

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 AMERICAN CIVIL LIBERTIES : CIVIL ACTION  
4 UNION, ET AL :

5 PLAINTIFF :

6 VS. :

7 ALBERTO R. GONZALES, :  
8 IN HIS OFFICIAL CAPACITY AS :  
9 ATTORNEY GENERAL OF THE :  
10 UNITED STATES :

11 DEFENDANT : NO. 98-05591

12 TUESDAY, NOVEMBER 14, 2006  
13 COURTROOM 17-A  
14 PHILADELPHIA, PA 19106

15 

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BEFORE THE HONORABLE LOWELL A. REED, JR. SJ

16 

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NON-JURY TRIAL  
17 DAY 14

18 

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APPEARANCES:

19 CHRISTOPHER A. HANSEN, ESQUIRE  
20 ADEN J. FINE, ESQUIRE  
21 BEN WIZNER, ESQUIRE  
22 CATHERINE CRUMP, ESQUIRE  
23 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
24 125 BROAD STREET  
25 NEW YORK, NY 10004-2400  
(212) 549-2606 FOR THE PLAINTIFFS

26 SUZANNE R. WHITE, CM  
27 FEDERAL CERTIFIED REALTIME REPORTER  
28 FIRST FLOOR U. S. COURTHOUSE  
29 601 MARKET STREET  
30 PHILADELPHIA, PA. 19106  
31 (215) 627-1882

32 PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,  
33 TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 APPEARANCES: (CONTINUED)

2 CHRISTOPHER HARRIS, ESQUIRE  
3 KATHARINE MARSHALL, ESQUIRE  
4 JEROEN VAN KWAWEGEN, ESQUIRE  
5 ADDISON F. GOLLODAY, ESQUIRE  
6 BENJAMIN SAHL, ESQUIRE  
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FOR THE PLAINTIFFS

13 U.S. DEPARTMENT OF JUSTICE  
14 CIVIL DIVISION  
15 RAPHAEL O. GOMEZ, ESQUIRE  
16 THEODORE HIRT, ESQUIRE  
17 ERIC J. BEANE, ESQUIRE  
18 KENNETH E. SEALLS, ESQUIRE  
19 TAMARA ULRICH, ESQUIRE  
20 JOEL MCELVAIN, ESQUIRE  
21 JAMES TODD, ESQUIRE  
22 ISAAC R. CAMPBELL, ESQUIRE  
23 ROOM 6144  
24 20 MASSACHUSETTS AVENUE, NW  
25 WASHINGTON, DC 20530  
(202) 514-1318

FOR THE DEFENDANT

1 (THE CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING, WELCOME TO BE  
3 SEATED.

4 MISS WHITE, GOOD MORNING.

5 THE COURT REPORTER: GOOD MORNING.

6 ALL COUNSEL: GOOD MORNING.

7 THE COURT: IS THE DEFENSE READY WITH  
8 THEIR NEXT WITNESS, PLEASE.

9 MR. TODD: YOUR HONOR, THE DEFENDANT  
10 CALLS ARTHUR CLARK.

11 THE COURT: WATCH YOUR STEP, SIR. GOOD  
12 MORNING.

13 THE WITNESS: GOOD MORNING.

14 THE COURT: REMAIN STANDING TO TAKE THE  
15 OATH PLEASE.

16 ARTHUR CLARK, JR., DEFENDANT'S WITNESS,  
17 SWORN.

18 THE CLERK: STATE AND SPELL YOUR FULL NAME  
19 FOR THE RECORD.

20 THE WITNESS: ARTHUR E CLARK, JUNIOR,  
21 A-R-T-H-U-R, MIDDLE INITIAL E, CLARK, C-L-A-R-K, JUNIOR,  
22 J-R.

23 MR. TODD: YOUR HONOR, MAY I HAVE  
24 PERMISSION TO APPROACH THE BENCH WITH SOME PAPER COPIES.

25 THE COURT: YES.

1 DIRECT EXAMINATION

2 BY MR. TODD:

3 Q. GOOD MORNING, MR. CLARK.

4 A. GOOD MORNING.

5 Q. CAN WE START WITH YOUR EDUCATION. WHERE DID YOU

6 GO TO COLLEGE?

7 A. COLGATE UNIVERSITY.

8 Q. YOU RECEIVED A DEGREE?

9 A. YES. A B.A. DEGREE.

10 Q. WHAT WAS YOUR MAJOR?

11 A. ECONOMICS.

12 Q. AFTER COLGATE YOU WENT TO BUSINESS SCHOOL?

13 A. YES.

14 Q. WHERE?

15 A. NEW YORK UNIVERSITY GRADUATE SCHOOL OF BUSINESS.

16 Q. YOU RECEIVED A DEGREE?

17 A. YES.

18 Q. WHAT WAS YOUR CONCENTRATION?

19 A. ECONOMICS.

20 Q. MOVING ON TO YOUR WORK EXPERIENCE, WHAT WAS YOUR

21 FIRST JOB?

22 A. I WAS EMPLOYED BY FORD MOTOR COMPANY.

23 Q. HOW LONG WERE YOU THERE?

24 A. TWO YEARS.

25 Q. WHAT WAS YOUR FIRST JOB IN THE PAYMENT INDUSTRY?

1 A. AMERICAN EXPRESS.

2 Q. WAS THAT IMMEDIATELY AFTER FORD?

3 A. YES.

4 Q. HOW LONG WERE YOU AT AMERICAN EXPRESS?

5 A. ABOUT EIGHT YEARS.

6 Q. WHAT POSITIONS DID YOU HOLD THERE?

7 A. I WAS HIRED AS AN ASSISTANT PRODUCT MANAGER, I  
8 WAS PROMOTED TO A PRODUCT MANAGER, AND ULTIMATELY  
9 PROMOTED TO VICE-PRESIDENT OF MARKETING BEFORE I  
10 DEPARTED AMERICAN EXPRESS.

11 Q. WHAT DID YOUR DUTIES ENTAIL AT AMERICAN EXPRESS?

12 A. A NUMBER OF THINGS, BUT BASICALLY TO DEVELOP AND  
13 EXECUTE ANNUAL MARKETING PLANS FOR THE VARIOUS AREAS  
14 THAT I WAS FOCUSING ON IN THE CREDIT CARD BUSINESS.

15 Q. WHAT DID THIS MARKETING -- THESE MARKETING PLANS  
16 ENTAIL?

17 A. THEY ENTAILED FIELDING MARKET RESEARCH TO  
18 INVESTIGATE NEW MARKETS, LEARN ABOUT THE AWARENESS AND  
19 BEHAVIOR OF EXISTING CARDHOLDERS, DEVELOPING MARKETING,  
20 ANNUAL MARKETING PLANS THAT CONSIST OF TV ADVERTISING,  
21 PRINT ADVERTISING, NEWSPAPER ADVERTISING, DIRECT MAIL TO  
22 OBTAIN NEW CARDHOLDERS, RETENTION, ACTIVATION AND USAGE  
23 PROGRAMS FOR EXISTING CARDHOLDERS.

24 Q. WHAT ROLE DID MARKET RESEARCH PLAY?

25 A. IT WAS A VERY IMPORTANT ROLE.

1 I HAD TO STAY ON TOP OF WHAT THE  
2 ATTITUDES WERE OF THE GENERAL POPULATION AND WHAT THE  
3 ATTITUDES AND AWARENESS LEVELS OF OUR EXISTING  
4 CARDHOLDERS WERE.

5 Q. WHAT ROLE DID YOU SPECIFICALLY PLAY IN THIS  
6 MARKET RESEARCH, IN DOING THIS MARKET RESEARCH?

7 A. A NUMBER OF ROLES. I PAID FOR THE MARKET  
8 RESEARCH OUT OF MY ANNUAL MARKETING PLANS, SO I  
9 CONSTANTLY HAD TO MAKE TRADEOFFS BETWEEN WHAT WAS THE  
10 RIGHT TYPE OF RESEARCH TO CONDUCT. QUANTITATIVE  
11 RESEARCH IS MORE EXPENSIVE THAN QUALITATIVE, SO MAKING  
12 DECISIONS ON THE TYPE OF RESEARCH WAS AN IMPORTANT ROLE  
13 I PLAYED. I ALSO CONTRIBUTED TO THE QUESTIONNAIRE  
14 DESIGN, SOMETIMES WROTE INDIVIDUAL QUESTIONS THAT I  
15 CONSIDERED IMPORTANT. I WOULD WORK WITH OUR RESEARCH  
16 HEAD AT AMERICAN EXPRESS AND RESEARCH VENDORS TO  
17 FINALIZE THE OVERALL STUDY AND THEN IN MANY CASES I WAS  
18 THE ONE PERSONALLY INVOLVED IN RECEIVING THE DATA  
19 AFTERWARDS AND ANALYZING IT AND TURNING IT INTO FINDINGS  
20 AND CONCLUSIONS.

21 Q. WHAT DID YOU DO AFTER YOUR EIGHT YEARS AT  
22 AMERICAN EXPRESS?

23 A. I JOINED DOW JONES.

24 Q. AND WHAT DID YOUR DUTIES ENTAIL AT DOW JONES?

25 A. I WAS A VICE-PRESIDENT OF MARKETING AT DOW JONES

1 AND I WAS RESPONSIBLE FOR RESEARCHING AND LAUNCHING A  
2 NEW NEWS SERVICE FOR DOW JONES.

3 Q. WHAT WAS YOUR ROLE IN RESEARCHING THE NEW NEWS  
4 SERVICE?

5 A. WHEN I ARRIVED AT DOW JONES, I INITIALLY FIELDDED  
6 A QUANTITATIVE MARKET RESEARCH STUDY TO ASSESS THE  
7 OVERALL ATTITUDES AND AWARENESS LEVELS OF VARIOUS NEWS  
8 SERVICES, AND ALSO GET POTENTIAL CUSTOMERS' REACTION TO  
9 OUR NEWS SERVICE THAT WE WERE ABOUT TO LAUNCH AT DOW  
10 JONES.

11 Q. HOW LONG WERE YOU AT DOW JONES?

12 A. TWO YEARS.

13 Q. WHAT WAS YOUR NEXT JOB AFTER YOUR TWO YEARS AT  
14 DOW JONES?

15 A. I JOINED CITIBANK AS VICE-PRESIDENT OF  
16 MARKETING.

17 Q. AND WHAT DID YOUR DUTIES ENTAIL AS  
18 VICE-PRESIDENT OF MARKETING?

19 A. A COUPLE OF THINGS. I WAS LAUNCHING A NEW  
20 SERVICE FOR ONLINE BANKING. AND, AS I HAD DONE AT DOW  
21 JONES, I INITIALLY FIELDDED IN THIS CASE QUANTITATIVE AND  
22 QUALITATIVE RESEARCH TO DETERMINE THE REACTION TO OUR  
23 NEW SERVICE AND HELP US CREATE A NAME FOR THE SERVICE.  
24 AND THEN AFTER THAT, THAT TOOK PROBABLY FIRST NINE  
25 MONTHS OF MY TIME THERE. THEN I DEVELOPED A MARKETING

1 PLAN TO INTRODUCE AND ROLL OUT THE SERVICE CALLED DIRECT  
2 ACCESS ONLINE BANKING AT CITIBANK.

3 Q. AND AGAIN SPECIFICALLY, WHAT WAS YOUR ROLE IN  
4 THE MARKET RESEARCH AT CITIBANK?

5 A. I PERSONALLY MET WITH THE RESEARCH VENDOR AND  
6 DECIDED ON THE RESEARCH DESIGN. I CONTRIBUTED  
7 INDIVIDUAL QUESTIONS, SIGNED OFF ON THE OVERALL  
8 QUESTIONNAIRE, AND I PERSONALLY RECEIVED THE DATA WHEN  
9 THE FIELDWORK HAD BEEN DONE AND ANALYZED THE DATA AND  
10 DEVELOPED FINDINGS AND CONCLUSIONS FOR CITIBANK.

