

exhibits to the Defendants' proposed Memorandum are attached hereto as **Exhibit #1**, **Exhibit #2**, and **Exhibit #3**.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November, 2019, a copy of the foregoing was served via USPS mail, postage prepaid, emailed, and/or sent via CM/ECF, and to the following parties:

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE, AT NASHVILLE**

THE LAMPO GROUP, LLC D/B/A
RAMSEY SOLUTIONS,

Plaintiff,

v.

KEVIN HELMUT PAFFRATH, *et al.*

Defendants.

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Case No.: 3:18-cv-01402

District Judge Eli J. Richardson

Magistrate Judge Barbara D. Holmes

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO
DISMISS PLAINTIFF'S AMENDED COMPLAINT**

I. INTRODUCTION

This is a Strategic Lawsuit Against Public Participation (a “SLAPP-suit”) filed by the Plaintiff, a celebrity and public figure, against the Defendants that centers upon satirical YouTube videos entitled: “Dave Ramsey: Exposed,” “dave Ramsey is suing me,” and “A Message for Dave Ramsey.” Doc. #92, Amended Complaint, pp. 9–12. The Plaintiff is upset, among other things, because Mr. Paffrath’s satirical YouTube videos mocked Dave Ramsey and were well-received by the public. *See, e.g., id.* at p. 12, ¶¶ 79–80. In retaliation, the Plaintiff has filed suit against the Defendants over several extravagant claims including: (1) a breach of contract claim; (2) fraud and misrepresentation claims; (3) speech-based “business disparagement” and “unfair competition” claims; (4) a misappropriation of trade secrets claim; and (5) a “false and misleading advertising claim” under the Lanham Act. *See id.* at pp. 14–18.

II. SUMMARY OF THE ARGUMENT

Beyond the fact that the Plaintiff has repeatedly conceded, under oath, that it did

not lose a single customer, client, agent, or any other business of any kind as a result of the videos at issue, *see* **Exhibit #1**, Plaintiff's Responses & Objections to Defendant's First Set of Interrogatories, Interrogatory #2, pp. 3–4; **Exhibit #2**, Galloway Deposition, p. 24, line 18–p. 27, line 16 (indicating absence of any lost customers, clients, or other agents); *see also id.* at p. 117, line 13–p. 118, line 1 (indicating that Plaintiff's tax returns and revenue statements would not demonstrate any harm), on its face, the Plaintiff's Amended Complaint fails even to state a cognizable claim for relief for several reasons:

First, with respect to its breach of contract claims, the Plaintiff asserts that Kevin Paffrath breached the Parties' contract prior to its termination because he “refused to meaningfully participate” in enough phone calls with Plaintiff's “Client Relationship Coach.” *See* Doc. #92, p. 8, ¶ 49. The Parties' contract does not even reference a “Client Relationship Coach,” however, and the Plaintiff has judicially admitted that the Plaintiff was the party that breached the contract at issue by refusing to perform prior to the asserted breaches. Additionally, as to the Plaintiff's claims that Mr. Paffrath breached the Parties' contract after its termination, these claims, too, fail to state a claim for relief, because the publicity and confidential information provisions that the Plaintiff claims Mr. Paffrath violated did not survive the contract's termination as a matter of law.

Second, with respect to the Plaintiff's fraud and misrepresentation claims, they are almost uniformly premised upon claimed misrepresentations about Mr. Paffrath's intentions and promised future performance, which are not actionable as a matter of law. Further, the Plaintiff's sole fraud claim based on a past fact—that Mr. Paffrath “supplied Ramsey with false information, including without limitation a false list of zip codes Paffrath allegedly served, in connection with his ELP application,” *see* Doc. #92, p. 14, ¶ 97—could not plausibly have harmed the Plaintiff. That defect also cannot be cured by

amendment, given that the witness who verified Plaintiff's complaint has acknowledged that there was no injury resulting from it. See **Exhibit #2**, p. 87, lines 2–7.

Third, as to the Plaintiff's speech-based “business disparagement” and “unfair competition” claims, they fail to state a claim for relief and cannot withstand First Amendment scrutiny for several reasons. Additionally, business disparagement is not even a recognized tort in Tennessee.

Fourth, with respect to the Plaintiff's misappropriation of trade secrets claim, it cannot plausibly be maintained. The Plaintiff asserts that Defendant Paffrath misappropriated the Plaintiff's trade secrets by publishing Plaintiff's confidential information on YouTube after the Plaintiff terminated the Parties' contract. The Plaintiff's claimed trade secrets ceased being confidential or subject to any contractual protection at all the moment that the Plaintiff terminated the Parties' contract, however, and the Plaintiff's contract does not reserve the right to—or provide any mechanism to secure the return of—the supposedly confidential information at issue after termination. As a matter of law, then, the Plaintiff did not take reasonable efforts to maintain the secrecy of its alleged trade secrets. Further, given the Plaintiff's failure to plead with any degree of specificity what actual harm it suffered after its alleged trade secrets were published to more than 100,000 people—and given that the Plaintiff has since acknowledged, under oath, that it did not lose any business of any kind following the mass publication of the alleged trade secrets at issue, see **Exhibit #1**, Interrogatory #2, pp. 3–4; **Exhibit #2**, p. 24, line 18–p. 27, line 16; *id.* at p. 117, line 13–p. 118, line 1—the notion that the Plaintiff's claimed trade secrets hold any independent economic value whatsoever is not plausible, and that fatal defect is not curable by amendment.

Fifth, with respect to the Plaintiff's Lanham Act claim, it fails for multiple reasons.

To begin, two essential elements of a Lanham Act claim—that: (i) “the statement actually or tends to deceive a substantial portion of the intended audience,” and (ii) “the statement is material in that it will likely influence the deceived customer’s purchasing decisions[,]” *Am. Council of Certified Podiatric Physicians & Surgeons v. Am. Bd. of Podiatric Surgery, Inc.*, 185 F.3d 606, 613 (6th Cir. 1999) (citations omitted)—have not even been pleaded. These defects, too, cannot be cured by amendment, because, as noted, the Plaintiff did not, in fact, lose even a single customer, client, agent, or any other business of any kind as a result of the videos at issue. See **Exhibit #1**, Interrogatory #2, pp. 3–4; **Exhibit #2**, p. 24, line 18–p. 27, line 16; *id.* at p. 117, line 13–p. 118, line 1.

Further, as a matter of law, the statements over which the Plaintiff has sued are neither advertising nor even commercial speech, rendering the Lanham Act inapplicable in any regard. Further still, the Plaintiff’s mere “belie[f]” that harm resulted is insufficient to establish that the Plaintiff’s Lanham Act claim is plausible. See Doc. #92, p. 18, ¶ 134.

III. STANDARD OF REVIEW

The Defendants’ Motion to Dismiss is subject to familiar standards of review:

For purposes of a motion to dismiss, the Court must take the factual allegations in the complaint as true *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Id.* A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *Id.* When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. *Id.* at 679. A legal conclusion, including one couched as a factual allegation, need not be accepted as true on a motion to dismiss, nor are mere recitations of the elements of a cause of action sufficient. *Id.* at 678; *Fritz v. Charter Township of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010). Moreover, factual allegations that are merely consistent with the defendant’s liability do not satisfy the claimant’s burden, as mere consistency does not establish plausibility of entitlement to relief even if it

supports the possibility of relief. *Iqbal*, 556 U.S. at 678.

Bunn v. Navistar, No. 3:18-CV-00651, 2019 WL 333552, at *1 (M.D. Tenn. Jan. 24, 2019).

Further, “[t]here are . . . exceptions to th[e] general rule” that “matters outside the pleadings may not be considered in ruling on a 12(b)(6) motion to dismiss unless the motion is converted to one for summary judgment[.]” *Jackson v. City of Columbus*, 194 F.3d 737, 745 (6th Cir. 1999), *abrogated on other grounds by Swierkiewicz v. Sorema N. A.*, 534 U.S. 506 (2002). Specifically, “courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (emphasis added). Here, given that the Parties’ contract has previously been filed at Doc. #25-1 and is both quoted and referenced repeatedly throughout the Plaintiff’s Complaint, this Court’s consideration of the contract is proper.

IV. ARGUMENT

A. MR. PAFFRATH COULD NOT HAVE BREACHED THE PARTIES’ CONTRACT AS ALLEGED.

1. All of the Plaintiff’s breach of contract claims fail as a matter of law when considered against the terms of the actual contract at issue.

The Plaintiff’s Complaint alleges that Mr. Paffrath violated the Parties’ contractual agreement both pre-termination and post-termination. Prior to the contract’s termination, the Plaintiff alleges that Mr. Paffrath breached the Parties’ contract because he “refused to meaningfully participate” in enough phone calls with the Plaintiff’s “Client Relationship Coach.” See Doc. #92, p. 8, ¶ 49. Additionally, after the Plaintiff terminated the Parties’ contract, the Plaintiff alleges that Mr. Paffrath breached it by “unlawfully disclosing Ramsey’s confidential, proprietary, and other sensitive information” and

making public statements about the Plaintiff in violation of its publicity clause. *See id.* at p. 11, ¶¶ 67–68. Critically, though, none of Plaintiff’s claimed breaches was even possible.

a. *Plaintiff’s Pre-Termination Breach of Contract Claims*

As the Plaintiff itself pleads, the contract at issue provided that Mr. Paffrath would “[m]aintain open lines of communication and be available for regular calls with Lampo’s team at least **once per quarter**[.]” *Id.* at p. 5, ¶ 21(g) (emphasis added). *See also* Doc. #25-1, p. 6, § 11(g). Critically, though, the Plaintiff never alleges that Mr. Paffrath was unavailable more than “once per quarter.” *See* Doc. #92. Instead, the Plaintiff alleges that Mr. Paffrath “refused to commit to set aside one hour per month to communicate with Ramsey’s ELP team.” *Id.* at p. 8, ¶ 50. *See also id.* at ¶ 53 (complaining that “Paffrath could not value the ELP relationship enough to regular [sic] communications every month”). Such an obligation is nowhere to be found in the Parties’ contract, however, *see* Doc. #25-1, pp. 1–7, and as such, it could not plausibly have been breached.

Further, the Plaintiff’s specific gripe is not even that Mr. Paffrath was not “available” for the once-per-quarter calls required by the Plaintiff’s contract. *See* Doc. #25-1, p. 6, § 11(g). Instead, the Plaintiff contends that Mr. Paffrath “refused to meaningfully participate in the calls with his Client Relationship Coach.” *See* Doc. #92, p. 8, ¶ 49 (emphasis added). Notably, though, a “Client Relationship Coach” is not mentioned anywhere in the Parties’ contract, either. *See* Doc. #25-1, pp. 1–7.

In sum: The Plaintiff has premised its breach of contract claim upon allegations that Mr. Paffrath breached contractual provisions that do not exist and appear nowhere in the Parties’ actual contract. *See id.* Fatally, it has also failed to assert any harm whatsoever based on Mr. Paffrath’s allegedly unsatisfactory phone call participation—an essential element of Plaintiff’s breach of contract claim. *See Carpenter v. Cars Recon,*

Inc., No. 3:17-cv-01156, 2018 WL 6446589, at *3 (M.D. Tenn. Dec. 7, 2018). As a consequence, Plaintiff's claims that Mr. Paffrath breached the Parties' contract while it was in effect are not plausible, and they must be dismissed as a matter of law.

b. *Plaintiff's Post-Termination Breach of Contract Claims*

The Plaintiff additionally alleges that it was harmed by the following three specific YouTube videos that mocked Dave Ramsey, all of which the Plaintiff alleges that Mr. Paffrath published after the Plaintiff unilaterally terminated the Parties' contract: A video entitled "Dave Ramsey: Exposed," which the Plaintiff alleges was published on November 19, 2018 (see Doc. #92, p. 9, ¶ 57); a second video entitled "Dave Ramsey is suing me" which it alleges was published on November 21, 2018 (see Doc. #92, p. 12, ¶¶ 76–77); and a third video entitled "A Message for Dave Ramsey [,]" which the Plaintiff alleges was published on November 24, 2018 (see Doc. #92, p. 13, ¶ 82). Thus, all three of the videos that the Plaintiff claims to have been harmed by¹ were published only after the Plaintiff terminated the Parties' contract on October 8, 2018. See Doc. #92, p. 8, ¶ 54 ("[O]n October 8, 2018, Ramsey terminated the Agreement and removed Paffrath from Ramsey's real estate ELP program, having referred him not a single client.").

According to the Plaintiff, Mr. Paffrath's November 2018 videos violated the "Publicity" and "Confidential Information" provisions of the Parties' contract, see *id.* at p. 11, ¶¶ 67–68, which are set forth at sections 4 and 6 of that contract, respectively. See

¹ The Plaintiff does not even allege damage resulting from the September 15, 2018, video or the October 22, 2018, video referenced at paragraph 68 of the Plaintiff's Amended Complaint, see Doc. #92, p. 11, ¶ 68, neither of which is even mentioned elsewhere in the Plaintiff's Amended Complaint. *But see Carpenter v. Cars Recon, Inc.*, No. 3:17-cv-01156, 2018 WL 6446589, at *3 (M.D. Tenn. Dec. 7, 2018) (noting that "damages caused by the breach of contract" is an essential element of a breach of contract claim). Instead, the Plaintiff's Amended Complaint is focused upon the three post-termination videos that mocked Dave Ramsey.

Doc. #25-1. These claims also fail as a matter of law, though, for a simple reason: The Parties' contract unambiguously reflects that neither provision survived the contract's October 8, 2018, termination, so it was not possible to breach them after October 8, 2018.

The Parties' contract provides without ambiguity that only two specific sections would survive its termination:

First, section 7.1 of the contract provides, in pertinent part, as follows:

7.1 **Transaction Fees**: ELP shall pay Ramsey thirty percent (30%) of the gross commission, fee or any remuneration whatsoever due to ELP in any referred client transaction. **This provision shall expressly survive two years from the termination hereof ("survival period"), requiring ELP to pay the transaction fees for any referred client transaction closing within two years of the termination of this Agreement.** "Transaction" as used herein shall mean any purchase, sale, or lease of any real property in which ELP is entitled to receive any remuneration of any kind from a Ramsey referred client. Payment of Transaction Fees shall be made no later than ten (10) days following the transaction closing.

Id. at pp. 4–5, § 7.1 (emphasis added).

Second, section 10 of the contract, addressing both "Indemnification" and "payment obligations," provides, in pertinent part, that:

10. **Term; Renewal; Termination**. The term of this Agreement shall be one (1) year from the date hereof. This Agreement will renew automatically for successive one year terms unless either party gives notice of its intention that the Agreement shall not be renewed at the end of its then current term. Either party may terminate this Agreement, without cause, at any time. **The provisions of section 15, "Indemnification," and payment obligations of this Agreement will survive any such expiration or termination of this Agreement.**

Id. at pp. 5–6 (partial emphasis added).

No other provision of the Parties' contract—including section 4, governing "Publicity," and section 6, governing "Confidential Information"—contains a survival clause providing that its obligations would remain effective following the contract's

termination. *See id.* at pp. 1–7. Similarly, no provision of the contract reserved or afforded the Plaintiff the right to recover any “Confidential Information” following the contract’s termination. *Id.* No provision of the contract obligated the Defendant to return any “Confidential Information” following the Agreement’s termination on October 8, 2018, either. *Id.* The contract does expressly provide, however, that it is the Parties’ “Entire Agreement,” and that it “contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes and cancels any prior agreements or understandings, whether oral or written, between the parties hereto with respect hereof.” *See id.* at p. 7, § 21.

Whether the “Publicity” and “Confidential Information” clauses of the Parties’ contract remained effective after the contract’s October 8, 2018, termination is an issue that “involve[s] the interpretation and construction of written instruments.” *Cellco P’ship v. Shelby Cty.*, 172 S.W.3d 574, 586 (Tenn. Ct. App. 2005). “Issues relating to the interpretation of written instruments involve legal rather than factual issues.” *Id.* (quoting *The Pointe, LLC v. Lake Mgmt. Ass’n, Inc.*, 50 S.W.3d 471, 474 (Tenn. Ct. App. 2000)). Under Tennessee law, courts also “may not make a new contract for parties who have spoken for themselves,” particularly where—as here—a party seeks relief from the actual terms of a contract “simply because [its] obligations later prove to be burdensome or unwise.” *Realty Shop, Inc. v. RR Westminster Holding, Inc.*, 7 S.W.3d 581, 598 (Tenn. Ct. App. 1999) (citing *Petty v. Sloan*, 277 S.W.2d 355, 359 (1955)). *See also Richmond v. Frazier*, No. E2008-01132-COA-R3-CV, 2009 WL 2382303, at *7 (Tenn. Ct. App. Aug. 4, 2009) (same), *appeal denied* (Tenn. Feb. 22, 2010). Instead, a court’s “task is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the contract language.” *Carpenter*, 2018 WL 6446589, at *3.

Here, in stark contrast to sections 7.1 and 10 of the Parties' contract, which did contain survival clauses, sections 4 and 6 of the Parties' contract—the “Publicity” and “Confidential Information” clauses that the Plaintiff claims the Defendant breached following termination—did not contain survival clauses providing that any of their obligations would continue to remain effective following the contract's termination. Compare Doc. #25-1, pp. 4–5, § 7.1 & pp. 5–6, § 10, with Doc. #25-1, p. 4, §§ 4 & 6. Further, fundamental rules of construction instruct that the Parties' decision to include survival clauses with respect to sections 7.1 and 10—but not to do so with respect to sections 4 and 6 (or any other provision of the Parties' contract)—was deliberate and carries meaning. See *Richmond*, 2009 WL 2382303, at *7 (“It is also a well known rule of construction that where general and specific clauses conflict, the specific clause governs the meaning of the contract.”); *Shipley v. Sofco Erectors, Inc.*, No. C.A. 743, C.A. 790, 1988 WL 48618, at *6 (Tenn. Ct. App. May 16, 1988) (“the phrase, *expressio unius est exclusio alterius*, means: the expression of one thing is the exclusion of another (of the same kind). Whilst the rule is more frequently applied to the construction of statutes and wills, it equally is applicable to other instruments of writing.”), *appeal denied* (Tenn. May 30, 1989).

A near-identical situation regarding a contract's arbitration provisions—rather than the survival provisions at issue here—was presented in *D & E Construction Co. v. Robert J. Denley Co.*, 38 S.W.3d 513, 518–19 (Tenn. 2001). There, the Tennessee Supreme Court sensibly held, in considerable detail, as follows:

It is well settled that courts must examine the content of the entire written agreement to determine the contracting parties' intent. “Contractual terms should be given their ordinary meaning . . . and should be construed harmoniously to give effect to all provisions and to avoid creating *519 internal conflicts.” *Wilson v. Moore*, 929 S.W.2d 367, 373 (Tenn. Ct. App.

1996). In addition, a contract's provisions must be interpreted in the context of the entire contract, "viewed from beginning to end and all its terms must pass in review, for one clause may modify, limit or illustrate another." *Frizzell Constr. Co. v. Gatlinburg, L.L.C.*, 9 S.W.3d 79, 85 (Tenn. 1999) (quoting *Cocke County Bd. of Highway Comm'rs v. Newport Utils. Bd.*, 690 S.W.2d 231, 237 (Tenn. 1985)); see also *Realty Shop, Inc. v. RR Westminster Holding, Inc.*, 7 S.W.3d 581, 597 (Tenn. Ct. App. 1999). Although the arbitration provision in this case gives the arbitration panel very broad authority to decide any claims relating to a breach of contract dispute, when looking at the contract in its entirety, we find no provisions requiring the owner to pay attorney's fees to the contractor in the event of its breach of the contract.

On the other hand, there are two provisions in the contract requiring the contractor to indemnify the owner against certain claims, which include, and specifically mention, the payment of attorney's fees as part of any related expenses. After reading the contract in its totality, we conclude that the maxim *expressio unius est exclusio alterius* is applicable here. "Literally translated, the phrase . . . means: the expression of one thing is the exclusion of another (of the same kind). Whilst the rule is more frequently applied to the construction of statutes and wills, it equally is applicable to other instruments of writing." *City of Knoxville v. Brown*, 195 Tenn. 501, 260 S.W.2d 264, 268 (1953). **We conclude that application of this canon to this case provides further evidence that the parties did not intend to arbitrate the issue of attorney's fees relating to the owner's breach of the agreement.**

Id. (emphases added).

This analysis is unimpeachable and directly applicable to the instant case. Here, the Parties' express intent in executing their contract was that only the Defendant's Transaction Fees obligations and Indemnification obligations—which do include survival clauses—would survive the contract's termination, see Doc. #25-1, pp. 4–5, § 7.1 & pp. 5–6, § 10, but that the balance of the Parties' obligations to one another—which do not include survival clauses—would not, see Doc. #25-1. Consequently, Mr. Paffrath could not have violated the contract's "Publicity" and "Confidential Information" provisions by posting satirical YouTube videos mocking the Plaintiff in November 2018—more than a month after the Plaintiff terminated the Parties' contractual relationship on October 8,

2018. *Id.* As such, the Plaintiff's post-termination breach of contract claims are fatally implausible and fail as a matter of law.

2. The Plaintiff judicially admits that it failed to perform its obligations under the Parties' contract, which entitled Mr. Paffrath to "treat it as broken."

Tennessee adheres to the "first-to-breach" rule in breach of contract cases. *See Advanced Concrete Tools, Inc. v. Beach*, No. 3:10-CV-1139, 2014 WL 1385868, at *19 (M.D. Tenn. Apr. 9, 2014).

Under the "first-to-breach" rule, "[a] party who has materially breached a contract is not entitled to damages stemming from the other party's later material breach of the same contract." *White*, 395 S.W.3d at 715 (quoting *McClain v. Kimbrough Constr. Co.*, 806 S.W.2d 194, 199 (Tenn. Ct. App. 1990)); *see also Madden Phillips Constr. Co., Inc. v. GGAT Development Corp.*, 315 S.W.3d 800, 812 (Tenn. Ct. App. 2009) ("[A] party who commits the first uncured material breach of contract may not recover damages for the other party's material breach.").

Id.

As the Western District recently observed, Tennessee also "adheres to the general contract principle that '[e]ach party has the right to proceed free of hindrance by the other party.'" *VJ, LLC v. State Auto Prop. & Cas. Ins. Co.*, No. 14-2919, 2016 WL 11602001, at *9 (W.D. Tenn. Aug. 3, 2016) (quoting *ACG, Inc. v. Southeast Elevator, Inc.*, 912 S.W.2d 163, 168 (Tenn. Ct. App. 1995), *appeal denied* (Tenn. Oct. 30, 1995)). Consequently, if another party "interfered, hindered, or prevented the performance to such an extent as to render the performance difficult and diminish the benefits to be received, the first party could treat the contract as broken and was not bound to proceed under the added burdens." *Wil-Helm Agency v. Lynn*, 618 S.W.2d 748, 752 (Tenn. Ct. App. 1981).

Here, Mr. Paffrath contracted with the Plaintiff in exchange for a clear and specific bargained benefit: That the Plaintiff would "agree[] to provide [him], through its broker, with referral services within [his] assigned territory, as defined and determined

exclusively by Ramsey.” *See* Doc. #25-1, p. 3, § 1. The Plaintiff’s performance of this obligation was the entire purpose of the Parties’ contract. *See id.*, p. 3 (“**WHEREAS**, above-named ELP is a licensed real estate agent engaged in the full time business of representing both buyers and sellers of real estate, and the broker identified above is duly licensed as a principal broker in the the [sic] state in which **referrals will be made**; and **WHEREAS**, the ELP desires to market its services through Ramsey and **receive referrals through the ELP program**”) (some emphasis added). The contract also required Mr. Paffrath to pay—and he did pay—the Plaintiff consideration in the form of \$350 per month in exchange for the referrals at issue, *see id.* at p. 1, “the receipt of which [was] hereby acknowledged” upon the contract’s execution, *see id.* at p. 2.

Notwithstanding the Plaintiff’s obligation to provide referral services, though, and despite the fact that Mr. Paffrath paid the Plaintiff in full for such services, the Plaintiff did not perform its obligations under the contract; the Plaintiff judicially admits that it not perform its referral obligations under the contract; and the Plaintiff refers to its admitted non-performance of its referral obligations as a “policy.” *Compare* Doc. #25-1, p. 3, § 1 (“Ramsey agrees to provide ELP, through its broker, with referral services within ELP’s assigned territory, as defined and determined exclusively by Ramsey.”), *with* Doc. #92, p. 8, ¶ 54 (“Ramsey terminated the Agreement and removed Paffrath from Ramsey’s real estate ELP program, having referred him not a single client.”); *id.* at ¶ 48 (noting that “[i]n furtherance of Ramsey’s policy that it would not begin referring consumers to Paffrath unless and until Ramsey was satisfied that Paffrath was committed to the program and to providing excellent client service”). This “policy” appears nowhere in the contract itself, however, and the Plaintiff enjoyed no right under the contract to withhold its promised performance as described. *See* Doc. #25-1, pp. 1–7.

By its own admission, the Plaintiff's breach was never cured. *See* Doc. #92, p. 8, ¶ 54. That admission also flatly forbids the Plaintiff from recovering damages in this action, *see Advanced Concrete Tools, Inc.*, 2014 WL 1385868, at *19 (collecting cases). Further, the Plaintiff's admitted non-performance diminished Mr. Paffrath's negotiated benefits to such an extent that he "could treat the contract as broken and was not bound to proceed under the added burdens." *Wil-Helm Agency*, 618 S.W.2d at 752. Consequently, because damages are an essential element of the Plaintiff's breach of contract claims, *see Carpenter*, 2018 WL 6446589, at *3, and because a broken contract cannot be enforced, all of the Plaintiff's breach of contract claims fail as a matter of law.

B. THE PLAINTIFF'S FRAUD AND MISREPRESENTATION CLAIMS ARE NOT COGNIZABLE.

The Plaintiff's fraud and misrepresentation claims—which "are synonymous" under Tennessee law, *Concrete Spaces, Inc. v. Sender*, 2 S.W.3d 901, 905 n.1 (Tenn. 1999)—fall into two distinct categories:

(1) Claims that Mr. Paffrath misrepresented his intentions and his future intent to perform, *see, e.g.*, Doc. #92, p. 9, ¶ 55 ("never intended"); *id.* at p. 10, ¶ 62 ("no intention"); *id.* at p. 15, ¶ 98 ("clearly had no intentions of doing so"); *id.* at ¶ 106 ("no intent to perform"); and

(2) A claim that Mr. Paffrath misrepresented the zip codes that he served at the time of his application, *see id.* at p. 14, ¶ 97.

The former is not actionable as a matter of law, however, and the latter is not even alleged to have caused the Plaintiff any injury and could not plausibly have done so.

1. Plaintiff's claims premised upon Mr. Paffrath's alleged statements of intention and representations concerning future events are not actionable.

The first category of Plaintiff's fraud and misrepresentation claims is categorically

inactionable as a matter of law in Tennessee, which does not permit such claims when premised upon statements of intention or representations concerning future events. *See, e.g., Henley v. Labat-Anderson, Inc.*, No. 03A01-9104-CV-126, 1991 WL 120403, at *2 (Tenn. Ct. App. 1991) (“statements of opinion or intention are not actionable”) (cleaned up); *McElroy v. Boise Cascade Corp.*, 632 S.W.2d 127, 130 (Tenn. Ct. App. 1982) (“representations concerning *future* events are not actionable even though they may later prove to be false.” (citing *Young v. Cooper*, 203 S.W.2d 376 (Tenn. Ct. App. 1947))). *See also Fowler v. Happy Goodman Family*, 575 S.W.2d 496, 499 (Tenn. 1978) (“Although a minority view, the rule established by the cases in this state has been that a misrepresentation of intention or a promise without intent to perform is legally insufficient to support a claim for rescission or damages.” (citing *A. Landreth Co. v. Schevenel*, 52 S.W. 148 (Tenn. 1899))).

2. Plaintiff’s zip-code based fraud claims are both implausible and insufficient.

As to the Plaintiff’s claim that Mr. Paffrath “supplied Ramsey with false information, including without limitation a false list of zip codes Paffrath allegedly served, in connection with his ELP application,” *see* Doc. #92, p. 14, ¶ 97—the claim similarly fails for multiple reasons.

First, the Parties’ contract—which was their “Entire Agreement” on this issue, Doc. #25-1, p. 7, § 21—reflects that Mr. Paffrath’s “assigned territory” would be “defined and determined exclusively by Ramsey[,]” *see id.* at p. 3, § 1. Put differently: The zip codes to which referrals would be made were not and could never be determined by Mr. Paffrath.

Second, the Plaintiff never made a single referral to Mr. Paffrath in any zip code. *See* Doc. #92, p. 8, ¶ 54 (“[O]n October 8, 2018, Ramsey terminated the Agreement and removed Paffrath from Ramsey’s real estate ELP program, having referred him not a

single client.”). Consequently, no plausible harm—an essential element of the Plaintiff’s claim—could have resulted, and the Plaintiff does not plausibly allege that any damages did result from the zip codes at issue. This defect also cannot be cured by any future amendment, because the Plaintiff’s employees have since testified at length that, in fact: (1) The Plaintiff did not suffer any damages as a consequence of the zip codes at issue, **Exhibit #2**, p. 87, lines 2–7; and (2) the Plaintiff was the party that actually proposed the zip codes in the first instance, **Exhibit #3**, Riddle Deposition, p. 32, lines 12–14.

3. Plaintiff’s negligent misrepresentation claim is fatally implausible.

The Plaintiff’s Amended Complaint is premised upon extensive factual allegations of knowing and deliberate misrepresentation, rather than negligence. *See* Doc. #92, pp. 9–15, ¶¶ 55, 56, 62, 99, 104, 105, 106. Despite the Plaintiff’s repeated allegations of knowing and deliberate misconduct, though, the Plaintiff has also tossed in, as an afterthought, a claim based on merely negligent misrepresentation. *See* Doc. #92, pp. 15–16. To support that claim, the Plaintiff’s Amended Complaint includes the following lone, bare, formulaic, and purely conclusory recital: “Paffrath had knowledge of the representations’ falsity, utter disregard for their truth, or did not exercise reasonable care in obtaining or communicating the information upon which Ramsey justifiably relied.” *See id.* at p. 16, ¶ 110 (emphasis added). This bare, conclusory legal allegation—which enjoys no factual support elsewhere within the Plaintiff’s Complaint—is insufficient to withstand a motion to dismiss.

“‘[B]are assertions,’ formulaic recitation of the elements, and ‘conclusory’ or ‘bald’ allegations” are not entitled to any presumption of truth. *Hasting v. First Community Mortgage*, No. 3:17-cv-00989, 2018 WL 5808727, at *2 (M.D. Tenn. 2018) (quoting *Iqbal*, 556 U.S. at 680). The bare, formulaic, conclusory, and alternatively pleaded legal

assertion set forth in paragraph ¶ 110 of the Plaintiff's Complaint satisfies these criteria in spades. *See* Doc. #92, p. 16, ¶ 110. Accordingly, the Plaintiff's allegation in paragraph 110 is not entitled to a presumption of truth, and it may safely be "set[] aside" for purposes of this motion. *Hasting*, 2018 WL 5808727, at *2 ("Identifying and setting aside such allegations is crucial, because they simply do not count toward the plaintiff's goal of showing plausibility of entitlement to relief.").

Absent paragraph ¶ 110, there is not a single allegation in the Plaintiff's Complaint that supports a negligent misrepresentation claim. *See generally* Doc. #92. Indeed, the balance of the Plaintiff's Complaint—which is premised upon allegations of Defendant's knowing and deliberate misrepresentation—flatly contradicts the Plaintiff's negligence claim. *See, e.g., id.* at pp. 9–15, ¶¶ 55, 56, 62, 99, 104, 105, 106. Given this context, the Plaintiff has failed to state a claim for relief, and it has certainly failed to state a *plausible* claim for relief with respect to negligent misrepresentation. *See Hasting*, 2018 WL 5808727, at *2 ("The question is whether the remaining allegations – factual allegations, i.e., allegations of factual matter – plausibly suggest an entitlement to relief. If not, the pleading fails to meet the standard of Fed. R. Civ. P. 8 and thus must be dismissed pursuant to Rule 12(b)(6)." (citing *Iqbal*, 556 U.S. at 681–83)).

As a consequence, the Plaintiff's claim for negligent misrepresentation should be dismissed. *See id.* Further, no future amendment on the matter should be permitted, because the Plaintiff has since clarified that its allegations are, indeed, premised upon knowing and deliberate misconduct. **Exhibit #2**, p. 79, lines 21–25.

C. THE PLAINTIFF'S SPEECH-BASED "BUSINESS DISPARAGEMENT" AND "UNFAIR COMPETITION" CLAIMS FAIL TO STATE A CLAIM.

1. Plaintiff's speech-based claims cannot withstand First Amendment scrutiny.

Paragraph 63 of the Plaintiff's Amended Complaint specifically details that the Plaintiff has sued the Defendants for "Business Disparagement" (Count V) and "Unfair Competition" (Count VII) regarding the following statements that the Plaintiff alleges were tortious:

[1] Ramsey requires the estate ELPs to "1. Always be closing... 2. Because if you don't we'll kick you out; 3. Pay me my fees. 4. That's financial peace for me, b*itch!"

[2] The vetting process and fee structure is one big sales pitch;

[3] Ramsey provides "cold as ice leads" to ELP's [sic] who aren't prequalified;

[4] Ramsey receives a fee from each ELP for "doing nothing";

[5] Ramsey "fluffs the numbers" of his ELP program;

[6] Customers receive "21 calls in 1 week" with "no qualification" and that the ELP program is simply a "handoff service";

[7] Ramsey's ELP program does "ZERO Vetting," is "High-Pressure," has "Dismal Success Rates," and is a "Profit Driven Sham."

Doc. #92, p. 10, ¶ 63 (time stamps omitted). Thus, as to Counts V and VII, the Defendants have been sued for their speech regarding a public figure based on a smattering of innocuous, hyperbolic statements and opinions included in YouTube videos.² *See id.*

Critically, though, notwithstanding the Plaintiff's own characterizations of its

² Elsewhere throughout its Complaint, the Plaintiff sporadically complains about other non-tortious statements that fail to state a claim for relief for the same reasons presented in this Memorandum. *See, e.g.*, Doc #92, p. 12, ¶ 73 ("Paffrath also maliciously and falsely stated that Ramsey does not 'vet' the ELPs."). In some instances, the Plaintiff's claims also contradict themselves. *Compare* Doc #92, p. 11–12, ¶¶ 70, 72 ("Paffrath maliciously and falsely stated that Ramsey does not disclose the fees he receives from the ELP members. . . . These statements are, of course, false because Ramsey affirmative [sic] discloses it receives a fee from an ELP on Ramsey's website."), *with* Doc #92, p. 11, ¶ 66 (asserting that "the fees associated with the program" were "confidential and proprietary").

claims, precedent compels this Court to treat the Plaintiff's speech-based tort claims as common defamation claims. *See, e.g., Boladian v. UMG Recordings, Inc.*, 123 F. App'x 165, 169 (6th Cir. 2005) ("A party may not skirt the requirements of defamation law by pleading another, related cause of action." (citing *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 53 (1988))); *Moldea v. N.Y. Times Co.*, 22 F.3d 310, 319–20 (D.C. Cir. 1994) ("[A] plaintiff may not use related causes of action to avoid the constitutional requisites of a defamation claim."). *Cf. Klayman v. Segal*, 783 A.2d 607, 619 (D.C. 2001). The Plaintiff "does not dispute that business disparagement claims are typically analyzed under the same framework as defamation claims," Doc. #60, p. 7, and it assumes that the same framework governs its unfair competition claim, *id.* at p. 8. The Plaintiff assumes correctly, *Boladian*, 123 F. App'x at 169, and Plaintiff's speech-based claims must satisfy the heightened constitutional requirements that govern defamation claims as a result.

The innocuous and plainly hyperbolic, opinion-based statements that the Plaintiff has sued over uniformly fail to clear—or even approach—the heightened constitutional requirements that govern defamation claims. "[T]he Supreme Court of the United States has constitutionalized the law of [defamation]." *Press, Inc. v. Verran*, 569 S.W.2d 435, 440 (Tenn. 1978). *See also Clark v. Viacom Int'l Inc.*, 617 F. App'x 495, 507 (6th Cir. 2015); *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). As a result, defamation claims are subject to heightened pleading standards, and they present threshold questions of law. *See Brown v. Mapco Express, Inc.*, 393 S.W.3d 696, 708 (Tenn. Ct. App. 2012). Thus, "ensuring that defamation actions proceed only upon statements which may actually defame a plaintiff 'is an essential gatekeeping function of the court.'" *Pendleton v. Newsome*, 772 S.E.2d 759, 763 (Va. 2015) (quoting *Webb v. Virginian-Pilot Media Cos., LLC*, 752 S.E.2d 808, 811 (2014)).

