page of
5 Exhibit 14. So what is this ad? What commercial
6 transaction is this ad proposing?

7 A. This is an ad that it was probably up that I
8 did not review because, when it came back up for
9 review, we asked them to modify it.

10 Q. What did you ask them to do?

11 A. This is a business that has a transaction
12 between the mother and the adopted family. The adopted
13 family, or the potential adopted family, needs to pay a
14 fee for the service. We asked them to modify it so
15 that it is an ad that reaches out to the family rather
16 than the pregnant mother.

17 MS. COHEN: Mark this, please.

18 (Exhibit 14 was marked for
19 identification.)

20 BY MS. COHEN:

21 Q. Okay. I'm showing you what has been marked as
22 Exhibit 17. Can you tell me how this ad reaches out to
23 the family versus the pregnant mother?

24 A. This is not the ad that we -- this is the ad
25 we asked for a modification. This is not an ad that

OTTMAR & ASSOCIATES 602-485-1488

1 A. They have compensation for the baby, to give
2 up your baby.

3 Q. Okay. So it appears to propose a commercial
4 transaction?

5 A. They'll buy your rent, food, electricity,
6 water, bus passes, cell phones; things that are a value
7 that cost money.

8 Q. And can you look at the next page?

9 A. Exhibit 19?

10 Q. The next page of the exhibit, yeah.

11 So this ad that is 1949 is
12 Bates-numbered -- is 1949. The next Bates number of
13 this Exhibit 19 is 1950 and 1951, and these are E-mails
14 between you and Colleen McCarthy, with CBS Outdoor.
15 Right?

16 A. Yes.

17 Q. So you are advising Ms. McCarthy that the ad
18 is not compliant with City standards because you didn't
19 see the fees associated with the pregnant mother. Do
20 you see that?

21 A. I would say that this is not the ad associated
22 with that particular part of the E-mail. The part that
23 says "Thank you," it looks like they sent me an ad,
24 possibly, that was in compliance.

25 Q. But we don't know what that ad was?

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1 was reviewed with me by CBS. When it came back up for
2 review, when it was presented to me, we asked for a
3 modification.

4 Q. So did you require this ad to be taken down?

5 A. I didn't -- I don't believe it was up.

6 Q. Well, is that not a transit stop in Phoenix?

7 A. I don't know where the stop is. But as far as
8 I know, when I took over the review of the ads, this
9 was not an ad that I saw that was up.

10 Q. So do you recall how they modified the ad?

11 A. I don't believe they -- I don't recall them
12 giving me a modified ad.

13 Q. So the key, though, is that was that it
14 didn't -- it wasn't targeted to the family that would
15 be doing the adopting?

16 A. The services are free to the mother. There is
17 a fee to the family doing the adopting.

18 Q. Okay.

19 (Exhibit 14 was marked for
20 identification.)

21 Q. Okay. I'm showing you what has been marked
22 as Exhibit 14. Does this ad propose a commercial
23 transaction?

24 A. It could, yes.

25 Q. And so, why is that?

OTTMAR & ASSOCIATES 602-485-1488

1 A. Correct. I don't.

2 Q. Okay. So 1949, the reason that I'm delaying
3 is because I believe, according to the City's
4 production, Exhibit 19 was actually rejected.

5 So before we end the deposition, I want to
6 confirm that or not.

7 (Exhibit 14 was marked for
8 identification.)

9 BY MS. COHEN:

10 Q. Okay. I'm showing you what has been marked as
11 Exhibit 14. It's two pages. Do you see that?

12 A. Yes.

13 Q. Can you look at these and tell me if these
14 proposed -- the ads in Exhibit 14 propose a commercial
15 transaction?

16 A. Yes.

17 Q. In what ways do these ads propose a commercial
18 transaction?

19 A. These are state parks that have an entrance
20 fee.

21 Q. How do you know there's an entrance fee?

22 A. Because confirmation from -- I'm sorry, I was
23 looking at the area code. They are common knowledge so
24 have an entrance fee, confirmation from CBS Outdoor.

25 And I might point out, these ads were sent to

OTTMAR & ASSOCIATES 602-485-1488

1 as by mistake. They were actually supposed to be for
2 light rail.

3 Q. Would they be compliant with the City of
4 Phoenix's Transit Advertising Standards for bus - for
5 transit stops?

6 A. Yes.

7 Q. And where is the language -- where is the
8 express language that this ad proposes a commercial
9 transaction either in writing -- in words or in
10 depiction?

11 A. Sure. A state park is an entity that has an
12 entrance fee.

13 Q. Okay. Can you see the one marked 1/10? I'm
14 not sure what you have in front of you. That one.

15 Okay. I'm looking at Exhibit 16. Can you
16 look at the fourth page of Exhibit 16? It's an SRP
17 ad. Correct?

18 A. Yes.

19 Q. And that's an ad that is currently at a bus
20 stop. Correct?

21 A. No.

22 Q. Where is it at?

23 A. It's a former ad.

24 Q. Oh, okay. But it was up at a transit stop.
25 Is that right?

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1 [Recess taken from 2:01 to 2:07.]

2 [Exhibit No. 20 was marked for
3 identification.]

4 BY MS. COHEN:

5 Q. So in front of you is -- it's an exhibit
6 marked -- well, it's Exhibit 20. The cover page says,
7 "City of Phoenix Public Transportation Department." Do
8 you see that?

9 A. Yes.

10 Q. Does this document look familiar? By the way,
11 it's Bates-numbered Korwin 1 through Korwin 14.

12 A. No.

13 Q. Okay. Now, if you look at the second page --

14 A. Oh, no. This part doesn't, but yes.

15 Q. The second page?

16 A. Yes.

17 Q. Did you create this?

18 A. I believe I did.

19 Q. Do you see under the section it says,
20 "Non-compliant advertisements, no modification?"

21 A. Right.

22 Q. What does that mean?

23 A. That meant that we did not accept them as they
24 were. There was no modification given to us.

25 Q. Okay. So they never went up?

OTTMAR & ASSOCIATES 602-485-1488

1 A. Yes.

2 Q. Do you why it's not up now?

3 A. Because this is a donation to SRP.

4 Q. Do you know what year this happened?

5 A. No, I don't know.

6 Q. And so did you require this ad to be taken
7 down?

8 A. No.

9 Q. Do you know when it was taken down?

10 A. No. It came back up for review and that's how
11 I know about it.

12 Q. Oh, it was up, though, at some point?

13 A. Yes.

14 Q. Okay. And it was up during your tenure at the
15 Department of Public Transit?

16 A. Not while I was doing shelters. No.

17 Q. So it was before 2006?

18 A. Oh, I'm sorry, tenure. Yes.

19 MS. COHEN: Okay. The only thing I want
20 to check is the status of 1449 before we conclude -- at
21 least. Before I'm done.

22 MR. GARDNER: Which exhibit is that?

23 MS. KOHN: Exhibit 19.

24 MS. COHEN: Okay. So we will go do that
25 and we'll be back.

OTTMAR & ASSOCIATES 602-485-1488

1 A. I can't confirm they never went up, but they
2 would not have gone up -- or we would not have allowed
3 them to go up.

4 Q. Okay. It would have been, in the opinion of
5 the City and your department, that the ads were not
6 compliant with the City's transit standards. Is that
7 right?

8 A. Yes.

9 Q. And so if you then look at Exhibit Korwin --
10 I'm sorry, page Korwin 21. Do you see that?

11 A. Yes.

12 Q. Okay. And if you compare that to the first
13 page of Exhibit 14, are those the same ads?

14 A. They are.

15 Q. Okay. So now you had testified earlier that
16 you thought 14 proposed a commercial transaction.
17 Correct?

18 A. Yes.

19 Q. But, in fact, this ad was rejected by the
20 City. Correct?

21 A. It appears that it's in that category, yes.

22 Q. And do you have an explanation for that?

23 A. I don't. Other than, as I learn more
24 sometimes about ads, I can be -- I can have a
25 discussion, further discussion with the advertiser.

OTTMAR & ASSOCIATES 602-485-1488

and they can present their case.

So this would be something that, if the advertiser wanted to further talk to us, we would have and they could have pointed that out. But I see it for myself with the second review.

Q. Did you ever reach out to this advertiser to discuss this ad?

A. That would be up to CBS. And CBS is always encouraged to have the advertiser, if they have questions or whatever, that we are available to discuss it with them.

Q. Do you ensure -- in this particular case, did you ask CBS to reach out to the advertiser to discuss the ads?

A. I don't. In particular cases, we do. In general, we do ask them to ask us questions. If they have questions about the review process, about the standards, we want to discuss it with them.

Q. Okay. Can you just look at the last two pages of this exhibit? It's Korwin 32 and 34.

A. Yes.

Q. So now, Korwin 32, according to Korwin 3, is -- let's see. Well, is it the ad that was rejected and 34 the modification, or is it the modification and 34 the ad that was rejected?

OTTMAR & ASSOCIATES 602-485-1488

A. The commercial transaction is the dentist paid for this -- the membership paid for this, and that there's twofold; that there is the transaction and that the dentists are seeking clients and that a client would pay for the dental service.

MS. COHEN: Okay. I have no further questions.

MR. GARDNER: We'll review and sign.

MS. COHEN: Thank you for your time.

THE COURT REPORTER: Do you want the same copies as the previous deposition you ordered?

MS. COHEN: Yes.

MR. GARDNER: Yes, I would. Thank you.

(Concluded at 2:13 p.m.)

MARIE CHRISTINE CHAPPLE CAMACHO

OTTMAR & ASSOCIATES 602-485-1488

A. Thirty-four is the modification.

Q. Can you tell me in what way this was modified? Or why a modification was required?

A. We wanted to emphasize that this was an organization and that they are there to help you find a dentist to provide a service to you.

Q. What is an organization? What did you want to clarify?

A. That this is a dental membership; that they wanted to help you find a dentist to provide service, dental service to you.

Q. So what is changed in the ad that was accepted?

A. Rather than for more info, it's to find a dentist, not just to gain just general information about health. We're actually take action and to find a service, a dental service for yourself.

Q. Well, is there a fee for finding a dentist? Do you know whether the person who calls this number will be charged for the process of finding a dentist?

A. The organization charges a fee to the dentist to help them gain clients.

Q. So if a person calls this number and then if a person uses the dentist found for them, then there's a commercial transaction?

OTTMAR & ASSOCIATES 602-485-1488

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing transcript was taken before me, MARY DAVIS, a Certified Court Reporter in the State of Arizona; that the witness before testifying was duly sworn by me to testify to the whole truth; that the questions propounded to the witness and the answers of the witness thereto were taken down by me in shorthand and thereafter reduced to print under my direction; at the witness's request, notification was provided that the transcript was available to read and sign; that the foregoing pages are a true and correct transcript of all proceedings, all done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

Dated at Phoenix, Arizona, this 9th day of December, 2011.

Mary Davis

MARY DAVIS, RPR - Digital Signature
AZ Certified Court Reporter No. 40271

OTTMAR & ASSOCIATES 602-485-1488

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

ALAN KORWIN, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. CV2011-009838
)	
DEBBIE COTTON, et al.,)	
)	
Defendants.)	
_____)	

DEPOSITION OF DEBBIE COTTON

Phoenix, Arizona
November 18, 2011
10:00 a.m.

PREPARED FOR:

ATTORNEY AT LAW

(COPY)

Reported by:
Robin Jasper, RPR
CCR No. 50286

1 A. Yes. There was an ad for a religious --
 2 Q. I'm sorry, what?
 3 A. A religious entity with no commercial value.
 4 There was no commercial transaction.
 5 Q. Do you recall what it looked like?
 6 A. No, I don't recall.
 7 Q. Do you recall what the religious entity was?
 8 A. I do not recall.
 9 Q. Do you recall whether you, the City produced that
 10 in the documents it gave to plaintiffs in response to the
 11 plaintiffs' production request?
 12 A. I don't recall.
 13 Q. Do you recall anything about it, other than what
 14 you have testified to?
 15 A. No.
 16 Q. When you say "no commercial value," what do you
 17 mean by that statement?
 18 A. There was no exchange.
 19 Q. No exchange of what?
 20 A. Money, services.
 21 Q. Anything else?
 22 A. No.
 23 Q. Does Ms. Chapple also bring you ads that -- I'm
 24 sorry, Yes. Does Ms. Chapple also bring you ads that she
 25 believes may not meet City of Phoenix standards?

OTTMAR & ASSOCIATES 602-495-1488

1 A. Yes.
 2 Q. And who would that be?
 3 A. Ms. Chapple.
 4 Q. And in what circumstances would Mr. Heil be
 5 bringing you those ads?
 6 A. Ms. Chapple is out of the office.
 7 Q. Any other circumstances where he would be
 8 fulfilling that function?
 9 A. Not that I recall.
 10 Q. Is there an advertising review process in place
 11 whereby proposed ads are reviewed and determined whether
 12 they are appropriate for transit advertising?
 13 A. Yes.
 14 Q. Can you describe that process?
 15 A. Ms. Chapple and Mr. Heil review the ads, if
 16 additional questions -- review and discuss the ads. And
 17 if additional questions arise, they consult with legal
 18 counsel.
 19 Q. And then what happens in the process?
 20 A. A determination is made. They may suggest
 21 modifications to make the commercial value of the ad more
 22 apparent. That is the process.
 23 Q. So where is CBS Outdoor in this process?
 24 A. CBS's job is to follow the standards, and they
 25 should not present to us items that do not meet the

OTTMAR & ASSOCIATES 602-495-1488

1 A. Yes.
 2 Q. Does she bring you the same ads that Mr. Heil
 3 brings you, or would she be bringing you different ads?
 4 A. Different.
 5 Q. Can you recall any ads that Ms. Chapple has
 6 brought you within the last six months that she believed
 7 did not meet City standards?
 8 A. I don't recall.
 9 Q. Under what circumstances would Mr. Heil be
 10 bringing you an ad versus Ms. Chapple bringing you an ad
 11 that they believe did not meet City standards?
 12 A. What would be the differences?
 13 Q. Yes.
 14 A. No differences. They would bring them for the
 15 same reasons.
 16 Q. Now, how are it determined who would be bringing
 17 you ads? Was it just a matter of dividing up work load,
 18 or how would it work that on some occasions Mr. Heil would
 19 be bringing you an ad and then on another occasion
 20 Ms. Chapple would be bringing you an ad?
 21 A. If Ms. Chapple is out of the office, Mr. Heil
 22 would bring me the ad.
 23 Q. Between the two, does one with of them have
 24 their primary responsibility to bring to you ads that they
 25 believe do not meet City standards?

OTTMAR & ASSOCIATES 602-495-1488

1 standards.
 2 Q. So when an advertiser has a proposed ad that they
 3 want to post on a City of Phoenix transit bus stop, they
 4 first go to CBS Outdoor?
 5 A. Yes.
 6 Q. And then CBS Outdoor conducts a review of the
 7 proposed ad?
 8 A. I don't know.
 9 Q. Do you know what they do?
 10 A. No, I do not.
 11 Q. But advertisers go to CBS Outdoor before they can
 12 ever get to the City of Phoenix, is that right?
 13 A. Yes.
 14 Q. So what I meant by that, just to be clear, is
 15 that, if an advertiser wants to pay for an ad, they first
 16 go to CBS Outdoor and they do not go to your office?
 17 A. Yes.
 18 Q. And they in fact won't get to your office on many
 19 occasions?
 20 A. Yes.
 21 Q. And on occasions where CBS outdoor rejects an ad
 22 that is proposed to them, would that always come to your
 23 attention?
 24 A. No.
 25 Q. Would it ever come to your attention?

OTTMAR & ASSOCIATES 602-495-1488

1 A. Yes.

2 Q. Is there a process in place that requires CBS

3 Outdoor to provide to you a copy of ads that they have

4 rejected because they do not believe they meet the transit

5 standards of the City of Phoenix?

6 A. No.

7 Q. And what measures do you have in place to ensure

8 that CBS Outdoor is following the transit standards?

9 A. We do on-site inspections, we do field reviews,

10 we review their documents, invoices, and match the posted

11 ad with their paper trail.

12 Q. Anything else?

13 A. No.

14 Q. And when you do -- what do you mean by on-site

15 inspections?

16 A. We look at, we go out onto the street and look at

17 ads, take pictures of them, at the location.

18 Q. And why -- I'm sorry.

19 A. I beg your pardon?

20 Q. I didn't mean to interrupt you.

21 A. And we match those with the invoicing, or with

22 the billing that we receive. Actually, the invoicing, the

23 documentation, I will say, that we receive from CBS.

24 Q. And why do you go -- why are on-site inspections

25 done?

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1 Q. And what is the purpose of looking at the

2 documents?

3 A. To match what we see in the field to what is on

4 the document we receive from CBS, to be sure that they are

5 connected and they are the same.

6 Q. Do you have a process in place whereby you review

7 the proposed ads that CBS has rejected but never brought

8 to your attention?

9 A. No.

10 Q. Have you ever asked to see those ads, that they

11 have been proposed to CBS but they have rejected?

12 A. Not that -- I'm not aware. I don't know. I

13 don't know.

14 Q. No, my question was have you ever asked to see

15 any ads that CBS has rejected?

16 A. I don't know. Have I personally?

17 Q. Yes.

18 A. Have I personally, no.

19 Q. So just for the record, I just want to make sure

20 it's clear.

21 So you have never requested that CBS give to

22 you any ads that they have rejected --

23 A. Correct --

24 Q. -- but not passed on to your department?

25 A. I have not.

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1 A. It's necessary. It's part of how we manage and

2 monitor the contract, to be sure that the ads on the

3 street are current and that we are receiving the revenues.

4 Q. Do you do on-site -- and when I say "you," I mean

5 your department. Is that right, your department is doing

6 this?

7 A. Yes.

8 Q. Do you also review the ads to make sure they are

9 compliant with City standards?

10 A. Yes.

11 Q. By "City standards," I mean the transit

12 advertising standards.

13 A. Yes.

14 Q. And is there anything else that your department

15 looks for in these on-site inspections that you haven't

16 already testified to?

17 A. No.

18 Q. And you also said that you do field reviews, is

19 that right?

20 A. Well, the on-site inspection, in my words, is a

21 field review. They are one and the same.

22 Q. And you said you look at document invoices?

23 A. I'm going to say documents. I don't know if they

24 are invoices or exactly what they are, but they are

25 documents.