11 Q. AND HOW LONG WERE YOU AT CITIBANK?

12 A. TWO YEARS.

13 Q. AND WHAT WAS YOUR NEXT JOB AFTER YOUR TWO YEARS  
14 AT CITIBANK?

15 A. I JOINED MADISON CONSULTING GROUP.

16 Q. WHAT IS MADISON CONSULTING GROUP?

17 A. IT'S A CONSULTING GROUP THAT FOCUSES ON EFT  
18 SERVICES.

19 Q. AND HOW LONG WERE YOU THERE?

20 A. ABOUT FIVE YEARS.

21 Q. WHAT DID YOUR DUTIES ENTAIL AT MADISON  
22 CONSULTING?

23 A. I --

24 Q. I'M SORRY. PLEASE GO AHEAD.

25 A. I WORKED AS A LEAD CONSULTANT ON A NUMBER OF



1 CLIENT ASSIGNMENTS THAT WERE ASSISTING FINANCIAL SERVICE  
2 COMPANIES WITH THE LAUNCH OR DEVELOPMENT OF THEIR EFT  
3 AND ATM SERVICES.

4 Q. WHAT IS EFT?

5 A. EFT STANDS FOR ELECTRONIC FUNDS TRANSFER. AN  
6 EXAMPLE OF THAT IS WHERE A DEBIT CARDHOLDER WILL GO TO  
7 AN ATM AND GET CASH FROM THEIR CHECKING ACCOUNT.

8 Q. AND SO WHAT WAS A SIGNIFICANT PROJECT YOU DID AT  
9 MADISON CONSULTING?

10 A. ONE SIGNIFICANT PROJECT WAS TO WORK WITH A  
11 SERIES OF LOUISIANA/MISSISSIPPI BANKS, I THINK THERE WAS  
12 ABOUT 12 TO 15 OF THEM. AND MY ASSIGNMENT WAS TO WORK  
13 WITH THEM, WHICH RESULTED IN PROBABLY A YEAR AND-A-HALF  
14 CONSULTING ENGAGEMENT TO DEVELOP A SHARED ATM NETWORK.  
15 IN THOSE DAYS, THIS WOULD HAVE BEEN IN THE LATE '80S AND  
16 IN THOSE DAYS, MANY OF THE MAJOR CITIES AND/OR STATES  
17 HAD INDIVIDUAL SHARED NETWORKS. AND THIS WOULD HAVE  
18 BEEN THE FIRST ONE FOR THAT REGION OF THE COUNTRY, SO I  
19 WAS DEVELOPING THE RESEARCH AND THE BUSINESS PLAN TO  
20 ROLL THAT OUT FOR THESE BANKS.

21 Q. AND YOU JUST MENTIONED RESEARCH. WHAT SPECIFIC  
22 RESEARCH DID YOU DO FOR THIS PROJECT?

23 A. A NUMBER OF THINGS. I INVESTIGATED THE EXISTING  
24 REGIONAL NETWORKS AROUND THE COUNTRY OUTSIDE OF  
25 MISSISSIPPI AND LOUISIANA. I RELIED ON THIRD-PARTY

1 RESEARCH IN TERMS OF ATM AND EFT PRODUCTS AND PRACTICES.  
2 I ALSO RESEARCHED AND DEVELOPED THE DATA FOR OUR -- THE  
3 NETWORK I WAS PLANNING, WHICH CONSISTED OF HOW MANY  
4 CARDHOLDERS THE BANKS HAD, WHAT WAS THE LIKELY  
5 TRANSACTION VOLUME AND ISSUES LIKE THAT.

6 Q. HOW DID YOU DO THIS RESEARCH?

7 A. I PERSONALLY COMPLETED RESEARCH IN THOSE THREE  
8 AREAS THAT I JUST DESCRIBED.

9 Q. DID YOU MAKE USE OF SURVEYS?

10 A. NOT IN THIS PARTICULAR ASSIGNMENT.

11 Q. WHAT WAS ANOTHER SIGNIFICANT PROJECT AT MADISON  
12 CONSULTING?

13 A. ANOTHER MAJOR ONE WAS MERGING TWO ATM NETWORKS  
14 IN THE CHICAGO AREA, MONEY NETWORK AND CASH STATION.  
15 THERE WERE TWO EXISTING NETWORKS SET UP BY COMPETING AND  
16 COMPETITIVE BANKS. MY ASSIGNMENT WAS TO WORK WITH THESE  
17 TWO DIFFERENT EFT NETWORKS AND OWNING -- OWNERSHIP BANKS  
18 TO DEVELOP A MERGER PLAN.

19 Q. HOW DID YOU GO ABOUT DEVELOPING THE MERGER PLAN?

20 A. AGAIN, I LOOKED AT NETWORKS AROUND THE COUNTRY,  
21 OTHER EFT NETWORKS. I DEVELOPED THE DATA, RESEARCHED  
22 AND DEVELOPED THE DATA FOR THE CHICAGO MARKET, FOR THE  
23 MERGED AND SHARING NETWORK. AND I INTERVIEWED AND  
24 WORKED WITH EACH INDIVIDUAL BANK TO UNDERSTAND THEIR  
25 PERSPECTIVES ON WHAT THIS MERGED NETWORK, WHAT THE

1 OBJECTIVES AND GOALS SHOULD BE.

2 Q. AFTER YOUR FIVE YEARS AT MADISON CONSULTING,

3 WHAT DID YOU DO NEXT?

4 A. I FOUNDED A CONSULTING GROUP CALLED BUSINESS

5 DYNAMICS.

6 Q. WHAT YEAR WAS THAT?

7 A. 1990.

8 Q. WHAT WAS YOUR POSITION THERE?

9 A. MANAGING PARTNER.

10 Q. AND HOW LONG DID YOU RUN BUSINESS DYNAMICS?

11 A. ABOUT 15 YEARS.

12 Q. WHAT IS YOUR PRESENT POSITION?

13 A. MANAGING PARTNER OF BUSINESS INSIGHTS.

14 Q. AND WHAT YEAR DID YOU FOUND BUSINESS INSIGHTS?

15 A. 2005.

16 Q. SO IF MY MATH IS CORRECT, YOU HAVE BEEN A

17 CONSULTANT FOR 21 YEARS?

18 A. YES, THAT'S CORRECT.

19 Q. HAVE YOU BEEN ENGAGED BY ANY OF THE PAYMENT CARD

20 COMPANIES OVER THE 21 YEARS THAT YOU HAVE BEEN A

21 CONSULTANT?

22 A. YES, LOTS OF THEM.

23 Q. WHICH ONES?

24 A. AMERICAN EXPRESS, MASTERCARD, VISA, DISCOVER.

25 Q. HAVE YOU BEEN ENGAGED BY ANY BANKS AS A

1 CONSULTANT?

2 A. YEAH, AGAIN QUITE AN EXTENSIVE LIST.

3 Q. WHICH ONES ARE SIGNIFICANT?

4 A. CITIBANK, SOUTH TRUST, FLEET BANK, FIRST USA,  
5 MICHIGAN -- I'M SORRY, MANUFACTURERS NATIONAL IN DETROIT  
6 AND OTHERS.

7 Q. AND HAVE YOU BEEN ENGAGED BY ANY OF THE PAYMENT  
8 NETWORKS AS A CONSULTANT?

9 A. YES.

10 Q. WHICH ONES?

11 A. I TALKED ABOUT A COUPLE OF THEM. THE NETWORK IN  
12 LOUISIANA, THAT WAS CALLED LINC CASH STATION, L-I-N-C,  
13 CASH STATION, MONEY NETWORK, THE NYCE NETWORK IN NEW  
14 YORK, GULF NET. THOSE ARE SOME.

15 Q. HAVE YOU BEEN ENGAGED BY ANY ASSOCIATIONS AS A  
16 CONSULTANT?

17 A. YES.

18 Q. WHICH ONES?

19 A. TWO VERY IMPORTANT ONES IN THE BANKING INDUSTRY,  
20 THE AMERICAN BANKERS ASSOCIATION AND THE INDEPENDENT  
21 COMMUNITY BANKERS ASSOCIATION. THE FIRST ONE IS FOCUSED  
22 ON THE LARGER BANKS AND THE SECOND ONE IS FOCUSED ON THE  
23 SMALLER COMMUNITY BANKS.

24 Q. SWITCHING FROM CLIENTS TO TOPICS. HAVE YOU BEEN  
25 ENGAGED TO WORK ON ANY SIGNIFICANT PROJECTS THAT INVOLVE

1 THE YOUTH MARKET?

2 A. YES.

3 Q. WHAT DO YOU MEAN BY YOUTH MARKET?

4 A. GENERALLY IN THE PAYMENT INDUSTRY THAT REFERS TO  
5 INDIVIDUALS BETWEEN THE AGE OF 18 AND 25.

6 Q. AND WHAT WERE SOME OF YOUR PROJECTS CONCERNING  
7 THE YOUTH MARKET?

8 A. FOR THE LAST COUPLE OF YEARS I HAVE BEEN WORKING  
9 FOR FIRST FINANCIAL BANK, WHICH IS A BANK THAT FOCUSES  
10 EXCLUSIVELY ON PROVIDING CREDIT CARDS TO THE YOUTH  
11 MARKET.

12 Q. AND WHAT PROJECT HAVE YOU DONE FOR FIRST  
13 FINANCIAL BANK?

14 A. A WHOLE SERIES OF PROJECTS. ONE I MIGHT TALK  
15 ABOUT IS INVESTIGATING CONTACTLESS CHIP TECHNOLOGY.  
16 C-O-N-T-A-C-T-L-E-S-S, CHIP, C-H-I-P.

17 Q. WHAT ARE CONTACTLESS CHIPS?

18 A. THIS IS A COMPUTER CHIP AND A TINY RADIO ANTENNA  
19 THAT IS EITHER PUT ON A PAYMENT CARD OR ON A MOBILE  
20 PHONE SO THAT INDIVIDUALS CAN ACTUALLY PURCHASE BY  
21 WAVING THIS DEVICE NEAR A MERCHANT TERMINAL OR TAPPING A  
22 TERMINAL AS OPPOSED TO SWIPING A CARD THROUGH A PAYMENT  
23 TERMINAL.

24 Q. KIND OF LIKE THE MOBIL SPEEDPASS YOU USE TO PAY  
25 AT THE GAS PUMP?

1 A. IT'S DEFINITELY -- IT'S EXACTLY LIKE THAT.

2 Q. AND WHAT WAS YOUR ROLE ON THIS PROJECT?

3 A. I RESEARCHED WHAT THE COMPETITION WAS DOING, THE  
4 STATE OF THE TECHNOLOGY, WAS IT READY TO BE ADOPTED BY  
5 CONSUMERS. I TOOK A LOOK AT THE EXISTING PRODUCTS THAT  
6 FIRST FINANCIAL BANK HAD AND DEVELOPED SOME  
7 RECOMMENDATIONS ON HOW THIS BANK MIGHT USE THIS  
8 TECHNOLOGY IN THEIR PRODUCT LINE IN THE YEARS AHEAD.

9 Q. AND HOW DID THIS PROJECT RELATE TO THE YOUTH  
10 MARKET?

11 A. THE YOUTH MARKET IS VERY INTERESTED IN NEW  
12 TECHNOLOGY, AND THEY ALSO RELY VERY HEAVILY ON MOBILE  
13 PHONES, SO THIS SEEMED TO BE A NATURAL FOR THE YOUTH  
14 MARKET.

15 Q. THIS TECHNOLOGY IS BEING PUT IN MOBILE PHONES AS  
16 WELL?

17 A. YES. CURRENTLY --

18 MR. HARRIS: OBJECTION TO THE EXTENT THAT  
19 THIS IS BEING OFFERED FOR ITS TRUTH, THIS IS OUTSIDE THE  
20 SCOPE OF THE EXPERT'S REPORT. THERE'S NOTHING IN THERE  
21 ABOUT CREDIT CARD TECHNOLOGY ON MOBILE PHONES.

22 THE COURT: MR. TODD.

23 MR. TODD: YOUR HONOR, THIS IS JUST  
24 SHOWING THE RANGE OF MR. CLARK'S EXPERIENCE. IT'S JUST  
25 BEING DISCUSSED TO SHOW HIS EXPERIENCE. IT'S NOT BEING

1 OFFERED FOR THE TRUTH OF THE MATTER. IT'S JUST TO SEE  
2 SHOW HIS QUALIFICATIONS TO TESTIFY IN THIS CASE.

3 THE COURT: THE TRUTH OF HIS  
4 QUALIFICATIONS.

5 MR. TODD: YES.

6 THE COURT: NOT A STATE OF MIND  
7 SITUATION. THE FACT THAT IT IS NOT IN THE EXPERT REPORT  
8 JUST MEANS THAT HE DOES NOT GET ANY OPINIONS IN THE  
9 RECORD ON THAT ISSUE.