With this “essential gatekeeping function” in mind, *see id.*, “the issue of whether a communication is capable of conveying a defamatory meaning **is a question of law** for the court to decide in the first instance” *Brown*, 393 S.W.3d at 708 (emphasis added). *See also Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000) (“Whether a communication is capable of conveying a defamatory meaning is a question of law.”); *McWhorter v. Barre*, 132 S.W.3d 354, 364 (Tenn. Ct. App. 2003) (“The question of whether [a statement] was understood by its readers as defamatory is a question for the jury, but the preliminary determination of whether [a statement] is ‘capable of being so understood is a question of law to be determined by the court.’” (quoting *Memphis Publ’g Co. v. Nichols*, 569 S.W.2d 412, 419 (Tenn. 1978))).

Further, this Court is not bound by the Plaintiff’s own characterizations of the statements that it has sued over. *See, e.g., Brown*, 393 S.W.3d at 708–09 (“The issue of whether a communication is capable of conveying a defamatory meaning is a question of law for the court to decide in the first instance To make this determination, courts ‘must look to the words themselves and are not bound by the plaintiff’s interpretation of them.’” (quoting *Zius v. Shelton*, No. E1999–01157–COA–R9–CV, 2000 WL 739466, at *2 (Tenn. Ct. App. June 6, 2000))). Thus, “[i]f the [allegedly defamatory] words are not reasonably capable of the meaning the plaintiff ascribes to them, the court must disregard the latter interpretation.” *See Moman v. M.M. Corp.*, No. 02A01-9608-CV00182, 1997 WL 167210, at *3 (Tenn. Ct. App. Apr. 10, 1997). *See also Battle v. A & E Television Networks, LLC*, 837 F. Supp. 2d 767, 772 (M.D. Tenn. 2011)). Where, as here, an allegedly defamatory statement is not capable of being understood as defamatory as a matter of law, then a plaintiff’s complaint must be dismissed for failure to state a claim. *Id.*

Further still, Tennessee³ has adopted several categorical bars that prevent claimed defamations from being actionable, three of which independently control this case:

First, to provide substantial breathing room for free speech, statements that are merely “annoying, offensive or embarrassing” are categorically inactionable. *Davis v. Covenant Presbyterian Church of Nashville*, No. M2014-02400-COA-R9-CV, 2015 WL 5766685, at *3 (Tenn. Ct. App. Sept. 30, 2015), *appeal denied* (Tenn. Feb. 18, 2016) (quoting *Brown*, 393 S.W.3d at 708). “[T]he crux of free-speech rights is that generally they can be exercised even if (and perhaps especially when) they cause disruption and disharmony.” *Bennett v. Metro. Gov’t of Nashville & Davidson Cty.*, No. 3:17-CV-00630, 2019 WL 1572932, at *12 (M.D. Tenn. Apr. 11, 2019). Consequently,

[f]or a communication to be [defamatory], **it must constitute a serious threat to the plaintiff’s reputation.** A [defamation] does not occur simply because the subject of a publication finds the publication annoying, offensive or embarrassing. **The words must reasonably be construable as holding the plaintiff up to public hatred, contempt or ridicule. They must carry with them an element “of disgrace.”**

Davis, 2015 WL 5766685, at *3 (quoting *Brown*, 393 S.W.3d at 708).

Second, critical commentary and opinions based on non-defamatory facts enjoy constitutional protection under the First Amendment. *See generally Zius*, 2000 WL 739466, at *3; *see also Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990). *Cf. Taubman Co. v. Webfeats*, 319 F.3d 770, 778 (6th Cir. 2003) (“[A]lthough economic damage might be an intended effect of Mishkoff’s expression, the First Amendment protects critical commentary when there is no confusion as to source, even when it involves the criticism

³ The Plaintiff insists that Tennessee law governs its Complaint. *See* Doc. #33, Plaintiff’s Response in Opposition to Defendants’ Motion for Leva to File Anti-SLAPP Motion, p. 3. Defendants disagree and maintain their disagreement on the matter, but for purposes of the instant motion, the Plaintiff’s claims cannot survive under Tennessee law, either, and they should be dismissed for failure to state a claim as a result.

of a business.”). As a result, “an opinion is not actionable as libel unless it implies the existence of unstated defamatory facts.” *Stones River Motors, Inc. v. Mid-South Publ’g co.*, 651 S.W.2d 713, 722 (Tenn. Ct. App. 1983), *abrogation recognized by Zius*, 2000 WL 739466, at *3 (merely noting “there is no wholesale defamation exemption for anything that might be labeled ‘opinion.’”).

Third, to be considered defamatory, a statement cannot be mere rhetorical hyperbole, but “‘must be reasonably read as an assertion of false fact[.]’” *Grant v. Commercial Appeal*, No. W2015-00208-COA-R3-CV, 2015 WL 5772524, at *11 (Tenn. Ct. App. Sept. 18, 2015) (quoting *Secured Fin. Sols., LLC v. Winer*, No. M200900885COAR3CV, 2010 WL 334644, at *3 (Tenn. Ct. App. Jan. 28, 2010), *appeal denied* (Tenn. Jan. 28, 2010)). This requirement emanates from a long line of U.S. Supreme Court jurisprudence that has constitutionalized the inquiry. *See Milkovich*, 497 U.S. at 20 (“[T]he *Bresler–Letter Carriers–Falwell* line of cases provides protection for statements that cannot ‘reasonably [be] interpreted as stating actual facts’ about an individual . . . This provides assurance that public debate will not suffer for lack of ‘imaginative expression’ or the ‘rhetorical hyperbole’ [that] has traditionally added much to the discourse of our Nation. (quoting *Hustler Magazine*, 485 U.S. at 50, 53–55)).

Tennessee courts, of course, adhere to *Milkovich*. *See Hibdon v. Grabowski*, 195 S.W.3d 48, 63 (Tenn. Ct. App. 2005) (“[S]tatements that cannot ‘reasonably [be] interpreted as stating actual facts about an individual’ because they are expressed in ‘loose, figurative or hyperbolic language,’ and/or the content and tenor of the statements ‘negate the impression that the author seriously is maintaining an assertion of actual fact’ about the plaintiff are not provably false and, as such, will not provide a legal basis for defamation.”) (quoting *Milkovich*, 497 U.S. at 21, 110 S. Ct. 2695); *Farmer v. Hersh*, No. W2006-01937-COA-R3-CV, 2007 WL 2264435, at *5 (Tenn. Ct. App. Aug. 9, 2007) (“Mere hyperbole or exaggerated statements intended to make a point are not actionable defamatory statements.”); *Shamblin v. Martinez*, No. M2010-00974-COA-R3-CV, 2011 WL 1420896, at *6 (Tenn. Ct. App. Apr. 13, 2011)

(Statement could not be construed as defamatory because “rhetorical hyperbole and matters of opinion . . . cannot be reasonably interpreted as stating actual facts about the Plaintiffs.”).

Seaton v. TripAdvisor LLC, 728 F.3d 592, 597–98 (6th Cir. 2013).

Based on these bedrock principles, none of the statements underlying the Plaintiff’s Amended Complaint can plausibly be considered defamatory as a matter of law. *See* Doc. #92, p. 10, ¶ 63. Considered in the most generous fashion possible, the statements are, at worst, “merely annoying, offensive or embarrassing”—a deficiency that renders them categorically inactionable. *Davis*, 2015 WL 5766685, at *3 (quoting *Brown*, 393 S.W.3d at 708). Not one of them can plausibly be considered “disgrace[ful]” or “a serious threat to the plaintiff’s reputation.” *Davis v. The Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001) (quoting *Stones River Motors, Inc.*, 651 S.W.2d at 719). Consequently, notwithstanding the Plaintiff’s own characterizations of the statements, none of them is capable of conveying a defamatory meaning as a matter of law. *See id.*

Further, all of the statements that the Plaintiff has sued over are premised upon innocuous commentary and (admittedly unflattering) constitutionally protected opinions. *See* Doc. #92, p. 10, ¶ 63. All of them, too, are self-evidently based on “loose, figurative, [and] hyperbolic language,” *see Clark*, 617 F. App’x at 508 (quoting *Milkovich*, 497 U.S. at 21), which categorically renders the statements inactionable as well. *See, e.g., Seaton*, 728 F.3d 592, 598 (6th Cir. 2013) (“First, TripAdvisor’s use of ‘dirtiest’ amounts to rhetorical hyperbole. Second, the general tenor of the ‘2011 Dirtiest Hotels’ list undermines any impression that TripAdvisor was seriously maintaining that Grand Resort is, in fact, the dirtiest hotel in America. For these reasons, TripAdvisor’s placement of Grand Resort on the ‘2011 Dirtiest Hotels’ list constitutes nonactionable opinion.”). The notion, for instance, that Defendant Paffrath’s characterization of the Plaintiff’s leads

as being “cold as ice” was meant as a verifiable assertion of false fact is ridiculous. *See* Doc. #92, p. 10, ¶ 63. As the Sixth Circuit explained in *Clark*, 617 F. App’x at 508:

Nor may a speaker incur defamation liability if she does not purport to say something verifiable about the plaintiff. The First Amendment prohibits punishing someone for expressing an idea. *Snyder*, 562 U.S. at 458, 131 S. Ct. 1207; *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974). Thus, the falsity requirement is met only if the statement in question makes an assertion of fact—that is, an assertion that is capable of being proved objectively incorrect. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990) (citation omitted). If, by contrast, the statement is not “sufficiently factual to be susceptible of being proved true or false”—because, for instance, it is “loose, figurative, or hyperbolic language” or a statement of opinion that does not reasonably imply a false assertion of fact—then it may not form the basis of a state-law defamation action. *Id.* at 21, 110 S. Ct. 2695 (citation omitted); *Seaton*, 728 F.3d at 597.

Having maintained its speech-based tort claims for nearly a year at this juncture, the Plaintiff has apparently overlooked the self-evident hyperbole of Mr. Paffrath’s statements. Nonetheless, no person of ordinary intelligence would or even could interpret them in the way that the Plaintiff has construed them, rendering any supposed injury to Plaintiff’s reputation resulting from them sufficiently implausible as to be imaginary. *Aegis Scis. Corp. v. Zelenik*, No. M2012–00898–COA–R3–CV, 2013 WL 175807, at *6 (Tenn. Ct. App. Jan. 16, 2013) (holding that any allegedly defamatory statement must “be read as a person of ordinary intelligence would understand it in light of the surrounding circumstances[]”). For all of these reasons, none of the statements over which the Plaintiff has sued is capable of conveying a defamatory meaning as a matter of law, and the Plaintiff’s speech-based “Business Disparagement” claim and “Unfair Competition” claim should be dismissed for failure to state a claim as a consequence.

2. Tennessee has never recognized the tort of “Business Disparagement.”

Further, “with respect to Plaintiff’s disparagement claim, disparagement has not

yet been recognized in Tennessee as a separate cause of action.” *Multari v. Bennett*, No. 1:05-CV-355, 2006 WL 8442553, at *10 (E.D. Tenn. June 20, 2006). Tennessee courts have been presented with two independent opportunities to do so, and they did not recognize the tort in either case. *See Moore Const. Co. v. Story Eng’g Co.*, No. 01A01-9606-CV-00267, 1998 WL 382198, at *4 (Tenn. Ct. App. July 10, 1998) (noting that “Tennessee courts have not specifically recognized this tort[]” and stating that “[t]his case does not provide an appropriate vehicle for explicitly recognizing disparagement as a separate tort because Moore Construction Company has been unable to demonstrate that it will be able to prove an essential ingredient of the cause of action[]”); *McCord v. HCA Health Servs. of Tenn., Inc.*, No. M201400142COAR3CV, 2015 WL 1914634, at *8 n.18. (Tenn. Ct. App. Apr. 27, 2015) (“As noted in *Moore Const. Co., Inc. v. Story Engineering Co., Inc.*, Tennessee has not specifically recognized disparagement as a tort; however, the court acknowledged that ‘like a claim for defamation, a claim for disparagement must be based on a false statement.’”), *appeal denied* (Tenn. Oct. 115, 2015).

For the reasons set forth in the preceding section, because the instant case is premised upon statements that cannot plausibly be considered defamatory as a matter of law, this court should decline to make an *Erie* guess or recognize the tort of disparagement in the first instance, either. Abstaining from recognizing a new tort for the State of Tennessee is also especially appropriate here, given that this case is a SLAPP-suit aimed at censoring a citizen’s constitutionally protected commentary about a public figure regarding matters of public concern—something that Tennessee has long recognized as being “evil[.]” *See Residents Against Indus. Landfill Expansion, Inc. v. Diversified Sys., Inc.*, No. 03A01-9703-CV-00102, 1998 WL 18201, at *3 n.6 (Tenn. Ct. App. Jan. 21, 1998) (“The legislature has recently recognized the evils of this type of lawsuit.”); *see also id.* at

*3 (“Their lawsuit fits all of the characteristics of a lawsuit filed to intimidate a citizen into silence regarding an issue of public concern.”). Thus, this Court, too, should decline to recognize the new tort of “Business Disparagement” for Tennessee, and the Plaintiff’s “Business Disparagement” claim should be dismissed for failure to state a claim.

3. The Plaintiff’s “Unfair Competition” claim fails as well.

The Plaintiff’s “Unfair Competition” claim must be dismissed for failure to state a claim for multiple independent reasons as well. First, “a claim of unfair competition also requires an underlying tort,” *Dominion Enterprises v. Dataium, LLC*, No. M2012-02385-COA-R3CV, 2013 WL 6858266, at *7 (Tenn. Ct. App. Dec. 27, 2013), and given that the statements that the Plaintiff has sued over are all constitutionally protected for multiple reasons, there is no underlying tort over which the Plaintiff can sue. Second, “defendants did not have a valid and binding non-compete agreement at the time of the alleged inappropriate and unfair competition,” *B & L Corp. v. Thomas & Thorngren, Inc.*, 162 S.W.3d 189, 216 (Tenn. Ct. App. 2004), which further prevents the Plaintiff’s “unfair competition” claim from being actionable.

Further still, the tort does not plausibly apply to the instant case:

In its most common form, the tort of unfair competition requires a showing that:

(1) the defendant engaged in conduct which ‘passed off’ its organization or services as that of the plaintiff; (2) in engaging in such conduct, the defendant acted with an intent to deceive the public as to the source of services offered or authority of its organization; and (3) the public was actually confused or deceived as to the source of the services offered or the authority of its organization. *Sovereign Order of St. John v. Grady*, 119 F.3d 1236, 1243 (6th Cir. 1997).

This tort is generally alleged as part of a trademark infringement case. *See Frisch’s Restaurants, Inc., v. Elby’s Big Boy*, 849 F.2d 1012, 1015 (6th Cir. 1998).

Dade Int'l, Inc. v. Iverson, 9 F. Supp. 2d 858, 861 (M.D. Tenn. 1998).

However,

The Tennessee Court of Appeals has considered it appropriate to extend the tort of unfair competition beyond the context of trademark infringement in certain circumstances. In *B & L Corp. v. Thomas & Thorngren, Inc.*, 917 S.W.2d 674 (Tenn. Ct. App. 1995), for instance, the court held that an action for unfair competition could be sustained for a breach of a fiduciary relationship by an employee who uses confidential information to the employer's detriment. *Id.* at 681.

B & L Corp., 162 S.W.3d at 225 n.7 (quoting *Dade*, 9 F. Supp. 2d at 862).

None of these circumstances is present in this case. Nor has the Plaintiff alleged that the Defendants owed the Plaintiff any fiduciary duty at the time of the allegedly “unfair competition.” *See id.* Instead, the apparent basis for the Plaintiff's claim is that the critical statements in Mr. Paffrath's YouTube videos mocking Dave Ramsey “have actually deceived or designed [sic] to tend to deceive the public's purchasing decisions.” *See* Doc. #92, p. 17, ¶ 128. Critically, however, the Plaintiff has not so much as alleged any likelihood of customer confusion as to their source—an allegation that is essential to comport with the First Amendment and avoid a constitutional conflict. *See Taubman*, 319 F.3d at 778 (“[A]lthough economic damage might be an intended effect of Mishkoff's expression, **the First Amendment protects critical commentary when there is no confusion as to source, even when it involves the criticism of a business.**”) (emphasis added). Accordingly, the Plaintiff's “Unfair Competition” claim similarly fails to state a cognizable claim for relief, and it should be dismissed with prejudice as well.

D. THE TERMS OF THE PARTIES' CONTRACT PREVENT PLAINTIFF'S CLAIMED “CONFIDENTIAL INFORMATION” FROM BEING RECOGNIZED AS A TRADE SECRET.

The Plaintiff's misappropriation of trade secrets claim also cannot plausibly be maintained because the alleged “trade secrets” at issue were not confidential at the time

of their publication. The Plaintiff asserts that Defendant Paffrath misappropriated the Plaintiff's trade secrets by publishing the Plaintiff's confidential information on YouTube the month after the Plaintiff terminated the Parties' contract. Given the absence of any survival provision with respect to the Parties' "Confidential Information" clause, however, *see* Doc. #25-1, p. 4, § 6, the Plaintiff's claimed trade secrets ceased being confidential—or subject to any contractual protection at all—the moment that the Parties' contract was terminated, *see supra*, pp. 7–12. The Plaintiff's contract also did not reserve the right—or provide any mechanism to secure the return of—the supposed trade secrets at issue at any point following its termination. *See generally* Doc. #25-1.

As a matter of law, then, the Plaintiff's supposedly "confidential" information cannot be recognized as a trade secret, because the Plaintiff did not take reasonable efforts to maintain the secrecy of its information. *See, e.g., ProductiveMD, LLC v. 4UMD, LLC*, 821 F. Supp. 2d 955, 962 (M.D. Tenn. 2011) ("[B]y definition, a trade secret requires reasonable efforts to maintain secrecy."); *TGC Corp. v. HTM Sports, B.V.*, 896 F. Supp. 751, 761 (E.D. Tenn. 1995) ("The voluntary disclosure of 'any alleged "trade secret" as part of a business transaction without any reservation or agreement of confidentiality prevents recognition of the information as a "trade secret."'") (quoting *Turner v. Great Am. Opportunities, Inc.*, 716 S.W.2d 40, 44 (Tenn. Ct. App. 1986) (same))). *See also Am. Nat. Prop. & Cas. Co. v. Campbell Ins., Inc.*, 636 F. Supp. 2d 659, 668 (M.D. Tenn. 2009) (noting that "steps taken by [a] corporation to be certain that [recipients] protected the confidentiality of the information and returned it [to the corporation] upon leaving the company" are relevant), *dismissed by agreement of the parties*, No. 3:08-CV-00604, 2011 WL 6259473 (M.D. Tenn. Oct. 14, 2011). Further, given the Plaintiff's failure to plead that it lost even a single customer, agent, or any other business of any kind after Mr.

Paffrath publicized the alleged trade secrets to more than 100,000 people, the notion that the alleged trade secrets at issue hold any independent economic value—a separate requirement for trade secret recognition, *see* Tenn. Code Ann. § 47-25-1702(4)(A)—is not plausible. As before, this fatal omission also cannot be cured by amendment, given that the witness who verified Plaintiff’s complaint has repeatedly indicated under oath during discovery that the Plaintiff did not lose even a single customer, agent, or any business of any kind as a result of its alleged trade secrets being widely publicized. *See Exhibit #1*, Interrogatory #2, pp. 3–4; *Exhibit #2*, p. 24, line 18–p. 27, line 16. *See also id.* at p. 117, line 13–p. 118, line 1 (stating that Plaintiff’s tax returns and revenue statements do not demonstrate that the Plaintiff suffered any harm).

E. THE PLAINTIFF HAS FAILED TO STATE A CLAIM UNDER THE LANHAM ACT.

The Plaintiff’s Lanham Act claim also fails for multiple reasons. To begin, two essential elements of a Lanham Act claim—(i) that “the statement actually or tends to deceive **a substantial portion** of the intended audience,” and (ii) that “the statement is material in that it **will likely influence the deceived customer’s purchasing decisions**[,]” *Am. Council of Certified Podiatric Physicians & Surgeons*, 185 F.3d at 613 (emphases added)—have not even been alleged, *see* Doc. #92, p. 18. Instead, the Plaintiff’s Lanham Act claim is premised upon the Plaintiff’s mere “belie[f]” in some unspecified, undefined damage or future damage, *see id.* at ¶ 134. *But see Am. Council of Certified Podiatric Physicians & Surgeons*, 185 F.3d 606 at 613 (“To state a cause of action for misleading advertisement under the Lanham Act, a plaintiff must establish the following . . . 2) the statement actually or tends to deceive a substantial portion of the intended audience; 3) the statement is material in that it will likely influence the deceived consumer’s purchasing decisions”). *See also Asurion, LLC v. SquareTrade, Inc.*, No.

3:18-CV-01306, 2019 WL 4142154, at *2 (M.D. Tenn. Aug. 30, 2019). Yet again, these omissions also cannot be cured by amendment, given that the Plaintiff has repeatedly acknowledged that it did not, in fact, lose even a single customer, agent, or any business of any kind as a result of the publications at issue. See **Exhibit #1**, Interrogatory #2, pp. 3–4; **Exhibit #2**, p. 24, line 18–p. 27, line 16; *id.* at p. 117, line 13–p. 118, line 1.

Further, as a matter of law, the statements over which the Plaintiff has sued are neither advertising nor even commercial speech, rendering the Lanham Act inapplicable in any regard. See *Am. Council of Certified Podiatric Physicians & Surgeons*, 185 F.3d at 613 (holding that a Lanham Act claim must be premised upon “**advertisements** [] introduced into interstate commerce”) (emphasis added); *Taubman*, 319 F.3d at 774 (noting that “The Lanham Act is constitutional because it only regulates commercial speech, which is entitled to reduced protections under the First Amendment.”).

Here, the statements over which the Plaintiff has sued—set forth at Doc. #92, p. 10, ¶ 63—self-evidently are neither advertising nor commercial speech. See *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 422 (1993) (defining commercial speech as “speech which does ‘no more than propose a commercial transaction.’” (citing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66 (1983))). The Plaintiff has also acknowledged during this litigation that the videos present obvious satire. See, e.g., Doc. #51, Plaintiff’s Response to Defendants’ Motion for Leave to File Documents Under Seal, p. 3 (emphasizing that “Paffrath ‘pretends’ to be other characters at certain points in the videos, and the transcript does not reflect when Paffrath speaks as himself and when he speaks as one of these ‘characters.’”). Nor does the Plaintiff’s belief that Mr. Paffrath profited from the videos convert them into commercial speech. See, e.g., *Pittsburgh Press Co. v. Pittsburgh Comm’n on Human Relations*, 413 U.S. 376, 384 (1973) (“[S]peech is

not rendered commercial by the mere fact that it relates to an advertisement.” (citing *Sullivan*, 376 U.S. 254)). The fact that the statements at issue offend the Plaintiff and that the Plaintiff “believes” that it was harmed by them also does not render the First Amendment inapplicable or cure the Plaintiff’s otherwise defective Lanham Act claim. *See Taubman*, 319 F.3d at 778 (“We find that Mishkoff’s use of Taubman’s mark in the domain name ‘taubmansucks.com’ is purely an exhibition of Free Speech, and the Lanham Act is not invoked. And although economic damage might be an intended effect of Mishkoff’s expression, the First Amendment protects critical commentary when there is no confusion as to source, even when it involves the criticism of a business. Such use is not subject to scrutiny under the Lanham Act.”).

Simply stated: The Plaintiff has not sued over advertising or commercial speech that would enable the Lanham Act to apply to this action. Instead, the statements that it has sued over are properly characterized as “statements of opinion” that are “not actionable as misrepresentations of fact under the Lanham Act.” *See Serv. Jewelry Repair, Inc. v. Cumulus Broad., LLC*, 145 F. Supp. 3d 737, 747 (M.D. Tenn. 2015). The Plaintiff’s Lanham Act claim should be dismissed accordingly for failure to state a claim.

F. CALIFORNIA SUBSTANTIVE LAW GOVERNS SEVERAL OF THE PLAINTIFF’S CLAIMS, WHICH PLAINTIFF HAS MAINTAINED EXCLUSIVELY AS TENNESSEE TORT CLAIMS.

As Defendants have consistently contended, California substantive law governs all of the Plaintiff’s state-based claims except its breach of contract claim against Kevin Paffrath and, arguably, its trade secrets claim against Kevin Paffrath. The Defendants’ previous briefing on the matter, set forth at Doc. #30, Defendant’s Memorandum in Support of Motion for Leave to File Anti-SLAPP Motion, pp. 2–6, is incorporated herein by reference. Well in advance of the Plaintiff’s recent amendment, this Court also notified

the Plaintiff that its choice of law analysis mischaracterized the relevant inquiry. Doc. #62, Memorandum Opinion, p. 2 n.2.

Even so, the Plaintiff has now filed an Amended Complaint that relies on Tennessee tort claims. Because California substantive law governs multiple claims in this matter, however, and because the Plaintiff has chosen not to bring any claims under California substantive law, the Plaintiff's Tennessee-based claims against the two corporate Defendants, and Claims ## 2-5 and 7 asserted against Defendant Paffrath, should be dismissed for failure to state a claim upon which relief can be granted.

G. THE PLAINTIFF HAS DEMANDED UNCONSTITUTIONAL REMEDIES.

The Plaintiff's Amended Complaint seeks substantial injunctive relief that cannot be lawfully issued. Doc. #92, p. 19, ¶¶ 138–41. Such claims for relief should be dismissed.

First, the Plaintiff seeks to have this Court compel Mr. Paffrath to “remove each of the YouTube videos referenced” and “prohibit Paffrath or anyone acting in concert with Paffrath from posting any further content online that is false, deceptive, and malicious regarding Ramsey or that discloses Ramsey's Trade Secrets.” *Id.* at ¶¶ 138–39. Particularly in cases involving a public figure, however, Plaintiff's desired restraints cannot constitutionally be compelled. *See, e.g., Sindi v. El-Moslimany*, 896 F.3d 1, 33 (1st Cir. 2018) (noting that an “[a]n injunction that prevents in perpetuity the utterance of particular words and phrases after a defamation trial” may still be unconstitutional *even after* the words and phrases have been found defamatory, because “[b]y its very nature, defamation is an inherently contextual tort,” and “[w]ords that were false and spoken with actual malice on one occasion might be true on a different occasion or might be spoken without actual malice.”) (citations omitted). Plaintiff's already unconstitutional demands are further exacerbated by the fact that the Plaintiff has not

even bothered to restrict its demanded speech injunction to speech that is tortious. *See Hustler Magazine*, 485 U.S. at 54 (“Despite their sometimes caustic nature, from the early cartoon portraying George Washington as an ass down to the present day, graphic depictions and satirical cartoons have played a prominent role in public and political debate.”); *State ex rel. Pub. Disclosure Comm'n v. 119 Vote No! Comm.*, 957 P.2d 691, 695 (Wash. 1998) (“[T]he Supreme Court has recognized that to sustain our constitutional commitment to uninhibited political discourse, the State may not prevent others from ‘resort[ing] to exaggeration, to vilification of men who have been, or are, prominent in church and state, and *even to false statement.*’” (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 310 (1940))); *United States v. Alvarez*, 567 U.S. 709, 722 (2012) (plurality) (“The Government has not demonstrated that false statements generally should constitute a new category of unprotected speech . . .”).

Second, the Plaintiff seeks to have this Court “require Paffrath and anyone acting in concert with him to immediately return Ramsey’s Trade Secrets to Ramsey.” Doc. #92, p. 19, ¶ 140. The Plaintiff seeks to have the Court provide this relief—and the Court, similarly, is unable to provide it—because no such right exists in the Parties’ contract, which the Court may not redraft. *See* Doc. #25-1; *Realty Shop*, 7 S.W.3d at 597–98 (“The courts may not make a new contract for parties who have spoken for themselves, *see Petty v. Sloan*, 197 Tenn. 630, 640, 277 S.W.2d 355, 359 (1955), and may not relieve parties of their contractual obligations simply because these obligations later prove to be burdensome or unwise.”).

Third, the Plaintiff “requests that the Court require Paffrath to issue corrective advertising.” Doc. #92, p. 19, ¶ 141. Compelling speech is forbidden, however, and the Court cannot constitutionally oblige the Plaintiff’s demand. *See, e.g., United States v.*

United Foods, Inc., 533 U.S. 405, 410 (2001) (“Just as the First Amendment may prevent the government from prohibiting speech, the Amendment may prevent the government from compelling individuals to express certain views”); *Kramer v. Thompson*, 947 F.2d 666, 682 (3d Cir. 1991) (“[We find no support for the various retractions and withdrawals forced upon Thompson by the district court. Consequently, those orders of the district court compelling such retractions and withdrawals, and the associated contempt citations, must be reversed.”); *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”).

H. THIS COURT SHOULD DECLINE TO EXERCISE SUBJECT MATTER JURISDICTION OVER PLAINTIFF’S STATE LAW CLAIMS.

“The general practice among federal courts has been to permit any party to challenge (or for the court to question *sua sponte*) the existence of subject-matter jurisdiction at any time in the proceedings.” *Von Dunser v. Aronoff*, 915 F.2d 1071, 1074 (6th Cir. 1990). “The language of Fed. R. Civ. P. 12(h)(3) suggests that courts have a positive duty to undertake the jurisdictional inquiry: ‘Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.’” *Id.*

Although the actual amount in controversy in this matter has never been specified, this action was removed to this Court because of what appeared to be a claim of actual damages that exceeded \$75,000.00. *See Halsey v. AGCO Corp.*, 755 F. App’x 524, 526–

27 (6th Cir. 2018). The Plaintiff's claim of actual damages has since been clarified, however, and the actual damages sought do not even approach \$75,000.00. See **Exhibit #1**, Plaintiff's Responses & Objections to Defendant's First Set of Interrogatories, Interrogatory ## 1-2, pp. 3-4

The Plaintiff's only specified claim of damages is for \$4,200.00 arising from an alleged breach of contract. *Id.* The Plaintiff also seeks punitive damages, which are constitutionally limited by the actual damages incurred, and disgorgement of supposed unjust enrichment, which is not an available remedy for speech-based torts. See *Ventura v. Kyle*, 825 F.3d 876, 887 (8th Cir. 2016); *Alharbi v. Theblaze, Inc.*, 199 F. Supp. 3d 334, 361 (D. Mass. 2016); *Organovo Holdings, Inc. v. Dimitrov*, 162 A.3d 102, 126 (Del. Ch. 2017).

Under these circumstances, the Defendants can no longer represent or maintain the position that "the amount in controversy more likely than not exceeds the jurisdictional amount." See *Havener v. Richardson*, 198 F.3d 245 (6th Cir. 1999). Accordingly, following dismissal of the Plaintiff's newly-added Lanham Act claim, this court should exercise its discretion to dismiss, without prejudice, the Plaintiff's remaining state law claims. See *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009).

V. CONCLUSION

For the foregoing reasons, the Plaintiff's Amended Complaint should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November, 2019, a copy of the foregoing was sent via CM/ECF, and to the following parties:

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

THE LAMPO GROUP, LLC D/B/A RAMSEY SOLUTIONS,)	
)	
)	
<i>Plaintiff,</i>)	
)	C.A. No. 3:18-cv-01402
v.)	
)	Judge Richardson
KEVIN HELMUT PAFFRATH, THE PAFFRATH ORGANIZATION, and MEETNDONE CORPORATION,)	Magistrate Judge Holmes
)	
)	
<i>Defendants.</i>)	

PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26, 33, and 34 of the Federal Rules of Civil Procedure, Plaintiff The Lampo Group, LLC d/b/a Ramsey Solutions serve the following responses and objections to Defendant's First Set of Interrogatories and Requests for Production of Documents.

OBJECTIONS TO DEFINITIONS & INSTRUCTIONS

1. Plaintiff objects to Definition No. 5 because it seeks information that is not relevant and not proportional to the needs of the case. Plaintiff will interpret these terms to refer to the Plaintiff in this action and no one else.

2. Plaintiff objects to Definition Nos. 9 and 10 because they seek information that is not relevant and not proportional to the needs of the case. Plaintiff will interpret the term “document” to mean hard copy, paper documents and electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—that are in Plaintiff’s possession, custody, and/or control.

3. Plaintiff objects to Instruction No. 15 because it seeks information that is not relevant and not proportional to the needs of the case. To the extent documents are produced in response to the requests below that have not previously been produced either in PDF format or natively, Plaintiff will produce documents in searchable PDF format.

4. Plaintiff objects to these interrogatories because they exceed the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORIES

INTERROGATORY 1 [1-2]. [1] Identify the specific amount of damages that you claim you sustained or are owed for each separate category of damages listed in Section C of the Plaintiff's Rule 26(a)(1) disclosures, and [2] describe in detail how you calculated the amount of damages that you claim you sustained or are owed with respect to each category.

ANSWER: Objection. Section (C) of Plaintiff's Rule 26(a)(1) disclosures states that Plaintiff seeks all profits gained by the Defendants as a result of Defendants' wrongful conduct. Plaintiff has sought this information in discovery from the Defendants but Defendants have objected to producing this information. Accordingly, Plaintiff objects to this compound interrogatory because Defendants have prevented Plaintiff from accessing the documents and information necessary to answer it. Once Defendants fully and completely respond to Plaintiff's discovery requests seeking this information, Plaintiff will be in a position to answer this compound interrogatory.

Subject to this objection, [1] Plaintiff seeks as damages the \$350 monthly administrative fee for term of the ELP agreement, which Plaintiff would have been entitled to receive had Defendant not breached it, [2] which for the full term of the ELP agreement amounts to \$4,200.

[1] Ramsey further seeks to recover punitive and/or exemplary damages as allowed by law.

[1] Ramsey further seeks to recover as damages its attorneys' fees and costs in connection with this action pursuant to section 12 of the ELP agreement, pre-judgment and post-judgment interest, and all costs of court.

INTERROGATORY 2 [3]. [3] Identify all of the "business Lampo lost" and the name, address, and telephone number of each and every customer, client, or agent you claim to have lost in connection with Lampo's ELP Program as a result of Defendants' alleged actions.

ANSWER: [3] As a result of Defendant's breach of the ELP agreement, Plaintiff would have received the \$350 monthly administrative fee for term of the ELP agreement from the Defendant had Defendant not breached the ELP agreement. Accordingly, Plaintiff seeks as damages the \$350 monthly administrative fee for term of the ELP agreement.

INTERROGATORY 3 [4]. [4] Identify the monthly revenue generated by Lampo's ELP Program for each month spanning September 2015 through September 2019.

ANSWER: Objection. Plaintiff objects to this interrogatory because it seeks information that is not relevant to the claims and defenses asserted in this action. Plaintiff further objects because this interrogatory also seeks information that is proportional to the needs of the case. Plaintiff further objects to this interrogatory because it is overly broad in time, especially considering the time Defendants were associated with Plaintiff's ELP program. Plaintiff further objects to this interrogatory because it seeks Plaintiff's confidential commercial information and should only be produced pursuant to a protective order.

INTERROGATORY 4 [5]. [5] Identify the monthly profits earned by Lampo's ELP Program for each month spanning September 2015 through September 2019.

ANSWER: Objection. Plaintiff objects to this interrogatory because it seeks information that is not relevant to the claims and defenses asserted in this action. Plaintiff further objects because this interrogatory also seeks information that is proportional to the needs of the case. Plaintiff further objects to this interrogatory because it is overly broad in time, especially considering the time Defendants were associated with Plaintiff's ELP program. Plaintiff further objects to this interrogatory because it seeks Plaintiff's confidential commercial information and should only be produced pursuant to a protective order.

INTERROGATORY 5 [6-9]. [6] Identify all documents relevant to the Plaintiff's Verified Complaint that Jack Galloway reviewed or was provided in advance of his December 3, 2018, verification under oath that "I have read the foregoing Verified Complaint and have personal knowledge of the factual allegations set forth therein unless otherwise indicated and that the same are true and correct to the best of my knowledge." In your answer, specifically identify the name or title of the documents, [7] how Jack Galloway obtained a copy of the documents, and [8] when Jack Galloway reviewed or was provided the document, and [9] identify anyone other than Jack Galloway who reviewed or saw any portion of the documents and when such person reviewed or saw it.