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1 Q. Are you aware of whether Ms. Chapple has made

2 such a request of CBS?

3 A. I do not know.

4 Q. Do you know if Mr. Heil has made such a request?

5 A. I do not know.

6 Q. Have you ever asked Ms. Chapple to request from

7 CBS Outdoor any proposed ads that they have rejected but

8 not otherwise given to your department?

9 THE WITNESS: Could you repeat that, please.

10 (The requested portion of the record was

11 read by the court reporter.)

12 THE WITNESS: No.

13 BY MS. COHEN:

14 Q. Have you ever made the same request of Mr. Heil,

15 that is to ask -- I'm going to start over.

16 Have you ever asked Mr. Heil to ask CBS

17 Outdoor to produce to your department the ads that they

18 have rejected but not otherwise given to your department?

19 A. No.

20 Q. And how do you ensure that CBS Outdoor is aware

21 of the City of Phoenix's transit advertising standards?

22 A. They are part of the contract. We have

23 monthly -- we have given them copies, we have monthly

24 contract meetings with the vendor.

25 MS. COHEN: Can you read back the answer;

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1 (The requested portion of the record was
2 read by the court reporter.)
3 BY MS. COHEN:
4 Q. So did you mean that you give them copies of the
5 contract, your department gives CBS Outdoor copies of the
6 contract or copies of something else?
7 A. The advertising standards are a part of the
8 contract. CBS has signed the contract, therefore they
9 have them. We have also separately given them copies of
10 the standards, and we discuss the standards during our
11 meetings to clarify questions. If they present us with an
12 ad that they believe does not follow the standards, we ask
13 them point by point to explain why or why not a particular
14 ad will meet the standard. So we know that they are aware
15 of the standards.
16 Q. So CBS Outdoor may at times bring your attention
17 to ads that they believe may not meet the standards and
18 sometimes they do not?
19 A. Correct.
20 Q. Have you ever requested or any of your staff
21 requested -- let me start over.
22 Have you ever requested that any individuals
23 at CBS Outdoor obtain any training in transit advertising
24 and First Amendment issues related to such advertising?
25 A. No.

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1 Q. And what was the purpose of creating this
2 document?
3 A. To memorialize a process that has been in place.
4 Q. Had the process not been memorialized prior?
5 A. I don't recall.
6 Q. Do you know whether there was an advertising
7 review process written down prior to Cotton Exhibit 2?
8 A. I don't know.
9 Q. Do you know why -- Did you ask for the process to
10 be memorialized?
11 A. I don't recall.
12 Q. Do you know if anyone else requested that the
13 advertising review process be memorialized?
14 A. I don't recall.
15 Q. And when you used the word "memorialized," what
16 did you mean?
17 A. In writing, in a clear format.
18 Q. Has the advertising review process, at least
19 during your tenure as director, been memorialized anywhere
20 other than in this document, Cotton Exhibit 2?
21 A. I don't recall.
22 Q. When you became the director, did you undergo any
23 training?
24 A. When I became the director, did I undergo any
25 training?

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1 Q. Are you aware of whether CBS Outdoor or any of
2 its staff that are involved in the contract with the City
3 of Phoenix have obtained such training?
4 A. I don't know.
5 Q. Have you ever asked Ms. Chapple or Mr. Heil or
6 anyone on your staff to contact CBS Outdoor and request
7 that they obtain training on public transit advertising
8 and First Amendment issues?
9 A. No.
10 (Deposition Exhibit 2 was marked for
11 identification.)
12 BY MS. COHEN:
13 Q. In front of you is Cotton Exhibit 2, which is a
14 two-page document, Bates number 1218 -- well, it's
15 Korwin01218 and Korwin01219.
16 Do you see that?
17 A. Yes.
18 Q. Does this document look familiar?
19 A. Yes.
20 Q. Can you tell me what it is?
21 A. It's the Advertising Review Process.
22 Q. And do you know who created this document?
23 A. Ms. Chapple, in consultation with legal.
24 Q. How do you know that?
25 A. We discussed it.

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1 Q. Yes.
2 A. Yes.
3 Q. What kind of training did you undergo?
4 A. Management academy, numerous public
5 transportation seminars and symposiums and conferences.
6 Q. When was the management academy? When did you
7 attend that?
8 A. I don't recall.
9 Q. Was it within the first month that you became
10 director?
11 A. I don't recall.
12 Q. Do you recall whether it was the first year after
13 you became director?
14 A. I don't recall.
15 Q. Do you have any way you can estimate when you
16 attended the management academy?
17 A. It was early in my tenure.
18 Q. And did you attend it once?
19 A. Yes.
20 Q. And how long was the academy?
21 A. Approximately two weeks.
22 Q. So you attended the academy for approximately two
23 weeks?
24 A. Yes.
25 Q. Do you recall whether you had any -- I'm sorry,

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1 Did you have any training on City of Phoenix transit
2 advertising standards at the management academy?
3 A. No.
4 Q. Did you have any training on the City of Phoenix
5 Public Transit Department Advertising Review Process at
6 the management academy?
7 A. No.
8 Q. Did you have any training on the City of Phoenix
9 Public Transit Department Advertising Review Process at
10 any time during your tenure as director?
11 A. Would you define "training."
12 Q. Sure. When I ask you if you have ever received
13 training, did you ever attend any courses or classes or
14 seminars or conferences regarding the City of Phoenix's
15 transit advertising review process?
16 A. No.
17 Q. Did you shadow the director whose place you took
18 when you became director?
19 A. Yes.
20 Q. Do you know what I mean by "shadow"?
21 A. Yes.
22 Q. So what did you do?
23 A. I worked with him for two years prior to becoming
24 the director. I participated in meetings, worked through
25 various issues with him.

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1 A. No.
2 Q. And did you have an occasion to deal with any
3 First Amendment issues as they related to the advertising
4 review process, as deputy?
5 A. No.
6 Q. And do you know what I mean by "First Amendment
7 issues"?
8 A. Yes.
9 Q. What do you think I mean?
10 A. Issues of free speech.
11 Q. And when I say "First Amendment issues," I mean
12 issues of free speech and constitutional issues as they
13 might be implicated by the City's transit standards.
14 Is that what you understand?
15 A. Yes.
16 Q. And would you say that it's within your job
17 responsibility to ensure that the City of Phoenix's public
18 transit department advertising standards are enforced in a
19 constitutional manner?
20 THE WITNESS: Would you repeat that, please.
21 (The requested portion of the record was
22 read by the court reporter.)
23 THE WITNESS: Yes.
24 BY MS. COHEN:
25 Q. I want to refer you back to Cotton 3. Can you

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1 Q. Did any -- So this was when you were the deputy?
2 A. Yes.
3 Q. As deputy, though, you didn't work on any transit
4 advertising standards matters?
5 A. No.
6 Q. Is that right?
7 A. That is correct.
8 Q. That might not be totally clear, just because of
9 the way I asked the question.
10 In your capacity as director, and even when
11 you were shadowing the director, you didn't have an
12 occasion to deal with any transit advertising standard
13 issues, is that right?
14 A. No.
15 Q. It's not right?
16 A. Could you repeat the question?
17 Q. Did I just do that again? I just did that again
18 to you. How many double negatives can I put in one
19 sentence?
20 As director -- I'm sorry, as deputy, at any
21 time, even when you were shadowing the director, did you
22 have occasion to work on transit advertising standards?
23 A. No.
24 Q. Did you have an occasion to work on the transit
25 advertising review process?

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1 look at the first page. Let me ask you: Did you approve
2 this review process before it was put into place?
3 A. Yes. Well, let me rephrase that. This is the
4 process that has always been in place, even before I was
5 director, so I really can't say I approved it.
6 Q. I understand.
7 A. This is the way we have always done business.
8 Q. Fair enough. So when it was, when this
9 particular review process was memorialized, did you have
10 to approve it before it was finalized?
11 A. I did approve it.
12 Q. And is it disseminated in some manner?
13 A. The staff involved in the review process have the
14 review process.
15 Q. So can you just identify who -- Did you send this
16 document out to your staff?
17 A. No, I did not.
18 Q. Did you direct another staff member, one of your
19 staff members to do so?
20 A. No, I did not.
21 Q. But are you aware that another staff, whether
22 another -- I'm sorry. Are you aware of whether one of
23 your staff members distributed this process to anybody?
24 A. Yes.
25 Q. What are you aware of?

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A. I am aware that Ms. Chapple distributed this process to her staff, and, obviously, our attorney has it as well.

Q. Are you aware of whether this Cotton advertisement was given to CBS Outdoor?

A. I don't recall.

Q. And when you say Ms. Chapple's staff, whom are you referring to?

A. Matthew Hall.

Q. Is that it?

A. Yes. Well, let me say, it is possible she also gave it to her other staff member, which would be -- I can't think of his last name. Oh, I can't think of his last name. He's not involved in the advertising process, but it would not be unusual for her to share this information with her entire team.

Q. But Ms. Chapple's staff that deals with transit advertising, at least currently, is Mr. Hall?

A. Correct.

Q. And Ms. Gathers was also involved at some point?

A. Ms. Gathers is no longer involved in the process, and I don't know if she received a copy or not.

Q. So looking at, it's the paragraph under, it's on page one of Exhibit 3, Initial Review By Advertising Contractor, if you look at the last sentence, "If an

A. There are times when it has not happened.

Q. And what steps have you taken to make sure that it does happen?

A. We will send the offending contractor, we will send them letters and notices informing them that they violated the transit advertising standards and that they have not forwarded the information for our review.

Q. Okay. And then the same paragraph -- well, it's under the same heading, where it says, "In any case," that paragraph?

A. Mh-huh.

Q. I'm sorry, you have to say yes or no.

A. I beg your pardon.

Q. It's just the transcript.

A. I beg your pardon. Would you repeat the question.

Q. Of course. I'm looking at the paragraph on the same page that starts, "In any case, all advertisement to be posted --"

Do you see that?

A. Yes.

Q. So that means that once CBS has determined that they believe an ad is compliant with the City of Phoenix's advertising standards, then it must go to your department, is that right?

advertisement is questionable as to whether or not it is in compliance, it will be forwarded for review to the Designated Public Transit Department's Contract Manager."

Do you see that?

A. Yes.

Q. Who is the Designated Public Transit Department's contract manager?

A. Ms. Chapple.

Q. Has it been Ms. Chapple for the last two years?

A. Approximately.

Q. Has it been Ms. Chapple -- Has Ms. Chapple served as the contract manager since at least June of 2010?

A. Yes.

Q. And through the present?

A. Yes.

Q. And who is the advertising contractor that's referred to in this paragraph?

A. CBS Outdoor and Clear Channel.

Q. So this policy seems -- It says that advertisement -- if an advertisement is questionable as to whether or not it's in compliance, it will be forwarded for review?

A. Yes.

Q. And you testified earlier that that's not always the case?

A. Yes.

Q. This review process also references someone called the contractor liaison. That's actually in the second-to-the-last paragraph on the bottom of the page on Bates number Norwin01218.

Who is currently the contractor liaison?

A. It is an employee -- that is an employee of CBS.

Q. Do you know who that is currently?

A. Yes.

Q. Who is that?

A. Tom Reardon.

Q. Do you know how long he has been the contractor liaison?

A. I don't recall.

Q. Who was prior to Tom, who was the contract

liaison?

A. Steve Chatham.

Q. And who is Colleen McCarthy?

A. She is an employee of CBS.

Q. Have you worked with her before?

A. I have not.

Q. Have you met her?

A. I don't recall.

Q. Do you know, has she attended any of the meetings that you have attended with CBS?

1 A. I don't recall.
 2 Q. Do you attend the monthly meetings?
 3 A. No.
 4 Q. Have you ever attended the monthly meetings?
 5 A. No.
 6 Q. And the monthly meetings, I mean between your
 7 department and CBS that you testified to.
 8 A. Yes.
 9 Q. So you have not attended any of those meetings?
 10 A. No.
 11 Q. Can an advertising -- I'm sorry. Can transit
 12 advertising be posted at a City of Phoenix bus stop or on
 13 transit furniture without your approval?
 14 A. Can it be?
 15 Q. Yes.
 16 A. Yes.
 17 Q. Is that okay with you, or would that not be in
 18 compliance with the rules?
 19 A. If it meets the standards, it is okay.
 20 Q. So you don't review every ad before it's posted.
 21 Is that right?
 22 A. No.
 23 Q. That's not right?
 24 A. No, I mean that is right. I beg your pardon.
 25 Q. I will try to be better with the --

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1 Q. You don't have to say it, but if you are going to
 2 say something, say yes or no, until it's time to answer
 3 the question.
 4 MR. GARDNER: And it's better not to say
 5 anything -- Let her finish the question and then go ahead
 6 and answer.
 7 BY MS. COHEN:
 8 Q. So an advertiser brings an ad to CBS Outdoor, CBS
 9 Outdoor reviews it and determines that it is compliant
 10 with the transit standards, and at that point CBS can
 11 approve it for posting, is that right?
 12 A. Yes.
 13 Q. Need they do anything else after that point other
 14 than post the ad?
 15 A. Send it to us.
 16 Q. And when do they send it to you, prior to its
 17 posting or after its posting, or does it matter?
 18 A. It does not matter. We have gotten them both,
 19 both ways.
 20 Q. So they can post it and send it to you, right?
 21 A. Yes.
 22 Q. They can send it to you and then wait for your
 23 approval and then post it?
 24 A. It may not require our approval.
 25 Q. And we are talking about the kinds of ads where

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1 Is there anyone on your staff who does
 2 review every ad before it is posted at a transit stop?
 3 A. No.
 4 Q. So there are occasions CBS Outdoor will simply
 5 accept an ad and post it?
 6 A. Yes.
 7 Q. How often do you speak with Marie Chaplin?
 8 A. Daily.
 9 Q. And what generally, what do you meet about on a
 10 daily basis?
 11 A. A variety of topics.
 12 Q. Do some of those topics include transit
 13 advertising?
 14 A. Yes.
 15 Q. Who is the final decision maker on whether a
 16 proposed ad will be accepted?
 17 A. Ultimately me. I'm the final decision maker.
 18 Q. I just, I want to go through just a couple
 19 scenarios. An advertiser brings an ad to CBS Outdoor,
 20 right? That's their first stop, right?
 21 A. Correct.
 22 Q. And CBS Outdoor reviews it?
 23 A. Uh-huh.
 24 Q. Yes?
 25 A. Yes. I beg your pardon.

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1 They determine, CBS Outdoor determines comply with City of
 2 Phoenix standards, right?
 3 A. They may send it before they post it or after
 4 they post it.
 5 Q. And on an occasion where they are not sure about
 6 an ad and they send it to your department, who makes the
 7 decision on whether it's compliant or not compliant? And
 8 the "they" I'm referring to is, when CBS Outdoor sends
 9 your department an ad and CBS Outdoor believes that it may
 10 not be compliant with City of Phoenix transit standards,
 11 who makes the decision on whether it's compliant or not?
 12 A. Would you repeat that, please.
 13 Q. Sure. Let me try to rephrase it.
 14 In a situation where CBS Outdoor receives a
 15 proposed ad and believes it may not meet the City of
 16 Phoenix's standards, and then CBS determines we are going
 17 to send it -- that they are going to send it to your
 18 department for further review, is that a scenario that
 19 actually happens?
 20 A. Yes.
 21 Q. So who will make the decision from your
 22 department on whether that ad is compliant or not?
 23 A. If CBS tells us that they believe the ad is not
 24 compliant, we will concur with their assessment.
 25 Q. Are there occasions where you might decide that

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1 they made an incorrect assessment and determine that the
2 ad is in fact compliant?

3 A. I don't recall that type of situation.

4 Q. So is it like a rubber stamp, if CBS Outdoor
5 brings you an ad and they do not believe that it's
6 compliant but they want your input, do you just rubber
7 stamp it?

8 MR. GARDNER: Object to form.

9 Go ahead and answer, if you can.

10 THE WITNESS: That is their job. That is
11 why they receive revenues. And we want them to do their
12 job. That's what they are paid for.

13 BY MS. COHEN:

14 Q. So you will, so your department will give CBS
15 Outdoor deference when they bring an ad that says -- I'm
16 sorry,

17 When CBS Outdoor brings to your attention an
18 ad, your department's attention, an ad that they do not
19 believe is compliant but they want your input, your
20 department gives CBS Outdoor deference regarding their
21 initial assessment of the ad?

22 A. Yes. That is their job.

23 Q. Would it be fair to say that Ms. Chapple doesn't
24 do anything without your authority?

25 MR. GARDNER: Object to form.

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1 (Deposition Exhibit [redacted] was marked for
2 identification.)

3 BY MS. COHEN:

4 Q. In front of you is Cotton Exhibit 7, and it's a
5 seven-page exhibit. Can you confirm that?

6 A. I only have four pages.

7 MR. GARDNER: I have eight pages.

8 MS. COHEN: Well, that's crazy. All right
9 let's see. Let me trade you. Let me see what I gave you
10 here. Oh, you know what, there might be duplicates on the
11 back. You know what, let's just take the first page. We
12 will make, Cotton Exhibit 7 will just be one page and it
13 is Korwin01207. All right. Everyone on board here?
14 Okay. Hearing no objections, we will move forward.

15 BY MS. COHEN:

16 Q. Ms. Cotton, do you recognize Cotton Exhibit 7?

17 A. Yes.

18 Q. And what is it?

19 A. Public Transit Department advertising standards.

20 Q. Do these standards have to be approved by the
21 Mayor of the City of Phoenix before they are enacted?

22 A. No. They are department standards.

23 Q. Does the City Council have to approve them before
24 they are enacted?

25 A. No, they have not.

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1 Go ahead and answer, if you can.

2 THE WITNESS: Yes.

3 BY MS. COHEN:

4 Q. Does Ms. Chapple make final decisions on
5 whether -- Are there occasions where Ms. Chapple makes the
6 final decision on whether a transit ad is compliant with
7 City standards or not?

8 THE WITNESS: Would you repeat that, please.

9 (The requested portion of the record was

10 read by the court reporter.)

11 THE WITNESS: That's a difficult question to
12 answer.

13 BY MS. COHEN:

14 Q. When an ad is brought to your department's
15 attention and the department is being asked to make a
16 decision on whether an ad is compliant or not, who makes
17 that final decision?

18 A. I do.

19 Q. Are there ever occasions when Ms. Chapple makes
20 that final decision?

21 A. She always confers with me.

22 Q. And she's required to confer with you before she
23 would make a final decision on whether an ad is compliant.
24 Is that right?