10 MR. TODD: I THINK THERE IS SOME MENTION  
11 OF PAYMENT TECHNOLOGY AND PUTTING IN MOBILE PHONES IN  
12 THE EXPERT REPORT. WE WILL GET THERE LATER.

13 THE COURT: WHEN WE GET THERE. RIGHT NOW  
14 THE OBJECTION IS OVERRULED, SOLELY FOR THE PURPOSE OF  
15 EXPLAINING HIS BACKGROUND AND EXPERIENCE.

16 BY MR. TODD:

17 Q. I ASKED YOU IF THIS TECHNOLOGY IS BEING PUT IN  
18 MOBILE PHONES?

19 A. YES. IT'S CURRENTLY USED IN JAPAN AND IN PARTS  
20 OF EUROPE, AND CONSUMERS IN FACT ARE USING IT TO MAKE  
21 PURCHASES OF GOODS AND SERVICES WITH THEIR MOBILE  
22 PHONES.

23 Q. ANY OTHER PROJECTS CONCERNING THE YOUTH MARKET?

24 A. YES. IF I REFER BACK TO MY EARLY DAYS IN  
25 AMERICAN EXPRESS DURING THE '70S, ONE OF MY ASSIGNMENTS

1       THERE WAS TO FOCUS ON THE YOUTH MARKET, WHICH WAS A VERY  
2       IMPORTANT MARKET FOR AMERICAN EXPRESS.

3       Q.       WHY WAS IT AN IMPORTANT MARKET FOR AMERICAN  
4       EXPRESS?

5       A.       AMERICAN EXPRESS AS WELL AS OTHER CARD COMPANIES  
6       WERE VERY INTERESTED IN CONVINCING THE 18 TO 25 YEAR  
7       OLDS THAT THEIR INDIVIDUAL PRODUCTS WERE -- THAT THEIR  
8       INDIVIDUAL PRODUCTS WERE THE RIGHT PRODUCT TO ACQUIRE  
9       INITIALLY.  AND AT AMERICAN EXPRESS I WANTED TO MAKE  
10      SURE THAT WE GOT CUSTOMERS BETWEEN THE AGES OF 18 AND 25  
11      JOINING OUR PORTFOLIO WITH THE HOPE THAT THEY WOULD  
12      CONTINUE TO USE THE AMERICAN EXPRESS CARD FOR THEIR  
13      ENTIRE CAREER.

14      Q.       TO YOUR KNOWLEDGE, DID AMERICAN EXPRESS TARGET  
15      MINORS?

16      A.       ABSOLUTELY NOT.

17      Q.       TO YOUR KNOWLEDGE, DID FIRST FINANCIAL TARGET  
18      MINORS WITH ITS CONTACTLESS CHIP PROGRAM?

19      A.       ABSOLUTELY NOT.

20      Q.       HAVE YOU BEEN ENGAGED IN ANY SIGNIFICANT  
21      PROJECTS CONCERNING THE PREPAID MARKET?

22      A.       YES.

23      Q.       WHAT DO YOU MEAN BY PREPAID?

24      A.       THE PREPAID CARD IS A PAYMENT CARD THAT AN  
25      INDIVIDUAL LOADS WITH CASH AND THEN PROCEEDS TO PURCHASE



1 GOODS AND SERVICES.

2 Q. AND HOW DOES THIS DIFFER FROM A CREDIT OR DEBIT  
3 CARD.

4 A. A CREDIT CARD IS ESSENTIALLY A LOAN FROM A CARD  
5 ISSUING COMPANY. A DEBIT CARD IS A PAYMENT CARD THAT IS  
6 TIED TO A DEPOSIT ACCOUNT, PRIMARILY A CHECKING ACCOUNT.  
7 PURCHASES OF GOODS AND SERVICES ON A DEBIT CARD ARE  
8 DEDUCTED FROM THE INDIVIDUAL'S CHECKING ACCOUNT.

9 Q. WHAT SIGNIFICANT PROJECTS HAVE YOU BEEN ENGAGED  
10 TO WORK ON CONCERNING PREPAID CARDS?

11 A. I'M CURRENTLY WORKING ON A PROJECT FOR A BANK IN  
12 NEW YORK, METROPOLITAN BANK.

13 Q. AND WHAT IS YOUR ROLE IN THE PROJECT AT  
14 METROPOLITAN BANK?

15 A. THEY HAVE 15 CHECK CASHING FACILITIES IN THE  
16 GREATER NEW YORK AREA. MY ROLE IS TO REVIEW THEIR  
17 PRODUCT LINE AND LOOK AT THEIR CURRENT MARKETING AND  
18 SALES STRATEGIES WITH AN EYE TOWARD HOW I CAN COME UP  
19 WITH RECOMMENDATIONS SO THEY CAN GROW THE BUSINESS.  
20 THEY'RE FOCUSING ON THE UNBANKED ADULT POPULATION.

21 Q. WHAT IS THE UNBANKED ADULT POPULATION?

22 A. UNBANKED ARE INDIVIDUALS IN THE UNITED STATES  
23 THAT DO NOT HAVE A CREDIT CARD OR DEBIT CARD.

24 Q. NOW YOU SAID THAT YOU WERE WORKING ON THEIR  
25 MARKETING STRATEGY. WHAT IS YOUR ROLE IN THEIR

1           MARKETING STRATEGY?

2           A.           A COUPLE OF THINGS: ONE IS TO TAKE A LOOK AT  
3           WHAT OTHER PREPAID CARD ISSUERS ARE DOING IN THE UNITED  
4           STATES, WHAT KIND OF PRODUCTS THEY HAVE AND WHAT ARE  
5           THEIR STRATEGIES; SECOND IS TO REVIEW THE SERVICES THAT  
6           ARE PROVIDED BY METROPOLITAN BANK AT THEIR 15 CHECK  
7           CASHING FACILITIES, WHAT PRODUCTS THEY ARE OFFERING; AND  
8           THREE, TO COME UP WITH SOME RECOMMENDATIONS RELATIVE TO  
9           HOW THEY CAN GROW THE BUSINESS.

10          Q.           WHY ARE YOU REVIEWING THE COMPETITORS' PRODUCTS?

11          A.           WELL, IT'S VERY IMPORTANT THAT METROPOLITAN BANK  
12          DEVELOP A LINE THAT IS EFFECTIVE, A LINE OF PRODUCTS AND  
13          SERVICES THAT IS EFFECTIVE, AND IT IS MY OPINION THAT  
14          THERE MIGHT BE INSIGHTS THAT WE CAN GATHER FROM OTHER  
15          PREPAID CARD COMPANIES ACROSS THE UNITED STATES WHICH  
16          COULD BE LEVERAGED AND USED BY METROPOLITAN BANK.

17          Q.           HAVE YOU DONE ANY OTHER SIGNIFICANT PROJECTS  
18          CONCERNING PREPAID CARDS?

19          A.           YES.

20          Q.           WHAT OTHER PROJECT?

21          A.           ONE THAT COMES TO MIND IS MOSAIC, WHICH IS A  
22          PREPAID CARD. IT'S A PREPAID START-UP COMPANY, AND IT'S  
23          A PREPAID CARD THAT IS BEING OFFERED TO THE HISPANIC  
24          UNBANKED MARKETPLACE IN THE CHICAGO MARKET.

25          Q.           WHAT'S YOUR ROLE IN THIS PROJECT?

1 A. THIS IS A PROJECT I DID, COMPLETED ABOUT SIX  
2 MONTHS AGO. IT'S SIMILAR TO WHAT I'M DOING FOR THE  
3 METROPOLITAN BANK IN NEW YORK WITH THE EXCEPTION THAT ON  
4 THIS PROJECT, IT WAS A START-UP COMPANY AND SO I WAS  
5 HELPING THEM DESIGN THEIR INITIAL PRODUCTS AND SERVICES  
6 AS WELL AS COME UP WITH STARTING SALES AND MARKETING  
7 STRATEGIES.

8 Q. AND YOU MENTIONED THIS WAS TARGETING THE  
9 HISPANIC UNBANKED MARKET?

10 A. YES.

11 Q. HOW DID YOU GO ABOUT HELPING THE COMPANY TARGET  
12 THE HISPANIC UNBANKED MARKET?

13 A. WELL I FIRST DID SOME RESEARCH ON THE UNBANKED  
14 MARKET, WHICH LED ME TO FIND CFSI.

15 Q. WHAT IS CFSI?

16 A. CFSI STANDS FOR CENTER FOR FINANCIAL SERVICES  
17 INNOVATION. THEY ARE BASED IN THE CHICAGO MARKET AND IN  
18 THE U.S. THEY HAVE -- I GUESS THEY WOULD BE CONSIDERED  
19 ONE OF THE LEADING FIRMS IN TERMS OF FIRMS THAT ARE  
20 KNOWLEDGEABLE AND FOCUS ON THE UNBANKED MARKETPLACE.

21 Q. HAVE YOU DONE ANY RECENT PROJECTS CONCERNING  
22 PAYMENT TECHNOLOGIES?

23 A. YES, A WHOLE SERIES.

24 Q. WHO HAVE SOME OF YOUR CLIENTS BEEN IN THIS AREA?

25 A. I MENTIONED FIRST FINANCIAL BANK WITH

1 CONTACTLESS CARDS. ANOTHER IS NETCHARGE. ANOTHER IS  
2 AMAZON. ANOTHER IS PAY BY TOUCH.

3 Q. WHO IS PAY BY TOUCH?

4 A. PAY BY TOUCH IS ONE OF THE LEADING BIOMETRIC  
5 PAYMENT FIRMS IN THE COUNTRY.

6 Q. WHAT'S BIOMETRICS?

7 A. IN PAYMENTS THAT MEANS THAT AN INDIVIDUAL CAN AT  
8 A MERCHANT SIGN FOR THEIR PURCHASE OF GOODS AND SERVICES  
9 WITH A FINGERPRINT, A BIOMETRIC FINGERPRINT, WHICH IS  
10 TIED TO EITHER THEIR CHECKING ACCOUNT OR THEIR PAYMENT  
11 CARD.

12 Q. AND WHAT HAVE YOU DONE FOR PAY BY TOUCH?

13 A. I TOOK -- I RESEARCHED COMPETITIVE FIRMS IN THE  
14 MARKET, AND I HELPED THEM WITH GROWTH STRATEGIES. THIS  
15 WAS A PROJECT THAT I COMPLETED A COUPLE OF YEARS AGO.

16 Q. YOU MENTIONED AMAZON?

17 A. YES.

18 Q. WHAT DID YOU DO FOR AMAZON?

19 A. IN THE 2000/2001 PERIOD I COMPLETED A REVIEW OF  
20 AMAZON'S PAYMENT SYSTEM.

21 Q. AND WHAT DO YOU MEAN BY COMPLETED A REVIEW?

22 A. I TOOK A LOOK AT THE RELATIONSHIPS WITH THE CARD  
23 COMPANIES, AMERICAN EXPRESS, MASTERCARD AND VISA, AND I  
24 TOOK A LOOK AT THE DATA PROCESSING VENDORS THAT THEY  
25 WERE USING, IN THAT CASE IT WAS PAYMENT TECH, AND I WAS

1 FOCUSED ON ASSISTING AMAZON IN TERMS OF REDUCING FRAUD  
2 AND IMPROVING SERVICE QUALITY.

3 Q. WHAT DO YOU MEAN BY REDUCING FRAUD?

4 A. WELL, IN THE 2000/2001 PERIOD, THE INTERNET WAS  
5 A NEWER CHANNEL, DISTRIBUTION CHANNEL, THERE WAS A LOT  
6 OF FRAUD ON THE INTERNET AND --

7 MR. HARRIS: OBJECTION, YOUR HONOR. THE  
8 WITNESS HAS NOT YET BEEN PROFFERED AS AN EXPERT. IT'S  
9 INAPPROPRIATE FOR HIM TO BE PROVIDING FACTUAL TESTIMONY  
10 ABOUT FRAUD ON THE INTERNET BEFORE THIS HAS OCCURRED.