ANSWER: Objection. Plaintiff objects to this compound interrogatory because it seeks information that is protected by the attorney-client privilege and/or work product immunity. Plaintiff further objects to this interrogatory because it seeks information that is not relevant or proportional to the needs of the case.

Subject to these objections, [6] Mr. Galloway reviewed the videos referenced in the Complaint. [8] Mr. Galloway reviewed the videos prior to executing the verification attached to the Complaint.

INTERROGATORY 6 [10-23]. [10] Indicate all "personal knowledge" that Jack Galloway swore, under oath, that he had on December 3, 2018, regarding the allegations set forth in Paragraphs 67, [11] 93, [12] 98, [13] 99, [14] 100, [15] 104, [16] 105, [17] 110, [18] 113, [19] 114, [20] 115, [21] 119, [22] 120, and [23] 129 of the Plaintiff's Verified Complaint.

ANSWER: Objection. Plaintiff objects to this compound interrogatory because is not proportional to the needs of the case. This interrogatory attempts to track all of the allegations in Plaintiff's Complaint seeking "all" information, which is an abuse of the discovery process, unduly

broad, burdensome, and requires the equivalent of a narrative account of Plaintiff's case. Plaintiff further objects to this interrogatory because it improperly seeks "conclusions of law." [See Doc. 46 (Amended Answer and Affirmative Defenses to Complaint), ¶¶ 67, 99, 100, 104, 105, 110, 113, 114, 115, 119, 120, 129 (alleging paragraphs "contain conclusions of law to which no responsive pleading is required").] Plaintiff further objects to this interrogatory because it prematurely seeks information that need not be answered until after Defendants have fully responded to written discovery and oral discovery has been completed. Requiring an answer to an interrogatory at this stage of the case given the information requested is an improper attempt to require Plaintiff to marshal the entirety of its evidence before having an opportunity to fully explore its case. Subject to these objections, Plaintiff responds as follows:

[10] Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, Plaintiff refers Defendants to the ELP agreement and Defendants' "Dave Ramsey: Exposed" video. Defendants used Plaintiff's confidential information in Defendants' "Exposed" video, which advertises for Defendants' various real estate businesses, including Defendants' online real estate investment course.

[11] See Answer to Interrogatory No. 1 [1-2].

[12] Plaintiff refers Defendants to Defendants' "Exposed" video, during which Defendants admittedly "infiltrated" Plaintiff's ELP program and posted false statements about the ELP program in an effort to generate business for Defendants.

[13] See Answer to Interrogatory No. 6 [12].

[14] Paffrath represented he would abide by the terms of the ELP program when he entered into it. Had Plaintiff known of Paffrath's true intentions in entering into the ELP program to "infiltrate" it, Plaintiff would have never permitted Paffrath to be a part of the ELP program.

[15] *See* Answer to Interrogatory No. 6 [14].

[16] *See* Answer to Interrogatory No. 6 [12].

[17] *See* Answer to Interrogatory No. 6 [14].

[18] Defendants' videos contained many false statements, including those referenced in paragraphs 63, 70, 71, 73, 81, 85, 86, and 87 of the Complaint. *See also* Answer to Interrogatory No. 1 [1-2].

[19] *See* Answer to Interrogatory No. 6 [12].

[20] *See* Answer to Interrogatory No. 6 [12, 18].

[21] Plaintiff considers the information Defendants displayed in the "Exposed" video to be confidential and proprietary information that has been developed by Plaintiff's ELP team over time.

[22] Plaintiff's ELP HUB information is shared with parties who have agreed to keep it confidential pursuant to the ELP program agreement. Plaintiff provides this information to an ELP provider through its password-protected ELP HUB, as it did in this case with the Defendants, who then displayed screenshots of this information in Defendants' "Exposed" video.

[23] *See* Answer to Interrogatory No. 6 [10, 12].

INTERROGATORY 7 [24]. [24] Indicate whether the Plaintiff performed its contractual obligation to "to provide [Paffrath], through its broker, with referral services within ELP's assigned territory, as defined and determined exclusively by Ramsey," as set forth in Section 1 of the Real Estate ELP Agreement, previously filed at Doc. #25-1, Page ID #242.

ANSWER: [24] As described in the Complaint, Paffrath refused to participate in the required conference calls until he had "an opportunity to start trying to interact with some

referrals.” Because of Defendants’ non-compliance with the ELP program, Plaintiff terminated the ELP agreement before sending any referrals.

INTERROGATORY 8 [25]. [25] Indicate whether you claim that, prior to October 8, 2018, Kevin Paffrath shared with any third party any information that you claim is confidential. In your answer, specifically identify the confidential information that you claim Kevin Paffrath shared with any third party prior to October 8, 2018, and the time and date that you claim he shared it.

ANSWER: Objection. Plaintiff objects to this interrogatory because it prematurely seeks information that need not be answered until after Defendants have fully responded to written discovery and oral discovery has been completed. Requiring an answer to an interrogatory at this stage of the case given the information requested is an improper attempt to require Plaintiff to marshal the entirety of its evidence before having an opportunity to fully explore its case. Subject to this objection, Plaintiff responds as follows:

[25] At this time, Plaintiff is unaware of an instance where Defendants shared Plaintiff’s confidential information with a third party prior to October 8, 2018.

INTERROGATORY 9 [26-27]. [26] Indicate whether, prior to September 2018, any ELP Agreement or other contract between the Plaintiff and an ELP provider or agent contained a clause that reserved or afforded the Plaintiff the right to recover or otherwise secure the return of any “Confidential Information” following the agreement’s or contract’s termination, [27] and if so, how many ELP agreements or other contracts between the Plaintiff and an ELP provider contained a clause that reserved or afforded the Plaintiff the right to recover or otherwise secure the return of any “Confidential Information” following the agreement’s or contract’s termination.

ANSWER: Objection. Plaintiff objects to this compound interrogatory because it seeks information that is not relevant to the claims or defenses in this case. Plaintiff's ELP agreements or other contracts with other ELP providers are irrelevant to this case and the contract at issue here. Plaintiff further objects because this interrogatory seeks information that is not proportional to the needs of this case and is unduly burdensome and overly broad in that it would require Plaintiff to review every single contract it has entered into "prior to September 2018" which is also overly broad in time. Plaintiff further objects to this compound interrogatory because it seeks Plaintiff's confidential commercial information and should only be produced pursuant to a protective order. Plaintiff further objects to this compound interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 10 [28]. [28] Indicate the total number of "ELP Agreement[s]" or other contracts between the Plaintiff and an ELP provider or agent that the Plaintiff executed prior to September 2018.

ANSWER: Objection. Plaintiff objects to this interrogatory because it seeks information that is not relevant to the claims or defenses in this case. Plaintiff's ELP agreements or other contracts with other ELP providers are irrelevant to this case and the contract at issue here. Plaintiff further objects because this interrogatory seeks information that is not proportional to the needs of this case and is unduly burdensome and overly broad in that it would require Plaintiff to review every single contract it has entered into "prior to September 2018" which is also overly broad in time. Plaintiff further objects to this interrogatory because it seeks Plaintiff's confidential commercial information and should only be produced pursuant to a protective order. Plaintiff

further objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 11 [29]. [29] Identify in detail the Plaintiff's process for generating "leads" and referring them to Plaintiff's ELP Agents. In your answer, specifically identify whether the Plaintiff or any employee of the Plaintiff speaks to a prospective lead before making a referral to an ELP Agent and the average length of time, if any, that the Plaintiff or any employee of the Plaintiff speaks to a prospective lead before making a referral to an ELP Agent.

ANSWER: Objection. Plaintiff objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 12 [30-31]. [30] Indicate what Mitch Riddle's annual salary is, identified by both salaried or hourly compensation and compensation paid on commission, and [31] the approximate number of hours that Mitch Riddle works each year.

ANSWER: Objection. Plaintiff objects to this compound interrogatory because it seeks information that is not relevant to the claims or defenses in this case. Mr. Riddle's annual salary and hours worked is not relevant to the claims or defenses in this action. Plaintiff further objects to this interrogatory because it seeks confidential information of Mr. Riddle and should only be produced pursuant to a protective order. Plaintiff further objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 13 [32]. [32] Identify in detail the Plaintiff's process for vetting and hiring prospective ELP Agents and all facts known to Plaintiff that would support

Plaintiff's allegation in paragraph 74 of Plaintiff's Verified Complaint that "Ramsey carefully vets the providers in Ramsey's ELP program."

ANSWER: Objection. Plaintiff objects to this interrogatory because is not proportional to the needs of the case. This interrogatory attempts to track all of the allegations in Plaintiff's Complaint seeking "all facts known" information, which is an abuse of the discovery process, unduly broad, burdensome, and requires the equivalent of a narrative account of Plaintiff's case. Plaintiff further objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 14 [33]. [33] Identify in detail whether and how "leads" generated by the Plaintiff and referred to the Plaintiff's ELP providers would know or learn how much money, specifically, the Plaintiff makes on a successful sale.

ANSWER: Objection. Plaintiff objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 15 [34]. [34] Identify those persons, witnesses, documents, items, things, or other evidence that would support the allegation in paragraph 56 of the Plaintiff's Verified Complaint that Kevin Paffrath "fraudulently induced Ramsey into the Agreement as a ruse to infiltrate Ramsey's ELP program, steal Ramsey's confidential and proprietary information, and unlawfully compete with Ramsey by posting false and malicious statements about Ramsey's ELP program on the internet as clickbait so that Paffrath could increase page views and resulting business with Paffrath and his affiliated companies, The Paffrath Organization and MeetNDone."

ANSWER: Objection. Plaintiff objects to this interrogatory because is not proportional to the needs of the case. This interrogatory attempts to track all of the allegations in Plaintiff's

Complaint seeking all “persons, witnesses, documents, items, things, or other evidence,” which is an abuse of the discovery process, unduly broad, burdensome, and requires the equivalent of a narrative account of Plaintiff’s case. Plaintiff further objects to this interrogatory because it improperly seeks “conclusions of law.” [See Doc. 46 (Amended Answer and Affirmative Defenses to Complaint), ¶ 56 (alleging paragraph 56 of the Complaint “are conclusions of law to which no responsive pleading is required”).] Plaintiff further objects to this interrogatory because it prematurely seeks information that need not be answered until after Defendants have fully responded to written discovery and oral discovery has been completed. Requiring an answer to an interrogatory at this stage of the case given the information requested is an improper attempt to require Plaintiff to marshal the entirety of its evidence before having an opportunity to fully explore its case. Plaintiff further objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 16 [35-36]. [35] Identify all documents, items, or things that would establish the identity of the persons or entities other than Kevin Paffrath who signed up with or participated in Ramsey’s real estate ELP program and were given Ramsey’s confidential and proprietary information from September 1, 2015, to the present, and [36] indicate whether there was a decrease in the number of people of who signed up with or participated in the program during, after, or as a result of Kevin Paffrath’s alleged conduct, and if so, the extent of the decrease.

ANSWER: Objection. Plaintiff objects to this compound interrogatory because it seeks information that is not relevant to the claims or defenses in this case. The identity of the persons or entities other than the Defendant who participate in Plaintiff’s ELP program are irrelevant to this case and the contract at issue here. Plaintiff further objects because this compound

interrogatory seeks information that is not proportional to the needs of this case and is unduly burdensome and overly broad in that it would require Plaintiff to review every single contract it has entered into “since September 1, 2015, to the present” which is also overly broad in time. Plaintiff further objects to this compound interrogatory because it seeks Plaintiff’s confidential commercial information and should only be produced pursuant to a protective order. Plaintiff further objects to this compound interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 17 [37]. [37] Indicate which provision of Kevin Paffrath’s ELP Agreement, if any, you claim affords you the right to secure the return of information that you claim is confidential following termination of the Agreement.

ANSWER: Objection. Plaintiff objects to this interrogatory because it improperly seeks a conclusion of law. Plaintiff further objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 18 [38]. [38] Identify the date, time, and contents of all non-privileged communications between Dave Ramsey and The Lampo Group, LLC regarding Kevin Paffrath or relating to this litigation.

ANSWER: Objection. Plaintiff objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 19 [39-40]. [39] Identify all documents (referenced by Bates number) that Plaintiff intends to introduce as exhibits in its case-in-chief in this matter and [40]

the specific allegation or allegations in the Plaintiff's Verified Complaint that you contend the documents support.

ANSWER: Objection. Plaintiff objects to this compound interrogatory because is not proportional to the needs of the case. This interrogatory attempts to require Plaintiff to tie "all" documents it intends to introduce in its case-in chief to each allegation in Plaintiff's Complaint, which is an abuse of the discovery process, unduly broad, and burdensome. Plaintiff further objects to this compound interrogatory because it prematurely seeks information that need not be answered until after Defendants have fully responded to written discovery and oral discovery has been completed and after Plaintiff has identified its trial exhibits pursuant to this Court's Order. [See Doc. 14, PageID #159.] Requiring an answer to an interrogatory at this stage of the case given the information requested is an improper attempt to require Plaintiff to marshal the entirety of its evidence before having an opportunity to fully explore its case. Plaintiff further objects to this compound interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 20 [41-42]. [41] Identify all persons that the Plaintiff intends to call as witnesses in its case-in-chief in this matter and [42] the specific allegation or allegations in the Plaintiff's Verified Complaint regarding which those witnesses will testify.

ANSWER: Objection. Plaintiff objects to this compound interrogatory because is not proportional to the needs of the case. This interrogatory attempts to require Plaintiff to tie "all" witnesses it intends to call in its case-in chief to each allegation in Plaintiff's Complaint, which is an abuse of the discovery process, unduly broad, and burdensome. Plaintiff further objects to this compound interrogatory because it prematurely seeks information that need not be answered until September 14, 2020. [See Doc. 14, PageID #159.] Requiring an answer to an interrogatory at this

stage of the case given the information requested is an improper attempt to require Plaintiff to marshal the entirety of its evidence before having an opportunity to fully explore its case. Plaintiff further objects to this compound interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 21 [43]. [43] Identify all correspondences in your possession, without regard to form, between the Plaintiff and any Defendant in this action.

ANSWER: Objection. Plaintiff objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 22 [44]. [44] Identify and describe all of the Plaintiff's "reasonable efforts to maintain the secrecy of its Trade Secrets," as alleged at paragraph 120 of the Plaintiff's Verified Complaint.

ANSWER: Objection. Plaintiff objects to this interrogatory because it is not proportional to the needs of the case. This interrogatory attempts to track the allegations in Plaintiff's Complaint seeking "all" information, which is an abuse of the discovery process, unduly broad, burdensome, and requires the equivalent of a narrative account of Plaintiff's case. Plaintiff further objects to this interrogatory because it improperly seeks "conclusions of law." [See Doc. 46 (Amended Answer and Affirmative Defenses to Complaint), ¶ 120 (alleging the allegations of this paragraph "contain conclusions of law to which no responsive pleading is required").] Plaintiff further objects to this interrogatory to the extent it is duplicative of Interrogatory No. 6 [22]. Plaintiff further objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 23 [45]. [45] Identify and provide the name, address, and phone number of each and every person to whom the Plaintiff has provided any of the allegedly “confidential, proprietary, and other sensitive information, including but not limited to Ramsey’s client lists, vendor lists, customer lists, ELP lists, business plans, computer programs, developing products, internal reports, marketing strategies, metrics, marketing data or other information not available to the general public, whether communicated in writing, electronically or orally” or “confidential and proprietary data” referenced at paragraphs 65 and 66 of the Plaintiff’s Verified Complaint.

ANSWER: Objection. Plaintiff objects to this interrogatory because it seeks information that is not relevant to the claims or defenses in this case. The identity and contact information of those individuals or entities that have received Plaintiff’s confidential information are irrelevant to this case and the contract at issue here. Plaintiff further objects to this interrogatory in that it attempts to track the allegations in Plaintiff’s Complaint seeking “all” information, which is an abuse of the discovery process, unduly broad and burdensome. Plaintiff further objects because this interrogatory seeks information that is not proportional to the needs of this case and is unduly burdensome and overly broad in that it would require Plaintiff to identify every single individual or entity who has been provided Plaintiff’s confidential information and is further overly broad in that it is unlimited in time. Plaintiff further objects to this interrogatory because it seeks Plaintiff’s confidential commercial information and should only be produced pursuant to a protective order. Plaintiff further objects to this interrogatory because it improperly seeks “conclusions of law.” [See Doc. 46 (Amended Answer and Affirmative Defenses to Complaint), ¶¶ 65-66 (alleging the allegations of these paragraphs “contain conclusions of law to which no responsive pleading is required”).] Plaintiff further objects to this interrogatory because it exceeds the number of

interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 24 [46]. [46] Identify all persons, including attorneys, who were involved in drafting, filing, or otherwise approving any component of or allegation in the ex parte Temporary Restraining Order filed on December 3, 2018, at 3:35 p.m. in the Chancery Court for Williamson County, Tennessee, available at Doc. #1-5.

ANSWER: Objection. Plaintiff objects to this interrogatory because it seeks information that is not relevant to the claims or defenses in this case. The identity and contact information of those individuals or entities that drafted, filed, or otherwise approved of the Complaint in this matter is irrelevant to any party's claims or defenses in this case. Plaintiff further objects to this interrogatory in that it is a clear abuse of the discovery process, has been lodged for an improper purpose, and is harassing. Plaintiff further objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

INTERROGATORY 25 [47-48]. [47] Identify The Lampo Group, LLC's auditor, bookkeeper, accountant (including those accountants or CPAs within the Lampo Group, LLC and those accountants or CPAs who are part of a separate firm, sole proprietorship, company, or other entity, such as an accounting firm), and [48] any other persons who have within the period of September 2015 to the present prepared, possessed, and/or filed The Lampo Group, LLC's state and/or federal tax returns and/or other financial records, and state which records each possesses.

ANSWER: Objection. Plaintiff objects to this compound interrogatory because it seeks information that is not relevant to the claims or defenses in this case. The identity and contact information of Plaintiff's auditor, bookkeeper, or accountant or those who have prepared,

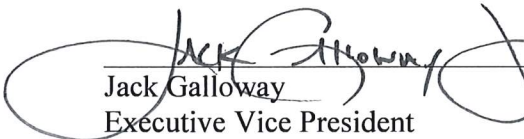
possessed, or filed Plaintiff's tax returns or other financial records is irrelevant to any party's claims or defenses in this case. Plaintiff further objects to this interrogatory in that it is a clear abuse of the discovery process, has been lodged for an improper purpose, is harassing, and is overly broad in time. Plaintiff further objects to this interrogatory because it seeks Plaintiff's confidential commercial information and should only be produced pursuant to a protective order. Plaintiff further objects to this interrogatory because it exceeds the number of interrogatories permitted under Rule 33 of the Federal Rules of Civil Procedure and Local Rule 33.01(b).

VERIFICATION OF THE LAMPO GROUP, LLC D/B/A RAMSEY SOLUTIONS

STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

I, Jack Galloway, after first being duly sworn, state as follows:

I am Jack Galloway. I am the Executive Vice President of the plaintiff in this matter, The Lampo Group, LLC d/b/a Ramsey Solutions (the "Company"). I am authorized to make this verification on behalf of the Company. I have read the answers to Interrogatory Numbers 1 [1-2], 2 [3], 5 [6-9], 6 [10-23], 7 [24], 8 [25]. These answers are based upon the Company's knowledge and are true and correct to the best of my knowledge, information, and belief.


Jack Galloway
Executive Vice President
The Lampo Group, LLC d/b/a Ramsey Solutions
EVP Lampo Group LLC

Sworn to and subscribed before me on this the 23rd day of October, 2019.



Notary Public: 

My Commission Expires: 2/21/21

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION 1:

Please produce all documents identified in response to the First Set of Interrogatories or upon which you, or anyone acting on your behalf, relied on or referred to in preparing the answers to the First Set of Interrogatories.

RESPONSE: To the extent any documents were identified in response to Plaintiff's Answers to Interrogatories, those documents have been previously produced.

REQUEST FOR PRODUCTION 2:

Please produce all non-privileged communications between Dave Ramsey and any member of the The Lampo Group, LLC regarding Kevin Paffrath or relating to this litigation.

RESPONSE: No documents are responsive to this request.

REQUEST FOR PRODUCTION 3:

Please produce copies of all documents comprising The Lampo Group, LLC's state and federal income tax returns, with all schedules, for the years 2015 to the present.

RESPONSE: Objection. Plaintiff objects to this request because Plaintiff's tax returns and schedules are not relevant to the claims or defenses in this case. Plaintiff further objects to this request in that it is a clear abuse of the discovery process, has been lodged for an improper purpose, is harassing, and is overly broad in time. Plaintiff further objects to this request because it seeks Plaintiff's confidential commercial information and should only be produced pursuant to a protective order.

REQUEST FOR PRODUCTION 4:

Please produce copies of all financial statements or financial reports generated by or for The Lampo Group, LLC for 2015 to the present.

RESPONSE: Objection. Plaintiff objects to this request because Plaintiff's financial statements or reports are not relevant to the claims or defenses in this case. Plaintiff further objects to this request in that it is a clear abuse of the discovery process, has been lodged for an improper purpose, is harassing, and is overly broad in time. Plaintiff further objects to this request because it seeks Plaintiff's confidential commercial information and should only be produced pursuant to a protective order.

REQUEST FOR PRODUCTION 5:

Please produce all documents evidencing the monthly revenue and profits generated by Lampo's ELP Program for each month spanning September 2015 through September 2019.

RESPONSE: Objection. Plaintiff objects to this request because Plaintiff's monthly revenues and profits are not relevant to the claims or defenses in this case. Plaintiff further objects to this request in that it is a clear abuse of the discovery process, has been lodged for an improper purpose, is harassing, and is overly broad in time. Plaintiff further objects to this request because it seeks Plaintiff's confidential commercial information and should only be produced pursuant to a protective order.

REQUEST FOR PRODUCTION 6:

Please produce all documents used to calculate the revenues and profits generated by Lampo's ELP Program for each month spanning September 2015 through September 2019.

RESPONSE: Objection. Plaintiff objects to this request because Plaintiff's monthly revenues and profits are not relevant to the claims or defenses in this case. Plaintiff further objects to this request in that it is a clear abuse of the discovery process, has been lodged for an improper purpose, is harassing, and is overly broad in time. Plaintiff further objects to this request because it seeks Plaintiff's confidential commercial information and should only be produced pursuant to a protective order.

REQUEST FOR PRODUCTION 7:

Please produce all documents or communications relevant to any of the factual allegations in paragraphs 89–130 of the Plaintiff’s Verified Complaint.

RESPONSE: Plaintiff has produced documents responsive to this request, including without limitation the ELP agreement and all videos made the subject of this action and all comments by the Defendants to those videos that are in Plaintiff’s possession, custody, or control.

REQUEST FOR PRODUCTION 8:

Please produce all documents relevant to each separate category of damages listed in Section C of the Plaintiff’s Rule 26(a)(1) disclosures.

RESPONSE: Objection. Plaintiff has sought some of this information in discovery from the Defendants—as that information is solely within Defendants’ possession, custody, and/or control—but Defendants have objected to producing this information. Accordingly, Plaintiff objects to this request because Defendant has prevented Plaintiff from accessing the documents and information necessary to respond to it. Once Defendant fully and completely responds to Plaintiff’s discovery requests seeking this information, Plaintiff will be in a position to produce additional information and supplement this response. Subject to this objection, Plaintiff has produced documents responsive to this request, including without limitation the ELP agreement and all videos made the subject of this action and all comments by the Defendants to those videos that are in Plaintiff’s possession, custody, or control.

REQUEST FOR PRODUCTION 9:

Please produce all contracts prior to September 2018 between the Plaintiff and any ELP provider or agent who had access to any material that the Plaintiff claims is confidential or proprietary.

RESPONSE: Objection. Plaintiff objects to this request because it seeks information that is not relevant to the claims or defenses in this case. “All” of Plaintiff’s ELP contracts with other ELP providers is irrelevant to this case and the contract at issue here. Plaintiff further objects because this request seeks information that is not proportional to the needs of this case, is unduly burdensome, harassing, and is overly broad in time. Plaintiff further objects to this request because it seeks Plaintiff’s confidential commercial information and should only be produced pursuant to a protective order.

REQUEST FOR PRODUCTION 10:

Please produce all documents indicating the individuals who participated in the Plaintiff’s ELP Program prior to September 2018.

RESPONSE: Objection. Plaintiff objects to this request because it seeks information that is not relevant to the claims or defenses in this case. “All documents” relating to other ELP providers is irrelevant to this case and the contract at issue here. Plaintiff further objects because this request seeks information that is not proportional to the needs of this case, is unduly burdensome, harassing, and is overly broad in time. Plaintiff further objects to this request because it seeks Plaintiff’s confidential commercial information and should only be produced pursuant to a protective order.

REQUEST FOR PRODUCTION 11:

Please produce all documents that Plaintiff intends to introduce as exhibits in its case-in-chief in this matter.

RESPONSE: Objection. Plaintiff objects to this request because it prematurely seeks information that need not be answered until September 14, 2020 pursuant to the Court’s Order. [See Doc. 14, PageID #159.] Subject to this objection, Plaintiff has produced documents responsive to this request, including without limitation the ELP agreement, correspondence

between the parties, and all videos made the subject of this action and all comments by the Defendants to those videos that are in Plaintiff's possession, custody, or control.

REQUEST FOR PRODUCTION 12:

Please produce all documents, items, or things that would establish the identity of persons or entities other than Kevin Paffrath who were given access to Ramsey's allegedly confidential and proprietary information from September 1, 2015, to the present.

RESPONSE: Objection. Plaintiff objects to this request because it seeks information that is not relevant to the claims or defenses in this case. "All documents" relating to other ELP providers and what those providers were provided is irrelevant to this case and the contract at issue here. Plaintiff further objects because this request seeks information that is not proportional to the needs of this case, is unduly burdensome, harassing, and is overly broad in time. Plaintiff further objects to this request because it seeks Plaintiff's confidential commercial information and should only be produced pursuant to a protective order.

REQUEST FOR PRODUCTION 13:

Please produce all documents that would demonstrate that persons or entities other than Kevin Paffrath disclosed or published any of Ramsey's allegedly confidential and proprietary information to any third party.

RESPONSE: Objection. Plaintiff objects to this request because it assumes facts not in existence. Plaintiff objects to this request because it seeks information that is not relevant to the claims or defenses in this case. It is the Defendants' improper disclosure of information that is relevant to this case. Accordingly, Plaintiff objects to this request because it is not proportional to the needs of this case, is unduly burdensome, harassing, an improper fishing expedition and is overly broad in time. Subject to these objections, no documents are responsive to this request.

REQUEST FOR PRODUCTION 14:

Please produce all documents containing allegedly confidential and proprietary information that you contend Kevin Paffrath disclosed in violation of his ELP Agreement.

RESPONSE: Objection. Plaintiff objects to this request because it seeks Plaintiff's confidential commercial information contained within the ELP HUB and should only be produced pursuant to a protective order. Subject to this objection, Plaintiff has previously produced a copy of the "Exposed" video, during which Defendant disclosed Plaintiff's confidential and proprietary information in violation of his ELP Agreement.

REQUEST FOR PRODUCTION 15:

Please produce all documents that demonstrate that the documents responsive to Request for Production 14 derive independent economic value from being generally unknown to others.

RESPONSE: Objection. Plaintiff objects to this request because it seeks Plaintiff's confidential commercial information contained within the ELP HUB and should only be produced pursuant to a protective order. Plaintiff further objects to this request because is not proportional to the needs of the case in that it would require production of every document related to the ELP program, which is unduly broad, burdensome, and unlimited in time.

REQUEST FOR PRODUCTION 16:

Please produce all documents that demonstrate that the documents responsive to Request for Production 14 were disclosed to any other person or entity without any reservation or agreement of confidentiality.

RESPONSE: Objection. Plaintiff objects to this request because it assumes facts not in existence. Plaintiff objects to this request because it seeks information that is not relevant to the claims or defenses in this case. It is the Defendants' improper disclosure of information that is relevant to this case. Accordingly, Plaintiff objects to this request because it is not proportional to

the needs of this case, is unduly burdensome, harassing, an improper fishing expedition and is overly broad in time. Subject to these objections, no documents are responsive to this request.

REQUEST FOR PRODUCTION 17:

Please produce all documents that demonstrate that Kevin Paffrath shared any information that you claim is confidential or proprietary with any third party prior to the Plaintiff terminating Kevin Paffrath's ELP Agreement.

ANSWER: Objection. Plaintiff objects to this request because it prematurely seeks information that need not be answered until after Defendants have fully responded to written discovery. Requiring an answer to this request at this stage of the case given the information requested is an improper attempt to require Plaintiff to marshal the entirety of its evidence before having an opportunity to fully explore its case. Subject to these objections, Plaintiff is unaware of an instance at this time where Defendants shared Plaintiff's confidential information with a third party prior to October 8, 2018.

REQUEST FOR PRODUCTION 18:

Please produce all documents sufficient to identify anyone who has stated that they intend or intended to leave the ELP program in response to the videos related to Ramsey.

RESPONSE: Plaintiff has produced documents responsive to this request, including all videos made the subject of this action and all comments to those videos that are in Plaintiff's possession, custody, or control.

REQUEST FOR PRODUCTION 19:

Please produce all documents used to calculate the revenues and profits of the ELP Program between September 2015 and the present.

RESPONSE: Objection. Plaintiff objects to this request because it is duplicative of Request for Production No. 5. Plaintiff further objects to this request because "all documents used

to calculate” Plaintiff’s revenues and profits are not relevant to the claims or defenses in this case. Plaintiff further objects to this request in that it is a clear abuse of the discovery process, has been lodged for an improper purpose, is harassing, and is overly broad in time. Plaintiff further objects to this request because it seeks Plaintiff’s confidential commercial information and should only be produced pursuant to a protective order.

REQUEST FOR PRODUCTION 20:

Please produce all documents containing statements against interest or admissions concerning the subject matter of this action or the facts and circumstances at issue herein made by Ramsey or any of its agents, employees, or representatives.

RESPONSE: Objection. Plaintiff objects to this request because it is not proportional to the needs of the case in that it seeks “all documents” from Plaintiff and its entire workforce. Accordingly, Plaintiff objects to this request because it is overly broad and unduly burdensome. Subject to these objections, no documents are responsive to this request.

REQUEST FOR PRODUCTION 21:

Please produce all documents that would establish in what way and in what amount you incurred a decrease, reduction, or loss of any business, income, or profits during or after Kevin Paffrath’s alleged conduct and what you did, if anything, to mitigate such decrease, reduction, or loss.

RESPONSE: Plaintiff has produced documents responsive to this request, which include but are not limited to comments posted by individuals in response to the videos at issue in this case as well as the Complaint in this matter and the Agreed Order.

REQUEST FOR PRODUCTION 22:

Please produce all documents that would tend to establish that there were potential applicants that would have but did not sign up for or participate in the Plaintiff's real estate ELP program because of the conduct of Kevin Paffrath alleged in the Plaintiff's Verified Complaint.

RESPONSE: Plaintiff has previously produced documents responsive to this request, which include but are not limited to comments posted by individuals in response to the videos at issue in this case.

REQUEST FOR PRODUCTION 23:

Please produce all documents that would tend to establish that there were ELP Agents, sales leads, or buyers who would have, but did not, close any sale relating to the Plaintiff's real estate ELP program because of the conduct of Kevin Paffrath alleged in the Plaintiff's Verified Complaint,

RESPONSE: Plaintiff has previously produced documents responsive to this request, which include but are not limited to comments posted by individuals in response to the videos at issue in this case.

REQUEST FOR PRODUCTION 24:

Regarding your claim for attorney's fees, please provide all documents indicating what has been billed or invoiced to you by, and what you have paid to, any attorneys or other legal professionals related to this action or the events prior to the filing of this action, including the invoices sent to and paid by you related to this action.

RESPONSE: Objection. Plaintiff objects to this request because it seeks information that is not relevant at this stage of the case and has been lodged for an improper purpose and is harassing. Plaintiff further objects to this request because it clearly seeks information that is protected by the attorney-client privilege and/or work product immunity. Subject to these

objections, Plaintiff will provide the necessary support for an award of attorneys' fees in accordance with Rule 54 of the Federal Rules of Civil Procedure and Local Rule 54.01.

REQUEST FOR PRODUCTION 25:

Please produce all non-privileged documents in your possession generated between August 2018 and the present that contain the word "Paffrath."

RESPONSE: Plaintiff has previously produced documents responsive to this request, which include but are not limited to the ELP agreement, correspondence between the parties, the videos made the subject of this action, and comments posted by individuals in response to the videos at issue in this action.

REQUEST FOR PRODUCTION 26:

Please produce all weekly, monthly, or other periodic statements from your financial accounts (checking, savings, money market, credit union accounts, or other such cash or other financial management accounts) in which you have had any legal or equitable interest from September 1, 2015, to the present.

RESPONSE: Objection. Plaintiff objects to the extent this request is duplicative of prior requests. Plaintiff further objects to this request because Plaintiff's "weekly, monthly, or other periodic statements" from Plaintiff's financial accounts are not relevant to the claims or defenses in this case. Plaintiff further objects to this request in that it is a clear abuse of the discovery process, has been lodged for an improper purpose, is harassing, and is overly broad in time. Plaintiff further objects to this request because it seeks Plaintiff's confidential commercial information and should only be produced pursuant to a protective order.

REQUEST FOR PRODUCTION 27:

Please produce all documents referenced in Plaintiff's Rule 26 Initial Disclosures.

RESPONSE: Plaintiff has previously produced documents referenced in Plaintiff's Rule 26 Initial Disclosures pursuant to the Court's Initial Case Management Order. [Doc. 13, PageID #153.]

Respectfully submitted,

s/ R. Brandon Bundren

E. Todd Presnell (#17521)

R. Brandon Bundren (#30985)

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tpresnell@bradley.com

bbundren@bradley.com

*Attorneys for Plaintiff The Lampo Group, LLC d/b/a
Ramsey Solutions*

CERTIFICATE OF SERVICE

I certify that on October 23, 2019, I served a true and correct copy of the foregoing to counsel of record as follows:

Daniel A. Horwitz (daniel.a.horwitz@gmail.com)

Law Office of Daniel A. Horwitz

Counsel for Defendants

s/ R. Brandon Bundren

R. Brandon Bundren

THE LAMPO GROUP, LLC, et al.

vs.

PAFFRATH, et al.

JACK BOONE GALLOWAY, JR.