25 A. Yes.

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1 Q. Do you know whether the City Council reviews
2 these standards, the Transit Advertising Standards at all?

3 A. They have not.

4 Q. So who is ultimately -- Is there someone who has
5 to give the ultimate approval for the issuance of these
6 transit standards?

7 A. May I rephrase my previous statement? We have
8 received input from the City Council and they have made
9 modifications to these standards.

10 Q. City Council has?

11 A. Yes. Well, let me say -- yeah, City Council.

12 Q. Do you know what it means when an item is on a
13 City Council agenda that is for consent?

14 A. Yes.

15 Q. What does that mean?

16 A. It means that they approve it with -- there is
17 typically no presentation. It is approved as a matter of
18 course.

19 Q. So do you know whether these 2009 standards were
20 approved by consent?

21 A. I don't recall.

22 Q. Would you attend meetings where City Council
23 approved or gave consent for standards?

24 A. Yes.

25 Q. Did you attend any City Council meetings where

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1 the 2009 standards that are Cotton 001141 I were
2 considered?

3 A. I don't recall.

4 Q. Do you know whether the City Council has the
5 ability to say no to standards that transit standards
6 that come out of your department?

7 A. Would you repeat that?

8 Q. Sure. Do you know whether City Council, Phoenix
9 City Council has the power to tell your department, no,
10 the transit standards such as those in Exhibit 1 are not
11 appropriate?

12 A. Yes, they have the power.

13 Q. And how do you know that?

14 A. They have ultimate power over all City
15 activities.

16 Q. So it's your understanding that, if City Council
17 advised that these standards were not okay, they needed to
18 be edited or modified, that you would have to do so?

19 A. Would you repeat that, please.

20 Q. Yes. Is it fair to say that if City Council
21 advised your department that these transit standards were
22 not acceptable, that your department would then have to
23 come up with a revised version of standards?

24 A. Yes.

25 Q. So looking back at Exhibit 1, section B), where

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1 Q. And you mean "we" as in your department?

2 A. Yes.

3 Q. So in applying this standard in section B) -- and
4 you were -- this was during your tenure as the director,
5 right, these standards were in place during your tenure,
6 correct?

7 A. Yes.

8 Q. And applying the standard to a proposed ad, what
9 would you look at to ensure that the subject matter of the
10 advertising was limited to speech which proposes a
11 commercial transaction?

12 A. Would you repeat that, please.

13 Q. Sure.

14 Can you read that back.

15 (The requested portion of the record was
16 read by the court reporter.)

17 THE WITNESS: That the subject on the face
18 of the ad was clear as to the intent that there was a
19 commercial transaction, that there were goods -- in
20 exchange of goods or services, that there had to be some
21 consideration.

22 BY MS. COHEN:

23 Q. Is there anything else that you would look at to
24 determine whether an ad was limited to speech which
25 proposed a commercial transaction?

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1 it says, "The subject matter of transit bus --"

2 Do you see that?

3 A. Yes.

4 Q. Can you tell me, what does it mean that, "The
5 subject matter of transit bus, spelter, and bench
6 advertising shall be limited to speech which proposes a
7 commercial transaction?"

8 A. Yes.

9 Q. What does that mean?

10 A. It means that there has to be an exchange of
11 goods or services or money.

12 Q. Does this provision mean anything else?

13 MS. GARDNER: You mean the sentence of the
14 phrase or --

15 MS. COHEN: Let me re-ask the question.
16 BY MS. COHEN:

17 Q. Other than, okay, you had just testified that
18 okay. Let me ask this:

19 What does this standard mean when it says
20 that "advertising shall be limited to speech which
21 proposes a commercial transaction." other than what you
22 have already testified to?

23 A. That is what it means.

24 Q. Does it have any other meaning?

25 A. Not as we apply it.

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1 A. No.

2 Q. When you say you would look at the subject, you
3 would look at the subject on its face?

4 A. Yes. We can only control the ad, so whatever is
5 posted on the ad has to constitute a commercial
6 transaction.

7 Q. So what does that mean, that you would have to
8 look at what's on the ad?

9 A. What is presented to us. So if there's a
10 McDonald's ad, it is clear that you have to buy something
11 from McDonald's. If it is a legal ad, it is clear, if you
12 are going to use legal services, you have to pay for those
13 services.

14 Q. And what are ways in which an advertiser can make
15 it clear that they are going, that they are proposing
16 it's sorry. Let me strike that.

17 Can you read back that answer?

18 (The requested portion of the record was
19 read by the court reporter.)

20 BY MS. COHEN:

21 Q. So how would an advertiser make clear on the face
22 of an ad that there is something -- that they are
23 advertising something to buy?

24 A. It's up to the creativity of the advertising
25 firm.

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Q. So that's not something that you -- Well, when do you use to judge whether an ad proposes to sell something?

A. What a reasonable person would understand to be commercial.

Q. And what in your opinion is, or what do you mean by what a reasonable person would determine to be commercial?

A. If you can look at it, you can determine that there's a commercial transaction. It varies from ad to ad. There is no one way.

Q. Did you play any role in developing the standards that are Cotton 144000-17?

A. I reviewed them.

Q. And why did you, for what purpose did you review them?

A. It's my role to review them. I discussed them with legal counsel and my staff.

Q. Anything else?

A. Not that I recall.

Q. There was a time when your department issued new standards, is that right?

A. The standards were not new. They were revised and updated.

Q. So the 2009 standards were later revised and updated?

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A. Yes.

Q. And they were enacted with your approval?

A. Yes.

Q. And you reviewed them before they were enacted?

A. Yes.

Q. And can you point, going through this, to the places where the 2011 standards clarified the 2009 standards?

A. Yes.

Q. Can you just start with the first thing that you notice. You can take your time.

A. I'd on the March 7 add text related to the Arizona Revised Statutes.

MR. GARDNER: You are referring to March 7, 2011?

THE WITNESS: Yes. Thank you.

On the same March 7 document, item "g" adds text, Arizona Revised Statute language. And item "h" also adds Arizona Revised Statute language on the March 7 document.

BY MS. COHEN:

Q. Anything else that the March 7, '11 standards did to clarify the 2009 standards?

A. The documents were generally -- the information was reorganized so that there was a better flow.

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A. Yes.

Q. Why were they revised and updated?

A. Clarity, reorganize the information, added additional references to Arizona Revised Statutes.

Q. What did you think needed clarity?

A. We wanted to put references to statutes. So for example, where it says, "Depicts violence and/or antisocial behavior," there is a statute that refers to that, and we wanted to put that there so that it was clear what we were referring to.

Q. Are there any other ways that you believe the 2009 standards needed to be clarified?

A. Not that I recall.

Q. Were you involved in the process, though, of bringing clarity to the 2009 rules?

A. Yes.

(Deposition Exhibit 144000-17 was marked for identification.)

BY MS. COHEN:

Q. In front of you is Cotton 144000-17. It's two pages. Do you recognize this exhibit?

A. Yes.

Q. What is it?

A. The most recent Transit Advertising Standards.

Q. Were those enacted on March 7, 2011?

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Q. So now the language --

Is there anything else?

A. Not unless -- Would you like me to just take more time and look at it?

Q. If you need more time to answer the question, sure.

A. We clarify our primary purpose for accepting advertising, which we did not do on the 2009.

Q. Where is that clarified?

A. That is actually -- we are adding it in paragraph A, the end of the last sentence, "The City's primary purpose for the transit advertising panel is generating revenue."

Q. And why was that primary purpose added?

A. To gain clarity, so that those that are reviewing these standards will understand that this is a revenue-generating component of our budget, so that we may maintain our transit system and provide service.

Q. Is there any other reason this primary purpose was added?

A. Just to clarify.

Number 8, letter B indicates also that this is a guideline, which is the first sentence of B, "It is a guideline," which means it is not set in stone, we are just using it as a framework.

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Q. A guideline for what?

A. For how we will review and apply the standards.

Q. And when you say "framework," what do you mean by "framework"?

A. Framework guideline.

Q. On how the City -- So the section B was modified to provide a framework guideline on how the advertising standards will be applied. Is that right?

A. Yes. We want people to know that it's not set in stone.

Q. What do you mean by "it's not set in stone"?

A. We want to generate revenues. We don't want to tell advertisers what to do, how to craft their message. We just want to ensure that it is commercial in nature and complies with the standards.

Q. Are there any other ways in which the 2011 -- Sorry.

A. Are there any other ways that the 2009 standards were clarified when the 2011 standards were enacted?

A. Not that I can see at this time.

Q. So what does it mean, what does the term mean -- Okay, let me strike that.

A. It states, B1 of Exhibit 4 states that, "A commercial transaction must be proposed and must be

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propose a commercial transaction?

A. Not as we apply it in my department.

Q. And the standard also requires that the ad must be, quote, "adequately displayed,"

Do you see that?

A. Yes.

Q. And what does it mean, what does "adequately displayed" mean?

A. That it can be seen and that it is clear with your eyes. It cannot be obscured down in the bottom of the corner so that you can't see it. It has to be adequately displayed so you can view it.

Q. What needs to be adequately displayed?

A. The commercial transaction.

Q. So do you have an example of an ad that you recall where the commercial transaction is -- Let me strike that.

A. I want to look back at Exhibit 5, which are the 2009 standards.

A. Exhibit 5?

Q. Do I have these misnumbered?

MR. CARDNER: Exhibit 3 is the Advertising Review Process.

MS. COHEN: So I have them misnumbered.

BY MS. COHEN:

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adequately displayed on the transit advertising panel,"

Do you see that?

A. Yes.

Q. And what does it mean when it states that the standard states that "A commercial transaction must be proposed?"

A. I would refer to the definition that I gave earlier in my testimony.

Q. So the definition you gave earlier regarding the definition of a commercial transaction has stayed the same in the 2009 standards and the 2011 standards, is that right?

A. Yes.

Q. And what does it mean that the ad must propose a commercial transaction?

A. It means that when you look at the face of the ad, you are depicting, displaying a commercial transaction between two parties. And by "propose" I mean the two entities don't have to enter into a commercial transaction, but it is a proposal to enter into that transaction, to entice you to enter into a commercial transaction.

Q. Is there any other meaning of the term, as used in this standard, is there any other meaning other than what you have already testified to as to what it means to

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Q. Exhibit 4, sorry, Exhibit 4, which are the 2009 standards, do you see it says that "advertising shall be limited to speech." Do you see that? It's section B.

A. Yes, I see it.

Q. And what does it mean -- what kind of speech is the standard referring to?

A. The words that are on the advertising document, or on the advertising poster.

Q. So the speech as used in the 2009 standards refers only to words?

A. Could be the graphics, because pictures also speak.

Q. Is there anything else that the term "speech" means in the 2009 standards?

A. Not that I can think of.

Q. Now if you look at Exhibit 5, the standard in the words "limited to speech" are no longer contained in the standard. Do you see that, when you compare B from Exhibit 4 to the B in Exhibit 5, B1?

A. Yes.

Q. Why was that removed? Why was the term "limited to speech" removed from the 2009 standards when the 2011 standards were enacted?

A. We are not trying to control -- Well, to us speech means the advertising, the words that are depicted

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1 on the panel. And we wanted to be sure that it was not
2 that we were trying to control people's First Amendment
3 rights. We were really just concerned with what's going
4 on the face of the advertising panel, the words that are
5 on the face of the panel.

6 MS. COHEN: Can you read that back?

7 (The requested portion of the record was
8 read by the court reporter.)

9 BY MS. COHEN:

10 Q. So what's the difference between limiting speech
11 and limiting what's displayed on the advertising panel?

12 A. From our perspective, the only place that we can
13 control is that we are concerned with is our panel. And
14 we want to be sure that the phrases or the words that are
15 displayed there compose a commercial transaction.

16 Q. Right. And that's what -- and there is a change,
17 though, the 2009 standards use the term "limited to
18 speech," which you have defined broadly to include not
19 only words but graphics and other things --

20 A. Uh-huh.

21 Q. -- right?

22 A. Uh-huh.

23 Q. You have to say yes or no.

24 A. Yes. I beg your pardon.

25 Q. So, but when you look at 1, B1 on the 2011

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1 public service speech are prohibited in transit
2 advertising?

3 I'm just noting for the record that the
4 deponent is taking the time to review both exhibits.

5 A. Would you repeat the question, please.

6 (The requested portion of the record was
7 read by the court reporter.)

8 THE WITNESS: No.

9 BY MS. COHEN:

10 Q. Looking at Exhibit 3, how would you define the
11 term "adequately" as it's used in B1?

12 A. I would define "adequately" as that which can be
13 viewed by a reasonable person, can be seen.

14 Q. And I just want to make sure I've got this right.
15 Would the example that you previously gave, where you had
16 an ad and then at the bottom of the ad it said something
17 about proposing a commercial transaction, would that be an
18 example of where the commercial transaction would not be
19 viewed or seen by a reasonable person?

20 A. It depends on the size of the font, it depends
21 upon the location, the placement.

22 Q. So all of those factors, font, location,
23 placement, all factor into your determination on whether a
24 commercial transaction is adequately displayed on the
25 panel?

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1 standards. It says, it takes out those words and says
2 simply, "a commercial transaction must be proposed and
3 adequately displayed."

4 A. Yes.

5 Q. And the difference between the two are what, in
6 your opinion?

7 A. We thought this was more clear.

8 Q. And just one more question on this. How do you
9 think it's more clear in the 2011 standards than it was in
10 the 2009 standards?

11 MR. BARNER: Object to form.

12 But go ahead and answer.

13 THE WITNESS: I think it's more clear
14 because we are talking about the panel of the advertising
15 and that what is displayed, whether it is words or
16 graphics, must be, must constitute a commercial
17 transaction.

18 BY MS. COHEN:

19 Q. Did you understand my question, the question I
20 asked you that you just answered?

21 A. Yes.

22 Q. Does this, other than looking at B1 -- or let me
23 say, looking at Exhibit 4 and 5, which are the 2009
24 standards and the 2011 standards, do either of these
25 standards state that public service announcements or

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1 A. Yes.

2 Q. Is there anything, any other factors that you
3 would take into consideration that, as to whether an ad
4 adequately displays the commercial transaction?

5 A. I don't review ads every day. There may be many
6 specific items. I could not detail them to you.

7 Q. Well, who does review them every day?

8 A. Ms. Chapple.

9 Q. So you know how she defines the term "adequately
10 displayed --" I'm sorry, the term -- let me start over.

11 Do you know how Ms. Chapple defines the term
12 "adequately" as used in Exhibit 3?

13 A. No, I do not.

14 Q. Have you ever discussed this with her?

15 A. I have not discussed how she views "adequately,"
16 how she defines "adequately."

17 Q. And you have not discussed with Ms. Chapple the
18 factors that she considers in determining whether an
19 advertisement adequately displays a commercial
20 transaction?

21 A. We have discussed them many times, but they are
22 different every time, every ad is different.

23 Q. So you have discussed with her how she defines
24 "adequately"?

25 A. No. We have just talked about advertising in

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1 general and whether or not they are displayed properly.
2 but every ad is different.

3 Q. Have you discussed with Ms. Chapple that she
4 should consider the size of the font, the location and the
5 placement of the commercial transaction in determining
6 whether it complies with the standard?

7 A. Have I discussed with her?

8 Would you repeat that?

9 (The requested portion of the record was
10 read by the court reporter.)

11 THE WITNESS: No.

12 BY MS. COHEN:

13 Q. We are going to turn the air up a little bit.
14 And would you like a break?

15 A. No, I'm fine.

16 MS. COHEN: Well, I'm going to take a
17 five-minute break. So, unless anyone wants a longer
18 break, we will return in five minutes.

19 (The deposition was at recess.)

20 BY MS. COHEN:

21 Q. Have you ever spoken with Alan Korwin?

22 A. Yes.

23 Q. And how many times have you spoken with him?

24 A. I don't recall.

25 Q. Is it more than once?

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1 A. Would you repeat your question?

2 Q. When you first met Mr. Korwin, was it on a
3 telephone conversation or in person?

4 A. I do not recall.

5 Q. What did you discuss?

6 A. The ad Guns Save Lives.

7 Q. And what did you discuss about the ad Guns Save
8 Lives?

9 A. His concern --

10 Q. About -- I'm sorry.

11 A. His concern that the ad was viewed as not
12 compliant with the transit advertising standards.

13 Q. Did he say anything else to you?

14 A. Yes.

15 Q. What else did he say to you?

16 A. He was concerned that the ad did not meet the
17 standards. He wanted to know why. He thought we were
18 violating his rights of free speech. Other topics I
19 cannot recall specifically.

20 Q. Did you take notes at this conversation?

21 A. No.

22 Q. Did you record them anywhere, any notes of the
23 conversation at all?

24 A. No.

25 Q. I'm going to ask that again.

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1 A. Yes.

2 Q. Was it more than twice?

3 A. Yes.

4 Q. Is it more than three times?

5 A. I don't remember.

6 Q. Do you think it could have been more than four
7 times?

8 A. I don't remember.

9 Q. So the first time --

10 Have you met Mr. Korwin?

11 A. Yes.

12 Q. And the first time that you talked to him, did
13 you meet him in person?

14 A. I don't recall.

15 Q. Do you remember under what circumstances you came
16 to work on Mr. Korwin for the first time?

17 A. Yes.

18 Q. What circumstances were they?

19 A. Regarding an ad.

20 Q. What ad?

21 A. Guns Save Lives.

22 Q. Did he contact you or did you contact him?

23 A. I don't recall.

24 Q. Did you -- I'm sorry, maybe I asked you this.

25 Was it in person or on the phone?

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1 Did you record anywhere notes of the
2 conversation you had with Mr. Korwin?

3 A. No.

4 Q. And did he ask you to tell him why his ad did not
5 meet City standards?

6 A. Yes.

7 Q. Did you answer him?

8 A. Yes.

9 Q. What did you say?

10 A. I do not recall my exact words.

11 Q. What was the sum and substance of what you said
12 to Mr. Korwin?

13 A. The ad as presented did not display a commercial
14 transaction.

15 Q. Did you explain to him in what ways the ad did
16 not display a commercial transaction?

17 A. Yes.

18 Q. What did you explain to him?

19 A. I don't remember my exact words.

20 Q. Do you remember the sum and substance of the
21 words that you used?

22 A. Yes. The words displayed on the ad, "Guns Save
23 Lives," it is not clear what the commercial transaction
24 is. It is not -- those three words do not constitute a
25 commercial transaction.