11 MR. TODD: AGAIN, YOUR HONOR, THIS IS  
12 JUST ABOUT HIS EXPERT QUALIFICATIONS AT THIS TIME. IT  
13 IS NOT BEING PROFFERED FOR THE TRUTH OF THE MATTER  
14 ASSERTED.

15 MR. HARRIS: I WITHDRAW MY OBJECTION.

16 THE COURT: ALL RIGHT.

17 BY MR. TODD:

18 Q. WHAT DO YOU MEAN BY REDUCE FRAUD?

19 A. I WAS LOOKING FOR WAYS TO REDUCE THE NUMBER OF  
20 ERRONEOUS TRANSACTIONS ON AMAZON'S WEBSITE.

21 Q. AND HOW DID YOU GO ABOUT HELPING THEM REDUCE  
22 FRAUD?

23 A. WELL, MUCH OF THE PROJECT IS CONFIDENTIAL, BUT I  
24 GUESS I CAN TALK ABOUT TWO OPERATIONAL THINGS THAT HAVE  
25 BECOME RELATIVELY STANDARD IN THE ONLINE PAYMENT

1 INDUSTRY. ONE WAS ADDRESS VERIFICATION, WHICH IS  
2 BASICALLY AMAZON AT THEIR WEBSITE ASKS A CUSTOMER THAT  
3 IS ABOUT TO PURCHASE SOME PRODUCT FROM AMAZON WHAT THEIR  
4 BILLING ADDRESS IS, AND THIS ASSISTS AMAZON IN REDUCING  
5 ERRONEOUS TRANSACTIONS.

6 Q. AND YOU MENTIONED A SECOND TECHNOLOGY?

7 A. YES. THERE IS A THREE-DIGIT SECURITY CODE ON  
8 THE BACK OF A PAYMENT CARD, AND THAT IS A NUMBER THAT  
9 ONLY THE INDIVIDUAL WITH THE CARD KNOWS. SO BY  
10 REQUESTING THAT, AGAIN, AT CHECK-OUT ON THE AMAZON  
11 WEBSITE, IT HELPED AMAZON REDUCE FRAUD.

12 Q. NOW YOU ALSO MENTIONED THAT YOU HELPED AMAZON  
13 IMPROVE SERVICE. WHAT DO YOU MEAN BY THAT?

14 A. WELL, AGAIN, MUCH OF THAT IS CONFIDENTIAL, BUT I  
15 CAN TALK ABOUT ONE AREA. I FOCUSED ON SPEED OF  
16 AUTHORIZATION FOR PAYMENT TRANSACTION BECAUSE AT  
17 CHECK-OUT CONSUMERS ARE VERY CONCERNED ABOUT ONCE THEY  
18 DECIDE TO MAKE A PURCHASE, SPEED OF CHECK-OUT, SO I  
19 FOCUSED ON THAT ASPECT AND CAME UP WITH SOME  
20 RECOMMENDATIONS IN THAT AREA.

21 Q. YOU ALSO MENTIONED THAT YOU WORKED FOR NETCHARGE  
22 IN THE PAYMENT TECHNOLOGY ARENA?

23 A. YES. NETCHARGE WAS A START-UP COMPANY. I  
24 WORKED FOR THEM FOR ABOUT A YEAR AND-A-HALF. THEY  
25 WANTED TO BECOME A NEW PAYMENT SYSTEM ON THE INTERNET.

1       THEY ESSENTIALLY HAD BOLD PLANS AND THOUGHT THAT THEY  
2       COULD TAKE AWAY A LOT OF BUSINESS FROM AMERICAN EXPRESS,  
3       MASTERCARD, VISA AND DISCOVER.

4       Q.       WHAT WAS YOUR ROLE IN THAT PROJECT?

5       A.       I RESEARCHED ONLINE TRANSACTIONS IN THE U.S. BY  
6       THE MAJOR CARD COMPANIES. I LOOKED AT NEW PAYMENT  
7       SERVICE IDEAS THAT WERE COMING ALONG, ALONG WITH  
8       NETCHARGE. I WORKED WITH NETCHARGE ON LEVERAGING THEIR  
9       PARTICULAR PROPRIETARY TECHNOLOGY AND WORKED WITH  
10      NETCHARGE TO MEET WITH INDIVIDUAL BANKS AND CARD  
11      COMPANIES TO GET THEM TO USE NETCHARGE.

12     Q.       DID YOU -- YOU MENTIONED PASSGATE?

13     A.       YES.

14     Q.       WHAT WAS YOUR -- WHAT DID YOU DO FOR PASSGATE?

15     A.       PASSGATE WAS ALSO A START-UP. IT WAS ANOTHER  
16     COMPANY LIKE NETCHARGE THAT WANTED TO COME UP WITH A NEW  
17     APPROACH FOR ONLINE TRANSACTIONS. PASSGATE'S IDEA WAS  
18     TO HAVE A DISPOSABLE NUMBER THAT AN INDIVIDUAL MIGHT USE  
19     ON THE INTERNET. THE IDEA THAT EACH TRANSACTION WAS ONE  
20     INDIVIDUAL'S DISPOSABLE NUMBER. AND AFTER THAT  
21     INDIVIDUAL TRANSACTION WAS MADE, THAT NUMBER WAS  
22     DISPOSED AND THEY WOULD USE ANOTHER NUMBER AFTER THAT.  
23     THEREFORE, IF SOMEONE WAS TO SECURE THAT NUMBER, IT  
24     COULD NOT BE USED AFTER THAT TRANSACTION.

25     Q.       ARE YOU STILL WORKING FOR PASSGATE?

1 A. NO.

2 Q. WHY NOT?

3 A. SIMILAR -- ANOTHER COMPANY HAD SIMILAR  
4 TECHNOLOGY BY THE NAME OF ORBISCOM. THEY GOT TO THE  
5 MARKETPLACE SOONER THAN PASSGATE, AND THEY EXIST TODAY  
6 BUT THEY ARE FULFILLING A VERY TINY NICHE ON THE  
7 INTERNET.

8 Q. MR. CLARK, TELL ME ABOUT YOUR EXPERIENCE WITH  
9 SURVEY RESEARCH. YOU MENTIONED THAT YOU'VE DONE SOME  
10 DIFFERENT KINDS OF RESEARCH. WHAT ARE THE VARIOUS  
11 ASPECTS OF SURVEY RESEARCH DONE?

12 A. WELL, OVER THE COURSE OF WHAT I THINK ARE  
13 PROBABLY 35 OR 40 RESEARCH STUDIES THAT I FIELDDED FOR  
14 EITHER MY CORPORATE WORK OR MY CONSULTING WORK AND  
15 EXTENSIVE USE OF AND REVIEW OF THIRD PARTY RESEARCH, I  
16 WOULD SAY MY ROLE HAS BEEN TO FIND CREDIBLE RESEARCH, TO  
17 ANALYZE THE SURVEY DESIGN, TO PLAY A ROLE IN THE  
18 QUESTIONNAIRE DEVELOPMENT AND ANALYZE THE RESULTS WHEN  
19 IT COMES OUT OF THE FIELD.

20 Q. OKAY.

21 NOW, YOU MENTIONED THAT YOU PLAYED A ROLE  
22 IN DESIGNING AND CONDUCTING SURVEY RESEARCH, IS THAT  
23 CORRECT?

24 A. YES.

25 Q. AND CAN YOU ELABORATE ON THAT?



1       A.        SURE.  ONE EXAMPLE IS A RESEARCH STUDY THAT I  
2       DID EACH YEAR AT AMERICAN EXPRESS, WHICH WAS VERY  
3       IMPORTANT TO MY -- THE SUCCESS OF MY MARKETING PLANS AT  
4       AMERICAN EXPRESS.  THAT WAS A QUANTITATIVE STUDY OF U.S.  
5       -- OF THE U.S. POPULATION, AND I USED THAT TO COLLECT  
6       AWARENESS AND ATTITUDES OF THE U.S. POPULATION TOWARDS  
7       THE AMERICAN EXPRESS CARD.  I USED THAT -- IT WAS TREND  
8       DATA, SO I DID THAT STUDY EACH YEAR, AND I USED THE  
9       TREND DATA TO SEE IF WE WERE IMPROVING OR LOSING GROUND  
10      AND FOR LEARNING ABOUT SPECIFIC ASPECTS OF CONSUMER  
11      BEHAVIOR.

12     Q.        AND I THINK YOU MENTIONED YOU PLAYED A ROLE IN  
13      DESIGNING SURVEY QUESTIONS?

14     A.        YES.

15     Q.        COULD YOU ELABORATE ON THAT ROLE?

16     A.        YES.  WELL, AS PART OF THAT QUESTION, AS PART OF  
17      THAT SURVEY, I INDIVIDUALLY DEVELOPED QUESTIONS THAT I  
18      THOUGHT WERE IMPORTANT.  AGAIN, THIS IS A TREND STUDY,  
19      SO OVER TIME YOU COME UP WITH NEW QUESTIONS AND NEW WAYS  
20      TO ASK QUESTIONS.  YOU GET BETTER INSIGHTS ON HOW  
21      RELIABLE THE CONSUMERS' ANSWERS ARE IN VARIOUS TOPICS  
22      AND WHETHER THEIR ANSWERS ARE CONSISTENT WITH THEIR  
23      BEHAVIOR.

24     Q.        HAVE YOU PLAYED A ROLE IN SELECTING THE SAMPLE  
25      SIZE FOR A SURVEY?

1 A. VERY DEFINITELY.

2 Q. WOULD YOU ELABORATE ON THAT?

3 A. YES. IN THAT STUDY IN PARTICULAR, IT NEEDED TO  
4 BE A QUANTITATIVE STUDY, SO A COUPLE HUNDRED INDIVIDUALS  
5 WOULD HAVE BEEN INADEQUATE. GENERALLY IN QUANTITATIVE  
6 STUDIES OVER A THOUSAND IS A GOOD BENCHMARK. THE  
7 CONFIDENCE LEVELS AND HOW YOU ARE GOING TO SEGMENT THE  
8 DATA SOMETIMES HAVE YOU DRIVE THE STUDY UP TO 2,000,  
9 3,000, 4,000 OR A LARGER NUMBER. SO ON THAT STUDY I WAS  
10 DETERMINED IT HAD TO BE A REPRESENTATIVE QUANTITATIVE  
11 SAMPLE OF THE U.S. POPULATION.

12 Q. NOW, OF THE 35 TO 40 STUDIES YOU FIELDDED, HAVE  
13 THESE BEEN TELEPHONE SURVEYS?

14 A. SOME OF THEM WERE TELEPHONE, SOME OF THEM WERE  
15 DIRECT MAIL, SOME OF THEM WERE IN PERSON, SOME WERE  
16 ONLINE.

17 Q. AND YOU HAVE MENTIONED YOU ANALYZED THE RESULTS  
18 OF THESE SURVEYS?

19 A. YES.

20 Q. COULD YOU ELABORATE ON THAT?

21 A. WELL, IN MANY CASES, I PERSONALLY RECEIVED THE  
22 DATA TABLES FROM THE RESEARCH VENDOR AND HAD TO WORK  
23 WITH THE DATA TO ANALYZE IT AND DEVELOP CREDIBLE  
24 FINDINGS AND RECOMMENDATIONS. THAT WOULD BE REVIEWED  
25 WITH SENIOR MANAGEMENT IN THE AMERICAN EXPRESS EXAMPLE.

1 IF IT WAS A CONSULTING ASSIGNMENT IT WOULD HAVE TO BE  
2 REVIEWED WITH MY CONSULTING CLIENT BECAUSE THESE  
3 FINDINGS AND RECOMMENDATIONS THEN WOULD BE USED FOR  
4 MARKETING OR BUSINESS CONCLUSIONS AND PROGRAMS WE WERE  
5 GOING TO SET UP.