October 29, 2019



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<p>1 IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, AT NASHVILLE</p> <hr/> <p>2 THE LAMPO GROUP, LLC, D/B/A 3 RAMSEY SOLUTIONS,</p> <p>4 Plaintiff,</p> <p>5 vs. Case No. 3:18-CV-01402</p> <p>6 KEVIN HELMUT PAFFRATH, THE 7 PAFFRATH ORGANIZATION, and 8 MEETNDONE CORPORATION,</p> <p>9 Defendants.</p> <hr/> <p>10 11 12 13 14 Deposition of: 15 JACK BOONE GALLOWAY, JR. 16 Taken on behalf of the Defendants October 29, 2019</p> <hr/> <p>17 18 19 20 21 22 23 Elite Reporting Services www.elitereportingservices.com 24 Sarah N. Linder, LCR Post Office Box 292382 Nashville, Tennessee 37229 25 (615)595-0073</p>	<p style="text-align: right;">Page 3</p> <p>1 2 I N D E X 3 4 Examination Page By Mr. Horwitz 6</p> <p>5 6 E X H I B I T S 7 8 Exhibit No. 1 Page Plaintiff's Rule 26(a)(1) 12 Initial Disclosures 9 10 Exhibit No. 2 13 E-mail from Brandon Bundren to Daniel Horwitz dated 9/27/2019 Re: Lampo v. Paffrath, et al. 11 12 Exhibit No. 3, Late-Filed 15 Any Document Providing that Jack Galloway Knew that the 13 Plaintiff's Initial Disclosures 14 Were Updated Prior to 10/29/2019</p> <p>15 Exhibit No. 4 32 16 Subpoena and Notice of Deposition to Jack Galloway 17 18 Exhibit No. 5 33 Letter from Brandon Bundren to Daniel Horwitz in Response to 19 Production of Documents to be Produced by Jack Galloway 20 21 Exhibit No. 6 41 Transcript from the YouTube Video Dave Ramsey is Suing Me 22 23 Exhibit No. 7 41 Transcript from the YouTube Video A Message for Dave Ramsey 24 25 Exhibit No. 8 42 Transcript from the YouTube Video Dave Ramsey Exposed</p>
<p style="text-align: right;">Page 2</p> <p>1 2 A P P E A R A N C E S 3 4 5 For the Plaintiff:</p> <p>6 MR. BRANDON BUNDREN MR. THOR Y. URNESS Attorneys at Law 7 Bradley Arant Boult & Cummings, LLP 1600 Division Street, Suite 700 8 Nashville, TN 37203 (615)252-2352 9 Bbundren@bradley.com Turness@bradley.com</p> <p>10 11 For the Defendant:</p> <p>12 MR. DANIEL A. HORWITZ 13 Attorney at Law Law Office of Daniel A. Horwitz 14 1803 Broadway, Suite 531 Nashville, TN 37203 15 (615)739-2888 Daniel.a.horwitz@gmail.com</p> <p>16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 Exhibit No. 9 Page Plaintiff's Responses and Objections 120 3 to Defendant's First Set of Interrogatories and Requests for 4 Production of Documents</p> <p>5 Exhibit No. 10 120 ELP Agreement Between Kevin Paffrath 6 and The Lampo Group</p> <p>7 Exhibit No. 11 120 Verified Complaint</p> <p>8 9 Exhibit No. 12 121 ELP Real Estate Promotional Suite Usage Guide</p> <p>10 11 Exhibit No. 13 121 The Daily Beast Article Titled 12 Spies, Cash, and Fear: Inside Christian Money Guru Dave Ramsey's 13 Social Media Witch Hunt</p> <p>14 15 16 17 18 19 20 21 22 23 24 25</p>

S T I P U L A T I O N S

The deposition of JACK BOONE GALLOWAY, JR., was taken by counsel for the Defendants, at Bradley Arant Boult & Cummings, LLP, 1600 Division Street, Suite 700, Nashville, Tennessee, on October 29, 2019, for all purposes under the Federal Rules of Civil Procedure.

All formalities as to caption, notice, statement of appearance, et cetera, are waived. All objections, except as to the form of the questions, are reserved to the hearing, and that said deposition may be read and used in evidence in said cause of action in any trial thereon or any proceeding herein.

It is agreed that SARAH N. LINDER, LCR, Notary Public and Court Reporter for the State of Tennessee, may swear the witness, and that the reading and signing of the completed deposition by the witness are not waived.

1 A. Yes.

2 Q. Is it fair for anyone reading this transcript after it's complete to assume that you understood a question if you answered it and didn't ask me to clarify it?

6 A. Yes.

MR. HORWITZ: Y'all ready to begin?

(No response.)

BY MR. HORWITZ:

10 Q. Will you please state your full name for the record?

12 A. Jack Boone Galloway, Jr.

13 Q. And where are you employed, sir?

14 A. Ramsey Solutions.

15 Q. Is that also The Lampo Group?

16 A. Lamper -- Lampo Group, d/b/a, Ramsey Solutions.

18 Q. To your knowledge, is that the plaintiff in this matter?

20 A. Yes.

21 Q. So if we refer to The Lampo Group, or the plaintiff, or Ramsey Solutions, we're all talking about the same entity, right?

24 A. Yes.

25 Q. Have you ever been involved in litigation as

* * *

JACK BOONE GALLOWAY, JR., was called as a witness, and having first been duly sworn, testified as follows:

EXAMINATION

QUESTIONS BY MR. HORWITZ:

8 Q. Good morning, Mr. Galloway.

9 A. Good morning.

10 Q. My name is Daniel Horwitz. I represent the defendants in this matter. Just a couple of ground rules before we get started. Have you ever been deposed before?

14 A. No.

15 Q. So when I ask a question, I'm gonna ask that you please let me finish my question and then give your answer to the question. I won't interrupt you; you won't interrupt me, it'll make the court reporter's life a lot easier. If I ask you a question to which the answer is yes or no, I'm gonna ask you to please give an audible response rather than shaking your head yes or no because it's not gonna be able to come down on the transcript. Additionally, if I ask you a question that you don't understand, will you tell me?

1 a witness before?

2 A. No.

3 Q. Never testified at a deposition?

4 A. No.

5 Q. Never testified at a trial?

6 A. No.

7 Q. Have you ever been sued before?

8 A. No.

9 Q. To your knowledge, has The Lampo Group ever been sued before?

11 A. No.

12 Q. How long have you been employed at The Lampo Group?

14 A. 19 years, 4 months.

15 Q. During the past 19 years and 4 months, has The Lampo Group ever been involved in other litigation outside of this matter?

MR. BUNDREN: Objection, foundation. You can answer.

20 THE WITNESS: Okay. Is it okay to change an answer that I gave previously if I -- it's --

MR. BUNDREN: If you need to correct something --

24 THE WITNESS: Okay.

MR. BUNDREN: -- on the record, go ahead.

Page 9

1 **THE WITNESS: It's not -- you asked if we**
2 **had ever been sued. We may have been sued once by a**
3 **radio station in Montana.**
4 BY MR. HORWITZ:
5 Q. Approximately when would that have occurred?
6 **A. 2010.**
7 Q. And what was the nature of that litigation?
8 **A. Radio affiliate contracts.**
9 Q. And that's the only piece of litigation that
10 you're aware of since you've been employed?
11 **A. Yes.**
12 Q. Have you ever sent cease and desist letters
13 to anyone during your employment?
14 **A. I --**
15 MR. BUNDREN: Objection, foundation.
16 BY MR. HORWITZ:
17 Q. You don't know?
18 **A. I do not.**
19 Q. Could you tell me who would know the answer
20 to that?
21 MR. BUNDREN: Objection, speculation.
22 BY MR. HORWITZ:
23 Q. If you know, can you tell me who would know
24 the answer?
25 MR. BUNDREN: Same objection.

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1 BY MR. HORWITZ:
2 Q. You can answer these questions.
3 **THE WITNESS: Do I answer when you**
4 **object?**
5 MR. BUNDREN: Yeah.
6 **THE WITNESS: Okay.**
7 MR. BUNDREN: Unless I tell you not to.
8 **THE WITNESS: It would be Matt Blackburn**
9 **who was our general counsel and is no longer employed**
10 **by the company.**
11 BY MR. HORWITZ:
12 Q. Would anyone else know the answer to that
13 information?
14 MR. BUNDREN: Objection, speculation,
15 foundation.
16 **THE WITNESS: Yes. Dave would be**
17 **familiar with any cease and desist we had sent.**
18 BY MR. HORWITZ:
19 Q. Dave Ramsey?
20 **A. Yes.**
21 Q. Is Dave Ramsey aware of this litigation?
22 **A. Yes.**
23 Q. What does he know about this litigation to
24 your knowledge?
25 MR. BUNDREN: Objection, foundation,

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1 speculation.
2 **THE WITNESS: He knows that we are in**
3 **litigation with Mr. Paffrath over our ELP contract**
4 **and he's aware that I'm here today.**
5 BY MR. HORWITZ:
6 Q. Given these objections, I'm gonna back up and
7 do something that I should have done at the
8 beginning. Sir, I've just handed you a document.
9 Will you read the title of that document to me,
10 please?
11 **A. This part up here (indicating)?**
12 Q. No, the part that says plaintiff's Rule 26.
13 **A. Plaintiff's rules -- plaintiff's Rule**
14 **26(a)(1) initial disclosures.**
15 Q. And will you please read the bolded section
16 A?
17 **A. The --**
18 MR. BUNDREN: We'll -- objection. We'll
19 stipulate to what exhibit -- what section A says.
20 MR. HORWITZ: I'd still like --
21 MR. BUNDREN: You can --
22 MR. HORWITZ: -- to read it for the
23 record.
24 MR. BUNDREN: You can ask him what he
25 knows or if he participated in drafting these

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1 disclosures. That's fair game. But to have him sit
2 here and read the document, if that's how you want to
3 use your seven hours, go right ahead.
4 Go ahead.
5 MR. HORWITZ: Are you done?
6 MR. BUNDREN: Yeah.
7 BY MR. HORWITZ:
8 Q. Will you please read the bolded section A?
9 **A. The name and, if known, the address and**
10 **telephone number of each individual likely to have**
11 **discoverable information along with the subjects of**
12 **that information that the disclosing party may use to**
13 **support its claims or defenses, unless the use would**
14 **be solely for impeachment.**
15 Q. And, sir, would you agree with me that below
16 that section you are not listed?
17 **A. Yes, I would agree. Are you talking about**
18 **anywhere in the document?**
19 Q. I'm talking about on page 1 or 2 under
20 subsection A.
21 **A. I do not see my name on page 1 or 2.**
22 Q. Okay.
23 MR. HORWITZ: I'd like to tender this as
24 Exhibit 1, please.
25 (WHEREUPON, the above-mentioned document

1 was marked as Exhibit Number 1.)
 2 BY MR. HORWITZ:
 3 Q. Sir, I've just handed you another document.
 4 This is an e-mail from your counsel to me. Would you
 5 please read the highlighted portion of that e-mail?
 6 MR. BUNDREN: Go ahead.
 7 **THE WITNESS: Lampo has not listed Mr.**
 8 **Galloway on its Rule 26(a)(1) disclosures; yet, it is**
 9 **willing to produce him for a deposition. Please note**
 10 **that the failure to include Mr. Galloway was an**
 11 **inadvertent mistake. Lampo will supplement its**
 12 **disclosures and include Mr. Galloway who was relevant**
 13 **information -- who has relevant information as he**
 14 **verified the complaint filed in this matter.**
 15 MR. HORWITZ: I'd like to tender this as
 16 Exhibit 2, please.
 17 (WHEREUPON, the above-mentioned document
 18 was marked as Exhibit Number 2.)
 19 BY MR. HORWITZ:
 20 Q. Mr. Galloway, to your knowledge, has the
 21 plaintiff ever updated its Rule 26 disclosures prior
 22 to this deposition taking place?
 23 MR. BUNDREN: Objection, foundation,
 24 relevance, harassing but you can answer.
 25 **THE WITNESS: I do not have knowledge of**

1 **that.**
 2 BY MR. HORWITZ:
 3 Q. Would you have any reason to disagree with me
 4 if I represented to you that it had not?
 5 MR. BUNDREN: Objection, foundation,
 6 personal knowledge, and harassing, but you can
 7 answer, and relevance.
 8 **THE WITNESS: I do not have knowledge of**
 9 **that so I would not disagree.**
 10 BY MR. HORWITZ:
 11 Q. If you come to have knowledge that your --
 12 that the plaintiff's initial disclosures were updated
 13 prior to today's date, will you send any document to
 14 that effect to the court reporter which we'll tender
 15 as Late-Filed Exhibit 3?
 16 MR. BUNDREN: We don't file late-filed
 17 exhibits here so I would object to that. If he --
 18 MR. HORWITZ: Brandon, I'm gonna object
 19 to all the --
 20 MR. BUNDREN: If any exhibits you want to
 21 mark in this deposition, you mark them today;
 22 otherwise, they will not be marked to this
 23 deposition. If you want to seek leave to take his
 24 deposition later, you have more than your ability to
 25 do so. So we would object to that.

1 To the extent you can answer the
 2 question, you can answer.
 3 **THE WITNESS: Please repeat the question.**
 4 BY MR. HORWITZ:
 5 Q. If you come to find that initial disclosures
 6 were updated prior to today's date, will you please
 7 send them to the court reporter and we will have them
 8 filed as Late-Filed Exhibit 3?
 9 **A. Yes.**
 10 MR. BUNDREN: Objection. Same objection.
 11 Go ahead, answer. Let me object first.
 12 **THE WITNESS: Okay.**
 13 MR. BUNDREN: So go ahead and answer the
 14 question.
 15 **THE WITNESS: Yes.**
 16 (WHEREUPON, the above-mentioned document
 17 was designated to be marked as Late-Filed Exhibit
 18 Number 3, when provided.)
 19 MR. HORWITZ: Thank you. And I'm just
 20 gonna place this on the record: This is a time limit
 21 deposition.
 22 MR. BUNDREN: Uh-huh.
 23 MR. HORWITZ: All of these spoken
 24 objections are improper. I'd like to continue with
 25 this and get this done so that we can do so that we

1 can get out of here. How about that?
 2 MR. BUNDREN: I would disagree with you
 3 about the objections being improper. I'm entitled
 4 under the Rules to state my objections for the record
 5 so the Court can consider them. I would like to get
 6 this deposition done too quickly, but we are going to
 7 make our objections and protect the record.
 8 You may continue.
 9 BY MR. HORWITZ:
 10 Q. I mention all of this just so that you know I
 11 don't know what you know because your attorneys
 12 haven't told me. So as part of this deposition,
 13 there may be times that I ask you questions that you
 14 don't know the answer to. So if I ask you a question
 15 that you don't know the answer to, will you tell me?
 16 **A. Yes.**
 17 MR. BUNDREN: Objection, compound, vague,
 18 and ambiguous.
 19 You can answer.
 20 **THE WITNESS: Yes.**
 21 BY MR. HORWITZ:
 22 Q. Additionally, if I ask you a question that
 23 you don't have personal knowledge about, will you
 24 tell me that?
 25 **A. Yes.**

1 Q. And just so that we're operating under the
2 same understanding, what does personal knowledge mean
3 to you?

4 MR. BUNDREN: Objection, calls for a
5 legal conclusion.

6 You can answer.

7 **THE WITNESS: Personal knowledge means I**
8 **was personally involved or had firsthand or**
9 **secondhand knowledge.**

10 BY MR. HORWITZ:

11 Q. If you have secondhand knowledge, will you
12 tell me where you got it from?

13 MR. BUNDREN: Objection to the form.

14 **THE WITNESS: Yes.**

15 BY MR. HORWITZ:

16 Q. Sir, you mentioned a moment ago that Dave
17 Ramsey was aware of this litigation; is that correct?

18 **A. Yes.**

19 Q. Is Dave Ramsey interested in litigation where
20 he is criticized?

21 MR. BUNDREN: Objection to the form,
22 speculation, vague, ambiguous.

23 **THE WITNESS: No.**

24 BY MR. HORWITZ:

25 Q. I've just handed you an article. Will you

1 please read the title of that article?

2 **A. Spies, Cash, and Fear Inside Christian Money**
3 **Guru Dave Ramsey's Social Media Witch Hunt.**

4 Q. Have you ever seen this article before, sir?

5 **A. (Reviews document.) Yes.**

6 Q. And when did you first come to see this
7 article?

8 **A. When it was made public on The Daily Beast.**

9 Q. Was there internal discussion about this
10 article?

11 MR. BUNDREN: Objection, relevance,
12 harassing.

13 **THE WITNESS: Yes.**

14 BY MR. HORWITZ:

15 Q. Did you ever discuss this article with Dave
16 Ramsey?

17 MR. BUNDREN: Same objection.

18 **THE WITNESS: I was in meetings where it**
19 **was discussed and Dave was there. Dave and I did not**
20 **sit down and have one-to-one meetings about this.**

21 BY MR. HORWITZ:

22 Q. Has Dave Ramsey ever pulled a gun out of a
23 bag to try to teach a lesson about gossip?

24 MR. BUNDREN: Objection, harassing, and
25 relevance. We're getting pretty far afield from the

1 claims made in this case. If we need to call the
2 Judge, we will so I wouldn't spend much time on this.

3 You can answer.

4 **THE WITNESS: Yes.**

5 BY MR. HORWITZ:

6 Q. Is it fair to say that Dave Ramsey does not
7 like being criticized online?

8 MR. BUNDREN: Objection, foundation,
9 argumentative, and harassing.

10 **THE WITNESS: He does not dislike it more**
11 **than any other person that I know.**

12 BY MR. HORWITZ:

13 Q. Are you familiar with the allegations made by
14 former employees within this article?

15 MR. BUNDREN: Objection, lack of
16 foundation.

17 **THE WITNESS: Very vaguely. I could not**
18 **tell you what they are sitting here today without**
19 **reading the article.**

20 BY MR. HORWITZ:

21 Q. Well, take a -- take a moment to familiarize
22 yourself with them because I'd like to go through
23 some of them.

24 **A. (Reviews document.) Is there a particular --**
25 **it's a long article. Is there a particular piece of**

1 **it you'd like me to read?**

2 Q. Has Dave Ramsey ever offered a cash bounty
3 for information related to criticism of him online?

4 MR. BUNDREN: Objection.

5 Don't answer the question.

6 We're gonna adjourn the deposition and
7 call the Court at this point. You're free to record
8 and type the -- what we talk about with the Court but
9 I just -- we're -- don't answer the question.

10 MR. HORWITZ: Can you explain the nature
11 of that objection?

12 MR. BUNDREN: Yeah, relevance, harassing.
13 It has nothing to do with this case so we're gonna
14 call the Court and we're gonna see if the Judge
15 thinks it's relevant. And if she does, then we
16 can -- you can proceed and ask him questions but --
17 is that what you want to do?

18 MR. HORWITZ: It's your objection.

19 MR. BUNDREN: I'm instructing him not to
20 answer. So do you want to call the Court? We're
21 happy to do it.

22 MR. HORWITZ: If you'd like to call the
23 Court to sustain that objection --

24 MR. BUNDREN: Hey, this is your -- this
25 is your deposition. If you want to proceed with

1 asking questions about this article that has
2 absolutely nothing to do with this case, then that's
3 what we're gonna have to do. If you want to stop
4 asking questions and start to move on to stuff that's
5 relevant in this case, then we can do that. How
6 would you want to proceed?

7 BY MR. HORWITZ:

8 Q. When did Dave Ramsey first become aware of
9 this litigation to your knowledge?

10 **A. My best guess would be, of the litigation,**
11 **when it was filed and I don't know that date but...**

12 Q. Was this litigation filed at Dave Ramsey's
13 direction?

14 MR. BUNDREN: Objection to the form,
15 speculation, foundation.

16 **THE WITNESS: It was a group decision by**
17 **our executive leadership of which Dave is the CEO.**

18 BY MR. HORWITZ:

19 Q. Was that decision made in a meeting?

20 **A. My recollection of it is poor. My best**
21 **recollection would be that Dave, our general**
22 **counsel -- not the entire group in a board meeting**
23 **but that they would have been made aware of. But the**
24 **decision would have been between Dave, myself, our**
25 **general counsel. It's possible there were other**

1 **people in that conversation but I don't have memory**
2 **of who they would be.**

3 MR. BUNDREN: And I would remind the
4 witness that communications involving the general
5 counsel are privileged and not to be disclosed.

6 **THE WITNESS: Okay. All communication**
7 **included general counsel.**

8 BY MR. HORWITZ:

9 Q. Approximately when did this meeting take
10 place?

11 **A. Shortly before it was filed. I don't know**
12 **the date.**

13 Q. And you were the one who verified the
14 complaint that was filed in this matter; is that
15 correct?

16 **A. Correct.**

17 Q. Who did you talk to at Lampo before verifying
18 the complaint?

19 **A. General counsel. To my knowledge,**
20 **communication was done via e-mail with general**
21 **counsel, myself, and Dave Ramsey.**

22 Q. Is it fair to say that Dave Ramsey is
23 familiar with the allegations in this complaint?

24 MR. BUNDREN: Objection to the form,
25 foundation, speculation.

1 **THE WITNESS: Yes.**

2 BY MR. HORWITZ:

3 Q. Sir, what documents did you review before
4 verifying the complaint?

5 **A. The YouTube videos. And to my knowledge,**
6 **that's -- that's the documents.**

7 Q. Sir, a couple of days ago, did you verify any
8 interrogatory responses in this matter?

9 **A. Yes.**

10 Q. And you verified them under oath; is that
11 correct?

12 **A. Correct.**

13 Q. There's no reason why you would have given a
14 false answer under oath, correct?

15 MR. BUNDREN: Objection, argumentative.

16 **THE WITNESS: Correct.**

17 BY MR. HORWITZ:

18 Q. So these interrogatories are true and correct
19 to the best of your knowledge?

20 MR. BUNDREN: Objection, lack of
21 foundation. The witness hasn't been presented with
22 all the interrogatories that he verified, only a
23 portion of them.

24 Go ahead. You can answer.

25 **THE WITNESS: Correct.**

1 BY MR. HORWITZ:

2 Q. Your answers were also verified on behalf of
3 the entire The Lampo Group, not just your own
4 personal knowledge; is that correct?

5 MR. BUNDREN: Objection to the form,
6 compound.

7 **THE WITNESS: Please re-ask the question.**

8 BY MR. HORWITZ:

9 Q. I'm not trying to confuse you. The
10 verification that you signed, I'm just reading it out
11 loud. I am authorized to make this verification on
12 behalf of the company. These answers are based upon
13 the company's knowledge and are true and correct to
14 the best of my knowledge, information, and belief.

15 **A. Correct.**

16 Q. Does that sound right?

17 **A. Yes.**

18 Q. I'd like to direct your attention to
19 Interrogatory Number 2. It's on the first page of
20 the document that I just handed you. Will you please
21 read -- well, I'll read it for you. The question,
22 the interrogatory, states: Identify all of the
23 business Lampo lost and the name, address, and
24 telephone number of each and every customer, client,
25 or agent you claim to have lost in connection with

1 Lampo's ELP program as a result of defendant's
 2 alleged actions. Did I read that correctly, sir?
 3 **A. Yes.**
 4 Q. Can you flip to the following page and read
 5 the answer that was given?
 6 **A. As a result of the defendant's breach of the**
 7 **ELP agreement, plaintiff would have been -- would**
 8 **have received the \$350 monthly administrative fee for**
 9 **a term of the ELP agreement from the defendant had**
 10 **defendant not breached the ELP agreement.**
 11 **Accordingly, plaintiff seeks as damages the \$350**
 12 **monthly administrative fee for the term of the ELP**
 13 **agreement.**
 14 Q. Would you agree with me that there is no
 15 customer named in that answer?
 16 MR. BUNDREN: Objection, argumentative.
 17 You can answer.
 18 **THE WITNESS: Yes.**
 19 BY MR. HORWITZ:
 20 Q. Would you agree with me that there is no
 21 client named in that answer?
 22 MR. BUNDREN: Objection, argumentative
 23 but you can answer.
 24 **THE WITNESS: Yes.**
 25 BY MR. HORWITZ:

1 Q. Would you agree with me that the only agent
 2 named in that answer is Kevin Paffrath?
 3 **A. I do not see Kevin Paffrath's name in the**
 4 **answer.**
 5 Q. Sir, if I represented to you that the
 6 defendant referenced in your answer was Kevin
 7 Paffrath, would you disagree with me?
 8 **A. I would not disagree.**
 9 Q. Would you agree with me that other than the
 10 defendant being named in that answer there is no
 11 other agent listed in it; is that correct?
 12 **A. Correct.**
 13 Q. So in terms of all of the business that Lampo
 14 claims to have lost in this matter, that does not
 15 include a single customer, does it?
 16 MR. BUNDREN: Objection to the form and
 17 argumentative.
 18 **THE WITNESS: There are not individual**
 19 **customers named in this answer.**
 20 BY MR. HORWITZ:
 21 Q. Do you know of any customers that you lost as
 22 a result of the allegations giving rise to this
 23 litigation?
 24 **A. I do not have a list of names.**
 25 Q. Do you have a single name?

1 **A. No.**
 2 Q. Do you have the name of a lost client as a
 3 result of the allegations giving rise to this matter?
 4 **A. No.**
 5 Q. Do you have any knowledge of any other ELP
 6 agent that you lost as a result of the allegations
 7 giving rise to this matter?
 8 **A. I do not have a list of names. Our brand is**
 9 **built on trust and integrity, and Mr. Paffrath's**
 10 **attacks on YouTube were attacks on our integrity and**
 11 **trust, but I do not have a list of names that made**
 12 **decisions based on that.**
 13 Q. Do you know of any other agent that you lost
 14 as a result of the allegations giving rise to the
 15 facts of this matter?
 16 **A. No.**
 17 Q. Sir, can you please turn back to the first
 18 page of the document that I handed you? I'm gonna
 19 read the question into the record. Identify the
 20 specific amount of damages that you claim --
 21 MR. BUNDREN: I'm sorry, where are you
 22 reading for the record? You said read the question.
 23 MR. HORWITZ: I am. Interrogatory 1.
 24 MR. BUNDREN: Thank you.
 25 BY MR. HORWITZ:

1 Q. Identify the specific amount of damages that
 2 you claim you sustained or are owed for each separate
 3 category of damages listed in section C of the
 4 plaintiff's 26(a)(1) disclosures and describe in
 5 detail how you calculated the amount of damages that
 6 you claim you sustained or are owed with respect to
 7 each category. Did I read that correctly?
 8 **A. Yes.**
 9 Q. Now, a moment ago, you referenced harm to
 10 your company's reputation; is that a fair
 11 characterization?
 12 **A. Yes.**
 13 Q. Will you tell me where in this answer you
 14 claim damage resulting from harm to your company's
 15 reputation?
 16 MR. BUNDREN: Objection to the form,
 17 argumentative, vague, and ambiguous.
 18 **THE WITNESS: (Reviews document.) I do**
 19 **not.**
 20 BY MR. HORWITZ:
 21 Q. It's fair to say it's not listed?
 22 MR. BUNDREN: Objection, argumentative --
 23 **THE WITNESS: Yes.**
 24 MR. BUNDREN: -- calls for a legal
 25 conclusion.

1 BY MR. HORWITZ:

2 Q. Sir, the answer that you verified in response
3 to Interrogatory 1 states that plaintiff seeks all
4 profits gained by the defendants as a result of
5 defendant's wrongful conduct, does it not?

6 MR. BUNDREN: Objection to the form.
7 That's exactly not what it says. The answer is
8 listed under subject to this objection. Above the
9 objection -- or above that are objections.

10 BY MR. HORWITZ:

11 Q. Let's do this: Why don't you read your
12 entire answer to this interrogatory?

13 **A. Answer: Objection. Section C of plaintiff's**
14 **Rule 26(a)(1) disclosures states that plaintiff seeks**
15 **all profits gained by the defendants as a result of**
16 **the defendant's wrongful conduct. Plaintiff has**
17 **sought this information in discovery from the**
18 **defendants but defendants have objected to producing**
19 **this information.**

20 **Accordingly, plaintiff objects to this**
21 **compound interrogatory because defendants have**
22 **prevented plaintiff from accessing the documents and**
23 **information needed to answer it. Once defendants**
24 **fully and completely respond to plaintiff's discovery**
25 **requests seeking this information, plaintiff will be**

1 **in a position to answer this compound interrogatory.**

2 **Subject to this objection, one, plaintiff**
3 **seeks as damages the \$350 monthly administrative fee**
4 **for a term of the ELP agreement which plaintiff would**
5 **have been entitled to receive had defendant not**
6 **breached it. Two, which for the full term of the ELP**
7 **agreement amounts to \$4,200.**

8 **One, Ramsey further seeks to recover punitive**
9 **and/or exemplary damages as allowed by law.**

10 **One, Ramsey further seeks to recover as**
11 **damages its attorneys' fees and costs in connection**
12 **with this action pursuant to section 12 of the ELP**
13 **agreement, pre-judgment and post-judgment interest**
14 **and all costs of court.**

15 Q. I'm interested now in the first paragraph of
16 that answer. Sir, do you have any personal knowledge
17 that the defendants acquired any of your customers as
18 a result of the videos that were published?

19 MR. BUNDREN: Objection to the preface.
20 If you want to ask him if he's aware of that, then
21 that's perfectly fine. But the witness did not
22 verify that portion of the answer which the
23 verification so states. So it's vague, confusing,
24 compound, and irrelevant.
25 You can answer.

1 **THE WITNESS: Do you mind to repeat the**
2 **question?**

3 BY MR. HORWITZ:

4 Q. Do you have any personal knowledge that the
5 defendants acquired any of the plaintiff's customers
6 as a result of the videos that were published?

7 **A. No.**

8 Q. Do you have any personal knowledge the
9 defendants acquired any customers at all as a result
10 of the videos that were published?

11 **A. No.**

12 Q. Do you have any personal knowledge the
13 defendants profited in any regard as a result of the
14 videos that were published?

15 **A. I'm aware that YouTube pays fees to anyone**
16 **who has high traffic on their pages, but I do not**
17 **have personal knowledge of Mr. Paffrath receiving**
18 **money.**

19 Q. Just to clarify, do you have any personal
20 knowledge that Mr. Paffrath received any money as a
21 result of the videos that were published?

22 MR. BUNDREN: Objection, asked and
23 answered.

24 You can answer again.

25 **THE WITNESS: No.**

1 MR. HORWITZ: A little bit of
2 housekeeping. Brandon, I'm just gonna show you this.
3 This is the subpoena --

4 MR. BUNDREN: Sure.

5 MR. HORWITZ: -- and the notice of
6 deposition. I'm just gonna tender it as an exhibit
7 if that's okay.

8 MR. BUNDREN: Yeah.

9 BY MR. HORWITZ:

10 Q. Sir, there were some documents that the
11 notice of --

12 THE REPORTER: One question. I know
13 there was an objection to 3 so are we making this 3
14 or 4?

15 MR. HORWITZ: 4.

16 THE REPORTER: Sorry.

17 (WHEREUPON, the above-mentioned document
18 was marked as Exhibit Number 4.)

19 BY MR. HORWITZ:

20 Q. There were some documents that we had asked
21 you to bring for this deposition. Do you have those
22 with you today?

23 MR. BUNDREN: Objection to the form.

24 BY MR. HORWITZ:

25 Q. Or does your counsel have them with him

1 today?

2 **A. I do not have documents with me today.**

3 MR. HORWITZ: Y'all brought them, though,
4 right?

5 MR. BUNDREN: That's exactly what I
6 handed you and what I e-mailed you before the
7 deposition but, yes, I have an extra copy if you want
8 it.

9 MR. HORWITZ: No. I just want to make
10 the documents an exhibit.

11 MR. BUNDREN: Sure.

12 MR. HORWITZ: And just make sure that
13 this is complete before I tender it as an exhibit.

14 MR. BUNDREN: (Reviews document.) Yes.
15 This is what Mr. Galloway's producing in response to
16 the subpoena.

17 MR. HORWITZ: Okay. I'm going to make
18 these the next exhibit, please.

19 (WHEREUPON, the above-mentioned document
20 was marked as Exhibit Number 5.)

21 BY MR. HORWITZ:

22 Q. Sir, you had mentioned a moment ago that you
23 have no personal knowledge that Mr. Paffrath got any
24 clients as a result of the videos that he publish; is
25 that a fair characterization?

1 **A. Yes.**

2 Q. Do you believe that he got clients as a
3 result of this, the publication of the videos, I
4 mean?

5 MR. BUNDREN: Objection.

6 **THE WITNESS: I do not know.**

7 BY MR. HORWITZ:

8 Q. You have no idea?

9 **A. Correct.**

10 Q. It would be pure speculation?

11 MR. BUNDREN: Objection to the
12 speculation.

13 **THE WITNESS: Yes, it would be.**

14 BY MR. HORWITZ:

15 Q. Sir, have you ever spoken to Kevin Paffrath?

16 **A. No, I have not.**

17 Q. That would include prior to him forming a
18 contractual relationship with your company; is that
19 correct?

20 **A. That's correct.**

21 Q. Do you have any personal knowledge of his
22 intentions with respect to contracting with your
23 company?

24 MR. BUNDREN: Objection to the form,
25 speculation, foundation. You can ask him if it's

1 based on his personal knowledge but I don't think
2 that cures the objections.

3 But if you can answer, go ahead.

4 **THE WITNESS: My personal knowledge would
5 include him verbally saying in a video that he should
6 infiltrate the ELP program.**

7 BY MR. HORWITZ:

8 Q. Okay. But before he contracted with your
9 company, you didn't have any personal knowledge about
10 his intentions, did you?

11 **A. No.**

12 Q. You mentioned that you had watched the videos
13 before filing this compliant; is that correct?

14 **A. Correct.**

15 Q. Would those be the Dave Ramsey Exposed video,
16 the A Message for Dave Ramsey video, and the Dave
17 Ramsey is Suing Me video?

18 **A. Correct.**

19 Q. And you've alleged that there were false
20 statements made within those videos; is that correct?

21 MR. BUNDREN: Objection to the form.

22 **THE WITNESS: Correct.**

23 BY MR. HORWITZ:

24 Q. Sir, what statements to the best of your
25 recollection were false in those videos?

1 MR. BUNDREN: I just want to be clear
2 just for the record that this witness is appearing as
3 a fact witness based on his personal knowledge of the
4 facts contained in this case and not as a corporate
5 representative.

6 But you can answer.

7 **THE WITNESS: He made statements that
8 Dave Ramsey lies; that any numbers that we had used
9 in describing our ELP program had been exaggerated or
10 falsified; that it was a scam; that the quality of
11 the program was terrible.**

12 BY MR. HORWITZ:

13 Q. Would you consider these objectively false
14 facts?

15 MR. BUNDREN: Objection to the form,
16 conclusions, foundation.

17 **THE WITNESS: Yes.**

18 BY MR. HORWITZ:

19 Q. That the quality of program was terrible is
20 an objectively false fact?

21 MR. BUNDREN: Objection to the form.
22 It's a conclusion of law. The witness isn't an
23 attorney.

24 **THE WITNESS: Yes.**

25 BY MR. HORWITZ:

1 Q. In the responses you just gave, are those
2 direct quotes from the videos?
3 **A. They are not direct quotes.**
4 Q. I'm going to hand you some YouTube generated
5 text transcripts.
6 MR. HORWITZ: Brandon, just for the
7 record, these have previously been filed under seal.
8 BY MR. HORWITZ:
9 Q. I'd like you to highlight each specific
10 statement that you claim is false.
11 MR. BUNDREN: I -- first of all, I would
12 object to this because as we've pointed out in our
13 filings, this filing is misleading and incomplete.
14 But if you want the witness to go through this
15 exercise, he is more than welcome to based on his
16 personal knowledge and not as a corporate
17 representative.
18 **THE WITNESS: Go through all three**
19 **documents --**
20 BY MR. HORWITZ:
21 Q. Yes, please.
22 **A. -- highlight any statements I feel like are**
23 **false.**
24 Q. I would like you to highlight the statements
25 that you asserted in your complaint were false and

1 damaging.
2 MR. BUNDREN: Same objection.
3 **THE WITNESS: (Complies.)**
4 MR. BUNDREN: You can take your jacket
5 off if you want.
6 **THE WITNESS: Do you mind if I get a cup**
7 **of coffee?**
8 MR. HORWITZ: Oh, please.
9 MR. BUNDREN: Go off the record? Take a
10 break?
11 MR. HORWITZ: Sure.
12 (Short break.)
13 MR. HORWITZ: Let's go back on the
14 record.
15 BY MR. HORWITZ:
16 Q. Sir, I just asked you to highlight portions
17 of certain video transcripts that you consider false
18 and damaging; is that correct?
19 **A. That's correct.**
20 Q. I'm handing you back the transcript you
21 highlighted from the video entitled Dave Ramsey is
22 Suing Me. Will you please read the portions that you
23 highlighted into the record?
24 MR. BUNDREN: And again, we'd object to
25 this exercise to the extent that any highlights are

1 attempted to make applicable as a corporate rep
2 deposition. This is not what that is.
3 **THE WITNESS: There are no highlights on**
4 **this document.**
5 BY MR. HORWITZ:
6 Q. Do the same thing for the transcript of the
7 video entitled A Message for Dave Ramsey. Will you
8 please read the highlighted portions into the record?
9 MR. BUNDREN: Same objection.
10 **THE WITNESS: Dave hides behind loopholes**
11 **that essentially allow him not to disclose how much**
12 **money he collects as a fee and doesn't really**
13 **actually vet anybody. The vetting process for**
14 **SmartVestors is simply a fee. They pay your company**
15 **for the stamp of approval. We take money from any**
16 **idiot out there that says he's an advisor and then we**
17 **send all of you people to them. A cease and desist**
18 **letter which is basically big company, big corporate**
19 **America stepping on the little guy. My goal is to be**
20 **a consumer advocate. I'm not trying to slap people's**
21 **names and titles to get more views. My sincere goal**
22 **is to share perspective.**
23 BY MR. HORWITZ:
24 Q. Which was the last one?
25 **A. (Indicating.)**

1 Q. Thank you. I can't remember which one I gave
2 you one first.
3 **A. This was the first one.**
4 Q. This is the first. This is the third. Will
5 you please do the same thing with the third?
6 MR. BUNDREN: Same objection.
7 BY MR. HORWITZ:
8 Q. And, sorry, what's the name of the video on
9 that?
10 **A. Dave Ramsey Exposed. I infiltrated the Dave**
11 **Ramsey network not with the intent to expose them**
12 **but, rather, once I was inside and I discovered what**
13 **I saw, the deceit and the lies, I felt compelled to**
14 **come out and expose them. Their vetting process and**
15 **their fee structure is basically one big sales pitch.**
16 **They get cold as ice leads. With 567 agents -- oh,**
17 **wait, 566, that puts Dave Ramsey's passive income at**
18 **2.3 million dollars per year. One, the agents suck**
19 **or, two, Dave Ramsey's cold as ice leads suck or,**
20 **three, Dave Ramsey's just throwing spaghetti against**
21 **the wall to see what'll stick.**
22 MR. HORWITZ: I'd like to make each of
23 these an exhibit, please.
24 **THE WITNESS: Excuse me.**
25 MR. BUNDREN: Individually or --

1 BY MR. HORWITZ:
 2 Q. Oh, I didn't realize you weren't done with
 3 that. I apologize.
 4 **A. Holy smokes, I got a lead from Dave Ramsey.**
 5 **Any poor sap that fills out the Dave Ramsey form is**
 6 **getting 21 phone calls within one week thanks to**
 7 **putting their information on Dave Ramsey's website.**
 8 **And what kind of qualification did anyone get from**
 9 **Dave Ramsey's staff? Nothing. It's simply a**
 10 **hand-off service. Dismal success.**
 11 MR. HORWITZ: I'd like to make the first
 12 one, the Dave Ramsey is Suing Me transcript that he
 13 was asked to highlight, the next exhibit.
 14 (WHEREUPON, the above-mentioned document
 15 was marked as Exhibit Number 6.)
 16 MR. HORWITZ: And the A Message for Dave
 17 Ramsey transcript that he was asked to highlight the
 18 next exhibit.
 19 (WHEREUPON, the above-mentioned document
 20 was marked as Exhibit Number 7.)
 21 MR. BUNDREN: Is that 7?
 22 THE REPORTER: Correct.
 23 MR. HORWITZ: And finally, the Dave
 24 Ramsey Exposed transcript that he was asked to
 25 highlight the next exhibit.