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Q. Were there any other ways in which you explained to him that his ad did not display a commercial transaction?

A. We discussed the very small font that underlay, or surrounded the ad, and also the content of those words; there was no commercial transaction that could be derived from the words there -- on his ad, I beg your pardon.

Q. When you said there was "no commercial transaction that could be derived," was that --

A. Well, in reading the words that surrounded the logo, there was no commercial transaction.

Q. What about the remainder of the ad, did that display a commercial transaction?

A. No.

Q. And why not? Did you tell him this?

A. Yes.

Q. And what did you tell him, the sum and substance of what you told him?

A. That the ad as was given to us did not display a commercial transaction, either the graphics or any of the large words, Guns Save Lives, or any of the small text surrounding the graphics.

Q. Is there anything else that you told him in response to his question as to why his ad did not comply with City standards?

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Mr. Korwin as to what changes he could make to his ad to make it compliant with City standards?

A. No.

Q. Why not?

A. That's not our role.

Q. "Our role," meaning the department's role?

A. Correct. That is not the City's role. That is the role of CBS.

Q. So it's not your role as director to suggest ways we could make his ad compliant?

A. It is not the role of the Public Transit Department to tell people how to make their ads compliant. It is the job of CBS. That's why we have a contract.

Q. So then you didn't refer Mr. Korwin to anybody else in your department that could assist him with making his ad compliant?

A. No.

Q. And you didn't refer him to anyone else in the City of Phoenix who could help him in developing an ad that would meet the City standards?

A. No, that is not our role.

Q. So you did not do that?

A. No, I did not.

Q. Is there anything else, other than what you have testified to, is there anything else that you talked to

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A. Not that I recall.

Q. Do you know what standards you were considering -- or I'm sorry, do you know which standards were enacted during this conversation?

A. The December 2008 standards were in effect.

Q. How would your opinion about Mr. Korwin's ad be any different in light of the 2011 standards?

A. No.

Q. Did you tell Mr. Korwin anything else, other than what you have testified to, as to why his ad did not propose a commercial transaction -- or I'm sorry

Did you tell Mr. Korwin anything else, other than what you testified to, as to why his ad was not compliant with City standards?

A. Yes.

Q. What else did you tell him?

A. That the City was interested in doing business with him, and if he would like to work with CBS to modify the ad so that a commercial transaction was clearly displayed, we would be happy for CBS to tell us if it met standards.

Q. Did you offer any suggestions to him as to how his ad could be compliant, be edited to comply -- start over?

Did you propose any suggestions to

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Mr. Korwin about, other than what you have testified to? And I'm focusing on this one conversation or meeting.

A. Not that I recall.

Q. How you had an occasion to speak with him again?

A. Yes.

Q. And where was this? Was this on the phone or in person?

A. In person.

Q. And where was it?

A. It was in City Hall.

Q. And what was the occasion?

A. There was a meeting.

Q. What kind of meeting?

A. To discuss Mr. Korwin's concerns.

Q. Did you call the meeting?

A. No, I did not.

Q. Do you know who -- do you know who requested a meeting?

A. I do not recall.

Q. So you don't recall -- I'm sorry, did you say you did not request a meeting?

A. Correct, I did not request a meeting.

Q. And who was at the meeting?

A. Mr. Korwin, there were other individuals representing his interest, whose names I do not know. The

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1 been received by the Mayor or City Council members?

2 A. No.

3 Q. And why did you prepare this memo?

4 A. I was asked by Ms. Morris to prepare the memo.

5 Q. And why was that?

6 A. To communicate the issue so that the Mayor and
7 City Council would be aware.

8 Q. And why did you feel that you should do that?

9 A. I was requested to do so.

10 Q. I'm sorry. Who requested you to do so?

11 A. Jane Morris did.

12 Q. And so what information did you use to prepare
13 this memo?

14 A. The ad, Mr. Korvin's ad was used, a staff
15 overview of why the ad was not compliant, discussion with
16 our legal department, communications with our vendor, CBS
17 Outdoor. Those would have been the resources I used to
18 prepare the memo.

19 Q. And you state in your memo that, "Display spaces
20 on transit street furniture and bus interiors and
21 exteriors are used for commercial speech, not for the
22 exchange of ideas."

23 Do you use that?

24 A. Not yet I don't. I will find it. Which
25 paragraph are you in?

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1 would have that they are not to include in their proposed
2 ad language that would exchange ideas?

3 MR. GARDNER: Object based on form.

4 But go ahead.

5 MS. COHEN: What's the basis?

6 MR. GARDNER: I can't understand what you
7 are asking.

8 MS. COHEN: Okay. Well, then, I should
9 re-ask the question, absolutely.

10 MR. GARDNER: If she can figure it out, go
11 ahead.

12 MS. COHEN: Well, I will cure it, because I
13 think it's important.

14 BY MS. COHEN:

15 Q. I would like to know, looking at Exhibit 5, how
16 an advertiser would know, when preparing an advertisement,
17 that their ad could not include language that would
18 constitute the exchange of ideas?

19 A. An advertiser should know that based upon their
20 conversations with CBS Outdoor.

21 Q. But should they know that based on the written
22 standards that are Exhibit 5 and Exhibit 6?

23 A. Yes.

24 Q. And where would they know that their ad should
25 not contain language that would include the exchange of

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1 Q. Sure. Well, it's on Exhibit 6, and it is the
2 second paragraph under the title Original Advertisement
3 posted to bus shelters by CBS Outdoor. The sentence
4 starts, "As non-public forums, display spaces --"

5 A. Yes.

6 Q. What did you mean by display spaces are not to be
7 used for the exchange of ideas?

8 A. It means that the display spaces are only to be
9 used for commercial transaction, not to share other
10 information.

11 Q. And where in the 2011 standards, which is
12 Exhibit 6, do the standards say that the displays shall
13 not contain language that exchanges ideas?

14 A. I'm sorry, Exhibit 6?

15 Q. Yes. These are the March 2011 transit standards.

16 THE WITNESS: Okay. Could you repeat the
17 question, please.

18 (The requested portion of the record was
19 read by the court reporter.)

20 THE WITNESS: Those exact words cannot be
21 found, but it does say a commercial transaction must be
22 proposed, in item number #1.

23 BY MS. COHEN:

24 Q. So is that language, "a commercial transaction
25 must be proposed," the only notice that an advertiser

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1 ideas?

2 A. It is implicit when it says a commercial
3 transaction, that is not an exchange of ideas. It is
4 implicit that you must be getting something and giving
5 something, that you must have some type of an exchange.
6 That's what "commercial transaction" means.

7 Q. So in proposing a commercial transaction, an
8 advertiser cannot exchange ideas as well?

9 A. If they are -- if that exchange of ideas
10 constitutes a commercial transaction, yes.

11 Q. So is there any other language, then, in either
12 the 2009 or 2011 standards that would give an advertiser
13 notice as to the fact that the ads should not include
14 language that constitutes the exchange of ideas?

15 A. No.

16 Q. Can an advertiser use language that would
17 exchange ideas if the ideas are to promote the commercial
18 transaction?

19 A. I would need to see the ad.

20 Q. So there might be occasions where the exchange of
21 ideas could be used to promote a commercial transaction on
22 an ad?

23 A. I would need to see the ad.

24 Q. Why would you need to see the ad?

25 A. You have to look at the ad in its totality.

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1 Q. Well, how would an advertiser know what to put in
2 the ad to make it compliant with the City standards?

3 A. It should work with CBS Outdoor, that is our
4 vendor. That is their responsibility, to be sure that
5 their clients understand the standards.

6 Q. Would there be any other way that they would know
7 that?

8 A. No. That is why CBS has the contract and why we
9 hold them responsible and why they have that work.

10 Q. So an advertiser wouldn't know just by looking at
11 the standards, either in 2011 or 2009, as to what they
12 should and should not be putting in their ads, is that
13 right?

14 A. I don't know what an advertiser would know. I
15 don't know.

16 Q. But certainly an advertiser would have to consult
17 with CBS Outdoor to ensure that they fully understood what
18 the City's standards were in terms of what would be
19 compliant or not with the City's requirements?

20 A. Yes, they would have to consult with CBS.

21 Q. Can advocacy language be used in an ad?

22 A. Language that denotes a commercial transaction
23 may be used in the ads.

24 Q. Go Green, Shop At Whole Foods, what kind of
25 language is that?

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1 Q. You and your department accepted it?

2 A. Yes.

3 Q. Did you review it?

4 A. Yes.

5 (Deposition Exhibit 7 was marked for
6 identification.)

7 BY MS. COHEN:

8 Q. I will take that.

9 A. May I hold on to it?

10 Q. You want to --

11 A. While we are here.

12 Q. Let's put Exhibit 9 and Exhibit 5 in front of
13 you.

14 And you are looking at Exhibit 7. This is a
15 two-page exhibit. It's Bates number Korwin-02111 and
16 -02110, is that right?

17 A. Yes.

18 Q. And the first page is a memo from you to the
19 Mayor and City Council members, correct?

20 A. Yes.

21 Q. And it's dated October 22, 2010?

22 A. Yes.

23 Q. Did you write this memo? Did you prepare it?

24 A. I do not recall.

25 Q. Did you approve this memo before it went out?

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1 A. I would have to see the ad.

2 Q. What if the ad just said Go Green, Shop At Whole
3 Foods, is that okay?

4 A. Whole Foods is a grocery store.

5 Q. So it's okay to say "Go Green"?

6 A. If you are shopping at Whole Foods, that is a
7 commercial transaction.

8 Q. Do the words "Go Green," in your opinion, propose
9 a commercial transaction?

10 A. I would have to see the ad.

11 Q. But based on the language itself, "Go Green,"
12 that would be not enough information for you to determine
13 whether that language per se constitutes a language that
14 could be used on a City of Phoenix transit ad?

15 A. It is the entire ad that is taken into
16 consideration.

17 Q. Looking back at Exhibit 6, your memo, you state
18 that a new advertisement was created by CBS Outdoor and
19 that it was accepted.

20 Do you see that discussion? It's the last
21 full paragraph on the first page, Korwin00307.

22 A. Yes, I see that.

23 Q. When it says it was accepted, who accepted the
24 ad?

25 A. Public Transit Department.

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1 A. I do not recall the circumstances of this memo.

2 Q. Do you need some more time to review it?

3 I just want to note for the record that the
4 witness is reviewing Exhibit 7.

5 THE WITNESS: Would you repeat the question,
6 please.

7 (The requested portion of the record was
8 read by the court reporter.)

9 THE WITNESS: Yes.

10 BY MS. COHEN:

11 Q. So now I know you have had the time to review it.
12 Is there anything in this memo that is not accurate?

13 A. No.

14 Q. And you state that, "Earlier this week, the
15 Public Transit Department was notified about a bus shelter
16 advertisement which seemed to be public service in
17 nature."

18 Do you see that?

19 A. Yes.

20 Q. And the date is October 22, 2010. Is that the
21 first time you became aware of the ad in question?

22 MR. GARDNER: On October 22?

23 BY MS. COHEN:

24 Q. No. It said, "earlier this week," Was that
25 indicating the time period that you first became aware of

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1 this.

2 (Deposition Exhibit 8-XXXX was marked for
3 identification.)

4 MR. GARDNER: Just mark it as 9.

5 MS. COHEN: That's what we have done. That
6 will just make it easier.

7 BY MS. COHEN:

8 Q: In front of you, Ms. Cotton, is a blown-up
9 version of Exhibit 8 --

10 MS. KOHN: Exhibit 9.

11 BY MS. COHEN:

12 Q: I'm sorry. Let's start over.

13 You are now looking at Exhibit 9, which
14 contains blown-up language that is taken from Exhibit 8.
15 And the language that was blown up is the language that
16 appears on either side of the heart on Exhibit 8. Do you
17 see that?

18 A: Yes.

19 Q: And we have all -- the parties have stipulated
20 that the blown-up language is the same language that has
21 come from Exhibit 8.

22 So can you review that?

23 A: Yes.

24 (Ms. Chapple departs the deposition room.)

25 BY MS. COHEN:

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1 A: It would not be my role to do this every day. I
2 do not have the expertise. It's not part of my
3 responsibility to do this every day.

4 Q: So the answer is?

5 A: No.

6 Q: I can take those from you.

7 On either the first or second -- I'm sorry,
8 let me back up.

9 You had testified about a conversation you
10 had with Mr. Korwin, and you are not sure whether it was
11 in person or on the phone.

12 Do you remember that testimony?

13 A: Yes.

14 Q: And then you testified that you attended a
15 meeting where Mr. Korwin was also present.

16 Do you recall that?

17 A: Yes.

18 Q: Do you recall any other time that you met with or
19 talked to Mr. Korwin?

20 A: Yes.

21 Q: When was that?

22 A: After the meeting, I spoke to Mr. Korwin.

23 Q: And what did you talk about?

24 A: The advertising.

25 Q: Can you tell me the sum and substance of your

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1 Q: Have you had a chance to review Exhibit 9?

2 A: Yes.

3 MS. COHEN: Can you read back the last
4 question before the break.

5 (The requested portion of the record was
6 read by the court reporter as follows: Now I
7 want to ask you to look at the ad that's
8 attached to Exhibit 9, which is page two of the
9 exhibit, and compare that to Exhibit 8. And if
10 I told you that the language that appears on
11 Exhibit 8 is the same language that appears in
12 Exhibit 9 -- And when I say "language," I mean
13 the smaller print on either side of the heart.
14 So I'm asking you to assume that the language is
15 the same. -- can you tell me by looking at
16 Exhibit 9, the second page, whether that ad is
17 compliant with City standards?)

18 BY MS. COHEN:

19 Q: Did you understand the question?

20 A: Yes.

21 Q: Okay. Can you answer that question?

22 A: I would confer with my staff. They are the
23 technical experts that do this every day. I do not.

24 Q: So just by looking at it and knowing the
25 standards, you could not answer my question?

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1 conversation with Mr. Korwin, what you said to him and
2 what he said to you?

3 A: I explained to Mr. Korwin -- Actually, I would
4 like to refer to my earlier testimony, I basically
5 repeated what I said before, the City was interested in
6 doing business with him, we would appreciate receiving his
7 ad, but we needed him to work with our vendor, CMS, to
8 make modifications so that the ad would have a commercial
9 transaction.

10 (Ms. Chapple returns to the deposition
11 room.)

12 BY MS. COHEN:

13 Q: And did you pay anything else to him?

14 A: Not that I recall.

15 Q: Did you discuss ads that, you know, that the
16 department reviews that are sometimes controversial?

17 A: I don't remember.

18 Q: Have you ever had a conversation with Mr. Korwin,
19 whether it was the first time in the meeting that you are
20 not sure was on the phone or in person, or at the meeting
21 or after the meeting that you testified about, do you ever
22 recall having a conversation with Mr. Korwin where you
23 discussed ads that come across the department, or that the
24 department comes across that are controversial?

25 A: Yes.

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1 Q. Can you explain what that conversation included?

2 A. I don't recall specifically.

3 Q. Can you tell me the sum and substance of this
4 conversation?

5 A. Yes. Generally, I said to Mr. Korwin that, if
6 our vendor comes across ads that are controversial, that
7 may cause concern, that our policy is for them to review
8 them with the department.

9 Q. And what is the purpose of that policy?

10 A. So that we can see the ad and we can encourage
11 our vendor to work with their client to make the
12 advertising compliant.

13 Q. Did you tell Mr. Korwin that you give extra care
14 in reviewing ads that are controversial?

15 A. I don't recall those words.

16 Q. Did you use words, any words like that in your
17 conversation?

18 A. I do not recall.

19 Q. Well, did you tell Mr. Korwin that you give extra
20 review to ads that are controversial?

21 A. I don't recall my exact conversation with
22 Mr. Korwin.

23 Q. Did you say anything to Mr. Korwin about the
24 department giving extra attention to ads that are
25 controversial?

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1 the discussion about the ads and where you discussed --
2 well, let me strike that.

3 Was anyone else present when you had this
4 conversation with Mr. Korwin?

5 A. This was a phone conversation. No.

6 Q. Did you ever tell Mr. Korwin that controversial
7 ads get extra scrutiny?

8 A. I do not recall.

9 Q. Would you deny that you told that to Mr. Korwin?

10 A. No.

11 MS. COHEN: I think I'm about done. I just
12 want to review my notes. So take a 10-minute break. I
13 will try to make it shorter, if I can.

14 (The deposition was recessed and reconvened
15 in the absence of Mr. Korwin.)

16 BY MS. COHEN:

17 Q. Ms. Cotton, did you ever tell Mr. Korwin that his
18 ad, the trainee ad, was controversial?

19 A. I do not recall.

20 Q. Would you deny that you told him that plaintiff's
21 ad was controversial?

22 A. No.

23 (Deposition Exhibit 10 was marked for
24 identification.)

25 BY MS. COHEN:

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1 A. I don't recall those exact words.

2 Q. What words do you recall?

3 A. I recall that I told Mr. Korwin that, when
4 controversial ads are brought to our attention by our
5 vendor, we work with them and encourage them to help the
6 ads become compliant.

7 Q. And that is because your department has directed
8 CBS to give extra attention to ads that could be
9 controversial, is that right?

10 A. No, that -- No.

11 Q. So what have you told CBS in terms of ads that
12 could be controversial?

13 A. We have not told them anything about
14 controversial ads, ads that are not compliant.

15 Q. So did you not use the word "controversial" in
16 your conversation with Mr. Korwin?

17 A. I don't recall.

18 Q. Did you not have a discussion about review that
19 is given to controversial ads in your discussion with
20 Mr. Korwin?

21 A. I don't recall.

22 Q. Would you deny that you used those words?

23 A. No, I would not.

24 Q. Was anyone else -- In the conversation that you
25 had with Mr. Korwin, was anyone else present when you had

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1 Q. In front of you, Mr. Cotton, is Exhibit 10, which
2 is Korwin00299. Do you see that?

3 A. Yes.

4 Q. It's one page, right?

5 A. Yes.

6 Q. And have you seen this document before?

7 A. I do not recall.

8 Q. I want to ask you -- Take as much time as you
9 need to look at it. Well, reasonably, because I think you
10 probably have other things to do today.