6 Q. SO IN YOUR CAPACITY AS A CONSULTANT, WHAT ROLE  
7 DOES SURVEY RESEARCH PLAY IN YOUR PROJECTS?

8 A. IT'S VERY IMPORTANT.

9 Q. COULD YOU ELABORATE ON THAT?

10 A. YES. IN PARTICULAR PROJECTS, A CLIENT MIGHT  
11 HAVE A STUDY THAT THEY HAVE COMPLETED AND THEY WILL ASK  
12 ME TO LOOK AT THIS STUDY TO SEE IF IT'S ADEQUATE FOR  
13 SOME OF THE NEW WORK WE ARE TRYING TO DO. SOMETIMES I  
14 HAVE TO WORK WITH A CLIENT TO FIELD A NEW CUSTOMIZED  
15 STUDY. IN SOME CASES, WE CAN RELY ON THIRD PARTY  
16 RESEARCH. THAT CAN BE VERY COST EFFECTIVE FOR THE  
17 CLIENT. WITH THIRD PARTY RESEARCH ESSENTIALLY A  
18 CREDIBLE RESEARCH VENDOR WILL HAVE A NUMBER OF CORPORATE  
19 CLIENTS AND SHARE THE RESULTS WITH THE CORPORATE  
20 CLIENTS. THEY CAN ALSO THEREFORE SHARE THE COSTS OF  
21 THAT STUDY.

22 Q. HOW DO YOU GO ABOUT DETERMINING WHETHER THIRD  
23 PARTY RESEARCH IS CREDIBLE?

24 A. THERE IS REALLY A NUMBER OF THINGS I WILL LOOK  
25 AT. ONE IS THE REPUTATION OF THE FIRM AND HOW LONG THE

1 FIRM HAS BEEN DOING THIS. ARE THEY FOCUSED ON ONE  
2 RESEARCH SEGMENT OR ONE MARKET SEGMENT OR ARE THEY SORT  
3 OF A GENERAL PURPOSE RESEARCH FIRM. WHAT IS THE QUALITY  
4 OF THEIR CLIENTS. IT IMPRESSES ME A LOT WHEN A THIRD  
5 PARTY RESEARCH FIRM HAS HIGH QUALITY DEMANDING CLIENTS  
6 THAT ARE SUBSCRIBING TO THEIR STUDY. I TAKE A LOOK AT  
7 THE RESEARCH METHODOLOGY. IF I'M LOOKING FOR  
8 QUANTITATIVE RESULTS, THEN I NEED A CERTAIN SAMPLE SIZE.  
9 AND I RELY ON OTHER INDIVIDUALS IN THE PAYMENT CARD  
10 INDUSTRY WHO MIGHT HAVE USED THESE THIRD PARTIES OR BE  
11 AWARE OF THE PRINCIPALS IN THE FIRM.

12 Q. HOW DO YOU MAKE USE OF THE OTHER INDIVIDUALS IN  
13 THE PAYMENT INDUSTRY?

14 A. WELL, OF COURSE, MY MANY YEARS OF BEING IN THE  
15 PAYMENT SERVICE INDUSTRY, I HAVE DEVELOPED A LOT OF  
16 INDIVIDUALS I KNOW AND I TALK WITH THEM ON A REGULAR  
17 BASIS ABOUT MANY THINGS, DID YOU SEE THIS DEVELOPMENT?  
18 ARE YOU AWARE OF THIS? AND IN THE COURSE OF THAT I ASK  
19 THEM ABOUT THIRD PARTY RESEARCH VENDORS. I MIGHT ASK  
20 THEM ABOUT A NUMBER OF THINGS. AND SOMETIMES IT'S VERY  
21 HELPFUL BECAUSE THEY -- ANOTHER PERSON IN THE INDUSTRY  
22 MIGHT HAVE JUST BECOME A CLIENT WITH THIS THIRD PARTY.  
23 ANOTHER PERSON IN THE INDUSTRY MIGHT HAVE RELIED ON THAT  
24 THIRD PARTY RESEARCH AND BEEN VERY PLEASED WITH IT, SO  
25 THOSE COMMENTS ARE VERY HELPFUL.

1 Q. DO YOU USE ANY OTHER MEANS TO FIND THIRD PARTY  
2 RESEARCH?

3 A. YES. I ALSO GENERALLY DO A SEARCH ON THE  
4 INTERNET. SOMETIMES WHEN I GO AND QUERY A SPECIFIC  
5 TOPIC, A NEW THIRD PARTY TURNS UP, OR I GET SOME NEW  
6 INSIGHTS ON A THIRD PARTY THAT I WAS VAGUELY AWARE OF.

7 Q. IS THERE ANY OTHER METHOD YOU USE TO FIND THIRD  
8 PARTY RESEARCH?

9 A. THOSE ARE BASICALLY THE METHODS.

10 Q. OKAY.

11 SO ARE YOU FAMILIAR WITH THE STANDARDS  
12 USED IN THE PAYMENT CARD INDUSTRY FOR DESIGNING AND  
13 CONDUCTING SURVEY RESEARCH?

14 A. YES.

15 Q. ARE YOU FAMILIAR WITH THE STANDARDS USED IN THE  
16 PAYMENT CARD INDUSTRY FOR ANALYZING THE RESULTS OF THE  
17 SURVEY RESEARCH?

18 A. YES.

19 Q. HOW MANY CONSULTING ASSIGNMENTS HAVE YOU HAD IN  
20 THE PAST 21 YEARS?

21 A. I WOULD SAY AT LEAST 100.

22 Q. AND YOU'VE COVERED AREAS BEYOND THOSE WE TALKED  
23 ABOUT TODAY?

24 A. YES. I HAVE COVERED PROJECTS ON CREDIT CARD,  
25 DEBIT CARD, SMART CARDS, CONTACTLESS CARDS, PREPAID

1 CARDS -- SMARTCARDS, PREPAID CARDS. BEFORE THAT I SAID  
2 CONTACTLESS CARDS. DID YOU HAVE THAT ONE? SORRY.

3 I FOCUSED ON THE YOUTH MARKET, THE  
4 PREPAID MARKET, THE UNBANKED MARKET. I HAVE FOCUSED ON  
5 THE U.S. MARKETPLACE. I HAVE ALSO DONE ASSIGNMENTS  
6 INTERNATIONALLY WITH THE ROYAL BANK OF SCOTLAND AND  
7 AMERICAN EXPRESS IN EUROPE. IN CANADA. I HAVE WORKED  
8 IN MEXICO FOR BANK COMER. SO I THINK I HAVE COVERED A  
9 WIDE RANGE AND HAVE A LOT OF DEPTH AND BREADTH IN THE  
10 PAYMENT SYSTEM.

11 Q. NOW, OF THE 35 TO 40 STUDIES THAT YOU HAVE  
12 CONDUCTED OVER THE COURSE OF YOUR CAREER, HOW MANY OF  
13 THESE HAVE FOCUSED ON PAYMENT CARD USAGE OR BEHAVIOR?

14 A. VIRTUALLY ALL OF THEM.

15 Q. AND HAVE YOU EVER ENCOUNTERED PROBLEMS WITH  
16 UNDERREPORTING OR OVERREPORTING?

17 A. NO.

18 Q. MR. CLARK, HAVE YOU EVER BEEN RETAINED AS AN  
19 EXPERT?

20 MR. HARRIS: EXCUSE ME, YOUR HONOR. THAT  
21 STATEMENT AND QUESTION APPEAR TO BE FOR THE TRUTH. I  
22 DON'T UNDERSTAND HOW THIS WOULD GO TO HIS  
23 QUALIFICATIONS, SO I MOVE TO STRIKE.

24 THE COURT: WE HAVE TALKED ABOUT OTHER  
25 AREAS WITH OVER AND UNDER PREFIXES THAT WERE NOT USED IN

1 THIS QUESTION. SO I DON'T KNOW WHAT THE QUESTION WAS IN  
2 ANY EVENT OR WHAT THE QUESTION REALLY MEANT.

3 MR. TODD: I WAS ASKING HIM IF HE HAD  
4 -- I'LL WITHDRAW THE QUESTION AND TRY AGAIN, YOUR HONOR.

5 THE COURT: OKAY.

6 MR. TODD: THE QUESTION IS WITHDRAWN.

7 BY MR. TODD:

8 Q. IN ANALYZING AND MAKING USE OF THE RESULTS OF  
9 THESE SURVEYS, HAVE YOU ENCOUNTERED PROBLEMS WITH THE  
10 SURVEY RESULTS UNDERREPORTING THE BEHAVIOR OR ATTITUDE  
11 THAT YOU WERE TRYING TO MEASURE?

12 A. NO.

13 MR. HARRIS: OBJECTION, YOUR HONOR. THIS  
14 APPEARS TO BE OFFERED FOR THE TRUTH. THERE IS NO  
15 LINKAGE TO THIS TO HIS EXPERTISE, AND HE HAS NOT BEEN  
16 PROFFERED AS AN EXPERT YET.

17 MR. TODD: JUST ASKING IN HIS PERSONAL  
18 EXPERIENCE, YOUR HONOR.

19 THE COURT: OBJECTION IS SUSTAINED.

20 BY MR. TODD:

21 Q. MR. CLARK, HAVE YOU EVER BEEN RETAINED AS AN  
22 EXPERT WITNESS?

23 A. YES.

24 Q. HOW MANY TIMES?

25 A. FOUR TIMES INCLUDING THIS CASE.

1 Q. WHAT WAS THE NAME OF THE FIRST CASE IN WHICH YOU  
2 WERE RETAINED AS AN EXPERT?

3 A. NABANCO VERSUS FDIC.

4 Q. WHO RETAINED YOU?

5 A. THE DEPARTMENT OF JUSTICE.

6 Q. WHAT WAS THE DISPUTE IN THAT CASE IN WHICH YOU  
7 WERE INVOLVED?

8 A. IT CENTERED AROUND THE VALUE OF A MERCHANT  
9 CREDIT CARD PORTFOLIO.

10 Q. AND WHAT EXPERT SERVICES DID YOU PROVIDE?

11 A. I RESEARCHED THE MATTER, I DEVELOPED AN EXPERT  
12 REPORT, AND I WAS DEPOSED.

13 Q. DID THAT CASE PROCEED TO TRIAL?

14 A. NO. IT SETTLED JUST BEFORE TRIAL.

15 Q. WHAT IS THE NAME OF THE SECOND CASE IN WHICH YOU  
16 WERE RETAINED AS AN EXPERT?

17 A. VALLEY NATIONAL BANK VERSUS EXPERIAN.

18 Q. AND WHO RETAINED YOU?

19 A. VALLEY NATIONAL BANK.

20 Q. AND WHAT WAS THE DISPUTE IN THAT CASE IN WHICH  
21 YOU WERE INVOLVED?

22 A. THAT CENTERED AROUND CREDIT CARD APPLICATION  
23 PROCESSING SOFTWARE THAT EXPERIAN HAD SOLD TO VALLEY  
24 NATIONAL BANK.

25 Q. WHAT WAS YOUR ROLE IN THAT CASE?



1 A. I RESEARCHED THE MATTER, I DEVELOPED AN EXPERT  
2 OPINION, AN EXPERT REPORT, AND I WAS DEPOSED.

3 Q. WHAT DID YOU DEVELOP AN EXPERT REPORT ON?

4 A. ON THE EFFECTIVENESS OF THIS APPLICATION  
5 SOFTWARE.

6 Q. DID THAT CASE PROCEED TO TRIAL?

7 A. NO. IT SETTLED JUST PRIOR TO TRIAL.

8 Q. WHAT IS THE NAME OF THE THIRD CASE IN WHICH YOU  
9 WERE RETAINED AS AN EXPERT?

10 A. VINCENT -- I'M FORGETTING THE NAME OF THE -- CAN  
11 I REFER TO SOMETHING?

12 Q. YOU KNOW, YOU CAN JUST CHARACTERIZE THE CASE.

13 A. OKAY. THIS WAS ABOUT A YEAR AGO AND I WAS -- IT  
14 WAS A CASE -- IT WAS A CLASS ACTION CASE, AND I WAS  
15 ASSISTING IN THE DEVELOPMENT OF A CLASS CERTIFICATION  
16 MOTION FOR THE PLAINTIFF.

17 Q. WHAT WAS THE DISPUTE IN THAT CASE IN WHICH YOU  
18 WERE INVOLVED?

19 A. IT CENTERED AROUND PAYMENT CARD PROCESSING AT  
20 THE POINT OF SALE.

21 Q. WHAT SPECIFICALLY DID YOU DO TO ASSIST IN THE  
22 MOTION FOR CLASS CERTIFICATION?

23 A. I DEVELOPED A REPORT ON PAYMENT CARDS IN THE  
24 UNITED STATES AND HOW THEY ARE PROCESSED AT THE POINT OF  
25 SALE.