1 (WHEREUPON, the above-mentioned document
 2 was marked as Exhibit Number 8.)
 3 BY MR. HORWITZ:
 4 Q. Sir, I'd like to direct your attention back
 5 to Interrogatory Number 1. Will you please tell me
 6 where in your answer to that interrogatory you claim
 7 that the statements that you just highlighted and
 8 read into the record damaged you?
 9 MR. BUNDREN: Objection, argumentative.
 10 **THE WITNESS: (Reviews document.) I do**
 11 **not see that it does.**
 12 BY MR. HORWITZ:
 13 Q. Would you agree with me if I said that the
 14 plaintiff has not claimed damages based on those
 15 statements?
 16 MR. BUNDREN: Objection to the form,
 17 argumentative.
 18 **THE WITNESS: Yes.**
 19 BY MR. HORWITZ:
 20 Q. With respect to your answer to Interrogatory
 21 2, will you please tell me where in your answer you
 22 claim that Lampo lost business as a result of the
 23 statements that you highlighted?
 24 MR. BUNDREN: Objection, argumentative.
 25 **THE WITNESS: (Reviews document.) I do**

1 **not see that it does.**
 2 BY MR. HORWITZ:
 3 Q. Fair to say that your answer does not reflect
 4 that Lampo lost business as a result of any of the
 5 statements that you highlighted?
 6 MR. BUNDREN: Objection, argumentative.
 7 **THE WITNESS: Yes.**
 8 BY MR. HORWITZ:
 9 Q. Did Lampo lose any business as a result of
 10 the statements that you highlighted?
 11 MR. BUNDREN: Objection. Again, this
 12 individual is not testifying as a Rule 30(b)(6)
 13 witness on damages.
 14 But you can answer.
 15 **THE WITNESS: I do not have personal**
 16 **knowledge of business that was lost.**
 17 BY MR. HORWITZ:
 18 Q. Do you have any secondhand knowledge?
 19 MR. BUNDREN: Same objection.
 20 **THE WITNESS: No.**
 21 BY MR. HORWITZ:
 22 Q. Sir, you verified the complaint that was
 23 filed at the outset of this matter, correct?
 24 **A. Correct.**
 25 MR. BUNDREN: Objection, asked and

1 answered.
 2 BY MR. HORWITZ:
 3 Q. Do you recall asserting that Lampo lost
 4 damages -- or lost business and was damaged by the
 5 statements made in Mr. Paffrath's videos?
 6 MR. BUNDREN: Objection, calls for a
 7 legal conclusion.
 8 You can answer.
 9 **THE WITNESS: Do you have the complaint?**
 10 **I can...**
 11 BY MR. HORWITZ:
 12 Q. I'm asking if you recall it.
 13 MR. BUNDREN: Same objection. I'd ask
 14 that the witness be provided with the document if
 15 he's going to be asked about it.
 16 **THE WITNESS: I do not recall it without**
 17 **the document.**
 18 BY MR. HORWITZ:
 19 Q. On December 3rd, 2018, did you have any
 20 knowledge that The Lampo Group lost business as a
 21 result of the statements that were contained in the
 22 videos that Mr. Paffrath published?
 23 MR. BUNDREN: Objection, calls for a
 24 legal conclusion.
 25 You can answer.

1 **THE WITNESS: No.**
 2 BY MR. HORWITZ:
 3 Q. Sir, I've just handed you a document entitled
 4 ELP agreement. Do you recognize this document?
 5 **A. Yes.**
 6 Q. And what is it?
 7 **A. It is the real estate ELP agreement.**
 8 Q. And tell me what that is.
 9 **A. It is an agreement between a real estate**
 10 **agent and our company that we will send them fans of**
 11 **our company and they will help them buy or sell a**
 12 **home. There is the referral fee sharing outlined and**
 13 **how they will -- some of the boundaries on how they**
 14 **will conduct business, some of the expectations.**
 15 Q. Is this a standard formal contract?
 16 MR. BUNDREN: Objection to form, vague,
 17 and ambiguous.
 18 THE REPORTER: I'm sorry.
 19 MR. BUNDREN: Vague and ambiguous.
 20 BY MR. HORWITZ:
 21 Q. Let me ask that -- I'll withdraw that and ask
 22 it in a different way. Do all ELP agents sign the
 23 same contract?
 24 MR. BUNDREN: Objection to the form,
 25 foundation.

1 **THE WITNESS: Yes.**
 2 BY MR. HORWITZ:
 3 Q. Approximately how many ELP agents have signed
 4 a version of this contract?
 5 MR. BUNDREN: Objection to the form.
 6 We've objected to this information in discovery on
 7 relevance. We've also objected to this information
 8 in that it calls for information that's proprietary
 9 and sensitive of the plaintiff and will not be
 10 provided until a protective order is entered in this
 11 case. So on that basis, we'd ask the witness not
 12 answer the question.
 13 If you want to continue this line of
 14 questioning with respect to those subjects that we've
 15 said are either irrelevant or need a protective
 16 order, then we will -- we can either adjourn the
 17 deposition now and move for a protective order on
 18 those issues or you can move on to other questioning
 19 and we can adjourn the deposition later. It's up to
 20 you.
 21 BY MR. HORWITZ:
 22 Q. Sir, do you dispute that other persons beyond
 23 Kevin Paffrath signed this agreement?
 24 MR. BUNDREN: Objection to the form,
 25 vague and ambiguous.

1 **THE WITNESS: I do not dispute.**
 2 BY MR. HORWITZ:
 3 Q. Without giving me a precise number, would you
 4 agree that many ELP agents have signed this
 5 agreement?
 6 MR. BUNDREN: Objection to the form,
 7 vague and ambiguous.
 8 BY MR. HORWITZ:
 9 Q. Perhaps hundreds, is that possible?
 10 MR. BUNDREN: Objection to the form.
 11 You can answer.
 12 **THE WITNESS: Yes.**
 13 BY MR. HORWITZ:
 14 Q. Perhaps thousands, is that possible?
 15 MR. BUNDREN: Now, we're getting far
 16 afield.
 17 Don't answer the question.
 18 MR. HORWITZ: You're instructing the
 19 witness not to answer that question?
 20 MR. BUNDREN: I'm instructing the witness
 21 not to answer because it implies how many -- at least
 22 how many people are in the ELP program, which the
 23 plaintiff, Lampo Group, considers confidential and
 24 proprietary information. I'm okay with how you've
 25 done it so far, but if you are insisting on an answer

1 to that question, then we can either adjourn the
 2 deposition now or you can continue. Please let me
 3 know.
 4 MR. HORWITZ: I'm just curious why
 5 perhaps hundreds was a proper question but perhaps
 6 thousands was an improper question.
 7 MR. BUNDREN: Because I'm trying not to
 8 be unreasonable here and I'm trying to let you go as
 9 far as you can without breaching confidentiality on
 10 behalf of The Lampo Group.
 11 MR. HORWITZ: Let me do this: I'm gonna
 12 ask the question again. I'm gonna let you instruct
 13 the witness not to answer and then we'll move on.
 14 How about that?
 15 MR. BUNDREN: Is it your -- are you
 16 intending to ask the question to elicit an answer?
 17 MR. HORWITZ: No. I'm gonna let you
 18 instruct him not to answer.
 19 MR. BUNDREN: Okay. Well, then we'll
 20 move for a protective order on this issue.
 21 MR. HORWITZ: I'm trying to get through
 22 this deposition. Do you --
 23 MR. BUNDREN: Very well.
 24 MR. HORWITZ: -- understand what I'm
 25 trying to do there?

1 MR. BUNDREN: I understand.
 2 BY MR. HORWITZ:
 3 Q. Is it possible that thousands of ELPs agents
 4 have signed this agreement?
 5 MR. BUNDREN: For the reasons I just
 6 stated on the record, I will instruct the witness not
 7 to answer. I will -- we will -- at the end of the
 8 deposition, we will move for a protective order on
 9 this issue promptly.
 10 MR. HORWITZ: Let's move on.
 11 BY MR. HORWITZ:
 12 Q. Sir, will you please turn to page 6 of the
 13 agreement ELP?
 14 **A. (Complies.)**
 15 Q. Will you please read 11(g) for me into the
 16 record?
 17 **A. Maintain open lines of communication and be**
 18 **available for regular calls with Ramsey's team, which**
 19 **in no event shall be less frequent than once per**
 20 **quarter.**
 21 Q. Sir, to your knowledge, how many phone calls
 22 did Mr. Paffrath have with Lampo after executing the
 23 ELP agreement?
 24 MR. BUNDREN: Objection to the form.
 25 You can answer.

1 **THE WITNESS: I do not know.**
 2 BY MR. HORWITZ:
 3 Q. Was it more than one?
 4 MR. BUNDREN: Objection to the form. The
 5 witness says he does not know.
 6 BY MR. HORWITZ:
 7 Q. (Indicating.)
 8 **A. I do not know.**
 9 Q. Sir, do you have any personal knowledge that
 10 Mr. Paffrath was not available more than once per
 11 quarter?
 12 MR. BUNDREN: Objection to the form.
 13 This witness has asked and answered a variation of
 14 this question. He said he did not know how many Mr.
 15 Paffrath were on with the defendants -- or with the
 16 plaintiff.
 17 To the extent you can answer the
 18 question, go ahead.
 19 **THE WITNESS: My understanding at the**
 20 **time of the complaint was that he was unavailable for**
 21 **calls required by the contract. Between the signing**
 22 **of the contract and receiving referrals, he was not**
 23 **agreeable to the commitment of time spent with one of**
 24 **our representatives.**
 25 BY MR. HORWITZ:

1 Q. Sir, I'm gonna ask the question again. Do
 2 you have any personal knowledge that Mr. Paffrath was
 3 not available more than once per quarter after
 4 signing the ELP agreement?
 5 MR. BUNDREN: Objection, asked and
 6 answered.
 7 You can answer again.
 8 **THE WITNESS: My personal knowledge is**
 9 **not directly from speaking with Mr. Paffrath or his**
 10 **representative, Mitch Riddle, but it was that he was**
 11 **not agreeable to the coaching and the calls that was**
 12 **required and --**
 13 BY MR. HORWITZ:
 14 Q. Sir, I'm not trying to confuse you. I'm just
 15 trying to figure out what you know personally. Do
 16 you have any personal knowledge that Mr. Paffrath was
 17 not available more than once per quarter?
 18 MR. BUNDREN: And do -- objection, asked
 19 and answered, unduly repetitious, and now it's
 20 becoming harassing but you can answer.
 21 **THE WITNESS: My understanding earlier of**
 22 **personal knowledge was first or secondhand and I**
 23 **would describe my knowledge as secondhand.**
 24 BY MR. HORWITZ:
 25 Q. Do you have any firsthand knowledge that Mr.

1 Paffrath was not available for phone calls more than
 2 once per quarter?
 3 MR. BUNDREN: Objection, asked and
 4 answered, unduly repetitious, and harassing.
 5 You can answer.
 6 **THE WITNESS: No.**
 7 BY MR. HORWITZ:
 8 Q. Sir, you've alleged in your complaint that
 9 Mr. Paffrath was not available for calls with a
 10 relationship coach; is that correct?
 11 MR. BUNDREN: Objection to the form.
 12 This is not Mr. Galloway's complaint but you can
 13 answer.
 14 **THE WITNESS: That is correct.**
 15 BY MR. HORWITZ:
 16 Q. Mr. Galloway, I'm handing you a document.
 17 Will you please read the title of that document.
 18 **A. The Lampo Group, LLC --**
 19 Q. No, the part that says verified complaint,
 20 please. Just is that your verified complaint?
 21 **A. Yes, it is.**
 22 Q. Will you turn to the final page of that
 23 complaint?
 24 **A. (Complies.)**
 25 Q. Can you read me that, please?

1 A. I, Jack Galloway, being duly sworn make oath
2 and verify that I am an executive vice president of
3 The Lampo Group, LLC, d/b/a, Ramsey Solutions, the
4 plaintiff in this action; that I have read the
5 foregoing verified complaint and I have personal
6 knowledge of the factual allegations set forth
7 therein, unless otherwise indicated, and that the
8 same are true and correct to the best of my
9 knowledge.

10 Q. Fair to say that you're the one that signed
11 that?

12 A. Yes.

13 Q. Sir, will you please read paragraph 49 of
14 your verified complaint?

15 A. Paffrath, however, refused to meaningful --
16 to meaningfully participate in the calls with his
17 client relationship coach.

18 Q. In the ELP agreement, can you identify where
19 Mr. Paffrath agreed to participate in calls with a
20 client relationship coach?

21 MR. BUNDREN: Objection, calls for a
22 legal conclusion.

23 You can answer.

24 THE WITNESS: I would need to spend a few
25 minutes with this.

1 BY MR. HORWITZ:

2 Q. Is a relationship coach mentioned in that
3 contract, sir?

4 A. I would need to read the agreement again.

5 Q. Please do.

6 A. Okay. (Reviews document.) The only mention
7 I see is in 11(g): Maintain open lines of
8 communication and be available for regular calls with
9 Ramsey's team, which in no event shall be less
10 frequent than once per quarter.

11 Q. Did the provision that you just read include
12 mention of a relationship coach, sir?

13 MR. BUNDREN: Objection, argumentative.

14 THE WITNESS: No.

15 BY MR. HORWITZ:

16 Q. Would you agree that no provision of the
17 contract that you have alleged that Mr. Paffrath
18 breached contains mention of a relationship coach?

19 MR. BUNDREN: Objection, argumentative.

20 THE WITNESS: I agree.

21 BY MR. HORWITZ:

22 Q. Sir, will you please turn to page 5 of the
23 contract?

24 A. Is that this page?

25 Q. Yes.

1 A. Okay.

2 Q. Will you please read section 10 for me which
3 continues on the page afterward?

4 A. The term of this agreement shall be one year
5 from the date hereof. The agreement will renew
6 automatically for successive one-year terms unless
7 either party gives a notice of its intention that the
8 agreement shall not be renewed at the end of its then
9 current term. Either party may terminate this
10 agreement without cause at anytime. The provisions
11 of Section 15, indemnification and payment
12 obligations of this agreement, will survive any such
13 expiration or termination of this agreement.

14 Q. Sir, to your knowledge did either party to
15 this contract terminate this agreement?

16 A. Yes.

17 Q. And who was that?

18 A. The Lampo Group.

19 Q. When did they terminate the agreement?

20 A. My best estimate is mid to late November
21 2018.

22 Q. If I represented to you that the date was
23 October 8th, would you have reason to disagree with
24 me?

25 A. I would not have reason to disagree.

1 Q. After this agreement was terminated, The
2 Lampo Group no longer had any obligations to Mr.
3 Paffrath; is that correct?

4 MR. BUNDREN: Objection to the form, asks
5 for a legal conclusion.

6 You can answer.

7 THE WITNESS: That is correct.

8 BY MR. HORWITZ:

9 Q. After the termination of this agreement, Mr.
10 Paffrath no longer had any obligations to The Lampo
11 Group; is that correct?

12 MR. BUNDREN: Objection to the form,
13 calls for a legal conclusion but you can answer.

14 THE WITNESS: There are parts of the
15 contract that survive termination of the contract.

16 BY MR. HORWITZ:

17 Q. And which parts are those, sir?

18 A. The provisions of section 15, indemnification
19 and payment obligations of this agreement, will
20 survive any such expiration or termination of this
21 agreement.

22 Q. Is that section 15; is that correct?

23 A. I was reading from the top of page 5, I
24 believe, section 10, term renewal, termination -- the
25 last sentence of term renewal, termination. Here

1 (indicating).
 2 Q. But section 15 is the one that's mentioned;
 3 is that correct?
 4 **A. That's correct.**
 5 Q. Is section 4 mentioned?
 6 MR. BUNDREN: Objection --
 7 **THE WITNESS: No.**
 8 MR. BUNDREN: -- to the form, calls for a
 9 legal conclusion.
 10 MR. HORWITZ: Did you get the answer?
 11 **THE WITNESS: No.**
 12 THE REPORTER: (Nods head affirmatively.)
 13 BY MR. HORWITZ:
 14 Q. Is section 6 mentioned?
 15 MR. BUNDREN: Same objection.
 16 **THE WITNESS: No.**
 17 BY MR. HORWITZ:
 18 Q. Can you please turn to page 4 of the
 19 agreement. Will you please read section 4 to me?
 20 **A. I may not be on that page, section -- you**
 21 **said page 4, section 4?**
 22 Q. Yes, please.
 23 **A. One, two, three, four. Section 4: No**
 24 **publicity or license other than as expressly provided**
 25 **herein. Neither party shall make any public**

1 **statement, press release, or marketing material that**
 2 **uses the other's name, likeness, brand, or associated**
 3 **marks without the expressed written permission of the**
 4 **other.**
 5 Q. That says neither party; is that correct?
 6 **A. Yes.**
 7 Q. And when do the parties' obligations to one
 8 another under this provision end?
 9 MR. BUNDREN: Objection to the form,
 10 calls for a legal conclusion.
 11 You can answer.
 12 **THE WITNESS: I do not -- I do not know.**
 13 BY MR. HORWITZ:
 14 Q. After the agreement was terminated, did
 15 either party have any obligations to one another
 16 under this provision?
 17 MR. BUNDREN: Objection to the form,
 18 calls for a legal conclusion.
 19 You --
 20 **THE WITNESS: I do not know.**
 21 BY MR. HORWITZ:
 22 Q. Is it your position that Mr. Paffrath
 23 breached this provision of the agreement after it was
 24 terminated?
 25 MR. BUNDREN: Objection to the form.

1 **THE WITNESS: Yes.**
 2 BY MR. HORWITZ:
 3 Q. And why is that?
 4 **A. Your question was did he breach this after**
 5 **the contract?**
 6 Q. I'm trying to figure out when you think the
 7 obligations under section 4 end.
 8 MR. BUNDREN: Objection to the form.
 9 That's a compound question and calls for a legal
 10 conclusion. And this witness is not the corporate
 11 representative on that issue because there hasn't
 12 been a corporate representative notice served.
 13 But you can answer to the extent you can.
 14 **THE WITNESS: I do not have the answer to**
 15 **when that obligation ends based on this contract.**
 16 BY MR. HORWITZ:
 17 Q. Is it your position that Kevin Paffrath is
 18 prohibited from mentioning Dave Ramsey's name for
 19 eternity?
 20 MR. BUNDREN: Objection. That's on the
 21 same basis I stated in the previous question.
 22 You --
 23 **THE WITNESS: No.**
 24 BY MR. HORWITZ:
 25 Q. So when does his obligation end?

1 MR. BUNDREN: Same objection.
 2 **THE WITNESS: I do not know.**
 3 BY MR. HORWITZ:
 4 Q. Sir, will you please read section 6 to me?
 5 **A. Section 6, confidential information: In the**
 6 **event Ramsey shares any confidential, proprietary, or**
 7 **other sensitive information with ELP (although such**
 8 **sharing is not required by this agreement) ELP agrees**
 9 **not to use for its own benefit or the benefit of**
 10 **third parties, copy or reverse engineer any**
 11 **proprietary or confidential information of Ramsey.**
 12 **Confidential information shall include any client**
 13 **list, vendor list, consumer customer list, ELP list,**
 14 **business plans, computer programs, developing**
 15 **products, Ramsey internal reports, marketing**
 16 **strategies, metrics, marketing data, or other**
 17 **information not available to the general public,**
 18 **whether communicated in writing, electronically, or**
 19 **orally.**
 20 Q. Sir, does any portion of the provision that
 21 you just read me provide for agents to return
 22 confidential information after the agreement
 23 concludes?
 24 MR. BUNDREN: Objection, asks -- calls
 25 for a legal conclusion.

1 **THE WITNESS: No, it does not.**
 2 BY MR. HORWITZ:
 3 Q. And this is the same ELP agreement that you
 4 previously indicated that perhaps hundreds of ELP
 5 agents have signed; is that correct?
 6 **A. That is correct.**
 7 **This bother you (indicating)?**
 8 Q. (Shakes head negatively.)
 9 **A. Okay.**
 10 MR. BUNDREN: If we were on video, you
 11 couldn't do that.
 12 **THE WITNESS: All right.**
 13 BY MR. HORWITZ:
 14 Q. This is not section 15 of the agreement; is
 15 that correct?
 16 MR. BUNDREN: Objection, vague and
 17 ambiguous.
 18 **THE WITNESS: I don't understand the**
 19 **question. What is not section 15?**
 20 BY MR. HORWITZ:
 21 Q. The top part that we're talking about, this
 22 is section 6, not section 15; is that correct?
 23 **A. That is correct.**
 24 Q. And we previously discussed that section 15
 25 will survive the expiration or termination of this

1 agreement, do you remember that?
 2 **A. Yes.**
 3 Q. When does this provision -- when do the --
 4 withdrawn. When does an ELP agent's obligations
 5 under this section conclude?
 6 MR. BUNDREN: Objection, calls for a
 7 legal conclusion.
 8 You can answer it if you understand.
 9 **THE WITNESS: I do not know.**
 10 BY MR. HORWITZ:
 11 Q. Do you take the position that ELP agents have
 12 an obligation under this provision after the
 13 agreement terminates?
 14 MR. BUNDREN: Again, objection, calls for
 15 a legal conclusion and this witness is not being put
 16 forth as a corporate representative on these issues
 17 but you can answer.
 18 **THE WITNESS: Will you re-ask the**
 19 **question?**
 20 BY MR. HORWITZ:
 21 Q. Sure. Do you take any position as to whether
 22 an ELP agent has any obligations under this provision
 23 after the agreement is terminated?
 24 MR. BUNDREN: Same objection.
 25 **THE WITNESS: Yes.**

1 BY MR. HORWITZ:
 2 Q. And when do those obligations end?
 3 **A. I do not --**
 4 MR. BUNDREN: Objection to the form, the
 5 same objection.
 6 **THE WITNESS: I do not know.**
 7 BY MR. HORWITZ:
 8 Q. You don't know but the answer is yes?
 9 MR. BUNDREN: The same objection.
 10 **THE WITNESS: Correct.**
 11 BY MR. HORWITZ:
 12 Q. Would you agree that there is no section of
 13 this agreement that provides that section 6 will
 14 survive expiration or termination of this agreement?
 15 MR. BUNDREN: Objection, calls for a
 16 legal conclusion.
 17 **THE WITNESS: I agree.**
 18 BY MR. HORWITZ:
 19 Q. Would you agree that no provision of this
 20 agreement provides that section 4 will survive any
 21 such expiration or termination of this agreement?
 22 MR. BUNDREN: Objection, calls for a
 23 legal conclusion.
 24 **THE WITNESS: I agree.**
 25 BY MR. HORWITZ:

1 Q. Would you agree that this agreement does
 2 provide that section 15 survives expiration or
 3 termination of this agreement?
 4 MR. BUNDREN: Same objection.
 5 **THE WITNESS: I agree.**
 6 BY MR. HORWITZ:
 7 Q. So section 15 does survive and section 4 and
 8 6 do not; is that correct?
 9 MR. BUNDREN: Objection, legal
 10 conclusion; also unduly repetitious and has been
 11 asked and answered.
 12 You can answer.
 13 **THE WITNESS: I agreed earlier that I did**
 14 **not see that they -- that it was stated here that**
 15 **they did survive.**
 16 BY MR. HORWITZ:
 17 Q. Do you still agree with that?
 18 MR. BUNDREN: Objection to the form, same
 19 objection.
 20 **THE WITNESS: Yes.**
 21 BY MR. HORWITZ:
 22 Q. Sir, will you please turn to page 1 of the
 23 agreement?
 24 **A. (Complies.)**
 25 Q. Who is the managing broker listed on page 1

1 of this agreement?
 2 **A. Kevin Paffrath.**
 3 Q. I'm sorry, I'm talking about the managing
 4 broker.
 5 MR. BUNDREN: Objection to the form,
 6 asked and answered.
 7 **THE WITNESS: It says -- I see ELP, Kevin**
 8 **Paffrath; firm name, Meet Kevin; managing broker,**
 9 **Kevin Paffrath.**
 10 BY MR. HORWITZ:
 11 Q. I apologize. You're right. I was unclear.
 12 Do you see the section that says referring broker
 13 information?
 14 **A. Yes.**
 15 Q. What is the firm listed there?
 16 **A. The Lampo Group, Inc., d/b/a, Ramsey**
 17 **Solutions.**
 18 Q. And who is the managing broker listed in that
 19 section?
 20 **A. David L. Ramsey.**
 21 Q. That's David L. Ramsey the human being; is
 22 that correct?
 23 **A. That is correct.**
 24 Q. Tell me why David L. Ramsey the human being
 25 is on this contract.

1 MR. BUNDREN: Objection to the form,
 2 speculation, lack of foundation.
 3 You can answer it if you understand.
 4 **THE WITNESS: He is the managing broker.**
 5 BY MR. HORWITZ:
 6 Q. Does he receive referral fees?
 7 MR. BUNDREN: Objection to the form, lack
 8 of foundation.
 9 BY MR. HORWITZ:
 10 Q. Or compensation of any kind when ELP agents
 11 make sales pursuant to this agreement?
 12 MR. BUNDREN: Same objection.
 13 **THE WITNESS: Not directly. Referral**
 14 **fees are received by the company.**
 15 BY MR. HORWITZ:
 16 Q. But he profits from them; is that correct?
 17 MR. BUNDREN: Objection to the form,
 18 asked and answered.
 19 **THE WITNESS: Yes.**
 20 BY MR. HORWITZ:
 21 Q. Is it fair to say that you might know
 22 something about how he is compensated --
 23 MR. BUNDREN: Objection to the form.
 24 BY MR. HORWITZ:
 25 Q. -- with respect to sales made pursuant to

1 this agreement?
 2 MR. BUNDREN: Objection to the form,
 3 vague, and ambiguous, speculation, lack of
 4 foundation.
 5 **THE WITNESS: Do you mind to re-ask that**
 6 **question?**
 7 BY MR. HORWITZ:
 8 Q. Does David L. Ramsey the human being know
 9 anything about how he receives compensation arising
 10 from sales made pursuant to this agreement?
 11 MR. BUNDREN: Same objection.
 12 **THE WITNESS: Yes.**
 13 BY MR. HORWITZ:
 14 Q. Would you agree that how Dave Ramsey the
 15 human being receives referral fees is at issue in
 16 this litigation?
 17 MR. BUNDREN: Objection to the form,
 18 speculation, calls for a legal conclusion, lack of
 19 foundation.
 20 You can answer.
 21 **THE WITNESS: Re-ask the question.**
 22 BY MR. HORWITZ:
 23 Q. Would you agree that how Dave -- David L.
 24 Ramsey the human being receives referral fees is at
 25 issue in this litigation?

1 MR. BUNDREN: Same objection.
 2 **THE WITNESS: No.**
 3 BY MR. HORWITZ:
 4 Q. You would not agree with that?
 5 **A. No.**
 6 Q. Sir, do you recall highlighting a statement
 7 in the transcript earlier related to loophole laws?
 8 **A. Yes.**
 9 Q. To the best of your recollection, what was
 10 that statement about?
 11 **A. That Dave Ramsey uses a loophole in the law**
 12 **to receive compensation without disclosure.**
 13 Q. And you highlighted that statement as one
 14 that you contend was false and damaging; is that
 15 correct?
 16 **A. That is correct.**
 17 Q. Is that allegation at issue in this
 18 litigation?
 19 MR. BUNDREN: Objection to the form,
 20 calls for a legal conclusion.
 21 **THE WITNESS: I don't understand what you**
 22 **mean by at issue.**
 23 BY MR. HORWITZ:
 24 Q. Do the parties dispute anything related to
 25 that statement?

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1 MR. BUNDREN: Objection to form, calls
2 for a legal conclusion.
3 **THE WITNESS: Yes.**
4 BY MR. HORWITZ:
5 Q. Does Dave Ramsey know anything about the
6 referral fee arrangement that is reflected in this
7 agreement?
8 MR. BUNDREN: Objection to the form,
9 speculation, lack of foundation.
10 **THE WITNESS: Yes.**
11 BY MR. HORWITZ:
12 Q. Please turn to section 3 of the agreement.
13 Sorry, page 3 of the agreement, section 1, please.
14 Will you read that first sentence to me?
15 **A. Section 1, referral agreement: Ramsey agrees**
16 **to provide ELP, through its broker, with referral**
17 **services within ELP's assigned territory as defined**
18 **and determined exclusively by Ramsey.**
19 Q. Would you agree that that is Ramsey's
20 obligation under this agreement?
21 MR. BUNDREN: Objection to form, calls
22 for a legal conclusion.
23 **THE WITNESS: Yes.**
24 BY MR. HORWITZ:
25 Q. Sir, to your knowledge, did Ramsey provide

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1 ELP through its broker with referral services within
2 ELP's assigned territory as defined and determined
3 exclusively by Ramsey?
4 MR. BUNDREN: Objection to the form,
5 vague and ambiguous.
6 **THE WITNESS: No.**
7 BY MR. HORWITZ:
8 Q. Sir, you've alleged that Mr. Paffrath
9 disclosed trade secrets; is that correct?
10 MR. BUNDREN: Objection to the form. Mr.
11 Galloway did not allege anything. The complaint is
12 filed on behalf of the plaintiff in this matter and
13 Mr. Galloway is not the corporate representative.
14 To the extent you can answer, go ahead.
15 **THE WITNESS: Trade secrets and**
16 **proprietary, confidential information.**
17 BY MR. HORWITZ:
18 Q. And what was that information?
19 **A. He showed on video our ELP hub where various**
20 **information about other in- -- other agents, their**
21 **success, lead data. Those types of things are**
22 **displayed.**
23 Q. Was Lampo damaged by the disclosure of that
24 information?
25 MR. BUNDREN: Objection to the form,

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1 calls for a legal conclusion.
2 You can answer.
3 **THE WITNESS: I do not know.**
4 BY MR. HORWITZ:
5 Q. If I asserted that Lampo was not damaged by
6 the disclosure of that information, would you have
7 reason to disagree with me?
8 MR. BUNDREN: Objection to the form.
9 That's argumentative. And I wasn't aware that you
10 were gonna testify in this case. And speculation as
11 to what you're thinking and calls for a legal
12 conclusion, but you can answer.
13 **THE WITNESS: Your question was would I**
14 **disagree that we were harmed?**
15 BY MR. HORWITZ:
16 Q. Do you have -- let me withdraw the question.
17 Do you have any personal knowledge that Lampo was
18 harmed by the disclosure of that information?
19 MR. BUNDREN: Objection to the form,
20 calls for a legal conclusion.
21 You can answer.
22 **THE WITNESS: No.**
23 BY MR. HORWITZ:
24 Q. Sir, I'd like to direct your attention back
25 to Interrogatory Number 1. Sir, would you agree with

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1 me that Lampo does not assert in its answer to
2 Interrogatory 1 that it was damaged by the disclosure
3 of the confidential information and trade secrets
4 that we were just discussing?
5 MR. BUNDREN: Objection to the form,
6 calls for a legal conclusion.
7 **THE WITNESS: (Reviews document.) I**
8 **would agree.**
9 BY MR. HORWITZ:
10 Q. Sir, would you agree that in Lampo's response
11 to Interrogatory 2 Lampo has not indicated that it
12 lost any business as a consequence of the disclosure
13 of the confidential information and trade secrets
14 that Lampo claims were disclosed by Kevin Paffrath?
15 MR. BUNDREN: Objection to the form,
16 calls for a legal conclusion.
17 **THE WITNESS: I see that it lists the**
18 **\$350 monthly administrative fee for a total of**
19 **\$4,200.**
20 BY MR. HORWITZ:
21 Q. My question was whether or not Lampo has in
22 its response to Interrogatory Number 2 indicated that
23 it lost business as a result of the disclosure of
24 confidential information or trade secrets by Kevin
25 Paffrath?