11 Can you tell me if Exhibit 10 complies with
12 City of Phoenix transit standards?

13 A. I would confer with my staff.

14 Q. So is your answer, no, that you cannot tell by
15 looking at it whether Exhibit 10 complies with City of
16 Phoenix transit advertising standards?

17 A. No. I would confer with my staff.

18 (Mr. Korwin returns to the deposition room.)

19 MS. COHEN: I would just ask that,

20 Mr. Gardner, if Ms. Cotton has any training documents in
21 her office, I think we talked earlier about perhaps she
22 might have some training materials or reports. I will
23 look back at the transcript, but if there were documents
24 mentioned in the transcript that you have not produced, I
25 would just ask to get a copy of them. I will be more

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

ALAN KORWIN and TRAINMEAZ,)	
LLC,)	
)	
Plaintiffs,)	
)	
vs.)	No. CV 2011-009838
)	
DEBBIE COTTON and CITY OF)	
PHOENIX, ARIZONA, a municipal)	
corporation and political)	
subdivision of the State of)	
Arizona,)	
)	
Defendants.)	
)	

DEPOSITION OF ALAN KORWIN

Mesa, Arizona
December 20, 2011

Reported by: Cathy A. Miccolis, RPR/CRR
Certified Reporter, No. 50068

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<p>1 A. I don't recall.</p> <p>2 Q. What did you tell your dad about the lawsuit?</p> <p>3 A. Oh, that was just emotional father/son stuff.</p> <p>4 Told him I'm a little nervous. He wished me luck. He</p> <p>5 told me I will be okay, that sort of thing.</p> <p>6 Q. And how about your brother?</p> <p>7 A. Similar.</p> <p>8 Q. And Dave Hamel, he is a friend of yours; is</p> <p>9 that correct?</p> <p>10 A. Yes.</p> <p>11 Q. He is not a sponsor representative?</p> <p>12 A. No.</p> <p>13 Q. What did you tell him about the lawsuit?</p> <p>14 A. I told him that it was on. I don't recall the</p> <p>15 substance of our conversations.</p> <p>16 Q. Did any of these relatives, friends or sponsor</p> <p>17 representatives actively encourage you to file a lawsuit?</p> <p>18 A. No.</p> <p>19 Q. How long is TrainMeAZ, and I'm using the actual</p> <p>20 identification you provide in the complaint, TrainMeAZ,</p> <p>21 LLC, how long has that been in existence?</p> <p>22 A. Just under a year and a half.</p> <p>23 Q. Are you the incorporator of that organization?</p> <p>24 A. I am.</p> <p>25 Q. Were there any other incorporators of that</p>	<p>1 Q. You can go ahead and answer.</p> <p>2 A. Repeat the question, please.</p> <p>3 Q. Sure. Do you have any plans at the present</p> <p>4 time to form any sister or subsidiary corporations</p> <p>5 comparable to TrainMeAZ, LLC?</p> <p>6 MS. COHEN: Excuse me. Did you get my</p> <p>7 objection before, because Mr. Gardner started talking</p> <p>8 before I finished? Objection to form and foundation.</p> <p>9 BY MR. GARDNER:</p> <p>10 Q. You can go ahead and answer.</p> <p>11 A. No.</p> <p>12 Q. Now, since the inception of TrainMeAZ, LLC,</p> <p>13 have you ever advertised that organization in any fashion?</p> <p>14 A. Yes.</p> <p>15 Q. And in what way have you advertised that</p> <p>16 organization?</p> <p>17 A. We built a website. I have sent out eBlasts</p> <p>18 that mention it. We put up billboards. We contracted to</p> <p>19 put up bus shelter advertisements. We made a map -- we</p> <p>20 made two maps.</p> <p>21 Q. What do you mean by you made two maps?</p> <p>22 A. We had maps produced that have TrainMeAZ on</p> <p>23 them.</p> <p>24 Q. And what did the maps show?</p> <p>25 A. The gun map shows places where you can legally</p>
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<p>1 organization?</p> <p>2 A. No.</p> <p>3 Q. What was the purpose of your forming TrainMeAZ,</p> <p>4 LLC?</p> <p>5 A. To mount a statewide campaign to self</p> <p>6 marksmanship training, gun safety classes, ancillary</p> <p>7 supplies and books.</p> <p>8 Q. Any other purpose?</p> <p>9 A. I don't understand the question.</p> <p>10 Q. Did you have any other purpose in forming the</p> <p>11 organization other than what you just testified to?</p> <p>12 A. Yes. I was trying to pull together the</p> <p>13 firearms industry in the state of Arizona.</p> <p>14 Q. And why would you do that?</p> <p>15 A. It's an industry. It doesn't have a statewide</p> <p>16 umbrella group of any sort, which seemed like a reasonable</p> <p>17 thing to do.</p> <p>18 Q. Were you involved in any way with any</p> <p>19 predecessor organization that would have been comparable</p> <p>20 to TrainMeAZ, LLC?</p> <p>21 A. No.</p> <p>22 Q. Do you have any plans to form any other sister</p> <p>23 or subsidiary corporations similar to TrainMeAZ, LLC?</p> <p>24 MS. COHEN: Objection to form, foundation.</p> <p>25 BY MR. GARDNER:</p>	<p>1 shoot in the state, and the other is a tourist-type map of</p> <p>2 Phoenix and the state and has an advertisement for</p> <p>3 TrainMeAZ.</p> <p>4 Q. Any other types of advertising?</p> <p>5 MS. COHEN: Other than what he has testified</p> <p>6 to?</p> <p>7 MR. GARDNER: Yes.</p> <p>8 THE WITNESS: Not that I recall at the moment.</p> <p>9 BY MR. GARDNER:</p> <p>10 Q. How long has your website been up?</p> <p>11 A. I don't know.</p> <p>12 Q. Is that website entitled TrainMeAZ.com?</p> <p>13 A. Yes.</p> <p>14 Q. Who developed that website?</p> <p>15 A. Kevin Kreighton, Ralph Richardson, Ryan</p> <p>16 Kinnear, myself. That's all I recall at present.</p> <p>17 Q. Do the other gentlemen who assisted you in</p> <p>18 developing the website, are they employed with a specific</p> <p>19 company?</p> <p>20 A. I don't know.</p> <p>21 Q. For example, a website design company?</p> <p>22 A. I don't know.</p> <p>23 Q. What do these other three gentlemen do for a</p> <p>24 living, if you know?</p> <p>25 MS. COHEN: Objection; foundation.</p>

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1 Could you just pause so I can object if I need
2 to.
3 THE WITNESS: Yes, ma'am.
4 BY MR. GARDNER:
5 Q. Go ahead.
6 MS. COHEN: Thank you.
7 THE WITNESS: Ryan is a Web developer. I think
8 he is independent. Kevin, same thing. Ralph works
9 freelance art and design Web development and is
10 employed -- he is employed at a firm.
11 BY MR. GARDNER:
12 Q. You don't know what type of firm?
13 A. **I can't quite recall the name, no.**
14 Q. Did you ever provide any of these gentlemen
15 with written instructions as far as what you wanted the
16 website to contain?
17 MS. COHEN: Objection; form, foundation.
18 THE WITNESS: No. Let me -- I may have
19 e-mailed them as it was being developed.
20 BY MR. GARDNER:
21 Q. Do you think you still have those e-mails?
22 A. **I don't know.**
23 Q. Do you have any recollection as far as your
24 desires as to what you wanted in this website, even though
25 you may not have actually documented it in writing?

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1 MS. COHEN: Objection; form, foundation.
2 BY MR. GARDNER:
3 Q. Go ahead and answer.
4 MS. COHEN: Can I just finish my objections?
5 He knows that he is to answer. Mr. Korwin knows that he
6 is to answer, if he can, unless I instruct him otherwise.
7 MR. GARDNER: You better save the snotty
8 attitude because you've been like that since you walked
9 in.
10 MS. COHEN: Ooh, Mr. Gardner, let's just move
11 forward. I do not appreciate the personal attacks.
12 MR. GARDNER: Then if you want to go ahead --
13 MS. COHEN: I'm going to ignore you. You can
14 keep going. Let's just see where the deposition --
15 MR. GARDNER: I know what your attitude has
16 been since you walked in here, but I would like you to
17 clean it up if --
18 MS. COHEN: You want to get that on the record,
19 because I have no idea what you're talking about.
20 BY MR. GARDNER:
21 Q. Go ahead and answer.
22 MS. COHEN: Okay.
23 THE WITNESS: Would you repeat the question?
24 MR. GARDNER: Go ahead and read the question
25 back.

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1 (Record read.)
2 THE WITNESS: Well, it was supposed to present
3 Arizona as a gun-friendly state, which Arizona is. It was
4 supposed to facilitate getting, training, and ancillary
5 products for gun safety and marksmanship. It was a
6 collecting place for trainers to list their services, as
7 well as shooting ranges and stores. It provides news
8 that's relevant to that goal. It was supposed to be
9 pretty and colorful. We planned eventually to sell
10 products on the website, but we haven't gotten to that
11 yet. That's basically it.
12 BY MR. GARDNER:
13 Q. Now, on the website is there any type of
14 subcategory listing which a user of the website could
15 click on and that would assist them in learning how they
16 would get trained in the use of firearms?
17 A. **Yes.**
18 Q. And when they click on that, what exactly would
19 come up, if you know?
20 A. **Well, there are a lot of buttons. If they**
21 **click on "Training," it takes them to a list of trainers**
22 **who offer services here in the Valley or statewide.**
23 Q. And then they could kind of pick and choose and
24 get more information depending what site they click on?
25 MS. COHEN: Objection to form.

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1 THE WITNESS: The listings are directly to the
2 trainers themselves.
3 BY MR. GARDNER:
4 Q. It would give a group of trainers; is that
5 right?
6 MS. COHEN: Objection to form.
7 THE WITNESS: I don't understand the question.
8 BY MR. GARDNER:
9 Q. Well, you indicated that this would, in effect,
10 if you clicked on "Get Trained," it would identify a
11 number of trainers; is that correct?
12 A. **Yes.**
13 Q. That would identify a number of individuals.
14 **Is that also correct?**
15 A. **Some are individuals.**
16 Q. And some are businesses?
17 A. **Yes.**
18 Q. And then if I wanted more information about any
19 particular individual or business, I could click again on
20 those sites?
21 A. **If they have a website or an e-mail listed.**
22 Q. There is also, is there not, a subfile on your
23 website that is identified as "Find Ranges"?
24 A. **Yes.**
25 Q. And if you click on that, what comes up?

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<p>1 A. You get a directory of shooting ranges.</p> <p>2 Q. Do you know how many ranges come up when you</p> <p>3 click on that?</p> <p>4 A. No.</p> <p>5 Q. More than five?</p> <p>6 A. Yes.</p> <p>7 Q. More than 10?</p> <p>8 A. I don't know. I think we link to a range site,</p> <p>9 which should include hundreds, if not thousands, but I'm</p> <p>10 not sure.</p> <p>11 Q. Once again, if you clicked on any one</p> <p>12 particular site, would there be additional information</p> <p>13 that might be revealed to that individual getting on the</p> <p>14 site?</p> <p>15 MS. COHEN: I'm sorry. I didn't hear that</p> <p>16 question.</p> <p>17 (Record read.)</p> <p>18 BY MR. GARDNER:</p> <p>19 Q. That's on the ranges I'm referring to.</p> <p>20 MS. COHEN: Objection to form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. GARDNER:</p> <p>23 Q. There is also a subcategory entitled "Maps"; is</p> <p>24 that correct?</p> <p>25 A. Yes.</p>	<p>1 Q. And if one were to click on that, what would</p> <p>2 one find?</p> <p>3 A. Artwork for a number of the billboards we put</p> <p>4 up around the state.</p> <p>5 Q. Anything else?</p> <p>6 A. Some descriptive text.</p> <p>7 Q. Anything else?</p> <p>8 A. I don't recall.</p> <p>9 Q. There would also be a subsection for help and</p> <p>10 FAQ, which I assume is frequently asked questions; is that</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And if one were to click on that, what would</p> <p>14 one find?</p> <p>15 A. A series of frequently asked questions and</p> <p>16 responses.</p> <p>17 Q. Can you give me some illustration as far as</p> <p>18 what you might see specifically?</p> <p>19 A. No.</p> <p>20 Q. There would also be a subcategory for gun</p> <p>21 shows; correct?</p> <p>22 A. Yes.</p> <p>23 Q. And if one were to click on that, what would</p> <p>24 one find?</p> <p>25 A. It's not been developed yet.</p>
Page 19	Page 21
<p>1 Q. And if a person clicked on that, what would</p> <p>2 come up, if you know?</p> <p>3 A. A page that says an interactive map is in</p> <p>4 development and an opportunity to buy the gun map that we</p> <p>5 created.</p> <p>6 Q. You created a gun map?</p> <p>7 A. Yes.</p> <p>8 Q. And when you say "gun map," what are you</p> <p>9 referring to?</p> <p>10 A. The map I mentioned earlier.</p> <p>11 Q. There is also a subcategory, is there not, for</p> <p>12 newsroom?</p> <p>13 A. Yes.</p> <p>14 Q. And if one were to click on that, what would</p> <p>15 one find?</p> <p>16 A. The news release about the censorship of our</p> <p>17 bus stop ads.</p> <p>18 Q. Any other articles?</p> <p>19 A. I don't know.</p> <p>20 Q. When was the last time you actually looked in</p> <p>21 that portion of the website?</p> <p>22 A. That portion? I don't know.</p> <p>23 Q. There is also a subdivision for billboards; is</p> <p>24 that correct?</p> <p>25 A. Yes.</p>	<p>1 Q. What are your intents in that subsection?</p> <p>2 A. We would like to list all the gun shows</p> <p>3 available in the state. And there is some text to the</p> <p>4 effect that there are gun shows and we will be improving</p> <p>5 this page.</p> <p>6 Q. There is also a subsection entitled</p> <p>7 "Competitions"; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And what is contained in that subsection?</p> <p>10 A. One or two photographs posted by one of the</p> <p>11 developers to show competitors. Very little else.</p> <p>12 Q. You also have a section entitled "Travel to</p> <p>13 AZ"; correct?</p> <p>14 A. Yes.</p> <p>15 Q. If one were to click on that, what would one</p> <p>16 find?</p> <p>17 A. General tourist information.</p> <p>18 Q. Such as?</p> <p>19 A. Weather, climate.</p> <p>20 Q. So that must be updated pretty frequently?</p> <p>21 A. It -</p> <p>22 MS. COHEN: Objection to form.</p> <p>23 BY MR. GARDNER:</p> <p>24 Q. You can go ahead and answer.</p> <p>25 A. It has not been.</p>

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1 Q. So it would be more generic, Arizona is a
2 wonderful climate, versus anything that changes day to
3 day?
4 MS. COHEN: Objection to form.
5 BY MR. GARDNER:
6 Q. You can go ahead and answer.
7 A. I'd have to look.
8 Q. There is also a subsection entitled "Sponsors";
9 is that correct?
10 A. Yes.
11 Q. And if one were to click on that, what would
12 one see?
13 A. A list of the sponsors of the program.
14 Q. Like Arizona Citizens Defense League?
15 A. Yes.
16 Q. And finally there would be a subsection
17 entitled "Donate"; correct?
18 A. Yes.
19 Q. If one were to click on that, what would one
20 find?
21 A. Some text and a window where you can donate
22 through PayPal.
23 Q. You recall the language that you used in the ad
24 that the City of Phoenix found objectionable; correct?
25 MS. COHEN: Objection to form, foundation.

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1 THE WITNESS: No.
2 (Exhibit 1 marked.)
3 MS. COHEN: Let me just state for the record
4 this is not Bates stamped. It has not been previously
5 produced to plaintiffs in this case.
6 BY MR. GARDNER:
7 Q. Do you recognize that, Exhibit 1?
8 A. Yes.
9 Q. Identify what that is.
10 A. This appears to be the text portion of our bus
11 shelter ad.
12 Q. And I will represent to you that that's just a
13 blowup of the language you had on your ad.
14 A. Okay.
15 MS. COHEN: Mr. Gardner, did you all retype
16 this?
17 MR. GARDNER: Do we retype it?
18 MS. COHEN: Did you retype it?
19 MR. GARDNER: I have not retyped it.
20 MS. COHEN: Did someone in your firm? It's
21 just not what the ad -- it's obviously not in the same
22 format as the ad. So is that --
23 MR. GARDNER: Is that an issue as far as who
24 retyped it? He has already identified it as being the
25 language in his ad.

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1 MS. COHEN: I'm sure he didn't read every page
2 or read every line. I'm just trying to clarify for the
3 record if it was re -- if it was prepared by someone.
4 MR. GARDNER: Yes, this was prepared right from
5 the ad.
6 MS. COHEN: Thank you.
7 BY MR. GARDNER:
8 Q. Do you want to look at it just to verify that
9 that's the language?
10 A. As I said before, it appears to be.
11 Q. Just so we are clear on this, if I were to look
12 at this particular ad, would I be able to identify the
13 individuals or companies that would be available for the
14 providing of gun training?
15 A. I'm sorry. Would you repeat that?
16 Q. Go ahead and repeat the question.
17 (Record read.)
18 A. Yes.
19 Q. Identify for me where I'd be able to locate
20 that information?
21 A. Right here at TrainMeAZ.com.
22 Q. That wasn't quite my question, though. My
23 question is, is there anything in this particular ad that
24 identifies, on this ad, that identifies who those
25 individuals or organizations are?

Page 25

1 A. TrainMeAZ doesn't identify that?
2 Q. No. I'm just talking about this ad. Is there
3 anything on this ad that identifies either the individuals
4 or the companies to provide that training --
5 MS. COHEN: So --
6 MR. GARDNER: Let me finish.
7 BY MR. GARDNER:
8 Q. -- that provide that training?
9 MS. COHEN: So you're pointing to Exhibit 1,
10 Mr. Gardner, which is not the plaintiff's ad. This is a
11 retyped version of language from the ad. So I object to
12 the form and the foundation.
13 BY MR. GARDNER:
14 Q. Go ahead and answer.
15 A. Some of the sponsors who do provide that
16 training are listed at the end of the ad, and there are
17 inaccuracies in it I can see now.
18 Q. What are the inaccuracies?
19 A. Well, Caswells Crossroads of the West Gun Shows
20 is two firms. It's listed as one. GunLaws.com has a
21 comma instead of a period. That's all I can spot -- I
22 believe Front Sight is a compound term, not two words.
23 I'd have to study it more closely.
24 Q. Okay.
25 A. I found other errors too.