1 Q. DID YOU PERFORM ANY OTHER ROLE IN THAT CASE?

2 A. NO, THAT WAS ALL I WAS ASKED TO DO. I COMPLETED  
3 THAT TASK, AND I HAVE NO FURTHER INVOLVEMENT IN THE  
4 CASE.

5 Q. CAN WE BRING UP DEFENDANT'S EXHIBIT 94. I'M  
6 SHOWING YOU DEFENDANT'S EXHIBIT 94. THIS IS YOUR  
7 RESUME?

8 A. YES.

9 Q. HAVE WE TALKED ABOUT EACH OF THE ITEMS IN YOUR  
10 RESUME?

11 A. YES, WE HAVE.

12 MR. TODD: YOUR HONOR, I MOVE THAT  
13 DEFENDANT'S EXHIBIT 94 BE ADMITTED INTO EVIDENCE.

14 MR. HARRIS: NO OBJECTION.

15 THE COURT: DEFENDANT'S EXHIBIT 94 IS  
16 RECEIVED INTO EVIDENCE.

17 (D 94 ADMITTED INTO EVIDENCE.)

18 MR. TODD: AT THIS TIME I MOVE THAT  
19 MR. CLARK BE ADMITTED TO TESTIFY AS AN EXPERT IN THIS  
20 CASE ABOUT PAYMENT CARDS, THE EFFECTIVENESS OF PAYMENT  
21 CARDS.

22 MR. HARRIS: YOUR HONOR, DEFENDANTS --  
23 PLAINTIFFS HAVE NO OBJECTION TO HIM TESTIFYING AS AN  
24 EXPERT IN THE USE OF PAYMENT CARDS BY ADULTS, BUT HE HAS  
25 TESTIFIED AT HIS DEPOSITION HE HAS NO EXPERIENCE IN THE

1 ONLINE USE OF PAYMENT CARDS BY MINORS.

2 THE COURT: ANY PROBLEM WITH THAT  
3 RESTRICTION, MR. TODD?

4 MR. TODD: WELL, YOUR HONOR, PROFESSOR  
5 MANN ALSO TESTIFIED THAT PRIOR TO HIS ENGAGEMENT AS AN  
6 EXPERT IN THIS CASE, HE HAD NEVER PREVIOUSLY DONE ANY  
7 SCHOLARLY WORK ON MARKETING TO MINORS SPECIFICALLY, AND  
8 HIS TESTIMONY WAS ADMITTED. AND AS WE MOVE FORWARD,  
9 YOUR HONOR, AND WALK THROUGH MR. CLARK'S EXPERT SERVICES  
10 IN THIS CASE, WE WILL SHOW THAT HE HAS DONE RESEARCH  
11 SUFFICIENT FOR HIM TO ISSUE AN OPINION ABOUT THE USE OF  
12 -- OF MINORS' USE OF CARDS IN THIS CASE.

13 THE COURT: IS THIS SUBJECT CONTAINED IN  
14 HIS EXPERT REPORT?

15 MR. TODD: YES, YOUR HONOR.

16 THE COURT: MR. HARRIS, IF IT'S IN THE  
17 EXPERT REPORT, WHAT IS THE PROBLEM?

18 MR. HARRIS: THERE IS DISCUSSION ABOUT  
19 ONLINE USE OF PAYMENT CARDS BY MINORS IN THE EXPERT  
20 REPORT. MY OBJECTION IS THAT HE IS NOT AN EXPERT IN  
21 THAT AREA. PRIOR TO THIS ENGAGEMENT HE HAD NO  
22 EXPERIENCE IN ONLINE USE OF PAYMENT CARDS BY MINORS.

23 THE COURT: FOR ONE TO BE AUTHORIZED TO  
24 GIVE AN OPINION, ONE DOES NOT HAVE TO HAVE DONE IT  
25 BEFORE IF THEY USE THE SAME TECHNIQUES THEY HAVE USED

1 OVER THE YEARS IN OTHER AREAS OF THEIR WORK. THAT IS  
2 NOT A REASON WHY HE CAN'T TESTIFY ABOUT IT. I FIND IT  
3 DIFFICULT THOUGH THAT THE OFFER THAT HE BE CONSIDERED AS  
4 AN EXPERT ABOUT THE EFFECTIVENESS OF CREDIT CARDS,  
5 DEFENDANT'S OFFER OF HIS EXPERTISE IS VERY BROAD AND  
6 HARD TO -- FOR THIS COURT TO MANAGE AND THERE WILL BE A  
7 LOT OF OBJECTIONS BECAUSE IT IS NOT VERY SPECIFIC.

8 MR. TODD: I MOVE THAT MR. CLARK BE  
9 ADMITTED TO TESTIFY IN THIS CASE ABOUT THE USE OF  
10 PAYMENT CARDS ON THE INTERNET AND THE RELATED ASPECTS,  
11 REGULATORY, ECONOMIC, BANK BEHAVIOR, CARD ISSUER  
12 BEHAVIOR CONCERNING THEIR USE AS WELL AS --

13 THE COURT: WITHOUT RESTRICTION TO AGE.

14 MR. TODD: WITHOUT RESTRICTION TO AGE IN  
15 ANY WAY, YOUR HONOR.

16 MR. HARRIS: YOUR HONOR, I RENEW MY  
17 OBJECTION TO HIM TESTIFYING ABOUT PAYMENT CARDS, USE OF  
18 PAYMENT CARDS ON THE INTERNET BY MINORS. HE HAS NO  
19 EXPERIENCE.

20 THE COURT: HE HAS NOT DEMONSTRATED HE  
21 HAS ANY FACTUAL EXPERIENCE IN THAT AREA. IT DOES NOT  
22 MEAN THAT HE CAN'T GIVE AN OPINION ON THAT AREA BASED ON  
23 THE FACTS PRESENTED TO HIM EITHER HYPOTHETICALLY OR  
24 OTHERWISE. THE OBJECTION TO THE OFFER OF THE OPINIONS  
25 OF MR. CLARK IS OVERRULED, AND MR. CLARK WILL BE

1 PERMITTED TO PRESENT HIS OPINION ON THE EFFECTIVENESS OF  
2 CREDIT CARDS ON THE INTERNET AND RELATED ASPECTS WITHOUT  
3 RESTRICTION AS TO AGE. THE PLAINTIFFS HAVE THE RIGHT TO  
4 OBJECT TO ANY PARTICULAR QUESTION FOR WHICH THERE IS NO  
5 FOUNDATION.

6 MR. TODD: JUST TO CLARIFY, YOUR HONOR.  
7 IT'S ABOUT ALL PAYMENT CARDS, NOT JUST CREDIT CARDS.

8 THE COURT: DID I MISSPEAK? I WROTE  
9 CREDIT CARDS. THAT IS WHAT -- THE FIRST OFFER YOU MADE  
10 OF HIM, YOU USED THE WORD CREDIT CARDS.

11 MR. TODD: I'M SORRY, YOUR HONOR, MY  
12 MISTAKE, IF I CAN CORRECT THE RECORD.

13 THE COURT: PAYMENT CARD IS INCLUDED.  
14 BY MR. TODD:

15 Q. MR. CLARK, HAVE YOU BEEN RETAINED AS AN EXPERT  
16 WITNESS IN THIS CASE?

17 A. YES.

18 Q. WHO RETAINED YOU?

19 A. THE DEPARTMENT OF JUSTICE.

20 Q. WHEN WERE YOU RETAINED?

21 A. IN SEPTEMBER 2005.

22 Q. AND YOU PRODUCED A PRINCIPAL EXPERT REPORT?

23 A. YES.

24 Q. I ASK YOU -- BRINGING UP ON THE SCREEN WHAT HAS  
25 BEEN MARKED AS DEFENDANT'S EXHIBIT 93. THIS IS ALSO IN

1 YOUR WITNESS BINDER IF THE COURT WOULD LIKE TO TAKE A  
2 LOOK AT IT ON THE PAPER COPY. WHAT IS THIS DOCUMENT?

3 A. THIS IS MY EXPERT REPORT ISSUED ON MAY 8, 2006.

4 Q. HOW DID YOU GO ABOUT DEVELOPING THIS REPORT?

5 A. I USED MY NORMAL APPROACH, WHICH CONSISTS OF A  
6 NUMBER OF ELEMENTS.

7 Q. WHAT ARE THOSE ELEMENTS?

8 A. MY METHODOLOGY THAT I USE ON A REGULAR BASIS IS  
9 TO TALK WITH PEOPLE IN THE PAYMENT INDUSTRY, TO SEEK OUT  
10 CREDIBLE --

11 THE COURT: IF I KEEP INTERRUPTING, THERE  
12 IS SOMETHING MISSING HERE. WE ARE ALL VERY INTERESTED  
13 IN WHAT MR. CLARK IS GOING TO SAY, BUT YOU HAVE NOT  
14 ASKED HIM WHAT HE WAS ASKED TO DO. HE IS NOW TALKING  
15 ABOUT DOING SOMETHING THAT HAS NO PARAMETERS.

16 MR. TODD: I'M SORRY, YOUR HONOR. THE  
17 QUESTIONS JUST GOT OUT OF ORDER.

18 BY MR. TODD:

19 Q. MR. CLARK, WHAT WERE YOU ASKED TO DO BY THE  
20 DEPARTMENT OF JUSTICE?

21 A. TO PROVIDE AN OPINION ON THE EFFECTIVENESS OF  
22 PAYMENT CARDS ON THE INTERNET.

23 Q. AGAIN IN BRINGING UP DEFENDANT'S EXHIBIT 93,  
24 WHAT IS THIS DOCUMENT?

25 A. THIS IS MY MAY 8 EXPERT REPORT.

1 Q. HOW DID YOU GO ABOUT DEVELOPING THIS REPORT?

2 A. I USED MY STANDARD APPROACH, WHICH IS --  
3 CONSISTS OF TALKING WITH PEOPLE IN THE PAYMENT INDUSTRY,  
4 SEEKING OUT CREDIBLE IN-DEPTH REPORTS AND SEEKING OUT  
5 RELEVANT ARTICLES IN PUBLICATIONS THAT I READ ON A  
6 REGULAR BASIS.

7 Q. WHAT DO YOU MEAN BY TALK TO PAYMENT SYSTEMS  
8 INDIVIDUALS?

9 A. WELL, AS I STARTED THE PROJECT IN SEPTEMBER OF  
10 2005, AND BEGAN THE INITIAL RESEARCH FOR MY EXPERT  
11 OPINION, OVER THE NEXT FOUR TO SIX MONTHS I PROBABLY  
12 TALKED WITH 50 INDIVIDUALS IN THE PAYMENT SYSTEM. THESE  
13 ARE PEOPLE I HAVE KNOWN THROUGHOUT MY CAREER, AND I WAS  
14 SEEKING TO TALK TO THEM ABOUT SOURCES FOR DATA.

15 Q. DID YOU CONSIDER WHAT EACH OF THESE INDIVIDUALS  
16 TOLD YOU IN FORMING YOUR EXPERT OPINION?

17 A. NO.

18 Q. SO WHAT WAS THE PURPOSE OF THESE CONVERSATIONS?

19 A. IT WAS REALLY TO GET THEIR INSIGHTS ON DATA  
20 SOURCES.

21 Q. NOW WERE THESE THE ONLY CONVERSATIONS YOU HAD  
22 SINCE YOU HAVE BEEN RETAINED AS AN EXPERT?

23 A. NO.

24 Q. WHAT OTHER CONVERSATIONS DID YOU HAVE?

25 A. AS I STARTED TO WRITE THE EXPERT REPORT, THERE

1 WERE SPECIFIC TOPIC OR INFORMATION AREAS, AND I SOUGHT  
2 OUT INDIVIDUALS TO ASK THEM SPECIFIC QUESTIONS FOR MY  
3 EXPERT REPORT.