1 MR. BUNDREN: Objection to the form,
2 calls for a legal conclusion, also asked and
3 answered.
4 **THE WITNESS: I do not disagree.**
5 BY MR. HORWITZ:
6 Q. Can you just read the answer to Interrogatory
7 Number 2 again?
8 MR. BUNDREN: Objection to the form, been
9 asked and answered. The witness has already read it.
10 But, okay, you can do it again.
11 **THE WITNESS: So Interrogatory 2.**
12 **Answer: As a result of the defendant's breach of the**
13 **ELP agreement, plaintiff would have received the \$350**
14 **monthly administrative fee for the term of the ELP**
15 **from the defendant had defendant not breached the ELP**
16 **agreement. Accordingly, plaintiff seeks as damages**
17 **the \$350 monthly administrative fee for the term of**
18 **the agreement.**
19 BY MR. HORWITZ:
20 Q. Would you agree with me that Lampo has not
21 asserted that it lost any business as a result of the
22 disclosure of a trade secret?
23 MR. BUNDREN: Objection, calls for a
24 legal conclusion and it's argumentative.
25 **THE WITNESS: I agree that it's not in**

1 **that answer.**
2 BY MR. HORWITZ:
3 Q. Would you agree with me that the answer also
4 does not assert that Lampo lost any business as a
5 result of the disclosure of confidential information?
6 MR. BUNDREN: Same objection.
7 **THE WITNESS: I agree.**
8 BY MR. HORWITZ:
9 Q. Sir, in the verified complaint that you
10 verified, you indicated that trade secrets and
11 confidential information were disclosed to more than
12 a hundred thousand people; is that correct?
13 **A. That is correct.**
14 Q. Would you agree that -- withdrawn. Despite
15 more than a hundred thousand people having been given
16 access to the information that you claim was
17 confidential or a trade secret, would you agree that
18 Lampo has not asserted that it lost any business?
19 MR. BUNDREN: Objection to the form,
20 calls for a legal conclusion and vague.
21 You can answer.
22 **THE WITNESS: I would agree that it's not**
23 **asserted. I do not say that it's untrue, it's an**
24 **untrue statement. 100,000 people saw our proprietary**
25 **software and we don't know what damage may or may not**

1 **have occurred from that or will.**
2 BY MR. HORWITZ:
3 Q. Sir, you verified the responses to the
4 interrogatories; is that correct?
5 **A. That's right.**
6 MR. BUNDREN: Objection to the form. He
7 verified some of the answers.
8 BY MR. HORWITZ:
9 Q. Did you provide complete responses?
10 MR. BUNDREN: Objection to the form.
11 Again, he verified some of the answers which we've
12 articulated in the verification.
13 You can answer.
14 **THE WITNESS: I did -- I verified**
15 **answers.**
16 BY MR. HORWITZ:
17 Q. Did you provide complete responses?
18 MR. BUNDREN: Objection to the form, same
19 objection.
20 **THE WITNESS: By complete responses, do**
21 **you mean did I write the answers?**
22 BY MR. HORWITZ:
23 Q. I'm asking if you withheld any information
24 that was responsive to the interrogatories?
25 **A. No.**

1 MR. HORWITZ: Do y'all want to take a
2 break for lunch? Now is an okay time to do it.
3 MR. BUNDREN: Sure. How long do you want
4 to take?
5 MR. HORWITZ: However long.
6 **THE WITNESS: 20 minutes, 30 minutes?**
7 MR. BUNDREN: 30 minutes, how about that?
8 MR. HORWITZ: Sure.
9 (Lunch break.)
10 MR. HORWITZ: Let's go back on the
11 record.
12 BY MR. HORWITZ:
13 Q. Sir, do you still have the ELP agreement in
14 front of you?
15 **A. I do.**
16 Q. If we can go back to page 5, section 10,
17 please. This provision says either party may
18 terminate this agreement without cause at any time,
19 does it not?
20 **A. It does.**
21 Q. And you agree that Lampo was the party that
22 terminated this agreement; is that correct?
23 MR. BUNDREN: Objection, asked and
24 answered.
25 **THE WITNESS: That is correct.**

1 BY MR. HORWITZ:
 2 Q. Would you agree that this contract could have
 3 been terminated at any moment including the first day
 4 that it was executed?
 5 MR. BUNDREN: Objection to the form,
 6 speculation, calls for a legal conclusion.
 7 **THE WITNESS: Yes.**
 8 BY MR. HORWITZ:
 9 Q. Would you agree that Lampo does not have any
 10 right to \$4200 under this agreement?
 11 MR. BUNDREN: Objection to the form,
 12 calls for a legal conclusion.
 13 **THE WITNESS: Please re-ask the question.**
 14 BY MR. HORWITZ:
 15 Q. Sure. This contract provides for Mr.
 16 Paffrath to pay Lampo \$350 a month, correct?
 17 **A. That's correct.**
 18 Q. And it provides that either party can
 19 terminate this agreement at any moment; is that
 20 correct?
 21 **A. That's correct.**
 22 Q. So there's no right to have 12 months of
 23 payments made under this agreement; is that right?
 24 MR. BUNDREN: Objection to the form,
 25 calls for a legal conclusion.

1 You can answer.
 2 **THE WITNESS: I'm not sure.**
 3 BY MR. HORWITZ:
 4 Q. If Mr. Paffrath had terminated this agreement
 5 the day that it was signed, how much would he owe
 6 Lampo?
 7 MR. BUNDREN: Objection to the form,
 8 calls for a legal conclusion, speculation.
 9 **THE WITNESS: No further payments.**
 10 BY MR. HORWITZ:
 11 Q. None at all?
 12 **A. Huh-uh.**
 13 Q. If Lampo terminated this agreement within a
 14 month of it being signed, how much would Mr. Paffrath
 15 owe Lampo?
 16 MR. BUNDREN: Same objection.
 17 **THE WITNESS: Nothing other than**
 18 **referrals that were sent in the future -- that were**
 19 **sent that closed in the future.**
 20 BY MR. HORWITZ:
 21 Q. And if no referrals were sent, then how much
 22 would Mr. Paffrath owe Lampo?
 23 MR. BUNDREN: Same objection.
 24 **THE WITNESS: Zero.**
 25 BY MR. HORWITZ:

1 Q. Isn't that what happened here?
 2 MR. BUNDREN: Objection to the form,
 3 vague, and ambiguous, no foundation.
 4 You can answer.
 5 **THE WITNESS: He was terminated from the**
 6 **program. I don't -- I don't know how to answer your**
 7 **question. I'm not sure.**
 8 BY MR. HORWITZ:
 9 Q. I'd like to move to the topic of
 10 misrepresentations that Lampo is alleging that Mr.
 11 Paffrath made before this agreement was executed.
 12 First, do you claim that Mr. Paffrath deliberately
 13 made false statements?
 14 MR. BUNDREN: Objection to the predicate
 15 statement before the question, and also object to
 16 lack of foundation at this point, and that this
 17 witness is not a 309b)(6) witness.
 18 You can answer.
 19 **THE WITNESS: Yes.**
 20 BY MR. HORWITZ:
 21 Q. So it's not that he accidentally made false
 22 statements; it's that he deliberately made false
 23 statements; is that correct?
 24 MR. BUNDREN: Same objection.
 25 **THE WITNESS: That's correct.**

1 BY MR. HORWITZ:
 2 Q. I'm going to hand you the verified complaint
 3 that you verified. Will you please read paragraph
 4 55?
 5 **A. Unbeknownst to Ramsey when it entered the**
 6 **agreement, Paffrath never intended to comply with his**
 7 **obligations in the agreement.**
 8 Q. That's the gist of this claim, is it not,
 9 that Paffrath never intended to comply when he said
 10 he would; is that right?
 11 MR. BUNDREN: Objection to the form,
 12 vague, and ambiguous, argumentative, and calls for a
 13 legal conclusion.
 14 You can answer.
 15 **THE WITNESS: I don't want to speak to**
 16 **the gist of the claim.**
 17 BY MR. HORWITZ:
 18 Q. That's fair. Are you asserting that Paffrath
 19 never intended to comply with his obligations in the
 20 agreement?
 21 MR. BUNDREN: Objection to the form.
 22 Again, this is a -- not a Rule 30(b)(6) deposition.
 23 You can answer.
 24 **THE WITNESS: Yes.**
 25 BY MR. HORWITZ:

1 Q. So in the future -- all right. Withdrawn.
2 Mr. Paffrath made assertions to Lampo that he would
3 perform some future performance but he was lying
4 about those; that's the gist of the claim, right?

5 MR. BUNDREN: Same objection about lack
6 of foundation, calls for a legal conclusion, vague,
7 and ambiguous but you can answer.

8 **THE WITNESS: Yes.**

9 BY MR. HORWITZ:

10 Q. Lampo is claiming that Mr. Paffrath
11 misrepresented his future intentions; is that
12 correct?

13 MR. BUNDREN: Objection to the form,
14 calls for a legal conclusion. He's not a 30(b)(6)
15 representative.

16 You can answer.

17 **THE WITNESS: Yes.**

18 BY MR. HORWITZ:

19 Q. Other than statements about Mr. Paffrath's
20 future intentions, what do you assert that Mr.
21 Paffrath lied about prior to the execution of this
22 agreement?

23 MR. BUNDREN: Objection to the form,
24 calls for a legal conclusion, and also this witness
25 is not a 30(b)(6) witness that's been designated by

1 the company.

2 Subject to that, you can answer.

3 **THE WITNESS: He lied in his intention in**
4 **entering the program. He represented that he wanted**
5 **to become and -- and operate as an ELP when on video**
6 **he had mentioned and later confirmed that he**
7 **infiltrated the ELP program and gave false ZIP codes.**

8 BY MR. HORWITZ:

9 Q. And which ZIP codes do you claim are false?

10 MR. BUNDREN: Objection to the form.
11 This isn't a memory test.

12 **THE WITNESS: I do not have that**
13 **information in front of me.**

14 BY MR. HORWITZ:

15 Q. Do you have personal knowledge that any of
16 the ZIP codes he gave were false?

17 MR. BUNDREN: Objection to the form.

18 **THE WITNESS: His statements in the video**
19 **were that he gave false ZIP codes.**

20 BY MR. HORWITZ:

21 Q. Is that a direct quote from the video?

22 MR. BUNDREN: Objection to the form. The
23 witness has already answered this question.

24 **THE WITNESS: Yes.**

25 BY MR. HORWITZ:

1 Q. Is it your position that you never would have
2 entered into an ELP agreement with Kevin Paffrath if
3 he had hadn't given what you're referring to as false
4 ZIP codes?

5 MR. BUNDREN: Objection, form, calls for
6 a question of a 30(b)(6) witness and this witness has
7 not been designated as such.

8 Subject to that, you can answer the
9 question.

10 **THE WITNESS: Do you mind to re-ask the**
11 **question?**

12 BY MR. HORWITZ:

13 Q. Sure. Is it your position that if Mr.
14 Paffrath had never provided what you referred to as
15 false ZIP codes that you would have never entered
16 into an ELP agreement with Kevin Paffrath?

17 MR. BUNDREN: Objection to the form.
18 It's not what the complaint says. And that also asks
19 for an answer from a Rule 30(b)(6) representative
20 based on your question and this witness hasn't been
21 designated as such.

22 You can answer.

23 **THE WITNESS: If we had known he was**
24 **giving false ZIP codes, it is correct that we would**
25 **not have accepted him as an ELP. But what the**

1 **complaint states is that if we had known that he was**
2 **entering the program under false pretenses to expose**
3 **us, we would not have accepted him as an ELP.**

4 BY MR. HORWITZ:

5 Q. And if you hadn't entered into an ELP
6 agreement with Kevin Paffrath, how much would Kevin
7 Paffrath have owed you --

8 MR. BUNDREN: Objection to the form.

9 BY MR. HORWITZ:

10 Q. -- in dollars?

11 MR. BUNDREN: The witness is not a
12 30(b)(6) representative.

13 **THE WITNESS: If we had not entered into**
14 **a contractual agreement, he would not owe us money.**

15 BY MR. HORWITZ:

16 Q. Did you ever give -- did -- I apologize.
17 Withdraw that. Did Lampo ever give Paffrath the
18 opportunity to withdraw ZIP codes that he had
19 provided?

20 MR. BUNDREN: Objection to the form, lack
21 of foundation.

22 **THE WITNESS: I do not know the answer to**
23 **that question.**

24 BY MR. HORWITZ:

25 Q. If I represented to you that Lampo did give

1 Mr. Paffrath the opportunity to withdraw ZIP codes
 2 that he had submitted, would you have personal
 3 knowledge --
 4 MR. BUNDREN: Objection to the form. The
 5 witness couldn't have personal --
 6 BY MR. HORWITZ:
 7 Q. -- that --
 8 MR. BUNDREN: -- knowledge if he --
 9 MR. HORWITZ: Let me finish my questions.
 10 MR. BUNDREN: I think you did but go
 11 ahead.
 12 MR. HORWITZ: I didn't. Stop
 13 interrupting me.
 14 MR. BUNDREN: I -- it appeared to be the
 15 end of your question. If I interrupted you, I'm
 16 sorry.
 17 BY MR. HORWITZ:
 18 Q. Do you have personal knowledge to dispute the
 19 claim that Lampo gave Mr. Paffrath the opportunity to
 20 remove ZIP codes that he provided?
 21 MR. BUNDREN: Objection to the form, lack
 22 of foundation.
 23 **THE WITNESS: I do not have personal**
 24 **knowledge.**
 25 BY MR. HORWITZ:

1 Q. Does Lampo guarantee that an ELP agent will
 2 receive every ZIP code that the ELP would like to
 3 service?
 4 MR. BUNDREN: Objection to the form.
 5 This witness is not a 30(b)(6) representative who's
 6 been designated on any topic.
 7 Subject to that, you can answer.
 8 **THE WITNESS: No.**
 9 BY MR. HORWITZ:
 10 Q. Do you have any personal knowledge that would
 11 allow you to dispute the claim that Eleny Burton sent
 12 an e-mail to Kevin Paffrath saying if there are any
 13 ZIP codes that you would like to add or remove,
 14 please specify and send them in the following format
 15 and then listing ZIP codes?
 16 MR. BUNDREN: Objection to the form,
 17 calls for a legal conclusion, no foundation.
 18 **THE WITNESS: I do not have personal**
 19 **knowledge of that e-mail.**
 20 BY MR. HORWITZ:
 21 Q. Has Lampo ever cancelled an ELP agreement
 22 based on ZIP codes?
 23 MR. BUNDREN: Objection to the form.
 24 This witness is not a 30(b)(6) representative.
 25 **THE WITNESS: I do not know.**

1 BY MR. HORWITZ:
 2 Q. Was Lampo injured based on the ZIP codes that
 3 Kevin Paffrath submitted to it?
 4 MR. BUNDREN: Objection to the form,
 5 calls for a legal conclusion.
 6 **THE WITNESS: I do not have personal**
 7 **knowledge that Lampo was injured.**
 8 BY MR. HORWITZ:
 9 Q. Was Lampo injured by what you have referred
 10 to as -- I'm characterizing here, so please correct
 11 me if I'm mischaracterizing you -- false statements
 12 about his intentions?
 13 MR. BUNDREN: Objection to the form,
 14 calls for a legal conclusion, also asks a question on
 15 a -- that's more appropriate for a Rule 30(b)(6)
 16 deposition and not of this witness.
 17 You can answer.
 18 **THE WITNESS: Yes, I believe so.**
 19 BY MR. HORWITZ:
 20 Q. And what were those injuries?
 21 MR. BUNDREN: Same objection.
 22 **THE WITNESS: Our brand is a brand of**
 23 **integrity and trust and we're in the business of**
 24 **helping people. And --**
 25 BY MR. HORWITZ:

1 Q. Sir -- (indicating.)
 2 **A. -- when Mr. Paffrath went online to say that**
 3 **we're liars and cheaters, it damages that brand, it**
 4 **keeps people who we wanted to help from having full**
 5 **trust in us, and it tarnishes a brand that we've**
 6 **worked hard to build.**
 7 Q. Sir, will you please go back to your answers
 8 to Interrogatory 1? Can you tell me if there's any
 9 provision in there that references damage to Lampo's
 10 brand?
 11 MR. BUNDREN: Objection, calls for a
 12 legal conclusion.
 13 **THE WITNESS: No, there is not.**
 14 BY MR. HORWITZ:
 15 Q. Sir, in your answer to Interrogatory 2, is
 16 there any indication that Lampo lost business because
 17 of damage to its brand?
 18 MR. BUNDREN: Same objection.
 19 **THE WITNESS: (Reviews document.) No.**
 20 BY MR. HORWITZ:
 21 Q. Sir, you mentioned that you have never
 22 personally spoken to Kevin Paffrath; is that correct?
 23 **A. That is correct.**
 24 Q. Is it also fair to characterize your prior
 25 testimony as a claim that Kevin Paffrath lied

1 deliberately --

2 MR. BUNDREN: Objection to the form.

3 BY MR. HORWITZ:

4 Q. -- to Lampo?

5 MR. BUNDREN: Objection to the form,
6 argumentative.

7 **THE WITNESS: Could you re-ask the**
8 **question?**

9 BY MR. HORWITZ:

10 Q. Did you previously testify that Mr. Paffrath
11 deliberately lied to Lampo?

12 MR. BUNDREN: Objection to the form,
13 asked and answered.

14 **THE WITNESS: I previously testified that**
15 **he misrepresented his intentions.**

16 BY MR. HORWITZ:

17 Q. Deliberately; is that correct?

18 **A. Deliberately.**

19 Q. And how do you know that?

20 MR. BUNDREN: Objection to the form.

21 This witness is not a Rule 30(b)(6) witness.

22 You can answer.

23 **THE WITNESS: He suggested it, that he**
24 **should do it in one video, and he confirmed that he**
25 **did it in a second video.**

1 BY MR. HORWITZ:

2 Q. Is it your testimony that the statements that
3 he made in the videos were true?

4 MR. BUNDREN: Objection to the form.

5 This witness is not a Rule 30(b)(6) representative.

6 And this witness has already testified about the
7 false matters that were referenced in the videos so
8 it's been asked and answered.

9 **THE WITNESS: To my knowledge, his**
10 **statements were true. He made them. I don't...**

11 BY MR. HORWITZ:

12 Q. Are all of the statements in the video true?

13 MR. BUNDREN: Objection to the form,
14 asked and answered.

15 **THE WITNESS: No.**

16 BY MR. HORWITZ:

17 Q. How are you determining which statements in
18 the videos are true and which ones are deliberate
19 lies?

20 MR. BUNDREN: Objection to the form.

21 This witness is not a 30(b)(6) representative.

22 Subject to that, you can answer.

23 **THE WITNESS: I don't know.**

24 BY MR. HORWITZ:

25 Q. Are you just guessing?

1 MR. BUNDREN: Objection to the form, same
2 objection, and argumentative.

3 **THE WITNESS: Some of the statements that**
4 **he claims to be true that I know are not true because**
5 **I know he makes a claim about something we do or do**
6 **not do that I happen to know make that statement**
7 **false. When he makes his statement of what -- that**
8 **he intentionally infiltrated our ELP program to**
9 **expose it, I'm taking him -- it's -- I don't -- I**
10 **don't have personal knowledge that that is an untrue**
11 **statement the way that I do the other statements I**
12 **said were false.**

13 BY MR. HORWITZ:

14 Q. Do you know which ZIP codes Kevin Paffrath
15 has done business in?

16 **A. No, I do not.**

17 Q. But you accused him of deliberately
18 misrepresenting which ZIP codes he has done business
19 in; is that correct?

20 MR. BUNDREN: Objection to the form.

21 **THE WITNESS: That's correct.**

22 BY MR. HORWITZ:

23 Q. Based on statements in the videos --

24 MR. BUNDREN: Objection to the form.

25 BY MR. HORWITZ:

1 Q. -- is that correct?

2 **A. That's correct.**

3 Q. But you have no personal knowledge to dispute
4 the accuracy of the ZIP codes that he submitted; is
5 that correct?

6 MR. BUNDREN: Objection to form, asked
7 and answered, argumentative.

8 **THE WITNESS: That's correct.**

9 BY MR. HORWITZ:

10 Q. So walk me through it one more time. How do
11 you know which statements in the videos are true and
12 which ones are deliberate lies?

13 MR. BUNDREN: Objection to the form.

14 This has been asked multiple times now. It's been
15 asked and answered multiple times. It's unduly
16 repetitious and it's borderline harassing.

17 You can answer.

18 **THE WITNESS: Some of the statements that**
19 **I claimed were false were -- I claimed them as false**
20 **because I know he would make claims about us that I**
21 **know to be untrue because I know what we do. When he**
22 **claims that he intentionally infiltrated our program**
23 **to expose it and gave false ZIP codes, I do not have**
24 **evidence that that's a false statement.**

25 BY MR. HORWITZ:

<p style="text-align: right;">Page 93</p> <p>1 Q. Do you have any evidence that the ZIP codes 2 that he provided to Lampo were false? 3 MR. BUNDREN: Objection to the form. 4 This witness is not a 30(b)(6) representative. 5 You can answer. 6 THE WITNESS: Just his statements that 7 they were false. 8 BY MR. HORWITZ: 9 Q. Other than the ZIP codes and the claims about 10 his future intentions, do you claim that Mr. Paffrath 11 made any other false statements to Lampo prior to the 12 execution of the ELP agreement? 13 MR. BUNDREN: Objection to form. This is 14 not a 30(b)(6) deposition. 15 Subject to that, you can answer. 16 THE WITNESS: Not that I remember. If I 17 do, it's in the complaint, but not to my memory. 18 BY MR. HORWITZ: 19 Q. Did you claim to have personal knowledge of 20 anything that you alleged in your complaint that you 21 did not, in fact, have personal knowledge about? 22 MR. BUNDREN: Objection to form, 23 argumentative, vague, and ambiguous. 24 THE WITNESS: Do you mind to re-ask the 25 question?</p>	<p style="text-align: right;">Page 95</p> <p>1 paragraph that says at this time, a limited digital 2 marketing license? It's in the middle of the page. 3 A. Yes. 4 Q. Will you read that section to me, please? 5 A. At this time, a limited digital marketing 6 license is also included but will be restricted to 7 only the following: E-mail signatures, organic 8 social post, no paid or boosted promotions, applies 9 to any and all social media platforms including but 10 not limited to Facebook, Twitter, YouTube, LinkedIn, 11 Snapchat. 12 Q. YouTube is listed as one of the social media 13 platforms, is it not? 14 MR. BUNDREN: Objection to the form, 15 asked and answered. 16 THE WITNESS: It is. 17 BY MR. HORWITZ: 18 Q. Was Mr. Paffrath given this limited digital 19 marketing license as part of his ELP agreement? 20 MR. BUNDREN: Objection to form, 21 foundation. 22 THE WITNESS: I do not know. 23 BY MR. HORWITZ: 24 Q. Are all ELPs given this limited digital 25 marketing license --</p>
<p style="text-align: right;">Page 94</p> <p>1 BY MR. HORWITZ: 2 Q. Sure. Did you claim to have personal 3 knowledge in the -- of the allegations in Lampo's 4 verified complaint when you did not, in fact, have 5 personal knowledge of them? 6 MR. BUNDREN: Same objection. 7 THE WITNESS: No, not using our 8 definition of personal knowledge in the beginning. 9 BY MR. HORWITZ: 10 Q. And what was that definition again? 11 MR. BUNDREN: Objection, asked and 12 answered. 13 THE WITNESS: Firsthand or secondhand 14 knowledge. 15 BY MR. HORWITZ: 16 Q. Sir, I've just handed you a document entitled 17 real estate promotional suite. Do you recognize this 18 document? 19 A. Vaguely. 20 Q. Tell me roughly what we're looking at here. 21 A. This is a package to let ELPs with permission 22 to use Dave's likeness, ELP logo in their advertising 23 and signage, et cetera. 24 Q. Will you turn to page 2 of this agreement -- 25 or this promotional suite, please? Do you see the</p>	<p style="text-align: right;">Page 96</p> <p>1 MR. BUNDREN: Objection to the form, 2 foundation. 3 BY MR. HORWITZ: 4 Q. -- after executing an ELP agreement? 5 MR. BUNDREN: Same objection. 6 THE WITNESS: I am not sure. 7 BY MR. HORWITZ: 8 Q. If I represented to you that Mr. Paffrath was 9 provided this limited digital marketing license as 10 part of his ELP agreement, would you have any reason 11 to disagree with me? 12 MR. BUNDREN: Objection to form, lacks a 13 foundation. The witness already said he didn't know. 14 You can answer. 15 THE WITNESS: I would not have a reason 16 to disagree with you assuming you were telling me the 17 truth. 18 BY MR. HORWITZ: 19 Q. Would you agree that videos posted on YouTube 20 are at issue in this action? 21 A. Yes. 22 Q. Would you agree with me that this digital 23 marketing license allows ELPs to make organic social 24 posts not including paid or boosted promotions on any 25 and all social media platforms including but not</p>

<p style="text-align: right;">Page 97</p> <p>1 limited to Facebook, Twitter, YouTube, LinkedIn, and 2 Snapchat?</p> <p>3 MR. BUNDREN: Objection to the form, 4 calls for a legal conclusion and the interpretation 5 of a document. Subject to that, he can answer.</p> <p>6 THE WITNESS: With permission, yes.</p> <p>7 BY MR. HORWITZ:</p> <p>8 Q. With permission, was that your answer?</p> <p>9 A. Yes.</p> <p>10 Q. Where does it say that?</p> <p>11 A. In the ELP agreement.</p> <p>12 Q. Tell me what you're referring to.</p> <p>13 A. (Reviews document.) Other -- page 4, no 14 publicity or license other than as expressly provided 15 herein. Neither party shall make any public 16 statement, press release, or marketing material that 17 uses the other's name, likeness, brand, or any 18 associated marks without the expressed written 19 permission of the other.</p> <p>20 Q. Sir, is this digital marketing license 21 expressed written permission conferred by Lampo?</p> <p>22 MR. BUNDREN: Objection to form, calls 23 for an answer from a 30(b)(6) witness, which this 24 witness hasn't been designated as such.</p> <p>25 THE WITNESS: I do not know if this</p>	<p style="text-align: right;">Page 99</p> <p>1 not a 30(b)(6) representative.</p> <p>2 You can answer.</p> <p>3 THE WITNESS: Yes, that is my 4 understanding.</p> <p>5 BY MR. HORWITZ:</p> <p>6 Q. When does the license conferred by this 7 document expire?</p> <p>8 MR. BUNDREN: Objection to the form, 9 calls for a legal conclusion.</p> <p>10 THE WITNESS: I do not know.</p> <p>11 BY MR. HORWITZ:</p> <p>12 Q. Does it afford ELP agents an opportunity to 13 use Lampo's -- withdrawn. Let me restate that 14 question. After the ELP agreement is terminated by 15 either party, do ELP agents still have a digital 16 marketing license for Lampo?</p> <p>17 MR. BUNDREN: Objection to form, lack of 18 foundation.</p> <p>19 THE WITNESS: It is my understanding that 20 they do not.</p> <p>21 BY MR. HORWITZ:</p> <p>22 Q. Is that because section 4 of the ELP 23 agreement expires upon termination?</p> <p>24 MR. BUNDREN: Objection to form, calls 25 for a legal conclusion.</p>
<p style="text-align: right;">Page 98</p> <p>1 document grants that permission or if this document 2 outlines how to use the permission given in some 3 other way.</p> <p>4 BY MR. HORWITZ:</p> <p>5 Q. Well, let's read the section that says what 6 not to do. Will you please read the first two 7 sentences of that section, please?</p> <p>8 A. At this time, marketing parameters will be 9 restricted to the list above. Please do not use the 10 ELP or Ramsey brands in any form of website or 11 digital presence without the expressed written 12 permission from the VP of real estate. At this time, 13 restricted forms of marketing and marketing using the 14 ELP and Ramsey brands will include any form of paid 15 media, both digital and out of home, including but 16 not limited to paid or boosted social, paid search, 17 television, radio, and digital audio, cinema, gas 18 station networks, local paid and earned media, out of 19 home digital screens, and billboards.</p> <p>20 Q. Sir, is it your position that ELP agents are 21 not permitted to reference their connection to Lampo 22 in their e-mail signatures or in organic social posts 23 without first securing permission outside of this 24 document?</p> <p>25 MR. BUNDREN: Objection. This witness is</p>	<p style="text-align: right;">Page 100</p> <p>1 THE WITNESS: I don't know if there's 2 another document that gives this permission 3 (indicating). If there is, that document should 4 clarify when it's given and when it's revoked but I 5 don't have knowledge of that.</p> <p>6 BY MR. HORWITZ:</p> <p>7 Q. But you would agree that after an ELP 8 agreement is terminated ELP agents no longer have 9 this digital marketing license, correct?</p> <p>10 A. That is my understanding.</p> <p>11 Q. Sir, are you aware of anytime after October 12 8th, 2018, when Mr. Paffrath -- sorry, let me 13 withdraw that question. Are you aware of anytime 14 prior to October 8th, 2018, where Mr. Paffrath shared 15 information that Lampo asserts is confidential?</p> <p>16 MR. BUNDREN: Objection to the form, 17 calls for an answer to be given by a Rule 30(b)(6) 18 representative and not this witness here.</p> <p>19 Subject to that, you can answer.</p> <p>20 THE WITNESS: I'm not.</p> <p>21 BY MR. HORWITZ:</p> <p>22 Q. In fact, just a few days ago, you swore under 23 oath that plaintiff is unaware of an instance where 24 defendants shared plaintiff's confidential 25 information with a third party prior to October 8th,</p>

1 2018, did you not?
 2 **A. That's correct.**
 3 Q. Are you familiar with Lampo's process for
 4 generating leads and referring them to ELP agents?
 5 **A. Yes.**
 6 Q. Can you describe that process to me, please.
 7 **A. An individual comes to the Dave Ramsey**
 8 **website and clicks on ELP, fills out a form that is**
 9 **sent to the ELP to contact the individual and they**
 10 **are connected and do business.**
 11 Q. Does anyone from -- does any employee of
 12 Lampo speak to a lead before referring it to an ELP
 13 agent?
 14 MR. BUNDREN: Objection, lack of
 15 foundation.
 16 **THE WITNESS: Sometimes.**
 17 BY MR. HORWITZ:
 18 Q. What percentage of the time?
 19 **A. Very small, less than 5.**
 20 Q. Is it true that over 95 percent of the time
 21 no employee of Lampo speaks to a prospective lead
 22 before referring that lead to an ELP agent?
 23 MR. BUNDREN: Objection to the form,
 24 asked and answered.
 25 **THE WITNESS: I do not disagree.**

1 BY MR. HORWITZ:
 2 Q. That's correct, is it not?
 3 **A. I don't have -- that's a good estimate. I**
 4 **don't have the exact number but I don't disagree with**
 5 **that estimate.**
 6 Q. Is it fair to say that approximately 95
 7 percent of the time no employee of Lampo speaks to a
 8 prospective lead before referring that lead to an ELP
 9 agent?
 10 MR. BUNDREN: Objection to the form,
 11 asked and answered.
 12 **THE WITNESS: Yes.**
 13 BY MR. HORWITZ:
 14 Q. Are you familiar with Lampo's process for
 15 vetting and hiring prospective ELP agents?
 16 **A. Yes.**
 17 Q. Will you describe that process to me, please?
 18 **A. A real estate agent applies to become an ELP,**
 19 **is then contacted and interviewed by an employee of**
 20 **Lampo and they review a list of qualifications. And**
 21 **if that is acceptable, the person is accepted and**
 22 **approved to -- they become an ELP. They are sent**
 23 **some materials including the log-in for the ELP hub**
 24 **and they are connected with their coach and then**
 25 **they, after that, begin receiving referrals.**

1 Q. Approximately how many conversations does an
 2 employee of Lampo have with a prospective ELP agent
 3 before that agent is hired?
 4 MR. BUNDREN: Objection, lack of
 5 foundation, speculation.
 6 **THE WITNESS: I do not know.**
 7 BY MR. HORWITZ:
 8 Q. Approximately how long does an employee of
 9 Lampo spend speaking with a prospective ELP agent
 10 before the ELP agent is hired?
 11 MR. BUNDREN: Objection, lack of
 12 foundation, speculation.
 13 **THE WITNESS: I do not know.**
 14 BY MR. HORWITZ:
 15 Q. Approximately how many employees of Lampo
 16 speak to prospective ELP agents before ELP agents are
 17 hired?
 18 MR. BUNDREN: Objection to the form, lack
 19 of foundation, speculation.
 20 **THE WITNESS: I do not know the exact**
 21 **number.**
 22 BY MR. HORWITZ:
 23 Q. Sir, have you previously described the
 24 vetting process that Lampo conducts when evaluating
 25 prospective ELP agents as thorough?

1 **A. Yes.**
 2 Q. Would you agree with me that you do not know
 3 how many times an employee of Lampo speaks with a
 4 prospective ELP agent before hiring that person?
 5 MR. BUNDREN: Objection to form, asked
 6 and answered.
 7 **THE WITNESS: I agree I do not know the**
 8 **exact number.**
 9 BY MR. HORWITZ:
 10 Q. Would you agree with me that you do not know
 11 how long an employee of Lampo speaks with the
 12 prospective ELP agent before the ELP agent is hired?
 13 MR. BUNDREN: Same objection, asked and
 14 answered.
 15 **THE WITNESS: I agree I do not know the**
 16 **exact amount of time.**
 17 BY MR. HORWITZ:
 18 Q. Would you agree with me that you do not know
 19 how many employees of Lampo speak with a prospective
 20 ELP agent before the ELP agent is hired?
 21 MR. BUNDREN: Objection, asked and
 22 answered.
 23 **THE WITNESS: I agree I do not know the**
 24 **exact number of employees.**
 25 BY MR. HORWITZ:

1 Q. You've just qualified those answers by saying
2 the exact. Do you have an approximation of the
3 number of conversations an employee employed by Lampo
4 has with a prospective ELP agent before the ELP agent
5 is hired?

6 **A. I'd rather not guess.**

7 Q. You really have no idea, do you?

8 MR. BUNDREN: Objection to form,
9 argumentative.

10 **THE WITNESS: I don't know the exact
11 number and I'd rather not guess.**

12 BY MR. HORWITZ:

13 Q. Do you know an approximate number?

14 **A. I'd rather not guess.**

15 Q. Based on what facts do you contend that
16 Lampo's vetting of ELP -- of prospective ELP agents
17 is thorough?

18 MR. BUNDREN: Objection to form, asked
19 and answered. This is also a Rule 30(b)(6) -- more
20 appropriate topic for that kind of witness and it has
21 not been noticed here.

22 You can answer.

23 **THE WITNESS: The application process has
24 a lot of information about how long the person has
25 been in the business, what sort of team they have to**

1 **support a large number of referrals, how many
2 transactions they close annually in the areas -- the
3 total and in the areas that they work, their
4 familiarity with Dave Ramsey and what to expect from
5 Dave Ramsey fans. Then there is an interview process
6 to talk through each one of those things and also to
7 discuss some uniquenesses of a Dave Ramsey referral
8 versus a non Dave Ramsey referral discussing some
9 best practices. And then we -- at that point, if all
10 is acceptable and they agree to the coaching
11 relationship we discussed earlier, then they would
12 begin by receiving their first referrals and review
13 would be done as they're receiving their first
14 referrals to discuss how that's going.**

15 BY MR. HORWITZ:

16 Q. Do you independently verify the information
17 that prospective ELP agents submit through your
18 online form?

19 MR. BUNDREN: Objection to form, lack of
20 foundation, and this witness is not a 30(b)(6), not a
21 corporate representative.

22 **THE WITNESS: I do not have personal
23 knowledge that we independently verify that
24 information. Some of it -- licensure, some of those
25 things but maybe not everything in the application.**

1 **I'm not sure.**

2 BY MR. HORWITZ:

3 Q. Are all ELP agents successful in your
4 estimation?

5 MR. BUNDREN: Objection to form,
6 foundation and argumentative.

7 **THE WITNESS: No.**

8 BY MR. HORWITZ:

9 Q. What do you consider successful?

10 **A. That they make all efforts to serve all of
11 the referrals that are interested in buying or
12 selling a home and help the ones that are -- have
13 intention of buying or selling a home, help them get
14 through that process successfully.**

15 Q. Does the rate of successful sales factor into
16 your assessment of the success?

17 MR. BUNDREN: Objection to form.

18 **THE WITNESS: Yes, it does factor in.**

19 BY MR. HORWITZ:

20 Q. And what do you consider a high rate of
21 successful sales?

22 **A. My estimate is 15 percent.**

23 Q. Would be high?

24 **A. Not the highest but above average.**

25 Q. Would you consider a 15 percent successful

1 closing rate good?

2 MR. BUNDREN: Objection to form, asked
3 and answered.

4 **THE WITNESS: It is better than almost
5 all companies that are in this business.**

6 BY MR. HORWITZ:

7 Q. And what business specifically is that?

8 **A. In -- that deal with ELP referrals.**

9 Q. The referral service business; is that
10 correct?

11 **A. Real estate referral, yes.**

12 Q. And you mentioned that approximately 95
13 percent of prospective leads do not have a
14 conversation with an employee at Lampo; is that
15 correct?

16 **A. That's correct.**

17 MR. BUNDREN: Objection to form, asked
18 and answered.

19 **THE WITNESS: That's correct.**

20 BY MR. HORWITZ:

21 Q. Would it be fair to characterize Lampo as a
22 hand-off service between prospective leads and ELP
23 agents?

24 MR. BUNDREN: Objection to form, lack of
25 foundation, argumentative.

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1 **THE WITNESS: Do you mind to define**
2 **hand-off service?**
3 BY MR. HORWITZ:
4 Q. Whatever it means to you.
5 **A. No.**
6 MR. BUNDREN: Objection.
7 **THE WITNESS: I would not characterize**
8 **it.**
9 BY MR. HORWITZ:
10 Q. Why not?
11 **A. To me, hand-off implies that there is not a**
12 **lot of effort made to send quality referrals to**
13 **quality agents and we put a great deal of effort into**
14 **both of those.**
15 Q. Would other people be entitled to have a
16 different opinion of the meaning of hand-off service?
17 MR. BUNDREN: Objection, vague, and
18 ambiguous, speculation, and argumentative.
19 **THE WITNESS: They would be entitled.**
20 BY MR. HORWITZ:
21 Q. You sued Mr. Paffrath for calling Lampo a
22 hand-off service?
23 MR. BUNDREN: Objection to form. Mr.
24 Galloway hasn't sued anybody.
25 MR. HORWITZ: Can you please stop making

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1 speaking objections?
2 MR. BUNDREN: I -- it's not --
3 MR. HORWITZ: You can --
4 MR. BUNDREN: -- a speaking objection.
5 MR. HORWITZ: You can --
6 MR. BUNDREN: I'll tell you what the rule
7 states if you want to read it.
8 MR. HORWITZ: You can object to the form
9 but you've got to stop answering questions for your
10 witness.
11 MR. BUNDREN: That's not true. Let me
12 tell you what the law states. To the extent that
13 counsel makes a generic objection to form but failed
14 to specify the basis for that objection, the Court
15 considers those objections to be waived. So I will
16 continue to state the basis for the objection because
17 if I don't, you'll take the position that they've
18 been waived.
19 BY MR. HORWITZ:
20 Q. Has Lampo sued Kevin Paffrath for describing
21 Lampo as a hand-off service?
22 MR. BUNDREN: Objection to form. That's
23 a Rule 30(b)(6) topic and more appropriate for a Rule
24 30(b)(6) witness, which Mr. Galloway has not been
25 designated as such.