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1 Q. Is there anything on the ad -- and again, if
2 that just refreshes your memory in terms of what's on the
3 ad, I'm fine with that as well, but is there anything that
4 actually identifies -- and let's take the first one,
5 Arizona Citizens Defense League, where does the ad
6 actually identify Arizona Citizens Defense League as an
7 organization that actually will provide gun training?
8 MS. COHEN: Okay. I'm going to have a running
9 objection to the reference to Exhibit 1 as the ad.
10 MR. GARDNER: That's fine.
11 MS. COHEN: Objection to form.
12 BY MR. GARDNER:
13 Q. Go ahead and answer.
14 A. Repeat the question, please.
15 MR. GARDNER: Go ahead and repeat the question.
16 (Record read.)
17 A. It says it right here: "Educate your
18 children," and Arizona Citizens Defense League is listed.
19 Q. Where does it say, "Educate your children"?
20 A. It's on the very first line, with a period
21 after it, which does not appear in the ad.
22 Q. But the ad does not actually indicate that
23 Arizona Citizens Defense League is available to provide
24 training, does it?
25 A. It does to me.

Page 27

1 Q. Do you recall if there is anything on your ad,
2 and again, if you don't want to reference Exhibit 1, I'm
3 fine; I will go from your general recollection, but is
4 there anything on your ad that identifies ranges?
5 A. Yes.
6 Q. Where is that?
7 A. Caswells.
8 Q. What do you mean "Caswells"?
9 A. Gunsite, Frontsight. These are ranges.
10 Q. But how would someone know that?
11 MS. COHEN: Objection to form. Objection to
12 foundation.
13 BY MR. GARDNER:
14 Q. You may know that, but how would a person
15 taking a look at that ad know that?
16 MS. COHEN: Objection to form.
17 THE WITNESS: I -- I don't know.
18 BY MR. GARDNER:
19 Q. Does the advertisement that you wound up
20 placing in the bus shelter identify any maps --
21 MS. COHEN: Objection to form, foundation.
22 BY MR. GARDNER:
23 Q. -- as your website does?
24 MS. COHEN: Same objection.
25 THE WITNESS: I don't see one, although Wide

Page 28

1 World of Maps is listed and they produced the map.
2 BY MR. GARDNER:
3 Q. Was there anything on your advertisement that
4 identified the availability of a newsroom?
5 MS. COHEN: Objection to foundation.
6 THE WITNESS: Any what?
7 BY MR. GARDNER:
8 Q. A newsroom as you have on your website.
9 MS. COHEN: Objection to form and foundation.
10 THE WITNESS: I don't see one.
11 BY MR. GARDNER:
12 Q. Is there anything in your advertisement that
13 identifies the fact that you may have other ads on
14 billboards throughout the area, throughout the state?
15 MS. COHEN: Objection to form and foundation.
16 BY MR. GARDNER:
17 Q. Go ahead and answer.
18 A. I don't see one.
19 MS. COHEN: Just for the record, the
20 advertisement that is at issue in this case is not before
21 the plaintiff. He is reviewing Exhibit 1.
22 BY MR. GARDNER:
23 Q. Would it help to refresh your recollection just
24 looking at this?
25 MS. COHEN: What is this, Counsel?

Page 29

1 BY MR. GARDNER:
2 Q. You haven't seen this before?
3 MS. COHEN: Well, for the record it would be
4 nice to identify what this is.
5 MR. GARDNER: Well, I don't know if I'm really
6 going to introduce this as an exhibit because it's already
7 been introduced on multiple occasions. So I'm just using
8 this to refresh your recollection.
9 MS. COHEN: I appreciate that. I don't have an
10 objection. However, the record is confusing because the
11 witness is being questioned about an ad, but what's in
12 front of him is not the ad. It is a piece of paper with
13 incorrect -- it's an incorrect replication of a portion of
14 the ad, and that's all that he is reviewing in responding
15 to your question. So that is my objection.
16 BY MR. GARDNER:
17 Q. Would you like to refresh your memory by
18 looking at a copy of the actual ad to make sure you're
19 crystal clear on everything?
20 MS. COHEN: Well, let's be clear. If you're
21 asking him questions about the ad, then it would be
22 helpful to have the ad in front of him versus the
23 defendant's replication of a portion of the ad.
24 THE WITNESS: It -- what's the question?
25 BY MR. GARDNER:

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1 Q. Does that help refresh your memory in terms of
2 answering any of the questions that I have just asked you
3 over the last few minutes concerning the advertisement?

4 MS. COHEN: Objection to foundation. Objection
5 to form.

6 BY MR. GARDNER:

7 Q. Go ahead and answer.

8 A. **This appears to be a photo reduction of our
9 actual ad, which is six feet high.**

10 Q. Is there anything on the ad that is in the
11 format of a FAQ, or frequently asked questions, like you
12 have on your website?

13 A. **Well, the ad is not the website.**

14 Q. Right. I understand. I'm just talking about
15 the advertisement itself. I'm not concerned about what
16 would happen if they got on your website. I'm concerned
17 about what's actually on the ad itself.

18 A. **And the question is?**

19 MR. GARDNER: Go ahead and ask him -- redo the
20 question.

21 (Record read.)

22 A. **Yes.**

23 Q. And where is that?

24 A. **Well, there are some questions at the bottom --
25 the reproduction of the ad is a little too small for me to**

Page 31

1 **read --**

2 Q. Okay.

3 A. **-- from this.**

4 MS. COHEN: Can I just state for the record
5 that Cotton exhibit -- is that Cotton Exhibit 8?

6 THE WITNESS: 8.

7 MS. COHEN: -- is what Mr. Korwin is pointing
8 at.

9 THE WITNESS: There are two questions at the
10 end of your typed page 1. "How do you think so many
11 trainers and shooting schools thrive here?" And "Should
12 your state honor our rights this way?" Those are
13 frequently asked questions.

14 BY MR. GARDNER:

15 Q. And were answers given to those questions?

16 MS. COHEN: Objection to foundation.

17 BY MR. GARDNER:

18 Q. Anywhere on this advertisement?

19 MS. COHEN: Same objection.

20 THE WITNESS: Yes.

21 BY MR. GARDNER:

22 Q. Where is that?

23 A. **"Soak up family days where the shooting sports
24 are honored and enjoyed." "Arizona is an American
25 protectorate of the culture of marksmanship, where the**

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1 **decent, honorable and lawful pursuit of the shooting
2 sports," et cetera. Answers: "Should your state honor
3 our rights this way?" And "How do you think so many
4 trainers and schools thrive here?" "A coordinating point
5 for the state's thousand-plus certified trainers." So
6 it's not formatted as the website FAQ, but it's the same
7 in principle.**

8 Q. Is there anything on the advertisement which
9 advertises gun shows?

10 MS. COHEN: Objection to form, foundation.

11 THE WITNESS: Well, the largest promoter of gun
12 shows in the state is named.

13 BY MR. GARDNER:

14 Q. Yeah, but I don't know that to be a fact, and
15 there might be other people who wouldn't know that. So
16 how would the average person know that?

17 MS. COHEN: Objection to form.

18 THE WITNESS: I don't know what the average
19 person is.

20 BY MR. GARDNER:

21 Q. Is there anything on the ad that identifies any
22 upcoming competitions?

23 MS. COHEN: Objection to foundation.

24 THE WITNESS: Well, over here where it says,
25 "shooting sports are honored and enjoyed," the shooting

Page 33

1 sports include competitions.

2 BY MR. GARDNER:

3 Q. Is there anything on that ad that actually
4 identifies upcoming competitions specifically?

5 A. **You mean in a timely way, like a schedule?**

6 Q. Yes.

7 A. **No.**

8 Q. Is there anything contained on there about the
9 donation of money to TrainMeAZ, LLC?

10 A. **I don't see one.**

11 Q. You've indicated that you also, in terms of
12 your advertising, sent out eBlasts. To make sure we are
13 on the same page here, how do you define an eBlast?

14 A. **It's an e-mail to a list of recipients.**

15 Q. And are there certain target recipients that
16 receive an eBlast?

17 A. **Whoever is on the list.**

18 Q. Well, what list are you referring to?

19 A. **I have a list of people within the state and
20 nationally who receive my postings.**

21 Q. Do you know how many people are on that list?

22 A. **Currently, 5,000 some-odd in Arizona, and 30
23 some-odd thousand nationally, which includes the Arizona
24 list.**

25 Q. How frequently do these e-mail blasts go out?

Page 42

1 Q. Someone had actually torn the ad down was your
2 impression?

3 A. I don't know.

4 Q. When you say the ad was missing, missing from
5 what location?

6 A. It was somebody on the west side who drove by
7 it previously and called to say what happened.

8 Q. Did he actually indicate in that conference --
9 strike that.

10 In that communication you had with Mr. Bennett,
11 did he indicate that the City of Phoenix was having a
12 problem with the ad?

13 A. Yes.

14 Q. And what problem did he identify?

15 A. He didn't.

16 Q. He just said the City had a problem with it?

17 A. I don't recall.

18 Q. But you got the impression at the end of the
19 conversation that there may be an issue from the City of
20 Phoenix's perspective with that ad; is that correct?

21 A. Yes.

22 Q. What were the next steps you took to determine
23 what the problem was from the City of Phoenix standpoint?

24 A. I had a series of phone calls.

25 Q. With who?

Page 43

1 A. Cameron, Debbie Cotton, Ted Mariscal, Marie
2 Chappel, one of Cameron's superiors.

3 Q. You don't recall his name?

4 A. Steve Chatham.

5 Q. Who set up the -- there were a series of
6 telephone conversations; is that correct?

7 A. Yes.

8 Q. Was the first one a fairly large group session
9 where present would have been Mr. Bennett, Ms. Cotton, Ted
10 Mariscal, a number of others?

11 A. I don't recall.

12 Q. Do you recall having any conversations directly
13 with Debbie Cotton?

14 A. Yes.

15 Q. Would those conversations have occurred after
16 you had a group telephone conference with representatives
17 with not only the City of Phoenix but also CBS?

18 A. I don't recall.

19 Q. Do you recall anything about what was discussed
20 in the telephone conferences you did have with City of
21 Phoenix representatives?

22 A. Yes.

23 Q. Do you have any recollection as to any of the
24 City representatives identifying what the problems were
25 from their perspective with that ad?

Page 44

1 A. Yes.

2 Q. What's your recollection as far as what their
3 issues were?

4 A. They claimed the ad was a public service
5 announcement. I asked them for a definition of a public
6 service announcement, and they didn't have one. They
7 claimed someone had complained about the ad, but they
8 wouldn't identify the complaint or who made it. They
9 claimed the ad had to propose a commercial transaction,
10 which it does, which they disagreed with. They claimed
11 the ad was controversial and that special rules apply to
12 controversial ads, and they wouldn't tell me what those
13 rules were or what was controversial about the ad. And we
14 went back and forth on the controversy issue a good bit,
15 the public service definition, which I never got, and
16 the -- all the commercial proposals that are built into
17 the ad.

18 Q. As part of your Disclosure Statement I think a
19 transcript was prepared of a telephone conference. Is
20 that the conference you're referring to?

21 MS. COHEN: Objection to foundation.

22 THE WITNESS: Yes.

23 BY MR. GARDNER:

24 Q. Was that the first conference you had had with
25 any City of Phoenix representatives regarding this issue?

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1 A. I don't recall.

2 MS. COHEN: Foundation objection.

3 THE WITNESS: Sorry.

4 MS. COHEN: That's okay.

5 BY MR. GARDNER:

6 Q. Was there any resolution proposed by any City
7 of Phoenix representatives in that telephone conference?

8 MS. COHEN: Objection to foundation.

9 THE WITNESS: Which conference?

10 BY MR. GARDNER:

11 Q. The one you just talked about where there was
12 the discussion by various representatives of the City of
13 Phoenix as far as what their issues were.

14 A. I didn't say that. You're confusing things.
15 I'm confused.

16 MS. COHEN: If you don't understand the
17 question, just let him know.

18 THE WITNESS: I don't understand the question.

19 BY MR. GARDNER:

20 Q. In your Disclosure Statement I believe you
21 prepared, there was a transcript of a telephone conference
22 that took place between various representatives; correct?

23 A. Yes.

24 Q. That's --

25 MS. COHEN: Objection to foundation. I'm

Page 50

1 ad; is that correct?

2 **A. Yes.**

3 Q. Did she narrate what she thought should be

4 included in the ad, or did she have an actual ad that she

5 put in front of you?

6 **A. She had an eight-and-a-half-by-11**

7 **black-and-white sheet of paper.**

8 Q. How was that different from the ad that was

9 originally up?

10 **A. The small text was removed. The large text was**

11 **rearranged. The headline was moved. New text was added.**

12 Q. Was that kind of, it looked like someone had

13 prepared it in their own handwriting? It wasn't a big

14 professional job? It was more in someone's handwriting;

15 is that correct?

16 **A. I don't understand the question.**

17 Q. Sure. When she came in, did she have a

18 professionally done ad, or did she just have something

19 that she did in longhand?

20 **A. It was not handwritten. It was not**

21 **professionally done. It didn't appear to be**

22 **professionally done.**

23 Q. So what you can recall, it took out the

24 narrative; is that correct?

25 **A. The small, what you call the small text, yes.**

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1 Q. Then it just repositioned everything else?

2 MS. COHEN: Objection to form.

3 BY MR. GARDNER:

4 Q. Again, just from what your recollection is,

5 **A. Yes, and added words.**

6 Q. Do you recall what words were added?

7 **A. No.**

8 Q. This would have been identified as Chappel

9 Exhibit 9. Do you think that's what was placed in front

10 of you at that meeting?

11 **A. That is not.**

12 Q. That is not. Okay. So there is some other --

13 some other ad; is that correct?

14 **A. Yes.**

15 Q. Now, you indicated I believe that you thought

16 you had resolution. The ad that was presented to you, did

17 you think that the City was going to accept that ad?

18 MS. COHEN: Objection to form.

19 BY MR. GARDNER:

20 Q. Go ahead.

21 **A. They suggested they would, but it was**

22 **unacceptable to me and the sponsors.**

23 Q. How was it unacceptable to you?

24 **A. It changed our meaning.**

25 Q. How did it change the meaning?

Page 52

1 **A. Our ad is designed to sell marksmanship**

2 **training and gun safety classes. Their ad was designed to**

3 **promote a philosophy.**

4 Q. What philosophy were they promoting?

5 **A. Educate your kids that guns save lives.**

6 Q. So you thought -- and again, I'm really not

7 trying to put words in your mouth, but are you saying that

8 the fact that they talked about educating the kids was

9 objectionable? I'm not identifying exactly what you said

10 was objectionable in terms of the change in philosophy.

11 You said educate your kids.

12 MS. COHEN: I'm sorry. What's the question?

13 BY MR. GARDNER:

14 Q. I'm just trying to identify, what is the

15 philosophical change, because you gave me, you said

16 educate kids, but then you kind of lost me after that?

17 MS. COHEN: You said philosophical change. I

18 just object to the form of that.

19 BY MR. GARDNER:

20 Q. But I think -- didn't you say that, there was a

21 philosophical change?

22 MS. COHEN: Objection. Misstates the

23 testimony.

24 BY MR. GARDNER:

25 Q. Why don't you go ahead and tell me what you

Page 53

1 objected to. Let's just do it that way.

2 **A. The City proposed educating your kids that guns**

3 **save lives. That is not our message. That is not our**

4 **point. That is not what we are trying to sell.**

5 Q. So there was something that Debbie Cotton

6 presented, but based on your review, you objected to that?

7 **A. Yes.**

8 Q. Now, you said that there were other sponsors

9 that objected to it?

10 **A. Yes.**

11 Q. How did they object to it?

12 **A. Similar objection. Kim Grady took great**

13 **umbrage at the new message the City proposed that was not**

14 **our message, and she is a trainer.**

15 Q. Anybody else?

16 **A. Noble Hathaway expressed discontent with the**

17 **change.**

18 Q. What did he say? What was his issue with it?

19 **A. Similar. They were changing our message. It's**

20 **not what we are trying to say.**

21 Q. Anybody else?

22 **A. Not that I recall.**

23 Q. And again, I want to make sure I understood

24 your previous testimony. I thought you said that at the

25 close of this meeting you thought there was a resolution?

Page 54

1 A. Yes.

2 Q. Well, if the ad that Ms. Cotton put in front of
3 you was not objectionable to you, why do you say you
4 thought there was a resolution?

5 MS. COHEN: Was not objectionable? I think you
6 said that.

7 Can you either read back the question or
8 rephrase it?

9 BY MR. GARDNER:

10 Q. You indicated previously that you thought there
11 was going to be resolution of this issue?

12 A. Yes.

13 Q. And you thought there was a resolution by the
14 end of the meeting. Is that a fair statement?

15 A. Not a final resolution.

16 Q. But you thought there was some resolution?

17 A. Yes.

18 Q. And I guess the question I have is, why did you
19 feel that way if you were not willing to accept the
20 modifications supposedly made by Debbie Cotton?

21 A. We expressed our concerns. The City expressed
22 their concerns. We were clear during the meeting that the
23 proposed change they made was not acceptable to us, that
24 the idea the City would write our ad for us was anathema,
25 which my sponsors felt as well. And the meeting was left,

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1 as I understood it, that we would continue the dialogue
2 and reach resolution if we could, which was hampered by
3 the fact that despite repeated requests, we had no
4 guidelines for what we could write that would be
5 acceptable or how to avoid a public service announcement,
6 which they were claiming we had, and we didn't know how to
7 write what would be acceptable to them. We had no
8 guidelines. But we were supposed to continue. This - I
9 left feeling knowing that this was a first step.

10 Q. Did you ever request from the City a copy of
11 any written guidelines they had in effect?

12 A. Yes, I did.

13 Q. And were you provided with those?

14 A. I was provided with the transit advertising
15 guidelines, but not the controversy guidelines, the public
16 service announcement guidelines or the proposal of a
17 commercial transaction guidelines.

18 Q. So do I understand after that meeting that
19 there was going to be a continuation of the dialogue
20 between all the parties?

21 A. It was clear to me.

22 Q. Now, you expressed some frustration over the
23 fact that Debbie Cotton or at least someone from the City
24 might give you suggestions on what to put in the ad?