4 Q. AND WHAT WERE THOSE AREAS?

5 A. MERCHANT COSTS, ONLINE PROCESSING AND OPERATING  
6 APPROACHES, WORLDWIDE POLICIES OF THE CARD COMPANIES.

7 THE COURT: WHAT WAS THAT LAST ONE, SIR?

8 THE WITNESS: WORLDWIDE POLICIES,  
9 W-O-R-L-D-W-I-D-E. I HOPE I CAN SPELL.

10 BY MR. TODD:

11 Q. ANY OTHER AREAS FOR WHICH YOU SOUGHT OUT  
12 INDIVIDUALS?

13 A. NO.

14 Q. AND DID YOU CONSIDER THE INFORMATION PROVIDED BY  
15 THOSE INDIVIDUALS AS PART OF DEVELOPING YOUR EXPERT  
16 OPINION?

17 A. YES.

18 Q. AND YOU ALSO MENTIONED SEEKING OUT IN-DEPTH  
19 REPORTS. WHAT DO YOU MEAN BY THAT?

20 A. WELL, I WAS VERY INTERESTED IN FINDING A  
21 CREDIBLE IN-DEPTH REPORT ON WHICH I COULD HAVE ADEQUATE  
22 INFORMATION ON WHICH TO BASE AN EXPERT OPINION, AN  
23 EXPERT OPINION IN MY REPORT.

24 Q. I'M SHOWING YOU WHAT HAS BEEN MARKED AS  
25 DEFENDANT'S EXHIBIT 95. WHAT IS THIS?



1 A. THIS IS A SUMMARY OF SOURCES IN MY EXPERT  
2 REPORT.

3 Q. WHAT DOES THE FIRST BOX SAY?

4 A. THIS FOCUSES ON IN-DEPTH REPORTS AND THERE ARE  
5 FIVE AREAS WHERE I SOUGHT OUT AND OBTAINED A REPORT.

6 Q. WHAT WERE THOSE FIVE AREAS?

7 A. CHILD PAYMENT ACCESS, INTERNET PAYMENTS,  
8 INTERNET SHOPPING, PREPAID MARKET, AND THE FIFTH ONE IS  
9 UNBANKED MARKET.

10 Q. AND CAN WE BRING UP PAGE 0035 OF DEFENDANT'S  
11 EXHIBIT 93. WHAT IS THIS PAGE, MR. CLARK?

12 A. THIS IS A MORE DETAILED LOOK AT THE FIVE SOURCES  
13 THAT I ULTIMATELY USED.

14 Q. WHAT IN-DEPTH REPORTS DID YOU END UP SELECTING?

15 A. FOR CHILD PAYMENT ACCESS I SELECTED AN ANNUAL  
16 SURVEY FOR THE TEENAGE RESEARCH UNLIMITED COMPANY.

17 Q. WHAT'S TEENAGE RESEARCH UNLIMITED?

18 A. THEY ARE A THIRD-PARTY RESEARCH FIRM THAT FOR  
19 THE LAST 24 YEARS HAS BEEN FOCUSED ON THE TEEN MARKET.

20 Q. AND WHY DID YOU SELECT THIS REPORT?

21 A. I WAS IMPRESSED WITH THE REPUTATION, I WAS  
22 IMPRESSED WITH THE QUALITY OF THE CLIENTS THAT  
23 SUBSCRIBED TO THE STUDY. I WAS IMPRESSED WITH THEIR  
24 METHODOLOGY. I WAS LOOKING FOR A QUANTITATIVE STUDY  
25 THAT WOULD BE PROJECTABLE AND I WAS IMPRESSED WITH HOW

1       THEY HAD DONE THAT.   AND I HAD SEEN TEENAGE RESEARCH  
2       UNLIMITED QUOTED IN THE WALL STREET JOURNAL AS A  
3       CREDIBLE SOURCE.

4       Q.       IS THERE ANYTHING ELSE THAT STOOD OUT ABOUT THIS  
5       REPORT?

6       A.       IN THEIR SURVEY, WHICH THEY HAVE RUN FOR MANY  
7       YEARS, THEY HAVE A SERIES OF QUESTIONS THAT THEY ASK  
8       TEENS ABOUT ONLINE PURCHASES, HOW THEY BOUGHT THINGS  
9       WITH -- ONLINE, SO THERE IS A SERIES OF QUESTIONS WHICH  
10      ALLOWS ONE TO BETTER UNDERSTAND TEEN BEHAVIOR.

11      Q.       DID YOU FIND ANY OTHER SOURCE THAT GATHERED THIS  
12      BREADTH OF DATA?

13      A.       NO.

14      Q.       YOU MENTIONED SEEKING IN-DEPTH REPORTS FOR  
15      INTERNET PAYMENT VEHICLES.   DID YOU FIND A REPORT  
16      CONCERNING INTERNET PAYMENT VEHICLES?

17      A.       YES.   I PURCHASED AND RELIED ON THE CYBERSOURCE  
18      ANNUAL SURVEY.

19      Q.       WHY DID YOU SELECT THIS REPORT?

20      A.       THEIR REPUTATION IS VERY STRONG IN THE U.S. AS A  
21      LEADING PROVIDER OF RISK MANAGEMENT SERVICES FOR THE  
22      INTERNET, WEBSITE OPERATORS.   AS I LOOKED AT THEIR  
23      METHODOLOGY, THEY COLLECTED SURVEYS FROM OVER 400 ONLINE  
24      MERCHANTS.   SO I WAS IMPRESSED WITH THEIR STUDY.   THEY  
25      HAD RUN THIS, I BELIEVE, SEVEN OR EIGHT TIMES AS AN

1 ANNUAL SURVEY.

2 Q. YOU MENTIONED INTERNET SHOPPING. WERE YOU ABLE  
3 TO FIND A REPORT?

4 A. YES.

5 Q. WHAT REPORT DID YOU END UP SELECTING FOR THIS  
6 AREA?

7 A. SHOP.ORG'S ANNUAL SURVEY.

8 Q. AND WHY DID YOU SELECT THIS REPORT?

9 A. SHOP.ORG IS A DIVISION OF THE NATIONAL RETAIL  
10 FEDERATION, WHICH IS THE MAJOR RETAIL ASSOCIATION IN THE  
11 U.S. THEY'VE BEEN COMPLETING THIS STUDY FOR EIGHT YEARS  
12 WITH FORRESTER RESEARCH DOING THE SURVEY, AND THEY HAD  
13 BASED THEIR FINDINGS ON OVER 100 INTERVIEWS OF ONLINE  
14 RETAILERS.

15 Q. YOU MENTIONED THE PREPAID MARKET. WERE YOU ABLE  
16 TO FIND A REPORT COVERING THE PREPAID MARKET?

17 A. YES.

18 Q. WHAT REPORT DID YOU END UP SELECTING FOR THAT  
19 MARKET?

20 A. MERCATOR'S JULY 2005 REPORT.

21 Q. WHY DID YOU SELECT THIS REPORT?

22 A. THEY ARE A LEADING INDEPENDENT THIRD PARTY  
23 RESEARCH COMPANY THAT SPECIALIZES IN THE PREPAID MARKET.  
24 I HAD HEARD GOOD THINGS ABOUT THEM FROM INDIVIDUALS IN  
25 THE PAYMENT INDUSTRY, AND I WAS IMPRESSED WITH THE DEPTH

1 AND BREADTH OF THEIR REPORT.

2 Q. IS THERE ANYTHING THAT STOOD OUT ABOUT THIS  
3 REPORT?

4 A. THEY REALLY HAD A COMPREHENSIVE REPORT ON ALL  
5 ASPECTS OF THE PREPAID MARKET BECAUSE THERE IS OPEN AND  
6 CLOSED CARDS, AND IT'S A FAIRLY COMPLICATED MARKET. AND  
7 SO I WAS REALLY IMPRESSED WITH THE COMPREHENSIVENESS OF  
8 THE REPORT.

9 Q. YOU MENTIONED THE UNBANKED MARKET. WERE YOU  
10 ABLE TO FIND A REPORT?

11 A. YES.

12 Q. WHAT REPORT DID YOU END UP SELECTING?

13 A. A SURVEY FROM THE CENTER FOR FINANCIAL SERVICES  
14 INNOVATION, WHICH IS -- I HAVE BEEN TALKING ABOUT AS  
15 CFSI.

16 Q. WHY DID YOU SELECT THIS REPORT?

17 A. THEY ARE A LEADER IN THE UNBANKED MARKETPLACE.  
18 THEY HOLD CONFERENCES EACH YEAR ON THE UNBANKED  
19 MARKETPLACE. THEY FIELD RESEARCH STUDIES AND THEY ARE  
20 GENERALLY REGARDED AS ONE OF THE KEY INFORMATION SOURCES  
21 FOR THE UNBANKED MARKETPLACE.

22 Q. YOU CONSIDERED EACH OF THESE REPORTS IN FORMING  
23 YOUR EXPERT OPINION?

24 A. YES, I DID.

25 Q. AND CAN WE BRING DEFENDANT'S EXHIBIT 93, PAGE 35

1 -- I'M SORRY, IF WE CAN BRING UP DEFENDANT'S EXHIBIT 95  
2 BACK UP. JUST TO BE CLEAR, THIS IS ALSO A PAGE FROM  
3 YOUR EXPERT REPORT?

4 A. YES, IT IS.

5 Q. OKAY. CAN WE ZOOM IN ON THE MIDDLE ROW OF  
6 BOXES.

7 Q. NOW DID YOU CONSIDER OTHER SOURCES IN PREPARING  
8 YOUR EXPERT REPORT?

9 A. YES, I DID.

10 Q. WHAT ARE THOSE OTHER SOURCES?

11 A. ON THIS PAGE, SOME OF THEM ARE MENTIONED, THE  
12 U.S. CENSUS WEBSITE FOR ESTIMATES OF POPULATION; THE  
13 PATRIOT ACT; A STUDY FROM THE AMERICAN BANKERS  
14 ASSOCIATION; AN INDUSTRY DIRECTORY THAT HAS BEEN  
15 PUBLISHED FOR 16 OR 17 YEARS IN THE INDUSTRY; AN ONLINE  
16 PUBLISHERS ASSOCIATION ANNUAL STUDY THAT THEY DO ON THE  
17 ONLINE MARKETPLACE.

18 Q. CAN WE ZOOM IN ON THE LAST BOX ON THIS PAGE.  
19 WHAT DOES THIS SHOW?

20 A. AS I MENTIONED BEFORE, I SOUGHT OUT RELEVANT  
21 ARTICLES FROM THE SOURCES THAT I READ ON A REGULAR  
22 BASIS, AND I SELECTED ARTICLES FROM AMERICAN BANKER.  
23 AND I'M JUST GOING TO READ A FEW OF THESE NAMES,  
24 INTERNET RETAILER, WALL STREET JOURNAL AND NEW YORK  
25 TIMES, AMONGST OTHERS THAT ARE LISTED HERE.

1 Q. WHY DID YOU CONSIDER THESE ARTICLES?

2 A. THERE WAS A RELEVANT ARTICLE THAT -- THERE WAS  
3 AN ARTICLE I THOUGHT WAS RELEVANT TO THE CASE, AND SO I  
4 INCLUDED THAT.

5 Q. AND CAN WE COME BACK TO DEFENDANT'S EXHIBIT 93  
6 AND GO TO PAGE 0002 -- ACTUALLY, IT MIGHT BE 0003.  
7 DEFENDANT'S EXHIBIT 93, 0003.

8 THE COURT: IF I CAN HAVE YOURS, YOU CAN  
9 HAVE MINE.

10 MR. TODD: IF WE CAN GO TO PAGE 3  
11 ACTUALLY, 0003.

12 BY MR. TODD:

13 Q. AND WHAT IS THIS PAGE?

14 A. THIS IS PAGE 1. I THINK WE NEED TO TURN TO PAGE  
15 3.

16 Q. OKAY. PAGE 3?

17 THE COURT: PAGE 3 OR 0003?

18 THE WITNESS: I'M SORRY.

19 THE COURT: BATES NUMBER?

20 MR. TODD: THE BATES NUMBER, SIR.

21 THE COURT: PAGE 1 OF THE REPORT.

22 MR. TODD: SO CAN WE GO TO PAGE -- I  
23 GUESS LET'S TRY PAGE BATES NUMBER 4. SORRY, YOUR HONOR.

24 OKAY.

25 BY MR. TODD:

1 Q. MR. CLARK, IS THERE ANYTHING ELSE THAT YOU  
2 CONSIDERED IN PREPARING THIS REPORT?

3 A. YES. THERE WERE A COUPLE OF DEPOSITIONS.

4 Q. WHAT DEPOSITIONS DID YOU CONSIDER?

5 A. THE BERGMAN VISA DEPOSITION; THE ONE WITH RON  
6 CADWELL OF CCBILL; THE ONE WITH ED GARABEDIAN OF  
7 AMERICAN EXPRESS; AND THE ONE WITH JOSHUA PEIREZ OF  
8 MASTERCARD.