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1 **THE WITNESS: Lampo's suing Mr. Paffrath**
2 **for everything that is in the complaint, not**
3 **specifically for calling us a hand-off service.**
4 BY MR. HORWITZ:
5 Q. And you verified this complaint, did you not?
6 **A. I did.**
7 Q. The allegations in it, you verified them?
8 **A. Yes.**
9 Q. So when your attorney claims, you know,
10 perhaps you don't have any information about this, no
11 foundation for asking these questions about
12 allegations in your complaint, are we to assume that
13 you verified allegations that you don't know to be
14 true?
15 MR. BUNDREN: Objection to form,
16 argumentative.
17 **THE WITNESS: No.**
18 BY MR. HORWITZ:
19 Q. You do know stuff about this complaint, do
20 you not?
21 **A. Yes.**
22 Q. When I asked you questions about allegations
23 in this complaint, you -- there is a foundation for
24 me asking those because you verified them; is that
25 correct?

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1 MR. BUNDREN: Objection to form. He's
2 not a lawyer.
3 **THE WITNESS: I did verify the**
4 **allegations.**
5 BY MR. HORWITZ:
6 Q. Is there any provision of the ELP agreement
7 that you believe entitles Lampo to secure the return
8 of information that Lampo claims is confidential?
9 MR. BUNDREN: Objection, calls for a
10 legal conclusion.
11 **THE WITNESS: (Reviews document.) I do**
12 **not see in the agreement where it discusses the**
13 **return of confidential information.**
14 BY MR. HORWITZ:
15 Q. Is it possible that such a provision doesn't
16 exist?
17 MR. BUNDREN: Objection to the form,
18 calls for a legal conclusion and argumentative.
19 **THE WITNESS: Yes.**
20 BY MR. HORWITZ:
21 Q. Have you exchanged any e-mails with other
22 members of The Lampo Group regarding the facts of
23 this litigation?
24 MR. BUNDREN: Objection to form, vague
25 and ambiguous.

1 **THE WITNESS: Yes.**
 2 BY MR. HORWITZ:
 3 Q. Who are those individuals?
 4 **A. They were all including my general counsel,**
 5 **Matt Blackburn. And I do not know exactly who else**
 6 **was on that chain a year ago. I have given those to**
 7 **my legal counsel.**
 8 Q. Have you ever had conversations with anyone
 9 other than Matt Blackburn about this litigation?
 10 **A. Yes.**
 11 Q. Who are those individuals?
 12 **A. Other members of my leadership team.**
 13 Q. Can you give me the names?
 14 **A. Mark Floyd. I do not recall who all the**
 15 **other folks were. I have given those e-mails to my**
 16 **attorneys.**
 17 Q. I'm not looking for e-mails here. I'm
 18 looking for conversations.
 19 **A. Conversations. Dave Ramsey, Mark Floyd. Any**
 20 **conversation?**
 21 Q. About this litigation, yes.
 22 **A. Suzanne Sims. That's all that I'm positive**
 23 **of.**
 24 Q. Were these one-to-one conversations?
 25 **A. They were -- some of them were one to one.**

1 Q. What were the approximate dates of your
 2 one-to-one conversations with Mark Floyd?
 3 **A. I do not recall all the dates of any**
 4 **conversation with Mark Floyd.**
 5 Q. Approximately how many conversations do you
 6 think you may have had with Mark Floyd?
 7 **A. Five or less.**
 8 Q. Do you recall the dates of any one-to-one
 9 conversations with Dave Ramsey about this litigation?
 10 **A. I gave him very brief updates as recently as**
 11 **last week.**
 12 Q. What about before that?
 13 **A. He would have been included in some of the**
 14 **e-mail conversation with counsel but those were not**
 15 **one-to-one conversations.**
 16 Q. Did you have any other one-to-one
 17 conversations with Dave Ramsey about this litigation?
 18 **A. No. I've had no one-to-one conversations**
 19 **with Dave Ramsey about this.**
 20 Q. What about Suzanne Sims?
 21 **A. No. These are people that -- these other**
 22 **people are people who may have been copied on an**
 23 **e-mail or in a meeting where a conversation took**
 24 **place.**
 25 Q. You said as recently as last week you gave

1 him a brief update regarding this litigation; is that
 2 correct?
 3 **A. That's correct.**
 4 Q. Was it just the two of you?
 5 **A. No.**
 6 Q. Who else was there?
 7 **A. Mark Floyd. One meeting was with Mark Floyd,**
 8 **Dave, and I.**
 9 Q. That was last week?
 10 **A. Yes.**
 11 Q. Was your legal counsel there?
 12 **A. Our legal counsel is no longer employed by**
 13 **us. No.**
 14 Q. Was there any attorney representing you
 15 present?
 16 **A. No.**
 17 Q. What did you discuss during that meeting?
 18 **A. It was -- I had discussed -- I gave him an**
 19 **update on I had spent some time with these guys**
 20 **preparing for today and I gave him an update on that.**
 21 **I wasn't sure he even knew the depositions were this**
 22 **week and so I wanted him to know.**
 23 Q. Do you recall specifically what you told him?
 24 **A. I just discussed with him my preparation time**
 25 **and discussions with my attorneys.**

1 Q. Approximately how long did this conversation
 2 last?
 3 **A. Ten minutes.**
 4 Q. Do you recall the details of any questions
 5 that he asked you?
 6 **A. No, he did not ask questions. I -- he did**
 7 **not ask questions.**
 8 Q. And you said Mark Floyd was there for that
 9 conversation; is that correct?
 10 **A. That's --**
 11 MR. BUNDREN: Objection to form.
 12 **THE WITNESS: That's correct.**
 13 BY MR. HORWITZ:
 14 Q. And you said you talked about your
 15 preparation for this deposition. What did you talk
 16 about?
 17 **A. I told him that I had met with Brandon and**
 18 **Todd in my office to prepare for deposition, and that**
 19 **it was on Tuesday, and that I would be out all day**
 20 **Tuesday, and Mitch Riddle would be out all day**
 21 **Wednesday.**
 22 Q. Did you talk about the details of any things
 23 that you expected to be deposed about?
 24 **A. No.**
 25 Q. What was the date of this conversation?

1 **A. I do not recall the exact date.**
 2 Q. You said it was last week, though?
 3 **A. Yes.**
 4 Q. To your knowledge, has anyone else at Lampo
 5 had one-to-one conversations with Dave Ramsey --
 6 MR. BUNDREN: Objection, speculation.
 7 BY MR. HORWITZ:
 8 Q. -- regarding this litigation?
 9 MR. BUNDREN: Objection, speculation, no
 10 foundation.
 11 **THE WITNESS: No.**
 12 BY MR. HORWITZ:
 13 Q. Sir, do you contend that Lampo's tax returns
 14 would demonstrate harm arising from the publication
 15 of the YouTube videos at issue in this action?
 16 MR. BUNDREN: Objection to the form.
 17 That is a topic for a Rule 30(b)(6) deposition as
 18 phrased and Mr. Galloway's not been designated as
 19 such.
 20 To the extent you're aware, you can
 21 answer.
 22 **THE WITNESS: No.**
 23 BY MR. HORWITZ:
 24 Q. What about revenue statements?
 25 MR. BUNDREN: Same objection.

1 **THE WITNESS: No.**
 2 MR. HORWITZ: Those are my questions.
 3 MR. BUNDREN: Mr. Horwitz, I think I've
 4 had an opportunity to consider your request about the
 5 ELP questions that you posed earlier that we
 6 instructed the witness not to answer. If you would
 7 like to re-ask those questions, I would like to give
 8 you the opportunity to do so so that we don't have to
 9 burden the Court with an issue. I want to make sure,
 10 though, that you have the opportunity to do that. If
 11 you come close to a line which I consider to be an
 12 issue, I'll let you know but I want to give you that
 13 opportunity.
 14 MR. HORWITZ: This is about the numbers?
 15 MR. BUNDREN: Correct. Yes.
 16 BY MR. HORWITZ:
 17 Q. Sir, is it possible that thousands of ELPs
 18 have signed an agreement just like this one?
 19 **A. Yes.**
 20 Q. And that agreement does not provide for the
 21 return of confidential information following
 22 termination of the agreement, does it?
 23 MR. BUNDREN: Object to form, calls for a
 24 legal conclusion.
 25 You can answer.

1 **THE WITNESS: Not to my knowledge.**
 2 BY MR. HORWITZ:
 3 Q. This agreement provides that section 15,
 4 indemnification and payment obligations of this
 5 agreement will survive any such expiration or
 6 termination of this agreement, does it not?
 7 MR. BUNDREN: Objection to form. That's
 8 been asked and answered multiple times.
 9 **THE WITNESS: It does.**
 10 BY MR. HORWITZ:
 11 Q. Confidential information is discussed at
 12 section 6 and not at section 15; is that correct?
 13 MR. BUNDREN: Objection to form. It's
 14 been asked and answered multiple times; also calls
 15 for a legal conclusion.
 16 **THE WITNESS: That's correct.**
 17 BY MR. HORWITZ:
 18 Q. Are all ELP agents afforded access to the
 19 same confidential information that you contend was
 20 published in this matter?
 21 **A. Yes.**
 22 Q. After an ELP agreement is terminated, does
 23 Lampo ask ELP agents to return confidential
 24 information?
 25 MR. BUNDREN: Objection to form. It's

1 been asked and answered and it's more appropriate for
 2 a Rule 30(b)(6) deposition as asked.
 3 **THE WITNESS: Not to my knowledge.**
 4 MR. HORWITZ: Let's take five minutes if
 5 that's okay.
 6 MR. BUNDREN: Sure.
 7 (Short break.)
 8 MR. HORWITZ: Back on the record. Just a
 9 couple of housekeeping matters. I'm gonna make
 10 interrogatories and requests for production and
 11 responses the next exhibit.
 12 (WHEREUPON, the above-mentioned document
 13 was marked as Exhibit Number 9.)
 14 MR. HORWITZ: I want to make the ELP
 15 agreement between Kevin Paffrath and The Lampo Group
 16 the exhibit after that.
 17 (WHEREUPON, the above-mentioned document
 18 was marked as Exhibit Number 10.)
 19 MR. HORWITZ: I'm going to make Lampo's
 20 verified complaint the exhibit after that.
 21 (WHEREUPON, the above-mentioned document
 22 was marked as Exhibit Number 11.)
 23 MR. HORWITZ: And I'm going to make the
 24 promotional suite that we were discussing the exhibit
 25 after that.

<p style="text-align: right;">Page 121</p> <p>1 (WHEREUPON, the above-mentioned document 2 was marked as Exhibit Number 12.) 3 MR. HORWITZ: And without going into the 4 details of it -- I know we decided we weren't going 5 to do that but we talked about it earlier. I'm going 6 to make the article that we talked about at the 7 beginning of this matter the exhibit after that. 8 (WHEREUPON, the above-mentioned document 9 was marked as Exhibit Number 13.) 10 BY MR. HORWITZ: 11 Q. I only have two more very short areas of 12 inquiry. 13 MR. BUNDREN: I'm sorry, can I -- which 14 exhibit does that start with? 15 THE REPORTER: It starts with Number 9. 16 MR. BUNDREN: Number 9. Okay. 17 BY MR. HORWITZ: 18 Q. How do prospective clients or referrals 19 generated through the ELP program know the fees that 20 Lampo generates from a successful sale? 21 A. We have a disclosure on our website. 22 Q. And what does that disclosure say? 23 A. I don't remember exactly. 24 Q. Does it specify a dollar figure? 25 A. I don't recall what -- exactly what it says.</p>	<p style="text-align: right;">Page 123</p> <p>1 customers would know that answer; is that correct? 2 A. I -- 3 MR. BUNDREN: Objection to form. That's 4 not what he said. 5 THE WITNESS: I know that it's disclosed 6 on the website. I don't know what the language is. 7 BY MR. HORWITZ: 8 Q. Or the specific amount that's disclosed? 9 A. That's correct, I don't know what is dis- -- 10 I don't -- I don't recall what the disclosure says. 11 Q. Do you recall where specifically on the 12 website one would go to find that information? 13 MR. BUNDREN: Objection to form, asked 14 and answered. 15 THE WITNESS: No. 16 BY MR. HORWITZ: 17 Q. If I were to try to find out that information 18 by visiting your website, do you know what I would 19 click to find that information? 20 MR. BUNDREN: Objection to form, 21 speculation, asked and answered. 22 THE WITNESS: I don't know exactly where 23 it's located on our website. 24 BY MR. HORWITZ: 25 Q. One of the allegations in this complaint</p>
<p style="text-align: right;">Page 122</p> <p>1 I know that it's there and that we follow real estate 2 audit rules and guidelines. 3 Q. I'm not saying you've done anything wrong. 4 I'm just trying to figure out if I am a customer who 5 signs up through your website and my information gets 6 referred to an ELP agent -- 7 A. Uh-huh. 8 Q. -- how I would know how much Lampo is making 9 from that sale. 10 MR. BUNDREN: Objection to form. 11 You can answer. 12 THE WITNESS: I don't know. 13 BY MR. HORWITZ: 14 Q. If you don't know, is it fair that Kevin 15 Paffrath also might not know? 16 MR. BUNDREN: Objection to form, 17 speculation. 18 THE WITNESS: I'm a little confused by 19 your question because Kevin was told what the fees 20 were as a potential ELP. 21 BY MR. HORWITZ: 22 Q. I'm talking about how customers would know 23 the answer. 24 A. Okay. 25 Q. And you told me that you don't know how</p>	<p style="text-align: right;">Page 124</p> <p>1 involves Mr. Paffrath saying that Lampo doesn't 2 disclose, or something of that nature, the fees -- 3 I'm not trying to quote anything here -- the fees 4 that it receives to customers. And we had previously 5 discussed that there were statements in some of the 6 videos that you thought Mr. Paffrath was lying about. 7 I say this only to preface my next question, which is 8 how -- do you have any personal knowledge that would 9 help you identify when Mr. Paffrath is lying about 10 something versus when he is just wrong about 11 something? 12 MR. BUNDREN: Objection to the 13 predicated statement. 14 You can answer. 15 THE WITNESS: I don't have personal 16 knowledge to distinguish between him being incorrect 17 or intentionally lying. 18 BY MR. HORWITZ: 19 Q. Do you know anyone else at Lampo who might 20 have that information? 21 MR. BUNDREN: Objection, speculation. 22 THE WITNESS: No. 23 MR. HORWITZ: Those are my questions. 24 MR. BUNDREN: We will pass the witness. 25 We'll reserve -- reserve our questions 'til the time</p>

1 of trial. The witness will read and sign.
 2 **THE WITNESS: Okay.**
 3 THE REPORTER: Are you wanting to order
 4 this at this point?
 5 MR. HORWITZ: Yes.
 6 THE REPORTER: And what about you;
 7 obviously, a copy?
 8 MR. BUNDREN: Do you have the E-tran?
 9 THE REPORTER: Uh-huh.
 10 MR. BUNDREN: What's your -- what's your
 11 format? Usually PTX is --
 12 THE REPORTER: It is PTX.
 13 MR. BUNDREN: Do you have that?
 14 THE REPORTER: Uh-huh.
 15 MR. BUNDREN: Okay. Do you link the
 16 exhibits?
 17 THE REPORTER: We do.
 18 MR. BUNDREN: Okay. Let's do that.
 19 FURTHER DEPONENT SAITH NOT

REPORTER'S CERTIFICATE

1
 2
 3 STATE OF TENNESSEE
 4 COUNTY OF DAVIDSON

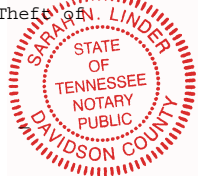
5 I, SARAH N. LINDER, Licensed Court Reporter,
 6 with offices in Nashville, Tennessee, hereby certify
 7 that I reported the foregoing deposition of JACK
 8 BOONE GALLOWAY, JR., by machine shorthand to the best
 9 of my skills and abilities, and thereafter the same
 10 was reduced to typewritten form by me.

11 I further certify that I am not related to
 12 any of the parties named herein, nor their counsel,
 13 and have no interest, financial or otherwise, in the
 14 outcome of the proceedings.

15 I further certify that in order for this
 16 document to be considered a true and correct copy, it
 17 must bear my original signature and that any
 18 unauthorized reproduction in whole or in part and/or
 19 transfer of this document is not authorized, will not
 20 be considered authentic, and will be in violation of
 21 Tennessee Code Annotated 39-14-104, Theft of
 22 Services.

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ERRATA PAGE

1
 2 I, JACK BOONE GALLOWAY, JR., having read the
 3 foregoing deposition, Pages 1 through 125, do hereby
 4 certify said testimony is a true and accurate
 5 transcript, with the following changes (if any):

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JACK BOONE GALLOWAY, JR.

Notary Public

My Commission Expires: _____

Reported by: Sarah N. Linder, LCR

Exhibits

Ex 01 - Jack Galloway, Jr. 3:8 12:24 13:1

Ex 02 - Jack Galloway, Jr. 3:10 13:16,18

Ex 04 - Jack Galloway, Jr. 3:15 32:18

Ex 05 - Jack Galloway, Jr. 3:17 33:20

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Ex 07 - Jack Galloway, Jr. 3:22 41:20

Ex 08 - Jack Galloway, Jr. 3:24 42:2

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Ex 11 - Jack Galloway, Jr. 4:7 120:22

Ex 12 - Jack Galloway, Jr. 4:8 121:2

Ex 13 - Jack Galloway, Jr. 4:10 121:9

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THE LAMPO GROUP, LLC, et al.

vs.

PAFFRATH, et al.

STEPHEN MITCH RIDDLE

October 30, 2019



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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE MIDDLE DISTRICT OF TENNESSEE, AT NASHVILLE</p> <hr/> <p>3 THE LAMPO GROUP, LLC, D/B/A 4 RAMSEY SOLUTIONS,</p> <p>5 Plaintiff,</p> <p>6 vs. Case No. 3:18-CV-01402</p> <p>7 KEVIN HELMUT PAFFRATH, THE 8 PAFFRATH ORGANIZATION, and 9 MEETNDONE CORPORATION,</p> <p>10 Defendants.</p> <hr/> <p>11</p> <p>12</p> <p>13 Deposition of: 14 STEPHEN MITCH RIDDLE 15 Taken on behalf of the Defendants 16 October 30, 2019</p> <hr/> <p>17</p> <p>18 Elite Reporting Services 19 www.elitereportingservices.com 20 Sarah N. Linder, LCR 21 Post Office Box 292382 22 Nashville, Tennessee 37229 23 (615)595-0073</p>	<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 I N D E X</p> <p>3</p> <p>4 Examination Page 5 By Mr. Horwitz 6 6 Examination 54 7 By Mr. Bundren 8 Examination 9 By Mr. Horwitz 55 10</p> <p>11 E X H I B I T S</p> <p>12</p> <p>13 Exhibit No. 1 Page 8 14 Subpoena and Notice of Deposition 15 to Stephen Mitch Riddle 16</p> <p>17 Exhibit No. 2 8 18 Letter from Brandon Bundren to 19 Daniel Horwitz in Response to 20 Production of Documents to be 21 Produced by Stephen Mitch Riddle 22</p> <p>23 Exhibit No. 3 9 24 Documents Produced by 25 Stephen Mitch Riddle</p> <p>Exhibit No. 4 11 Plaintiff's Rule 26(a)(1) Initial Disclosures</p> <p>Exhibit No. 5 17 E-mails Between Stephen Mitch Riddle and Kevin Paffrath, Re: Draft Mistake</p> <p>Exhibit No. 6 31 Transcript of the Telephone Call Between Kevin Paffrath and Stephen Mitch Riddle dated 9/6/2018</p>
<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 A P P E A R A N C E S</p> <p>3</p> <p>4</p> <p>5 For the Plaintiff:</p> <p>6 MR. BRANDON BUNDREN 7 MR. THOR Y. URNESS 8 Attorneys at Law 9 Bradley Arant Boult & Cummings, LLP 10 1600 Division Street, Suite 700 11 Nashville, TN 37203 12 (615)252-2352 13 Bbundren@bradley.com 14 Turness@bradley.com</p> <p>15</p> <p>16 For the Defendants:</p> <p>17 MR. DANIEL A. HORWITZ 18 Attorney at Law 19 Law Office of Daniel A. Horwitz 20 1803 Broadway, Suite 531 21 Nashville, TN 37203 22 (615)739-2888 23 Daniel.a.horwitz@gmail.com 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2</p> <p>3 Exhibit No. 7 40 4 ELP Agreement Between Kevin Paffrath 5 and The Lampo Group 6</p> <p>7 Exhibit No. 8 48 8 Transcript of the Telephone Call 9 Between Kevin Paffrath and 10 Stephen Mitch Riddle dated 10/8/2018 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

S T I P U L A T I O N S

The deposition of STEPHEN MITCH RIDDLE was taken by counsel for the Defendants, at Bradley Arant Boult & Cummings, LLP, 1600 Division Street, Suite 700, Nashville, Tennessee, on October 30, 2019, for all purposes under the Federal Rules of Civil Procedure.

All formalities as to caption, notice, statement of appearance, et cetera, are waived. All objections, except as to the form of the questions, are reserved to the hearing, and that said deposition may be read and used in evidence in said cause of action in any trial thereon or any proceeding herein.

It is agreed that SARAH N. LINDER, LCR, Notary Public and Court Reporter for the State of Tennessee, may swear the witness, and that the reading and signing of the completed deposition by the witness are not waived.

* * *

STEPHEN MITCH RIDDLE, was called as a witness, and having first been duly sworn, testified as follows:

EXAMINATION

QUESTIONS BY MR. HORWITZ:

Q. Good morning. My name is Daniel Horwitz. I represent the defendants in this matter. Can we begin by having you please state your name for the record?

A. Stephen Mitchell Riddle.

Q. And where are you employed, sir?

A. Ramsey Solutions.

Q. How long have you been employed there?

A. Two and a half years.

Q. Have you ever given a deposition before?

A. No.

Q. Have you ever testified in a legal proceeding before?

A. No.

Q. I'm gonna go over just a couple of ground rules. I'm going to ask my questions. If you would, please let me finish my answer (sic) so that your attorney can object and so that the court reporter

doesn't have to take down cross talk. If you'll let me finish, I will let you finish.

If there is a question that you want to answer yes or no to, I would ask that you please give an audible answer, say yes or no rather than shaking your head so that the court reporter can document it for the record. I'm also gonna ask if there's a question that I ask you that you do not understand, will you tell me?

10 A. Yes.

Q. If later someone reading this transcript is reading an answer that you've given to a question where you didn't ask me to clarify or didn't say that you understand, is it fair to that reader to assume that you did understand the question?

16 A. Can you say that again, please?

Q. Sure. Of course. If I ask you a question and you answer it without saying you didn't understand it, is it fair to assume that you did understand the question?

21 A. Yes.

Q. Just a couple of housekeeping matters.

MR. HORWITZ: (Indicating.)

MR. BUNDREN: (Nods head affirmatively.)

BY MR. HORWITZ:

Q. Is this the subpoena and notice of deposition that was served on you through counsel?

3 A. Yes.

MR. HORWITZ: Can we make that Exhibit 1, please?

6 THE WITNESS: Where is that at?

THE REPORTER: I need to stamp it.

MR. BUNDREN: When he gives you documents, she needs to stamp it.

10 THE WITNESS: What's that?

MR. HORWITZ: Just hand her the --

12 THE WITNESS: Oh, gotcha.

(WHEREUPON, the above-mentioned document was marked as Exhibit Number 1.)

BY MR. HORWITZ:

Q. And there were some document requests as part of that notice; is that correct, sir?

18 A. Yes.

Q. Is this the response that was given to those document requests?

21 A. Yes.

MR. HORWITZ: Make that Exhibit 2, please.

(WHEREUPON, the above-mentioned document was marked as Exhibit Number 2.)

1 BY MR. HORWITZ:
 2 Q. And these are some additional documents that
 3 were handed me -- handed to me by your counsel a few
 4 minutes ago.
 5 MR. HORWITZ: Brandon, if you don't
 6 object --
 7 MR. BUNDREN: No, not at all.
 8 MR. HORWITZ: -- we'll enter these as
 9 Exhibit 3.
 10 (WHEREUPON, the above-mentioned document
 11 was marked as Exhibit Number 3.)
 12 BY MR. HORWITZ:
 13 Q. Let me see that.
 14 **A. (Passes document.)**
 15 Q. Sir, I'm reading from Exhibit 2. Would you
 16 agree with me that it says with respect to Request
 17 for Production Number 1, Mr. Riddle objects to this
 18 request because the amount of compensation paid to
 19 him by the plaintiff is not relevant and that that
 20 objection has been signed by your counsel?
 21 **A. Yes.**
 22 Q. Mr. Riddle, I'm handing you a document. This
 23 document entitled Plaintiff's 26(a) Initial
 24 Disclosures -- pardon me. Is it entitled Plaintiff's
 25 Rule 26(a)(1) Initial Disclosures?

1 **A. I don't --**
 2 Q. I'm not --
 3 **A. -- know.**
 4 Q. -- trying to confuse you. The --
 5 **A. I don't understand what you're asking.**
 6 Q. The first page, what's the title of the
 7 document?
 8 **A. In the United States District Court Middle**
 9 **Tenn- -- Middle District of Tennessee, Nashville**
 10 **Division; Plaintiff's Rule 26(a)(1) Initial**
 11 **Disclosures. Is that what you're referring to?**
 12 Q. Yes, sir.
 13 **A. Okay.**
 14 Q. Can you please turn to page 3 of that
 15 document?
 16 **A. (Complies.)**
 17 Q. Can you please read the highlighted portion
 18 of the document that you have?
 19 **A. Lampo seeks to recover as damages the value**
 20 **of the effort Lampo expended in connection with**
 21 **defendant's admission into the ELP program and the**
 22 **resulting termination.**
 23 Q. Would you agree with me that Exhibit 2
 24 reflects that your compensation is no longer relevant
 25 to this matter?

1 MR. BUNDREN: Objection to the form,
 2 calls for a legal conclusion.
 3 **THE WITNESS: I don't know.**
 4 BY MR. HORWITZ:
 5 Q. That's fair. I'm just going to state for the
 6 record I'm not going to be asking you about your
 7 compensation based on those objections which your
 8 attorney has signed so we're just gonna move on to
 9 other matters, but I'd like to make the initial
 10 disclosures the next exhibit.
 11 THE REPORTER: Okay.
 12 MR. BUNDREN: And I just want to be clear
 13 that we don't object to any questions about how he's
 14 compensated. It's just the specific amount of what
 15 he is compensated, that -- that was our objection.
 16 (WHEREUPON, the above-mentioned document
 17 was marked as Exhibit Number 4.)
 18 MR. BUNDREN: Did you mark the
 19 disclosure?
 20 THE REPORTER: Uh-huh.
 21 MR. BUNDREN: Okay. So that's 4?
 22 THE REPORTER: Correct.
 23 MR. BUNDREN: Okay. Thank you.
 24 BY MR. HORWITZ:
 25 Q. Sir, do you know who Kevin Paffrath is?

1 **A. Yes.**
 2 Q. And who is Kevin Paffrath?
 3 **A. He's a real estate agent.**
 4 Q. Have you ever spoken with Mr. Paffrath?
 5 **A. I have.**
 6 Q. And what was the occasion that resulted in
 7 you speaking with Mr. Paffrath?
 8 **A. We had a phone call.**
 9 Q. Just one phone call?
 10 **A. Two phone calls.**
 11 Q. Only two total phone calls ever?
 12 **A. Yes.**
 13 Q. And approximately when did these phone calls
 14 take place?
 15 **A. I'm not sure. It was a long time ago.**
 16 Q. Can you --
 17 **A. I don't know.**
 18 Q. -- can you ballpark it for me?
 19 MR. BUNDREN: Objection to form, asked
 20 and answered.
 21 **THE WITNESS: Last September.**
 22 BY MR. HORWITZ:
 23 Q. Okay. And what did you talk about?
 24 **A. We talked about him coming into the ELP**
 25 **program.**

1 Q. How long approximately did you talk to him
2 about coming into the ELP program?
3 **A. I don't -- I don't know.**
4 Q. Can you estimate it?
5 MR. BUNDREN: Objection to form, asked
6 and answered.
7 **THE WITNESS: 30 minutes.**
8 BY MR. HORWITZ:
9 Q. And did Mr. Paffrath, in fact, come into the
10 ELP program?
11 **A. That's correct.**
12 Q. Did you ever talk to him over the phone after
13 he joined the ELP program?
14 **A. After he joined the ELP program?**
15 Q. Yes, sir.
16 **A. Yes.**
17 Q. How many times did you talk to him over the
18 phone after he joined the ELP program?
19 **A. Oh, it was one time.**
20 Q. Is it possible that it was two times?
21 **A. It was one time.**
22 Q. You mentioned that you thought you might have
23 spoken to him for 30 minutes before he joined the ELP
24 program. Is that customary when you're speaking to
25 prospective ELP agents?

1 **A. Yes.**
2 Q. And what is your job at Lampo? We probably
3 should have established that.
4 **A. So my job is account executive. I'm**
5 **responsible for onboarding now ELPs into our program.**
6 Q. Tell me what onboarding means.
7 **A. Just bringing them on to work with our fans**
8 **so we have a conversation with them and then we bring**
9 **them on to the program.**
10 Q. Are you the one who vets the ELP agents?
11 **A. Yes.**
12 Q. And you speak with them for about 30 minutes
13 before you onboard them; is that correct?
14 **A. Yes.**
15 Q. What do you talk about during the
16 approximately 30 minutes that you spend with ELP
17 agents before they join the program?
18 **A. So about their business, how they're**
19 **structured, how many transactions that they've closed**
20 **and then just tell them about the program.**
21 Q. Do you independently verify that information
22 before onboarding them into the ELP program?
23 **A. What do you mean independently verify?**
24 Q. Do you take some action to confirm whether or
25 not they have, in fact, made the sales that they

1 claim?
2 **A. No.**
3 Q. What else do you talk about other than the
4 sales that they've made?
5 **A. Just ask them questions about their business;**
6 **verify verbally that they have closed the sides (sic)**
7 **that -- the transactions that they've had; and then**
8 **tell them about the program; and then from there, we**
9 **move forward.**
10 Q. When prospective ELP agents talk about their
11 business, do you take any steps to verify that what
12 they're telling you is true?
13 **A. What do you mean by that?**
14 Q. I mean when somebody tells you what their
15 business is or how long they've been in business, do
16 you take any steps to confirm the accuracy of what
17 they're telling you?
18 **A. Take a look at their website. But aside from**
19 **that, the information that people tell me over the**
20 **phone is generally accurate for the most part.**
21 Q. And how do you make that determination?
22 **A. I generally just ask them questions and make**
23 **sure that they at least sound like they know what**
24 **they're talking about.**
25 Q. I'm not trying to confuse you. I'm just

1 trying to -- you rely on what they tell you to be
2 true; is that correct?
3 **A. Exactly.**
4 Q. Did you ever exchange any e-mails with Mr.
5 Paffrath?
6 **A. Yes.**
7 Q. I've just handed you a document that's
8 previously been filed in this case as document number
9 27-1. Does this look like a set of e-mail
10 correspondences between you and Kevin Paffrath?
11 **A. Yes.**
12 Q. Please turn to page 2 of the document that
13 I've just handed you. Is there a sentence in this
14 e-mail that says I meant to let my admin know that
15 you're going to be starting on 9/28?
16 **A. Yes.**
17 Q. Did you send this e-mail?
18 **A. I did.**
19 Q. Does this look like an authenticate copy of
20 the e-mail that you sent?
21 **A. What do you mean by authenticate?**
22 Q. This hasn't been faked, right? This is an
23 accurate correspondence?
24 **A. Oh, yeah.**
25 MR. HORWITZ: I'd like to mark this as

1 the next exhibit, please.
 2 (WHEREUPON, the above-mentioned document
 3 was marked as Exhibit Number 5.)
 4 BY MR. HORWITZ:
 5 Q. Do you ever work with prospective customers
 6 in your role as an employee of The Lampo Group?
 7 MR. BUNDREN: Objection to form, vague
 8 and ambiguous.
 9 **THE WITNESS: What do you mean by**
 10 **prospective customers?**
 11 BY MR. HORWITZ:
 12 Q. I mean referrals who are trying to buy or
 13 sell homes through the ELP program.
 14 **A. Personally, I do not.**
 15 Q. Do you know anything about the way that
 16 process works?
 17 **A. Yeah. So we have a customer advocate team**
 18 **that calls every single referral that fills out their**
 19 **information on the website just to make sure they're**
 20 **being served well by our agents. That generally**
 21 **happens two days after a customer fills out their**
 22 **information on the website.**
 23 Q. You mentioned they call every single
 24 referral?
 25 **A. Yes.**

1 Q. Is it possible that they don't call every
 2 single referral?
 3 MR. BUNDREN: Objection to the form,
 4 asked and answered.
 5 **THE WITNESS: I don't know.**
 6 BY MR. HORWITZ:
 7 Q. Is it possible that 95 percent of referrals
 8 are not spoken to by any employee of The Lampo Group?
 9 MR. BUNDREN: Objection to form, asked
 10 and answered.
 11 **THE WITNESS: I don't know.**
 12 BY MR. HORWITZ:
 13 Q. If you don't know the answer to those
 14 questions, then how do you know that they call every
 15 single referral?
 16 **A. Just because, I mean, I've had communication**
 17 **with that team. I mean, I've been working there for**
 18 **two and a half years and so I know a lot of those**
 19 **team members that are on the customer advocate team.**
 20 **But specifically what they do in their day to day,**
 21 **I'm not down in the weeds with that team.**
 22 Q. If Jack Galloway testified that 95 percent of
 23 referrals do not receive a phone call from an
 24 employee to The Lampo -- an employee of The Lampo
 25 Group, would he have been wrong?

1 MR. BUNDREN: Objection to the form,
 2 argumentative.
 3 **THE WITNESS: I don't know.**
 4 BY MR. HORWITZ:
 5 Q. Is it fair to say that Mr. Galloway knows
 6 more about this topic than you do?
 7 MR. BUNDREN: Objection to form,
 8 argumentative.
 9 **THE WITNESS: I don't know.**
 10 BY MR. HORWITZ:
 11 Q. Do you have personal knowledge as to how many
 12 customers are spoken to before being referred out to
 13 an ELP agent?
 14 MR. BUNDREN: Objection to form, asked
 15 and answered.
 16 **THE WITNESS: I don't know.**
 17 BY MR. HORWITZ:
 18 Q. You don't know if you have personal
 19 knowledge?
 20 **A. Or, no, I do not have personal knowledge.**
 21 **Let me clarify, I do not.**
 22 Q. Sir, do you have the authority to cancel or
 23 terminate ELP contracts in your position at The Lampo
 24 Group?
 25 **A. I do.**

1 Q. Have you ever terminated an ELP contract?
 2 **A. Yes.**
 3 Q. Did you terminate Kevin Paffrath's ELP
 4 contract?
 5 **A. Yes.**
 6 Q. Do you remember the date that you terminated
 7 Mr. Paffrath's ELP contract?
 8 **A. I don't remember the exact date. It was a**
 9 **long time ago.**
 10 Q. If I represented to you that that date was
 11 October 8th, would you have any reason to disagree
 12 with me?
 13 MR. BUNDREN: Objection to the form,
 14 argumentative.
 15 **THE WITNESS: I wouldn't have any reason.**
 16 BY MR. HORWITZ:
 17 Q. After you terminated Mr. Paffrath's ELP
 18 contract, did you refund him any money?
 19 MR. BUNDREN: Objection to the form. Mr.
 20 Riddle didn't refund anybody. The plaintiff may have
 21 but not Mr. Riddle.
 22 You can answer.
 23 **THE WITNESS: The company did.**
 24 BY MR. HORWITZ:
 25 Q. How much money did the company refund to Mr.