25 MS. COHEN: Objection to form.

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1 THE WITNESS: We objected to the idea that the
2 City would write our private ad.

3 BY MR. GARDNER:

4 Q. So did you go to CBS and ask them for their
5 assistance in terms of preparing an ad that might be
6 acceptable to the City of Phoenix in view of their
7 relationship with the City?

8 A. I don't recall.

9 Q. After this meeting did you have any more
10 conversations with any City of Phoenix representatives?

11 A. I don't recall the chronologies of our
12 conversations.

13 Q. Did you have any conversations with Debbie
14 Cotton after this meeting?

15 A. I don't recall the chronology.

16 Q. Would it be fair to say that there was no
17 continuation of the dialogue, for whatever reason?

18 A. The next thing that happened was that our ads
19 were taken down.

20 Q. And you think most of them were taken down
21 after this meeting that took place in October of 2010?

22 A. That was the next thing that happened. While I
23 was awaiting the continuation of the dialogue we had
24 opened that seemed to be a first of several steps, the
25 City took all the ads down.

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1 Q. Did you talk to anyone at the City of Phoenix
2 when you learned that all the ads had been taken down?

3 A. Yes.

4 Q. Who did you talk to?

5 A. I don't recall.

6 Q. Do you recall the substance of the
7 conversation, specifically whether they gave you a
8 particular reason why the ads were taken down?

9 A. I don't recall speaking with anyone at the City
10 specifically. I do recall speaking with Cameron.

11 Q. About the ads going down?

12 A. About the ads being taken down, about a further
13 meeting or conversation not having been held, despite the
14 apparent resolution that that would occur. He expressed
15 surprise as well.

16 Q. So you had a subsequent telephone conversation
17 with Cameron that took place after the meeting of October
18 of 2010, and he expressed surprise that there were no
19 additional meetings scheduled or other communications?

20 MS. COHEN: Objection to form, foundation.

21 THE WITNESS: I expressed surprise.

22 BY MR. GARDNER:

23 Q. Did he express surprise?

24 A. And he agreed.

25 Q. What do you mean he agreed?

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

ALAN KORWIN, et al.,

Plaintiffs,

vs.

DEBBIE COTTON, et al.,

Defendants.

No. CV2011-009838

DEPOSITION OF COLLEEN MARIE MCCARTHY

Phoenix, Arizona

April 3, 2012

10:00 a.m.

PREPARED FOR:

ATTORNEY AT LAW
(COPY)

Reported by:
HALEY WESTRA, RPR
Arizona CCR No. 50762

DEPOSITION OF COLLEEN MARIE MCCARTHY,

Taken on April 3, 2012, commencing at 10:01 a.m., at
the GOLDWATER INSTITUTE, 500 East Coronado Road,
Phoenix, Arizona, before HALEY WESTRA, a Certified
Reporter in the State of Arizona.

COUNSEL APPEARING:

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Attorneys for City of Phoenix.

COLLEEN MARIE MCCARTHY,

a witness herein, having been first duly sworn by the
Certified Reporter to speak the truth and nothing but
the truth, was examined and testified as follows:

EXAMINATION

BY MS. COHEN:

Q. Can you please state your full name for the
record?

A. Sure, Colleen Marie McCarthy.

Q. Ms. McCarthy, my name is Diane Cohen and I'm
an attorney and I represent the plaintiffs in this
matter.

I am taking your deposition today because
you've been disclosed as a person with knowledge by the
defendants regarding the matters in the litigation
Korwin versus Cotton.

I'm going to be asking you a series of
questions, and if at any time you don't understand my
question or you need me to repeat it, you will let me
know. Okay?

A. Okay.

Q. Okay. Otherwise, when I ask you a question
and you answer it, I will assume that you understood my
question and you've answered it fully and accurately to

I N D E X

WITNESS PAGE

COLLEEN MARIE MCCARTHY

EXAMINATION BY MS. COHEN 4

E X H I B I T S

EXHIBIT DESCRIPTION MARKED

1. Subpoena 28

2. Subpoena 29

3. E-mail correspondence from Steve
Charham to Brent Wood, Phil
Callahan, Curtis Mulford, Colleen
McCarthy dated October 18, 2010 33

4. City of Phoenix Public Transit
Department Advertising Review
Process 77

5. E-mail correspondence from Steve
Charham to Colleen McCarthy 85

6. City of Phoenix Public Transit
Department Transit Advertising On:
CBS Outdoor Passenger Shelters and
Benches, Clear Channel Outdoor
Buses, Non-Compliant
Advertisements 2010-2011 89

7. Photograph 101

8. Photograph 105

the best of your ability. Okay?

A. Okay.

Q. Where are you currently employed?

A. At CBS Outdoor.

Q. And where is that located?

A. That is 3150 South 48th Street --

Q. Okay. And do you have a title?

A. -- Phoenix.

Q. Oops.

A. I'm sorry.

Q. Do you have a title?

A. Real estate, slash, transit coordinator.

Q. And how long have you held that title?

A. Since July 2011.

Q. How long have you been employed by CBS?

A. Approximately two years.

Q. So you've held the position of real estate,
slash, transit coordinator during your -- throughout
your entire tenure with CBS?

A. No.

Q. Okay. What other positions have you held?

A. Real estate admin assistant.

Q. And when did you hold that position?

A. From May 2010 until July 2011.

Q. And did you begin your employment with CBS in

1 May 2010?

2 A. Yes.

3 Q. And after -- did you go right from the real

4 estate admin position to the real estate, class,

5 transit coordinator position?

6 A. Yes.

7 Q. Was that a promotion?

8 A. Yes and no. It's mostly a title change.

9 Q. And where were you before -- were you employed

10 before CBS?

11 A. Yes.

12 Q. And where were you employed?

13 A. The job previous was Charles Schwab.

14 Q. And when was that?

15 A. From 2008 to 2009.

16 Q. And what did you do for Charles Schwab?

17 A. Call center work.

18 Q. And what does that involve?

19 A. Answering phones about financial products,

20 banking products, and working with brokers.

21 Q. Anything else?

22 A. Uh-huh, no. I'm sorry.

23 Q. That's okay.

24 And did you go right from Charles Schwab

25 to CBS Outdoor?

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1 Q. And what did you do prior to Access?

2 A. I was in college full-time.

3 Q. And over what period of time?

4 A. 1996 through 1999.

5 Q. Prior to joining CBS, did you ever sell any

6 kind of advertising in any of your previous employment?

7 A. No.

8 Q. And can you just, please, identify the duties

9 in your job as a real estate transit coordinator for

10 CBS?

11 A. Sure. I work with the different

12 municipalities with their transit advertising programs.

13 I am the liaison between CBS and the City

14 to get them ads and work with their facilities

15 maintenance, do reports. I get them rent payments

16 every month.

17 And on the real estate side, I work with

18 billboards property, lessors, making lessor changes on

19 leases, and reporting.

20 Q. And you said you worked -- you work with

21 different municipalities?

22 A. Yes.

23 Q. What municipalities do you work with?

24 A. There's -- locally, there's Chandler,

25 Goodyear, Avondale, and Peoria.

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1 A. Are you talking about from one day to the

2 next, I mean, because...

3 Q. Was there a break in time?

4 A. There was.

5 Q. Okay. And when was that?

6 A. After Charles Schwab, I was unemployed for six

7 months.

8 Q. Okay. And then did you go to CBS Outdoor?

9 A. Yes.

10 Q. And prior to working at Charles Schwab, did

11 you have a job?

12 A. Yes.

13 Q. And where was that?

14 A. It was Access US.

15 Q. And what did you do for Access US?

16 A. I was the director of operations.

17 Q. And what did that position involve?

18 A. I oversaw all of the departments. It was an

19 Internet service provider, so networking groups and

20 sales, customer service, the accounting team, HR.

21 Q. Did you sell advertising?

22 A. No.

23 Q. And how long did you -- what period of time

24 did you hold that position?

25 A. From 1999 to 2007.

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1 Q. And Phoenix as well?

2 A. And Phoenix, yes. Sorry.

3 Q. Okay. And what do you do for -- do you

4 fulfill the same role for -- on behalf of CBS for all

5 of these municipalities?

6 A. Yes. They're a little bit different in their

7 requirements, but yes, it's the same role.

8 Q. And what role -- how would you describe that

9 role?

10 A. Transit coordinator liaison.

11 Q. And what do you do as a transit coordinator?

12 A. I make sure the ads are given to the City.

13 I get our team notified if there's any inventory

14 changes. I let our team know if there's any issues

15 with the City and our ads. I do a lot of reporting.

16 Q. And do you do all of these things for each of

17 the cities you identified?

18 A. Yes.

19 Q. And what does it mean to -- when you say make

20 sure you get ads to the City, what does that mean?

21 A. Each city has their own advertising

22 requirements, so some of them want the ads beforehand.

23 Other cities just request that we send

24 ads to them in advance if there's something borderline

25 about the image or the text in the ad so that they have

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A. It's just kiosk and bus...

Q. All right. I'll show you some photos later and perhaps we can clarify those.

A. Okay.

Q. Okay. And so can you describe the process of how you, CBS, goes about selling this ad space for the City of Phoenix transit stops?

A. I cannot. I'm not in the sales department.

Q. Okay. What is your role then?

A. I work in -- as a liaison between our sales group and the City of Phoenix, City of Good Year, Avondale, Peoria, Chandler and I get them advertising so the -- I don't get the actual advertising to them, I get them made aware of advertising, if it needs to be approved, if there's any maintenance issues, facilities, inventory problems, inventory removed, replaced, things like that, reporting.

Q. Okay. So in terms of this advertising, when you say that you're a liaison, so what do you do, if anything, other than transmit advertisements -- proposed advertisements to the City of Phoenix?

A. That is about it. I get the advertisements, I send it to Phoenix, Phoenix sends back a response, and I alert the account executive.

Q. And do you play any role in the review

processes the first step and that's the first place the advertiser would go?

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

Q. Do you know where -- where your role comes in?

A. Once the sales has an ad, they give it to me and that's where I start.

Q. Do you have any particular contact or contacts in the CBS sales department that you work with?

A. No. They all send it to me directly, so it's the whole department.

Q. And how many people are in the sales department?

A. I don't know exactly.

Q. Can you estimate?

A. 15, 20, maybe.

Q. Do you know whether any of these people in the sales department play a role in reviewing the ads to determine whether or not they comply with City of Phoenix transit advertising standards?

A. I don't know.

Q. And so you -- did you -- is it your testimony that the sales department then sends ads to you?

A. Yes.

Q. Okay. And then what do you do once you receive an ad?

process -- is there a review process, if you know, in terms of whether an ad that is brought to CBS is compliant with City of Phoenix transit advertising standards?

A. We try to comply to their standards, and we review it before it's sent.

Q. And do you play a role in the review process?

A. Yes.

Q. And what is your role in the advertising review process?

A. My role is to review the ad and make sure it's compliant -- it's compliant with the advertising standards.

Q. And how long have you had that role?

A. Since the end of 2010.

Q. So I'm wondering if you can walk me through, from start to finish, in terms of CBS's role in the transit advertising process. And I want to start with when a proposed advertiser comes to CBS and tells CBS that they would like to purchase advertising space at the City of Phoenix transit stop; what happens?

A. I am not in the sales department, so I don't know that exact process. I only know it from the point that I reached the -- the ad reaches me.

Q. Okay. And so are you aware of whether the

A. If it's for Phoenix, I send it to Phoenix to have them review it.

Q. Okay. Do you -- okay, when the ad comes to you from the sales department, do you do anything other than transmit it to the City?

A. I look at it myself and try to see if there's any potential problems with it as it relates to the City standards.

Q. And are there occasions when you have found that there have been potential problems with an ad?

A. Yes.

Q. And what have you done in those instances?

A. I sent it back to the account executive and let them know why I think it wouldn't pass the City standards.

Q. Do you -- oh, go ahead.

A. And then I give them an opportunity to let me know what they want me to do with the ad after that.

Q. Who is "we"? You said you give them -- "them" an opportunity to let them know what they want to do with the ad?

A. I give it back to the account executive and I say, "This is why I think it's not going to pass," and then I wait for them to decide what they want me to do, whether they want me to send it anyway or if they

1 want to modify it before I send it.

2 Q. Okay. Do you give the sales department advice
3 on how the ad could be edited in order to comply with
4 the City of Phoenix transit advertising standards?

5 A. No.

6 Q. Okay. And so then what would happen in a
7 scenario where you have sent an ad back to the sales
8 department?

9 A. Can you be more precise?

10 Q. Sure. Do you checkup and -- with sales to see
11 what the status of an ad or do you wait for them to
12 contact you?

13 A. I wait for them to contact me.

14 Q. And what if you get an ad back and you still
15 have problems with it?

16 A. Could you define "problems"?

17 Q. Well, you said that there -- you would look at
18 an ad to determine whether there were potential
19 problems with the ad, and those potential problems
20 would include what?

21 A. Problems -- what I mean by that is, I don't
22 think they would be compliant. The City might find
23 them -- that they're not compliant with their
24 advertising standards, so that's what I mean by a
25 "problem."

1 A. Well, I finally started transmitting ads to
2 the City of Phoenix at the end of 2010, so before then,
3 nothing.

4 Q. I'm sorry. Before then, did you say "before
5 then, nothing"?

6 A. I didn't transmit any ads to the City prior to
7 the end of 2010.

8 Q. Oh, whether -- okay, let's -- so no ads
9 whether they -- for example, you didn't even transmit
10 ads that CBS approved for posting?

11 A. Right, I never even saw the ads.

12 Q. Is that because that wasn't part of your job
13 duties?

14 A. That's correct.

15 Q. Okay. I just want to back up.

16 Did you review any documents in
17 preparation for your deposition today?

18 A. Could you define "documents"?

19 Q. Documents. Any kind of documents, materials,
20 in preparation for your deposition.

21 A. The documents that I received, like the
22 deposition documents?

23 Q. The subpoena?

24 A. Yes.

25 Q. You reviewed -- did you review the subpoena

1 So if I think they're not going to pass,
2 I would let the account exec know and they have an
3 opportunity to either modify it or ask me to send it as
4 is.

5 Q. And what if they ask you to send it as is?

6 A. Then I usually do. It depends on how blatant
7 it is. I mean, there are certain standards that are
8 very clear, smoking products, so if somebody wants me
9 to send a smoking product to the City for
10 advertisement, it won't pass.

11 Q. So do you send it to the City anyway?

12 A. No, I don't.

13 Q. What do you do?

14 A. I send it back to the account executive
15 with -- reminding them to look at the standards and let
16 them know it's not going to pass.

17 Q. So if you determine that an ad is such that it
18 just will not pass the City's transit advertising
19 standards, you will not transmit it to the City; is
20 that right?

21 A. That's correct.

22 Q. And how long has that been your practice?

23 A. Since about the beginning of 2011.

24 Q. So what did you do before the beginning of
25 2011 in such instances?

1 for your appearance today?

2 A. Not today, but yes, I have reviewed it.

3 Q. Fair enough. Okay.

4 Did you review the subpoena for documents
5 that was served on you as well?

6 A. I did, yes.

7 Q. Okay. And were you responsible at all for
8 producing the documents that were responsive to the
9 subpoena?

10 A. For both subpoenas?

11 Q. One subpoena was for your appearance.

12 A. That's correct.

13 Q. Do you understand that?

14 A. Yes.

15 Q. Okay. And then there was another subpoena as
16 well, right?

17 A. That's correct.

18 Q. And that subpoena asked for documents from
19 CBS?

20 A. Yes.

21 Q. Okay. And did you help in response -- did you
22 help gather documents to respond to that subpoena?

23 A. Yes.

24 Q. Did anyone else help you do that?

25 A. No -- yes, actually, I had someone look

1 give you -- to answer your question?

2 A. I -- it wasn't clear to me, that's correct.

3 Q. What wasn't clear to you?

4 A. How she defines a public service
5 announcement -- or not she -- how the City defines a
6 public service announcement.

7 Q. Have you ever asked the City what the
8 definition of -- proposes a "commercial transaction"
9 is?

10 A. I don't recall asking that question.

11 Q. Has the City ever discussed with you, or
12 anyone in your presence, what the definition of a
13 commercial transaction is?

14 A. Yes.

15 Q. And when was that?

16 A. I don't recall.

17 Q. Do you recall the last time this was
18 discussed?

19 A. It was early on when I took on the role.

20 Q. Sometime in 2010?

21 A. 2009 --

22 Q. Or 2011?

23 A. 2011, right.

24 Q. Anytime this year, did you discuss this with
25 the City?

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1 religious radio station put an advertisement up that
2 had language that said, "Get baptized, listen to Radio
3 1200".

4 MS. ZIMMERMAN: Object to the form.

5 A. It's -- I don't understand.

6 BY MS. COHEN:

7 Q. Well, when you say "religious radio station,"
8 could the ad contain a religious message?

9 A. No. If the message is referring to a
10 commercial transaction, then yes; if it's not, then no.

11 Q. Okay. In what way would a religious --

12 MS. COHEN: I'm sorry, can you read back
13 that answer?

14 [The requested portion was read by the
15 reporter as follows:

16 "ANSWER: No. If the
17 message is referring to a
18 commercial transaction,
19 then yes; if it's not, then
20 no.")

21 BY MS. COHEN:

22 Q. And how would a message relate to a commercial
23 transaction in terms of a religious advertisement?

24 A. Each advertiser is different, how they want to
25 present. But if you look at the ad and it's asking the

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1 A. No.

2 Q. What is your understanding, if you have one,
3 of what it means for an ad to propose a commercial
4 transaction?

5 A. A commercial transaction is either implicit or
6 explicit, and it proposes a transaction. So if you
7 were to look at the ad, it would tell you to go to
8 their store, go to their website, call them; and in
9 turn, they expect you to buy a service or a product.

10 Q. Does CBS have any internal standards in terms
11 of defining what a commercial transaction is?

12 A. Not that I'm aware of.

13 Q. And when I say "standards," I mean any kind of
14 direction or guidance or --

15 A. Not that I'm aware of.

16 Q. Are you -- can a transit advertisement contain
17 a religious message?

18 A. Yes.

19 Q. And under what circumstances?

20 A. If it's a commercial transaction, yes.

21 Q. Like what? Like, can you give me an example
22 of what that means?

23 A. If, for example, a religious radio station
24 could advertise the radio station.

25 Q. Is there -- so could a -- for example, could a

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1 viewer to use their product or their service, then it's
2 a commercial transaction; if they just want to make
3 some statement about religion, that's not a commercial
4 transaction. It has to actually apply.

5 Q. And do you just kind of know that when you see
6 the ad on whether it complies with the standards?

7 A. Yes.

8 Q. And it varies from ad to ad?

9 A. It does.

10 [Exhibit 1004 was marked.]

11 BY MS. COHEN:

12 Q. Ms. McCarthy, I'm showing you what's been
13 marked as McCarthy Exhibit 4. It's a two-page
14 document. Do you see that?

15 A. Yes.

16 Q. Or it's a two-page exhibit.

17 Have you seen this before?

18 A. Yes.

19 Q. When's the last time you've seen it?

20 A. I don't recall exactly. In early 2011.

21 Q. Okay. Under what circumstances did you see
22 it?

23 A. It was provided at the same time as the
24 revised standards.

25 Q. What revised standards?

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Q. And in -- part of your review is to determine whether the ads comply with the City of Phoenix transit advertising standards, right?

A. Right.

Q. And those standards require that an ad adequately display a commercial transaction, right?

A. Correct.

Q. And so what is your understanding of the meaning "adequately"?

A. My understanding is that the ad proposes a commercial transaction in and of itself. So if it's the name of the company or their contact information, that, to me, is an adequate display of a commercial transaction.

Q. Anything else you would add to that definition?

A. No.

Q. Okay. Did you -- while Steve Chatham was still with CBS before he retired, did you have occasions to talk to him about the "Gun Saves" -- "Guns Save Lives" ad that is the subject of this lawsuit?

A. Yes.

Q. Okay. And do you recall the first time you learned about the issue of the "Guns Save" -- we'll call it the "TrainMeArizona" ad because it's easier for

first discussion.

Q. And what did -- why were you a part of that discussion?

A. Because I worked with transits, so I was already in that relationship in a different capacity.

Q. And did you do anything?

A. No.

Q. And when I say "do anything," I mean, did you play any role in -- well, strike that.

So what happened after that, after this meeting that you just described?

A. Can you be more specific?

Q. Yeah. Okay. You received an e-mail, right, the exhibit -- McCarthy Exhibit 37

A. Uh-huh.

Q. 'Yes'?

A. Yes.

Q. No, that's totally normal.

A. It happens.

Q. No, well, it's just how we usually talk in interaction, but for deposition we have to say things.

So you received McCarthy Exhibit 37, and then you had this meeting or discussion, rather?

A. Discussion.

Q. Okay. And was this an over-the-phone?

me to say, and that's actually the proper name, in any event, but do you remember the first time you learned about the TrainMeArizona ad?

A. I -- yes.

Q. Okay. And when was that?

A. Back in October of 2010.

Q. Were you part of the process in any way whereby this ad was reviewed by CBS and posted?

A. No.

Q. So you -- you learned about it at what point?

A. That initial e-mail, one of the exhibits where Steve sent an e-mail asking everyone if they knew what it was about.

Q. And that is McCarthy Exhibit 37? I'm just showing you to confirm.

A. Yes, that's correct.

Q. And after that e-mail, had you had additional discussions regarding the TrainMeArizona ad?

A. Yes.

Q. And what was the next thing that happened after receiving the e-mail that you were apart of -- or had knowledge of?

A. After -- all I understood was what Steve told me that the ad had gone up, the City had a complaint, and we were asked to take it down, so that was the

A. No.

Q. In person?

A. Yes.

Q. Okay. And was that -- the e-mail was dated October 18, 2010. Was it on that date or sometime after that?

A. I don't recall the exact date.

Q. Okay. Was it -- so you don't know whether it was the same day you got the e-mail or not?

A. That's correct.

Q. Okay. Was it sometime soon after that?

A. Yes.

Q. Okay. And so you just described the discussion that occurred right after the e-mail?

I mean, when I mean "right after" is the next communication about the TrainMeArizona ad after receiving the e-mail was this discussion that you just testified to?

A. Yes.

Q. And what happened after that discussion? Were there further discussions that you were involved with?

A. Yes.

Q. Okay. And what was the next discussion that you were involved with?

A. The next discussion was about the modification

1 Q. But CBS did approve the ad originally, right,
2 that's your understanding?

3 A. I -- I honestly don't know.

4 Q. Do you know that it was posted?

5 A. I do.

6 Q. Okay. And do you know that if an ad is
7 posted, do you know whether that means that CBS has
8 approved it?

9 A. I am unaware of how CBS did approvals prior to
10 that incident.

11 Q. Okay. In your practice, if you -- is it you
12 that if -- say you submit an ad to the City and three
13 days pass and you don't hear from the City, then you
14 post the ad, correct?

15 A. That's correct.

16 Q. Do you direct someone to post the ad?

17 A. I inform the charting department that the ad's
18 been approved.

19 Q. Okay. And then what happens after that?

20 A. Then the charting department posts and finds
21 out where they want to put the ad and then directs the
22 operations team to go out and post the ad.

23 Q. And then the -- did you say the "charting"?

24 A. Right.

25 Q. C-H-A-R-T-I-N-G?

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1 it's Saturday, October 23rd -- you sent an e-mail --
2 2010, at 12:23 p.m.?

3 A. Yes.

4 Q. You sent an e-mail to Steve Chatham --

5 A. Yes.

6 Q. -- about an Arizona Republic story on "Guns
7 Saves Lives" ad?

8 A. Yes.

9 Q. Okay. And why did you send him this?

10 A. Because it showed up in my Google alerts.
11 I make -- I set up Google alerts for anything that's
12 related to CBS Outdoor, so when those come up, I review
13 the article and if it has anything to do with us,
14 I usually let people know.

15 Q. Okay. And Steve responded to you?

16 A. Yes.

17 Q. And he said that you -- did you ever talk to
18 him in person about this?

19 A. I don't recall.

20 Q. Okay. And what -- and he responded to you in
21 what manner?

22 A. Well, right here in the e-mail, he responded.

23 Q. And did you know what he meant when he said,
24 "I don't usually agree with the writers at the
25 newspaper, but this time I do"?

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1 A. Right.

2 Q. And do you have a contact person there?

3 A. No. That's Curtis Mulford on that e-mail.

4 Q. Oh, okay. Have you ever spoken with
5 Alan Korwin?

6 A. No.

7 Q. Do you know who he is?

8 A. No.

9 (Exhibit 5 was marked.)

10 BY MS. COHEN:

11 Q. I'm showing you what's been marked McCarthy
12 Exhibit 5.

13 MS. ZIMMERMAN: Do you have an extra
14 copy?

15 MS. COHEN: I sure do.

16 BY MS. COHEN:

17 Q. Do you see that?

18 A. Yes.

19 Q. Okay. Can you take a minute and look at it
20 and let me know if you have seen this before?

21 A. Yes, I have.

22 Q. Okay. And what is it?

23 A. It is -- originally it was an e-mail that I
24 sent to Steve Chatham.

25 Q. Okay. And it says that -- from Colleen and

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1 A. Not exactly, no.

2 Q. Did you know generally what he was talking
3 about?

4 A. No.

5 Q. Do you know what he was talking about when he
6 said (as read): "I know a number of Veterans and none
7 of them consider themselves to be employees of the VA"?

8 A. Honestly, I don't know how that relates to the
9 article, so I don't -- I'd have to re- -- I haven't
10 read this article in a long time.

11 Q. Will you take the time to do that to see
12 if it -- fair enough. I mean, do you want it just to
13 refresh your recollection so that you can answer the
14 question?

15 A. Sure. So the question was...

16 Q. Okay. You've had a chance to review the
17 exhibit?

18 A. Yes.

19 Q. And do you -- can you now answer the question
20 regarding what your understanding of what Steve Chatham
21 was saying in his e-mail back to you?

22 A. I -- I believe it's about the statement where
23 it says veterans are employees of the veteran
24 administration.

25 Q. And why -- do you have an understanding of why

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1 smaller writing, and it has a symbol. Do you see that?

2 A. Barely.

3 Q. Yeah, okay. So if you look at Exhibit 7 and
4 you look at the bottom of that page -- I'm sorry.
5 Exhibit 7 is right there -- do you see that insignia on
6 the lower right-hand corner of Exhibit 7?

7 A. Yes.

8 Q. Okay. Does it look like the same insignia
9 that is on Korwin -- I'm sorry -- McCarthy 6,
10 Exhibit 6/Korwin 5?

11 MS. ZIMMERMAN: Object to the form.

12 A. Yes, it looks similar.

13 BY MS. COHEN:

14 Q. Okay. And can you read what Exhibit 7 says at
15 the bottom, at the right-hand corner?

16 A. No, not at all.

17 Q. The first line, as I read it, and I have
18 reading glasses on. "U.S. Department of Health and
19 Human Services." Does that --

20 A. No --

21 Q. -- help you at all?

22 A. -- it's not clear at all.

23 Q. Okay.

24 A. I can't even make out a word.

25 Q. Okay. But is it your testimony that depending

1 you can't read, is that right?

2 A. That's correct.

3 Q. Okay. And this is a document produced by the
4 City of Phoenix. And this is, by the way, an ad that
5 is posted at a City of Phoenix transit stop; is that
6 right?

7 A. I don't know.

8 Q. Okay. Well, it is from the City of Phoenix,
9 so...

10 A. Okay.

11 Q. Depending on what the language says at the
12 lower right-hand corner, could that turn -- could that
13 answer your question on whether this ad proposes a
14 commercial transaction?

15 A. It's possible. I mean, the commercial
16 transaction could also be in this phone number.

17 Q. Okay. What if it's not in the phone number?
18 Let's assume it's not in the phone number.

19 A. If I contacted this advertiser, as a viewer of
20 the ad, if I called them up and asked them what they
21 sell, if I -- if I'm uncertain in how to decide whether
22 or not I see it as a commercial transaction, I would
23 look at their website or call them.

24 Q. But just by looking at this today, can you say
25 whether -- without calling this phone number?

1 on what this says, it could turn the whole ad into
2 proposing a commercial transaction?

3 MS. ZIMMERMAN: Object to the form.

4 MS. COHEN: Basis?

5 MS. ZIMMERMAN: Just vague.

6 MS. COHEN: How?

7 MS. ZIMMERMAN: Can you repeat the
8 question? Sorry.

9 [The requested portion was read by the
10 reporter as follows:

11 *QUESTION: Okay. But is it
12 your testimony that
13 depending on what this
14 says, it could turn the
15 whole ad into* --

16 THE COURT REPORTER: I need to check that
17 word right there.

18 MS. COHEN: I'll restate it.

19 THE COURT REPORTER: Okay.

20 MS. COHEN: I'll make it clear for
21 everybody.

22 BY MS. COHEN:

23 Q. Looking at Exhibit 7 -- I'm sorry, wrong.

24 Looking at Exhibit 6, page Korwin 5 of
25 Exhibit 6, the language in the lower right-hand corner,

1 A. No, I can't say.

2 Q. And you can't say because you'd want to call
3 the phone number?

4 A. Yes.

5 Q. And would you also want to know what it says
6 in the lower right-hand corner?

7 A. Yes.

8 Q. Okay. Well, I want -- I'm going to ask you a
9 question, and I'm going to see if you are able to
10 answer it. And that is: If I told you that the

11 language in the bottom right-hand corner on Korwin 5
12 says, "U.S. Department of Health and Human Services,"
13 and -- does that in itself propose a commercial
14 transaction?

15 A. I don't know. I would have to contact them.

16 Q. Okay. All right.

17 [Exhibit 60-8 was marked.]

18 BY MS. COHEN:

19 Q. Ms. McCarthy, I'm showing you what's been
20 marked Exhibit 60-8. And it's Bates-numbered CBS-265,
21 then 218, 219, and 220. Do you see that?

22 A. Yes, I do.

23 Q. CBS-269, what is this?

24 A. This is an advertisement for a plastic surgery
25 company.

1 A. Because this is an ad for a store that sells
2 things that have to do with romance and love and sexual
3 things, so it's appropriate for the store, the store
4 itself.

5 Q. Is this a way to kind of draw readers or
6 potential purchasers in?

7 A. To my opinion, my opinion is yes.

8 Q. So "Love is Binding" is kind of eye-catching
9 for potential customers?

10 A. Yes.

11 Q. So it, presumably, promotes the commercial
12 transaction of coming in and purchasing the items that
13 can be found at Fascinations?

14 A. Correct.

15 Q. So looking at CBS-219, same question: Does
16 "Love is Sensual" propose a commercial transaction?

17 A. As it relates to the store, yes.

18 Q. Do the words itself "Love is Sensual" -- do
19 the words themselves "Love is Sensual" propose a
20 commercial transaction, or are those words to kind of
21 draw the potential purchaser in to look at the ad and
22 then go to Fascinations and buy a product?

23 A. If you were to hand me an ad that just said
24 "Love is Sensual," no, then, it doesn't propose a
25 commercial transaction, but it's in conjunction with

1 A. I don't know. I don't know who produced the
2 revised ad.

3 Q. Fair enough. But you know one that was
4 produced?

5 A. That's correct.

6 Q. Do you know what happened after CBS produced
7 it?

8 A. It was sent to the City for review.

9 Q. And do you know whether the City reviewed it?

10 A. Yes.

11 Q. And how do you know that?

12 A. I was told that they reviewed it.

13 Q. Who told you?

14 A. Steve Chatham.

15 Q. Okay. And did he tell you who at the City
16 reviewed it?

17 A. No.

18 Q. Okay. And do you know what happened after the
19 City reviewed it?

20 A. It's my understanding that they approved the
21 revised ad for posting.

22 Q. The City did?

23 A. Yes.

24 Q. Okay. And what happened after that?

25 A. I don't know exactly. And what I was told is

1 this store.

2 Q. So it's the language in conjunction with the
3 store's name?

4 A. It's appropriate for the store, yes; for what
5 they sell, yes.

6 Q. So the language in connection -- I'm sorry --
7 it's the language "Love is Sensual" in conjunction with
8 the name of the store in its totality that makes it
9 proposing a commercial transaction?

10 A. Yes.

11 Q. So I have the same question for CBS-220.

12 "Love is Sweet," would you give me the same answer?

13 A. Yes, I would.

14 Q. And that is that "Love is Sweet," in and of
15 themselves, don't propose a commercial transaction?

16 A. No, not unless your store name was "Love" or
17 "Sweet," then no.

18 Q. So it's in conjunction with Fascinations?

19 A. Right.

20 Q. Okay. I just want to finish up by finishing
21 up the line of questioning about your discussions with
22 Steve Chatham in connection with the TrainMeArizona ad.

23 A. Okay.

24 Q. So a revised ad was produced by CBS; is that
25 right?

1 that the advertiser decided not to put up the modified
2 ad.

3 Q. Were you told why the advertiser decided not
4 to put up the modified ad?

5 A. No.

6 Q. Did you learn in any way why the advertiser
7 declined to put up the revised ad?

8 A. No.

9 MS. COHEN: I don't have anything.

10 MR. GARDNER: I don't have anything.

11 MS. COHEN: Signature? Reserve?

12 MS. ZIMMERMAN: Yes, we'd like to read
13 and sign.

14 MS. COHEN: Sure. And then we'll wait.
15 We have a rapidly approaching summary judgment date,
16 which -- and we also have further depositions, so we
17 would like the benefit of responsiveness to our
18 subpoenas --

19 MS. ZIMMERMAN: Okay.

20 MS. COHEN: -- as soon as possible.

21 MS. ZIMMERMAN: We will try to get back
22 to you as soon as -- or we will get back to you as soon
23 as we can.

24 MS. COHEN: Okay. Well, just, I want to
25 let you know of the dates. We have a May 1st deadline

Exhibit R

Attorneys for Plaintiffs

**DECLARATION OF ALAN
KORWIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND IN
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

1

2. I am a citizen of the United States and a resident of Scottsdale, Arizona, located in Maricopa County.
3. I am the manager of TrainMeAZ, which is a for-profit LLC registered pursuant to the laws of the state of Arizona. *See* PSJExh. A, which is an accurate copy of the articles of organization for the company.
4. TrainMeAZ is supported in part by “contributing sponsors,” who are commercial entities that pay money to the organization and are listed on the home page and elsewhere on the website, and get recognition in other venues, such as the map produced by TrainMeAZ. Firearm instructors also pay a yearly fee in exchange for being listed on the website, although renewal fees have been waived pending the outcome of the lawsuit (*Korwin v. Cotton et al.*).
5. Plaintiffs’ intent in creating the TrainMeAZ ad (*see* PSJExh. G) is to promote the sale of firearms training, education and shooting-range services. It is intended to direct readers to “Go to TrainMeAZ” to learn how they can participate and improve their firearm skills, get gun-safety training, participate in fun shoots and special training days at the range, and attend gun shows and classes. The ad promotes, among others, the state’s largest promoter of gun shows and is aimed at selling marksmanship training and gun-safety classes, and lists sponsors who provide firearms training and related goods and services.
6. The language in small print on either side of the heart in the original TrainMeAZ ad, *e.g.*, “In Arizona marksmanship matters,” and “The Grand Canyon State has constitutional carry,” was used to enhance and entice the reader to the proposed

commercial transaction of selling firearms training, education, and shooting-range services.

7. In July 2011, I first observed an advertisement posted on a City of Phoenix transit shelter kiosk and transit-map display, located on the east side of Tatum Boulevard, north of Aire Libre, in the City of Phoenix that depicts a large, blue cross that takes up nearly half the ad's space, and reads, "JESUS HEALS" on one line, with "AM 1360," and "Life. Perspective. Answers." on the following lines. I took a photograph of the advertisement on July 25, 2011, an accurate copy of which is attached to Plfs.' Motion for Summ. J. as "PSJExh. J, p. 1.) I observed this same ad posted in the same location when I passed by the transit stop on April 1, 2012, March 5, 2012, and December 19, 2011.
8. On November 2, 2010, I had a telephone conference with the Director of Public Transit Debbie Cotton wherein we discussed the original TrainMcAZ advertisement and the City's position that it was not compliant with the City's transit advertising standards. During that conversation, Ms. Cotton stated that ads that are controversial get extra scrutiny and that the TrainMcAZ ad was controversial.

I, Alan Korwin declare under penalty of perjury under 28 U.S.C. § 1746(2), the laws of the United States and of the State of Arizona, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed May 1, 2012


Alan Korwin