1 Paffrath?
 2 **A. \$700.**
 3 Q. How much money had Mr. Paffrath paid the
 4 company prior to him being refunded \$700?
 5 **A. \$700.**
 6 Q. So Mr. Paffrath was refunded all of his
 7 money; is that correct?
 8 **A. That is correct.**
 9 Q. And why did you refund -- did -- I apologize.
 10 Let me withdraw that question. Why did the company
 11 refund Mr. Paffrath \$700?
 12 **A. I'm not sure. It was a long time ago.**
 13 Q. Do you remember anything about it?
 14 **A. No.**
 15 Q. I'm gonna play some audio recordings. Let me
 16 give you a transcript to follow along.
 17 THE REPORTER: Let me get this booted up
 18 real quick.
 19 (Off-the-record discussion.)
 20 BY MR. HORWITZ:
 21 Q. So before we start, in front of you, I've
 22 given you a transcript?
 23 THE REPORTER: Go ahead.
 24 BY MR. HORWITZ:
 25 Q. I'm gonna ask you to follow along and tell me

1 if there's any portion of that transcript that you
 2 think is inaccurate by highlighting it for me.
 3 MR. BUNDREN: Objection to the form. I
 4 just want to clarify, inaccurate as in inaccurately
 5 transcribed?
 6 MR. HORWITZ: Correct.
 7 MR. BUNDREN: Okay. Do you understand
 8 what he's asking you to do?
 9 **THE WITNESS: I think so. Are you**
 10 **referring to, you know, any information that's**
 11 **presented in front of me if I think it's**
 12 **inaccurate --**
 13 BY MR. HORWITZ:
 14 Q. That's correct.
 15 **A. -- as far as what we transcribed?**
 16 MR. BUNDREN: Okay. Now I'm confused.
 17 Is it that the --
 18 MR. HORWITZ: Oh, sorry. I understand
 19 the -- I just want to make sure that the transcript
 20 is correct; that it is accurately transcribing this
 21 conversation.
 22 MR. BUNDREN: Okay.
 23 BY MR. HORWITZ:
 24 Q. If there is something that you think is
 25 something wrong, will you please let me know?

1 MR. BUNDREN: Do you understand now? I
 2 think I do.
 3 **THE WITNESS: I think so.**
 4 MR. HORWITZ: Okay.
 5 BY MR. HORWITZ:
 6 Q. So I would start on the first page because
 7 it's going to play.
 8 MR. BUNDREN: So she's gonna play it and
 9 we're just gonna sit here --
 10 MR. HORWITZ: Uh-huh.
 11 MR. BUNDREN: -- and we'll follow along.
 12 MR. HORWITZ: Yeah.
 13 MR. BUNDREN: Okay. Cool.
 14 (Audio played.)
 15 **THE WITNESS: Stop that.**
 16 (Audio stopped.)
 17 **THE WITNESS: I don't -- I don't --**
 18 BY MR. HORWITZ:
 19 Q. Will you just highlight --
 20 **A. -- know what that said.**
 21 Q. -- as you find things?
 22 **A. Okay.**
 23 MR. BUNDREN: I think if he needs to stop
 24 it, though, while he highlights. He wants to be able
 25 to listen to the rest of it.

1 **THE WITNESS: Exactly. All right. Cool.**
 2 **We're good.**
 3 (Audio played.)
 4 (Audio stopped.)
 5 BY MR. HORWITZ:
 6 Q. Can you read to the court reporter whatever
 7 you highlighted, please?
 8 **A. Yeah, one second. Page 3, line 14: Uh-huh,**
 9 **that's probably true. I didn't hear that in the**
 10 **recording.**
 11 Q. Okay. Anything else?
 12 **A. That's it.**
 13 Q. Everything else stand accurate?
 14 **A. Yep.**
 15 Q. Was that you on the phone call?
 16 **A. Yes.**
 17 Q. Is that a typical phone call discussing the
 18 sort of things that you would discuss with
 19 prospective ELP agents?
 20 **A. Yes.**
 21 Q. Had you required Mr. Paffrath to sign a
 22 confidentiality agreement before having that phone
 23 call?
 24 MR. BUNDREN: Objection to the form.
 25 **THE WITNESS: No.**

1 BY MR. HORWITZ:
 2 Q. Did Mr. Paffrath sign any confidentiality
 3 agreement with Lampo prior to that phone call?
 4 **A. I believe that there's an item in the**
 5 **contract that he signed.**
 6 Q. And when did he sign that contract, before or
 7 after the phone call?
 8 **A. After.**
 9 Q. So by the time -- during the phone call, had
 10 Mr. Paffrath signed any confidentiality agreement
 11 with Lampo to your knowledge?
 12 **A. No.**
 13 Q. Do you ever make prospective ELP agents sign
 14 confidentiality agreements before having phone calls
 15 like that one?
 16 **A. No.**
 17 Q. Did you disclose any confidential information
 18 during that phone call?
 19 MR. BUNDREN: Objection to the form,
 20 calls for a legal conclusion but you can answer.
 21 **THE WITNESS: Can you clarify what you**
 22 **mean by confidential?**
 23 BY MR. HORWITZ:
 24 Q. Sure. You disclosed that 2500 agents are a
 25 part of this program; is that correct?

1 **A. Yes.**
 2 Q. Was that confidential?
 3 MR. BUNDREN: Objection to the form,
 4 calls for a legal conclusion.
 5 You can answer.
 6 **THE WITNESS: I don't know.**
 7 BY MR. HORWITZ:
 8 Q. Have you ever told other prospective ELP
 9 agents that 2500 agents are a part of the program?
 10 **A. Yes.**
 11 Q. Approximately how many times would you
 12 estimate that you have told other prospective ELP
 13 agents that 2500 agents are a part of the program?
 14 **A. I have no clue.**
 15 Q. More than ten?
 16 MR. BUNDREN: Objection to form, asked
 17 and answered.
 18 **THE WITNESS: I don't know.**
 19 BY MR. HORWITZ:
 20 Q. More than a hundred?
 21 MR. BUNDREN: Objection to form, asked
 22 and answered.
 23 **THE WITNESS: I don't know.**
 24 BY MR. HORWITZ:
 25 Q. Is it possible that it's more than a hundred?

1 MR. BUNDREN: Objection to the form,
 2 asked and answered for the third time, I think.
 3 **THE WITNESS: I don't know.**
 4 BY MR. HORWITZ:
 5 Q. Is it possible that it's more than a
 6 thousand?
 7 MR. BUNDREN: Objection to the form,
 8 asked and answered. This is the fourth time this
 9 witness has said I don't know.
 10 **THE WITNESS: I don't know.**
 11 BY MR. HORWITZ:
 12 Q. You indicated that there is a 30 percent
 13 referral fee at close and \$350 per month payment to
 14 Lampo required as a condition of being part of this
 15 program during the call; is that correct?
 16 **A. Yes.**
 17 Q. Have you ever told other prospective ELP
 18 agents that there's a 30 percent referral fee at
 19 close and a \$350 per month fee owed to Lampo as part
 20 of being an ELP agent?
 21 **A. Yes.**
 22 Q. Approximately how many times have you
 23 disclosed that information to other prospective ELP
 24 agents?
 25 **A. I don't know.**

1 Q. Is it possible that it's more than ten?
 2 MR. BUNDREN: Objection to form, asked
 3 and answered.
 4 **THE WITNESS: It's probably more than**
 5 **ten.**
 6 BY MR. HORWITZ:
 7 Q. Is it possible that it's more than a hundred?
 8 MR. BUNDREN: Objection to form, asked
 9 and answered.
 10 **THE WITNESS: I don't know.**
 11 BY MR. HORWITZ:
 12 Q. Is it possible that it's more than a
 13 thousand?
 14 MR. BUNDREN: Objection to form, asked
 15 and answered for the third time.
 16 **THE WITNESS: I don't know.**
 17 BY MR. HORWITZ:
 18 Q. Are the fees associated with the program
 19 confidential?
 20 MR. BUNDREN: Objection to the form,
 21 calls for a legal conclusion.
 22 You can answer.
 23 **THE WITNESS: I mean, I -- we don't go**
 24 **out into the marketplace and advertise to agents**
 25 **that, hey, this is what the program costs.**

1 BY MR. HORWITZ:
 2 Q. Would you consider that information to be
 3 sensitive?
 4 MR. BUNDREN: Objection to the form,
 5 calls for a legal conclusion.
 6 **THE WITNESS: No.**
 7 BY MR. HORWITZ:
 8 Q. Has Lampo ever instructed you not to share
 9 that information?
 10 MR. BUNDREN: Objection to the form,
 11 vague and ambiguous. What information?
 12 **THE WITNESS: No.**
 13 BY MR. HORWITZ:
 14 Q. You understood my question, right?
 15 **A. I think so.**
 16 Q. Has Lampo ever instructed you not to disclose
 17 the fact that there is a 30 percent referral fee at
 18 close and a \$350 per month fee owed to Lampo as being
 19 part of --
 20 **A. Oh, no.**
 21 Q. Never told you not to say that?
 22 **A. That is correct.**
 23 Q. Are the fees associated with the program
 24 proprietary?
 25 MR. BUNDREN: Objection to form, calls

1 for a legal conclusion.
 2 **THE WITNESS: What does that mean?**
 3 BY MR. HORWITZ:
 4 Q. Does The Lampo Group consider the fees
 5 associated with the program to be confidential or
 6 proprietary in any way to your knowledge?
 7 MR. BUNDREN: Objection to form, asked
 8 and answered, and it calls for a legal conclusion.
 9 You can answer.
 10 **THE WITNESS: I'm not sure.**
 11 BY MR. HORWITZ:
 12 Q. The Mastermind that you mentioned during the
 13 call, it sounded like a benefit; is that right?
 14 **A. Yeah.**
 15 Q. Something that comes with the program?
 16 **A. Yes.**
 17 Q. To benefit ELP agents?
 18 **A. Yes.**
 19 Q. Are you familiar with the ELP agreement that
 20 ELP agents are required to sign?
 21 **A. Overall, but speaking in legal terms --**
 22 Q. Have you seen it before?
 23 **A. Yeah, I've seen it.**
 24 Q. Do you know if the Mastermind is mentioned in
 25 it?

1 **A. I don't know if the Mastermind is**
 2 **specifically mentioned in that.**
 3 Q. I'll let you take a look at it. I'm handing
 4 you a document that's previously been filed in this
 5 matter. It's document number 25-1. If you'd take a
 6 moment to look through the document and let me know
 7 if you see Mastermind mentioned anywhere.
 8 MR. HORWITZ: While he's looking, let me
 9 do that. Let me mark the highlighted transcript as
 10 the next exhibit, please.
 11 MR. BUNDREN: 6?
 12 THE REPORTER: (Nods head affirmatively.)
 13 (WHEREUPON, the above-mentioned document
 14 was marked as Exhibit Number 6.)
 15 **THE WITNESS: I don't see anything about**
 16 **the Masterminds. But item 11.G, open, says maintain**
 17 **open lines of communication and be available for**
 18 **regular calls with Ramsey's team which in no event**
 19 **shall be less frequent than once per quarter.**
 20 BY MR. HORWITZ:
 21 Q. Just to clarify, did you see anything about
 22 Masterminds?
 23 MR. BUNDREN: Objection to form, asked
 24 and answered.
 25 **THE WITNESS: I do not see anything about**

1 **Masterminds.**
 2 BY MR. HORWITZ:
 3 Q. Did you see anything about a relationship
 4 coach?
 5 MR. BUNDREN: Objection to the form,
 6 asked and answered.
 7 **THE WITNESS: No.**
 8 MR. BUNDREN: Or foundation. I'm sorry.
 9 BY MR. HORWITZ:
 10 Q. That was no?
 11 **A. No.**
 12 Q. Regarding the ZIP codes that y'all discussed,
 13 you sent him those ZIP codes; is that right?
 14 **A. That is correct.**
 15 Q. Tell me about the social media marketing
 16 guide or the suite -- promotional suite maybe. How
 17 does that work?
 18 MR. BUNDREN: Objection to form,
 19 compound, vague.
 20 **THE WITNESS: Can you provide me with the**
 21 **marketing suite?**
 22 BY MR. HORWITZ:
 23 Q. I think it might be this. Is this what you
 24 were talking about?
 25 **A. Yeah. So it has everything clearly spelled**

1 out in here as far as things that you can do to
 2 market the brand.
 3 Q. Tell me -- tell me what the benefit is to
 4 ELPs. Tell me how it works.
 5 **A. I mean, the benefit is is, you know, the Dave**
 6 **Ramsey show just being as large as it is, like being**
 7 **partnered with a big brand is beneficial.**
 8 Q. Okay. So I'd become an ELP agent. I sign
 9 the contract and then what? How do I get to use this
 10 marketing suite?
 11 **A. I mean, you have logos that you can use,**
 12 **different things that you can use on -- on like**
 13 **business cards, listing presentations, social media,**
 14 **e-mail signatures, different things that you can use.**
 15 Q. What can you use on social media?
 16 **A. Like the branding logos.**
 17 Q. Okay. And that comes with the ELP program?
 18 **A. Yes.**
 19 Q. As soon as I sign an ELP program agreement, I
 20 get to do all that stuff?
 21 **A. Yes.**
 22 Q. Social media include YouTube?
 23 MR. BUNDREN: Objection to the form.
 24 **THE WITNESS: I don't know.**
 25 BY MR. HORWITZ:

1 Q. Does it say that on there?
 2 **A. No.**
 3 Q. Will you hand that back to me, please?
 4 **A. (Complies.)**
 5 Q. Will you read that section, please?
 6 **A. Organic social posts applies to any and all**
 7 **social media platforms including but not limited to**
 8 **Facebook, Twitter, YouTube, LinkedIn, Snapchat.**
 9 Q. Do you want to change your answer to the
 10 question before this?
 11 **A. Yes.**
 12 Q. Social media includes YouTube, doesn't it?
 13 **A. Yes.**
 14 Q. And this is a benefit that comes with the
 15 program as a result of signing an ELP agreement?
 16 **A. Yes.**
 17 Q. Are you familiar with any videos that were
 18 published by Kevin Paffrath after you terminated his
 19 ELP agreement?
 20 **A. Yes.**
 21 Q. When did you come to be familiar with those
 22 videos?
 23 **A. I don't know. I don't remember.**
 24 Q. Do you remember how you came to be familiar
 25 with them?

1 **A. I do not remember.**
 2 Q. Do you know if somebody sent an e-mail to you
 3 about them?
 4 MR. BUNDREN: Objection to the form.
 5 **THE WITNESS: I think -- I think somebody**
 6 **told me about them but then, again, I'm not really**
 7 **sure.**
 8 BY MR. HORWITZ:
 9 Q. Did you discuss them with anybody?
 10 **A. My direct leader.**
 11 Q. Who's that?
 12 **A. At the time, it was Karlee Hildebrand.**
 13 Q. Did you discuss it with anybody else?
 14 **A. No.**
 15 Q. Have you since then discussed the videos with
 16 anyone else?
 17 **A. My direct leader, Karlee. I think that's**
 18 **about it.**
 19 Q. You think or you know?
 20 MR. BUNDREN: Objection to form --
 21 **THE WITNESS: I think.**
 22 MR. BUNDREN: -- asked and answered.
 23 **THE WITNESS: I think.**
 24 BY MR. HORWITZ:
 25 Q. Did you ever discuss the videos with Jack

1 Galloway?
 2 MR. BUNDREN: Objection to form, vague.
 3 **THE WITNESS: The only time I've**
 4 **discussed these videos with Jack Galloway was in a**
 5 **meeting that I had with our attorneys; that's the**
 6 **only time that we've discussed the videos.**
 7 BY MR. HORWITZ:
 8 Q. So just to clarify your answer before, it was
 9 not only on a single occasion that you discussed
 10 these videos with Karlee Hildebrand; is that correct?
 11 MR. BUNDREN: Objection to the form,
 12 asked and answered.
 13 **THE WITNESS: Can you ask that question**
 14 **again, please?**
 15 BY MR. HORWITZ:
 16 Q. You told me you had only discussed the videos
 17 one time with Karlee Hildebrand or something to that
 18 effect; is that right?
 19 MR. BUNDREN: Objection to form, asked
 20 and answered, argumentative.
 21 **THE WITNESS: Correct.**
 22 BY MR. HORWITZ:
 23 Q. And you told me you have discussed these
 24 videos with Jack Galloway during a separate meeting;
 25 was that correct?

1 **A. With the lawyers (indicating).**

2 Q. Okay. So the first answer was not complete,
3 was it?

4 MR. BUNDREN: Objection to the form,
5 argumentative and borderline harassing.

6 **THE WITNESS: I don't know.**

7 BY MR. HORWITZ:

8 Q. Are there any other occasions that you
9 discussed these videos with anyone at The Lampo
10 Group?

11 **A. I don't know.**

12 Q. Have you ever discussed these videos with
13 Dave Ramsey?

14 **A. No.**

15 Q. Does The Lampo Group have a policy of not
16 referring prospective customers to ELP agents until
17 they've demonstrated they are committed to the
18 program and to providing excellent client service?

19 MR. BUNDREN: Objection to the form.
20 You can answer.

21 **THE WITNESS: I don't understand your**
22 **question.**

23 BY MR. HORWITZ:

24 Q. Does The Lampo Group have a policy of not
25 referring prospective customers to ELP agents until

1 **A. Yeah.**

2 Q. Do you see any policy that indicates that
3 Lampo will not refer prospective customers to ELP
4 agents until they have demonstrated that they are
5 committed to the program and to providing excellent
6 client service?

7 MR. BUNDREN: Objection to the form,
8 calls for a legal conclusion. It's also
9 argumentative and it calls for -- Mr. Riddle is not
10 here to testify as a corporate representative. To
11 the extent he can answer the question, please do so.

12 **THE WITNESS: I'm not sure.**

13 BY MR. HORWITZ:

14 Q. Do you see such a policy?

15 MR. BUNDREN: Same objection.

16 **THE WITNESS: I don't. But then, again,**
17 **I can't really speak into like any legal writing**
18 **that's on this page or on these pages.**

19 BY MR. HORWITZ:

20 Q. I'm just asking if you see any section of the
21 agreement where that policy appears.

22 MR. BUNDREN: Same objection as before.

23 You can answer.

24 **THE WITNESS: No.**

25 BY MR. HORWITZ:

1 they've demonstrated that they are committed to the
2 program and to providing excellent client service?

3 MR. BUNDREN: Objection to form, vague,
4 ambiguous.

5 **THE WITNESS: No.**

6 BY MR. HORWITZ:

7 Q. Does not have such a policy?

8 **A. No. And I don't know how they would**
9 **implement such a policy until they're actually in the**
10 **program.**

11 Q. After someone becomes an ELP agent and has
12 joined the program, are you aware of any policy of
13 not referring prospective customers to ELP agents
14 until they've demonstrated that they are committed to
15 the program and to providing excellent client
16 service?

17 MR. BUNDREN: Objection to the form,
18 asked and answered. Also, as a -- this witness is
19 not a 30(b)(6) corporate representative on these --
20 any of these issues. He's a fact witness.

21 To the extent you know, you can answer.

22 **THE WITNESS: Yeah, I'm not sure.**

23 BY MR. HORWITZ:

24 Q. Do you still have the ELP agreement in front
25 of you?

1 Q. Would you please turn to page 3 of the ELP
2 agreement? Will you please read the first sentence
3 of section 1 entitled referral arrangement.

4 **A. Ramsey agrees to provide ELP through its**
5 **broker with referral services within ELP's assigned**
6 **territories defined and determined exclusively by**
7 **Ramsey. Such services include --**

8 Q. I just needed the first sentence.

9 **A. Okay. Cool.**

10 Q. Did Ramsey to your knowledge provide Kevin
11 Paffrath through its broker with referral services
12 within Mr. Paffrath's assigned territory as defined
13 and determined exclusively by Ramsey?

14 MR. BUNDREN: Objection to form, calls
15 for a legal conclusion. To the extent that the
16 witness can answer, he can.

17 **THE WITNESS: I don't know what you mean**
18 **by referral services.**

19 BY MR. HORWITZ:

20 Q. Did they refer him a single client?

21 **A. No.**

22 MR. HORWITZ: Can we mark the ELP
23 agreement as the next exhibit, please?

24 (WHEREUPON, the above-mentioned document
25 was marked as Exhibit Number 7.)

1 BY MR. HORWITZ:
 2 Q. I'm going to hand you a transcript and play
 3 file number 2. Before we do that, I'd like you to
 4 highlight anything that you think is transcribed
 5 incorrectly, please.
 6 MR. BUNDREN: Can we get copies for this?
 7 MR. HORWITZ: Yeah.
 8 MR. BUNDREN: All right. Do you intend
 9 to mark it as an exhibit?
 10 MR. HORWITZ: Yes.
 11 MR. BUNDREN: Then I think let's go off
 12 the record and then we'll get some copies of this.
 13 (Lunch break.)
 14 MR. HORWITZ: Are we back on the record?
 15 THE REPORTER: Yes, sir.
 16 BY MR. HORWITZ:
 17 Q. Just a couple of questions I forgot to ask
 18 earlier. Roughly how many prospective ELP agents
 19 would you estimate you've spoken to during your time
 20 at Lampo?
 21 A. I'm not sure. I don't know. I don't keep --
 22 Q. I meant --
 23 A. -- I don't keep track of that.
 24 Q. I'm asking you to estimate it, sir.
 25 MR. BUNDREN: Objection to form, asked

1 and answered.
 2 **THE WITNESS: Over a hundred.**
 3 BY MR. HORWITZ:
 4 Q. And you mentioned that is a typical phone
 5 call to that -- ELP agents for the program; is that
 6 right?
 7 A. Yeah.
 8 MR. BUNDREN: Objection to the form.
 9 BY MR. HORWITZ:
 10 Q. Is that yes?
 11 A. Yes.
 12 Q. Can you rule out the possibility that you
 13 disclosed the number of agents in the program to each
 14 person that you've spoken to when vetting a
 15 prospective ELP agent?
 16 MR. BUNDREN: Objection to form,
 17 argumentative.
 18 **THE WITNESS: I don't understand what**
 19 **you're asking.**
 20 BY MR. HORWITZ:
 21 Q. You said you didn't know earlier whether you
 22 had disclosed that information to, you know, more
 23 than ten or more than a hundred people. I'm asking
 24 if you can rule out the possibility.
 25 MR. BUNDREN: Objection to the form,

1 asked and answered, misstates the witness' testimony.
 2 **THE WITNESS: I still don't understand**
 3 **what you're asking.**
 4 BY MR. HORWITZ:
 5 Q. Can you rule out that you told each ELP agent
 6 you have vetted during your time at Lampo that there
 7 were 2500 agents in the program?
 8 MR. BUNDREN: Objection to form, asked
 9 and answered, misstates the witness' testimony, and
 10 argumentative.
 11 **THE WITNESS: I don't know.**
 12 BY MR. HORWITZ:
 13 Q. You don't know if you can rule it out?
 14 MR. BUNDREN: Same objection.
 15 MR. HORWITZ: Brandon, he hasn't answered
 16 the question.
 17 MR. BUNDREN: Yes, he has. He said I
 18 don't know. And you've asked him four times now. If
 19 you want to keep on doing that, I'm gonna object.
 20 BY MR. HORWITZ:
 21 Q. You don't know whether you can rule it out?
 22 MR. BUNDREN: Objection. Same objection.
 23 BY MR. HORWITZ:
 24 Q. Is that the answer --
 25 MR. BUNDREN: Fifth time.

1 BY MR. HORWITZ:
 2 Q. -- to the question?
 3 MR. BUNDREN: Objection, sixth time.
 4 **THE WITNESS: That's correct.**
 5 BY MR. HORWITZ:
 6 Q. Would you agree that it's possible if you
 7 can't rule out the possibility?
 8 MR. BUNDREN: Objection. Same objection.
 9 Same objection for the seventh time.
 10 **THE WITNESS: I still don't understand**
 11 **what you're asking.**
 12 BY MR. HORWITZ:
 13 Q. You've told me that you can't rule out the
 14 possibility that you disclosed the fact that 2500 ELP
 15 agents are in Lampo's program; is that correct?
 16 MR. BUNDREN: Objection, misstates the
 17 witness' testimony, asked and answered, and now it is
 18 harassing.
 19 MR. HORWITZ: Respectfully, Brandon, it's
 20 evasive. It's not that he's answered the question.
 21 MR. BUNDREN: He has answered the
 22 question, Daniel. You just don't like the answer.
 23 MR. HORWITZ: I'm trying to figure out
 24 what the answer is.
 25 MR. BUNDREN: He's told you I don't know.

1 He's told you that at least seven times.
2 THE WITNESS: Yeah, I don't know.
 3 BY MR. HORWITZ:
 4 Q. You can't rule it out and you don't -- and
 5 it's possible and -- but you don't know that it's
 6 possible?
 7 MR. BUNDREN: Objection. Now that's
 8 speculation, asked and answered, and misstates the
 9 witness' testimony, and argumentative.
 10 BY MR. HORWITZ:
 11 Q. I'm just trying to make this as clear as
 12 possible for the record. I'm not trying to trip you
 13 up. You have told me that you don't know whether
 14 it's possible that you discussed this with each
 15 prospective ELP agent; is that correct?
 16 MR. BUNDREN: Again, same objection.
17 THE WITNESS: That's correct.
 18 BY MR. HORWITZ:
 19 Q. You've also told me that you don't know
 20 whether you can rule it out; is that correct?
 21 MR. BUNDREN: Same objection.
22 THE WITNESS: That's correct.
 23 BY MR. HORWITZ:
 24 Q. Do you dispute that you have discussed the
 25 number of ELP agents in Lampo's ELP program which

1 every -- which you have discussed with prospective --
 2 no, let me withdraw that. Do you dispute that you
 3 have disclosed that there are 2500 agents in the
 4 Lampo's ELP program with each ELP agent that you have
 5 vetted during your time at Lampo?
 6 MR. BUNDREN: Objection, asked and
 7 answered, harassing.
 8 Go ahead.
9 THE WITNESS: I still don't know what
10 you're asking.
 11 BY MR. HORWITZ:
 12 Q. I'm asking if you dispute the fact that you
 13 have -- I'm asking whether you dispute that you have
 14 disclosed the number of agents in Lampo's ELP program
 15 with each agent that you have vetted?
 16 MR. BUNDREN: Same objection.
17 THE WITNESS: No, I don't dispute that.
 18 BY MR. HORWITZ:
 19 Q. Do you dispute that you have disclosed the
 20 fees associated with the program with each ELP agent
 21 that you have vetted?
 22 MR. BUNDREN: Objection to the form.
 23 Same objection.
24 THE WITNESS: Ask that again, please.
 25 BY MR. HORWITZ:

1 Q. Do you dispute whether you have disclosed --
 2 let me restate that. Do you dispute whether that...
 3 Do you dispute the contention that you have disclosed
 4 the fees associated with Lampo's ELP program to each
 5 prospective ELP agent that you have vetted?
 6 MR. BUNDREN: Objection, asked and
 7 answered, argumentative.
 8 Go ahead.
9 THE WITNESS: No.
 10 BY MR. HORWITZ:
 11 Q. Thank you.
 12 MR. HORWITZ: Can we play -- well, just
 13 to -- what happened to his transcript?
 14 MR. BUNDREN: I just gave it to you.
 15 BY MR. HORWITZ:
 16 Q. We're gonna do the same thing we did with
 17 that first file. She's gonna play an audio
 18 recording. I'm gonna ask you to highlight it if
 19 there's anything that you think has been transcribed
 20 incorrectly.
 21 (Audio played.)
 22 (Audio stopped.)
 23 BY MR. HORWITZ:
 24 Q. Did you recognize those calls?
25 A. Yes.

1 Q. Was that your voice on those calls?
2 A. Yes.
 3 Q. Can you read for the court reporter anything
 4 that you highlighted in that transcript?
5 A. Page 4, line item 11, it says practice. It
6 was program.
 7 Q. Anything else?
8 A. That's it.
 9 MR. HORWITZ: I'd like to mark that as
 10 the next exhibit, please.
 11 (WHEREUPON, the above-mentioned document
 12 was marked as Exhibit Number 8.)
13 THE WITNESS: Is that yours?
 14 THE REPORTER: Yes, it is.
 15 BY MR. HORWITZ:
 16 Q. To your recollection, were those calls on the
 17 final day of Mr. Paffrath's participation in the ELP
 18 program?
19 A. I think so.
 20 Q. You terminated his involvement in the program
 21 in that second call; is that correct?
22 A. Yeah.
 23 Q. And how many total calls did you have that
 24 day with Mr. Paffrath?
25 A. It was two.

1 Q. And those calls came after Mr. Paffrath
2 joined the ELP program; is that correct?
3 **A. Yes.**
4 Q. And you mentioned communication with Brandon
5 so far?
6 MR. BUNDREN: Off the record. Sorry.
7 (Off-the-record discussion.)
8 MR. HORWITZ: Back on the record?
9 MR. BUNDREN: Yeah.
10 BY MR. HORWITZ:
11 Q. You mentioned communication with Brandon so
12 far at some point during that call; is that correct?
13 **A. Yes.**
14 Q. Who is Brandon?
15 **A. Brandon's an ELP coach.**
16 Q. What's Brandon's full name?
17 **A. Brandon Maginnis (sp).**
18 Q. And what was the nature of Mr. Paffrath's
19 communication with Brandon Maginnis?
20 MR. BUNDREN: Objection to foundation.
21 **THE WITNESS: He had a phone call.**
22 BY MR. HORWITZ:
23 Q. Just one phone call?
24 **A. I think it was one phone call. I'm not sure.**
25 Q. Could it have been more than one phone call?

1 MR. BUNDREN: Objection to the form,
2 asked and answered.
3 **THE WITNESS: I don't know.**
4 BY MR. HORWITZ:
5 Q. We're up to two phone calls with you and one
6 phone call with Mr. Maginnis after Mr. Paffrath
7 joined the ELP program; is that correct?
8 MR. BUNDREN: Objection to the form.
9 **THE WITNESS: Yeah. Yes.**
10 BY MR. HORWITZ:
11 Q. Do you still have the ELP program agreement
12 in front of you?
13 **A. Yep.**
14 Q. Will you please turn to page 6 of that
15 agreement, please?
16 **A. (Complies.)**
17 Q. Will you please read 11(g)?
18 **A. Maintain open lines of communication and be**
19 **available for regular calls with Ramsey's team which**
20 **in no event shall be less frequent than once per**
21 **quarter.**
22 Q. Did Mr. Paffrath have more than one phone
23 call during the quarter that he was part of the ELP
24 program?
25 **A. Yes.**

1 Q. Was Mr. Paffrath available for phone calls
2 with Ramsey's team more than once per quarter during
3 his time as part of the ELP program?
4 **A. Yes.**
5 Q. You mentioned during the call that it is an
6 expectation of ELP agents to participate in a
7 one-hour phone call every single month; is that
8 correct?
9 **A. Yes.**
10 Q. Can you tell me where in this ELP agreement
11 that is specified?
12 MR. BUNDREN: Objection to form, calls
13 for a legal conclusion.
14 **THE WITNESS: It is not specified in the**
15 **agreement.**
16 BY MR. HORWITZ:
17 Q. Did you inform Mr. Paffrath of that
18 expectation after this agreement was executed?
19 **A. Can you say that again?**
20 Q. Did you inform Mr. Paffrath that he was
21 expected to be part of a one-hour phone call every
22 single month after this agreement was executed?
23 MR. BUNDREN: Objection to form.
24 **THE WITNESS: We actually talked about it**
25 **in the original phone call.**

1 BY MR. HORWITZ:
2 Q. In the original phone call you told him he
3 has to be available for a one-hour phone call every
4 single month as part of the program?
5 MR. BUNDREN: Objection, asked and
6 answered.
7 **THE WITNESS: I told him about the**
8 **Masterminds.**
9 BY MR. HORWITZ:
10 Q. Do you recall telling Mr. Paffrath that he
11 had to be part of a one-hour phone call every single
12 month in order to be part of the ELP program?
13 MR. BUNDREN: Objection to form, asked
14 and answered.
15 **THE WITNESS: The only thing I remember**
16 **is in the original call that we had that we listened**
17 **to earlier of telling him about the Masterminds.**
18 BY MR. HORWITZ:
19 Q. You previously indicated to me that this
20 expectation that ELP agents participate in a one-hour
21 phone call every single month is not in this ELP
22 agreement; is that correct?
23 **A. I didn't see it anywhere in the agreement.**
24 Q. Would you agree with me that it's not in the
25 agreement?

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1 MR. BUNDREN: Objection to form, calls
2 for a legal conclusion and it's been asked and
3 answered.

4 **THE WITNESS: Yes.**

5 BY MR. HORWITZ:

6 Q. Will you please turn to page 7 of this
7 agreement?

8 **A. (Complies.)**

9 Q. Will you please read section 21?

10 **A. This agreement, including any exhibits,**
11 **contains the entire agreement between the parties**
12 **hereto with respect to the subject matter hereof and**
13 **supersedes and cancels any prior agreement or**
14 **understandings, whether oral or written, between the**
15 **parties hereto with respect hereof. No addendum,**
16 **supplement, modification, or amendment of this**
17 **agreement shall be binding unless set forth in**
18 **writing and signed by both of the parties hereto.**

19 Q. One last question: At the bottom of this
20 agreement, it says ELP real estate version July 2018;
21 is that correct?

22 **A. Yes.**

23 Q. Is there a subsequent version of this
24 contract?

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

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1 MR. HORWITZ: Those are my questions.

2

3 EXAMINATION

4 QUESTIONS BY MR. BUNDREN:

5 Q. Mr. Riddle, before the lunch break, we went
6 over a conversation between yourself and Mr.
7 Paffrath. I think it's Exhibit 6. Do you have that
8 in front of you?

9 **A. Yes.**

10 Q. During the audio portion recording of that
11 call, was there anything that stood out to you about
12 the audio recording?

13 **A. No.**

14 Q. Did you hear anything in the background of
15 the audio recording?

16 **A. I did not hear anything in the background.**

17 Q. The first -- but listening to the audio
18 recording today, did you hear anything in the
19 background of the audio recording of the conversation
20 on September 6th of 2018?

21 **A. I did hear some typing in the background**
22 **after listening to it.**

23 Q. Were you -- were you engaging in any kind
24 of -- I know you sent, I think, two e-mails to Mr.
25 Paffrath during that call. But other than those two

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1 e-mails, were you typing on your computer during that
2 call?

3 **A. I was not typing anything on my computer**
4 **during that call. Usually, I walk around our space,**
5 **so I was not typing anything.**

6 Q. Did you know those calls were being recorded
7 with Mr. Paffrath?

8 **A. I had no clue. He never told me.**

9 MR. BUNDREN: That's all the questions we
10 have. We'll reserve until the time of trial.

11 MR. HORWITZ: Just one question.

12

13 EXAMINATION

14 QUESTIONS BY MR. HORWITZ:

15 Q. Did you make any false representations to Mr.
16 Paffrath during any of those calls?

17 MR. BUNDREN: Objection to the form,
18 argumentative, calls for a legal conclusion as well.

19 **THE WITNESS: What do you mean by false**
20 **misrepresentations?**

21 BY MR. HORWITZ:

22 Q. Did you ever lie to him?

23 MR. BUNDREN: Objection to form,
24 argumentative.

25 **THE WITNESS: No.**

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1 MR. HORWITZ: Those are my questions.

2 MR. BUNDREN: We'll reserve. The witness
3 will read and sign.

4 THE REPORTER: All right. Mr. Horwitz,
5 are you wanting to order this transcript.

6 MR. HORWITZ: (Shook head negatively.)

7 THE REPORTER: Are you all wanting to
8 order it?

9 MR. BUNDREN: Yes, PTX, same format as
10 the first -- the one yesterday.

11 THE REPORTER: Okay. So you'll be
12 getting the original then.

13 MR. BUNDREN: Yes.

14 THE REPORTER: Got it.

15 FURTHER DEPONENT SAITH NOT

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REPORTER'S CERTIFICATE

STATE OF TENNESSEE
COUNTY OF DAVIDSON

I, SARAH N. LINDER, Licensed Court Reporter, with offices in Nashville, Tennessee, hereby certify that I reported the foregoing deposition of STEPHEN MITCH RIDDLE by machine shorthand to the best of my skills and abilities, and thereafter the same was reduced to typewritten form by me.

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