9 Q. THESE WERE DEPOSITIONS THAT WERE TAKEN IN THIS  
10 CASE?

11 A. YES.

12 Q. DID YOU ATTEND THESE DEPOSITIONS?

13 A. YES. I ATTENDED ALL FOUR OF THESE DEPOSITIONS.

14 Q. MR. CLARK, AS YOU DEVELOPED YOUR EXPERT REPORT,  
15 ARE THERE ANY SPECIAL TERMS YOU EMPLOYED?

16 A. YES.

17 Q. WHAT ARE THOSE TERMS?

18 A. ONE IN PARTICULAR IS TRADITIONAL PAYMENT CARD.

19 Q. WHAT DO YOU MEAN BY TRADITIONAL PAYMENT CARD?

20 A. THAT MEANS A CREDIT CARD, A DEBIT CARD OR A  
21 RELOADABLE PREPAID CARD THAT IS OFFERED BY AMERICAN  
22 EXPRESS, DINERS CLUB, DISCOVER, MASTERCARD AND VISA.

23 Q. AND WHAT DO YOU MEAN BY CREDIT CARD?

24 A. THIS IS A LINE OF CREDIT THAT THE CARD ISSUER  
25 PROVIDES TO AN INDIVIDUAL.

1 Q. AND WHAT DO YOU MEAN BY DEBIT CARD?

2 A. THIS IS A PAYMENT CARD THAT IS TIED TO A DEPOSIT  
3 ACCOUNT, GENERALLY A CHECKING ACCOUNT, AND AS AN  
4 INDIVIDUAL PURCHASES GOODS AND SERVICES ON A DEBIT CARD,  
5 THEY ARE DEDUCTED FROM AN INDIVIDUAL'S CHECKING ACCOUNT.

6 Q. AND WHAT DO YOU MEAN BY RELOADABLE PREPAID CARD?

7 A. THIS IS A PAYMENT CARD THAT INDIVIDUALS LOAD  
8 WITH CASH AND THEN PROCEED TO USE IT TO MAKE PURCHASES  
9 OF GOODS AND SERVICES.

10 Q. AND WHAT DOES RELOADABLE MEAN?

11 A. IT MEANS THAT THE INDIVIDUAL MIGHT LOAD THE  
12 FIRST CARD WITH \$50. AFTER THEY'VE USED UP THAT \$50  
13 THEY MIGHT GO BACK AND RELOAD IT WITH ANOTHER \$50 OR  
14 \$100. THEY MIGHT GO BACK A THIRD TIME. THEY MIGHT GO  
15 BACK NUMEROUS NUMBERS OF TIMES TO RELOAD THIS PIECE OF  
16 PLASTIC WITH DIFFERENT AMOUNTS OF CASH.

17 Q. YOU MENTIONED RELOADABLE PREPAID CARDS. ARE  
18 THERE OTHER TYPES OF PREPAID CARDS?

19 A. YES. THERE ARE THOSE THAT ARE USED ONE TIME OR  
20 -- GENERALLY ARE CALLED NONRELOADABLE PREPAID CARDS.

21 Q. WHAT'S A NONRELOADABLE PREPAID CARD?

22 A. THIS IS WHERE AN INDIVIDUAL LOADS A PIECE OF  
23 PLASTIC WITH SOME CASH AND PROCEEDS TO USE IT AND NEVER  
24 RELOADS IT AGAIN, A SECOND, THIRD OR FOURTH TIME.

25 Q. WHY DID YOU USE THE TERM TRADITIONAL PAYMENT



1 CARD IN THIS REPORT?

2 A. WELL, THERE IS A LOT OF PAYMENT CARDS IN THE  
3 UNITED STATES, SO I WANTED TO BE VERY PRECISE ON THE  
4 GROUP OF CARDS I WAS TALKING ABOUT AND HOW EFFECTIVE  
5 THIS GROUP WOULD BE ON THE INTERNET.

6 Q. MR. CLARK, DO YOU HAVE AN OPINION ON THE LEVEL  
7 OF USE OF TRADITIONAL PAYMENT CARDS ON THE WEB TODAY?

8 A. YES.

9 Q. HOW DID YOU REACH THAT OPINION?

10 A. A NUMBER OF SOURCES.

11 Q. WHAT WERE THOSE SOURCES?

12 A. AN AMERICAN BANKERS ASSOCIATION STUDY, AN  
13 AMERICAN BANKER ARTICLE ABOUT A RESEARCH STUDY, AND SOME  
14 RELEVANT OTHER SOURCES.

15 Q. I'M SHOWING YOU WHAT HAS BEEN MARKED AS  
16 DEFENDANT'S EXHIBIT 96. WHAT IS THIS, MR. CLARK?

17 A. THIS IS -- THIS SHOWS -- THIS SHOWS THE FINDINGS  
18 OF THE JUPITER RESEARCH STUDY. IT WAS PUBLISHED IN  
19 AMERICAN BANKER IN APRIL OF 2006.

20 Q. JUST TO BE CLEAR, THIS PIE CHART IS IN YOUR  
21 EXPERT REPORT?

22 A. YES, IT IS.

23 Q. WHAT DOES THIS PIE CHART SHOW?

24 MR. HARRIS: OBJECTION, YOUR HONOR. THE  
25 OBJECTION IS LACK OF FOUNDATION. THIS IS BASED ON A

1 SURVEY. THIS WITNESS HAS TESTIFIED HE IS NOT AN EXPERT  
2 -- AT HIS DEPOSITION HE TESTIFIED HE IS NOT AN EXPERT IN  
3 SURVEY DESIGN OR IN STATISTICAL ANALYSIS. HE IS NOT  
4 QUALIFIED TO OPINE ON THE VALIDITY OF THIS SURVEY AND TO  
5 PROVIDE THE EVIDENCE IN THE SURVEY AS FACTS IN THE  
6 RECORD.

7 MR. TODD: YOUR HONOR, WE HAD EXTENSIVE  
8 TESTIMONY EARLIER THIS MORNING ABOUT MR. CLARK'S  
9 EXPERIENCE WITH DESIGNING AND CONDUCTING SURVEY RESEARCH  
10 AS WELL AS FAMILIARITY WITH THE STANDARDS USED IN THE  
11 PAYMENT CARD INDUSTRY, BOTH IN DESIGNING AND CONDUCTING  
12 AND ANALYZING THE RESULTS OR SURVEY RESULTS.

13 THE COURT: WELL, YOU HAVE TWO PROBLEMS.  
14 HE HAS NOT DEMONSTRATED THE USE OF ANY OF THAT KNOWLEDGE  
15 OR TECHNIQUES IN REACHING AN ANSWER TO THE QUESTION THAT  
16 YOU JUST POSED TO HIM. AND IN FACT THE QUESTION IS SO  
17 CONCLUSARY THAT -- YOU HAVE A PIE CHART THAT IS THE END  
18 OF THE SURVEY, YOU DON'T KNOW WHAT THE INSIDE OF THAT  
19 SURVEY WAS AT ALL OR WHETHER HE CONSIDERED IT. HE DOES  
20 HAVE EXPERTISE IN ANALYZING OTHER THIRD PARTY SURVEYS.  
21 HE HAS DESIGNED SURVEYS HIMSELF IN THIS INDUSTRY. HE  
22 HAS REACHED CONCLUSIONS. HE HAS A LOT OF EXPERIENCE AND  
23 UNDER THE LAW HE IS ALLOWED TO -- IN REACHING HIS  
24 CONCLUSION CONSIDER SURVEYS IN WHICH HE IS ABLE TO  
25 TESTIFY WERE DONE WITH APPROPRIATE METHODOLOGY AND

1 RELIABLE CONCLUSIONS TO BE REACHED. HE CAN THEN PROCEED  
2 TO RELY ON THOSE SURVEYS, BUT NONE OF THAT IS IN  
3 EVIDENCE AT THIS POINT.

4 MR. TODD: WELL, YOUR HONOR --

5 THE COURT: I DON'T THINK HE HAS TO BE AN  
6 EXPERT -- WELL, HE HAS DEMONSTRATED THAT HE HAS YEARS OF  
7 EXPERIENCE IN DESIGNING AND ANALYZING SURVEYS, BOTH  
8 PRINCIPAL SURVEYS DONE BY OR UNDER HIS SUPERVISION AND  
9 THIRD PARTY SURVEYS. SO I WILL OVERRULE THE OBJECTION  
10 ON THAT BASIS. AND FINALLY, THE SURVEYS ARE HEARSAY  
11 UNLESS THEY ARE USED ONLY FOR THE PURPOSE OF ALLOWING  
12 HIM TO REACH HIS OWN CONCLUSIONS AND NOT FOR THE TRUTH  
13 OF THE FACTS PURPORTEDLY FOUND IN THE SURVEY. I THINK I  
14 HAVE COVERED EVERYTHING WE NEED TO GET THIS DONE, I  
15 HOPE. I'M TRYING. WITH THOSE OBSERVATIONS IN MIND I  
16 WILL SUSTAIN THIS OBJECTION, AND MR. TODD WILL TAKE  
17 ANOTHER SHOT AT IT.

18 MR. TODD: OKAY.

19 BY MR. TODD:

20 Q. MR. CLARK, WHAT IS THE SOURCE OF THIS  
21 INFORMATION?

22 A. THE AMERICAN BANKER.

23 THE COURT: WE ARE TALKING ABOUT  
24 DEFENDANT'S EXHIBIT 96?

25 MR. TODD: 96.

1 THE COURT: 0001?

2 MR. TODD: YES, SIR.

3 BY MR. TODD:

4 Q. THIS IS ONE OF THE SOURCES YOU CONSIDERED IN  
5 REACHING YOUR OPINION?

6 A. YES. THE AMERICAN BANKER IS TO MANY PEOPLE IN  
7 THE PAYMENT SYSTEM BANKING INDUSTRY IS CONSIDERED THE  
8 BIBLE OF NEWS AND RELIABLE INFORMATION IN THE PAYMENT  
9 SYSTEMS. I HAVE BEEN READING THIS PUBLICATION FOR  
10 PROBABLY 25 YEARS, AND IT'S A LEADING PUBLICATION WITH  
11 VERY CREDIBLE NEWS AND FACT GATHERING CAPABILITIES.

12 Q. OKAY.

13 AND DID YOU CONSIDER THIS INFORMATION IN  
14 FORMING YOUR EXPERT OPINION?

15 A. YES.

16 Q. AND BASED ON YOUR CONSIDERATION OF THIS  
17 INFORMATION, WHAT DID IT SHOW?

18 MR. HARRIS: OBJECTION. LACK OF  
19 FOUNDATION.

20 THE COURT: SUSTAINED. WE DON'T EVEN  
21 KNOW WHAT THE SURVEY WAS. WE HAVE A PIE CHART THAT IS  
22 THE END OF THE SURVEY. DID HE JUST LOOK AT THE PIE  
23 CHART AND SAY, WELL, THAT INFLUENCED MY OPINION? THAT  
24 IS NOT ADMISSIBLE. HE HAS GOT TO PROVE --

25 MR. TODD: WE ARE NOT TRYING TO ADMIT THE

1       PIE CHART, YOUR HONOR.

2                   THE COURT:  YOU ARE ADMITTING IT BY  
3       ALLOWING HIM TO USE IT TO INFLUENCE HIS OPINION, WHICH  
4       IS UNDERSTANDABLE, AND I SAY THIS WITH RESPECT, BUT THE  
5       LAW REQUIRES HIM TO QUALIFY THE SURVEY, UNDER THE LAW  
6       THAT I HAVE JUST DESCRIBED TO YOU THAT WE HAVE BEEN  
7       USING FOR THE LAST THREE WEEKS IN THIS CASE.

8                   MR. TODD:  YOUR HONOR, I THINK WE HAD  
9       SOME TESTIMONY ABOUT THE SURVEY.  WE WILL HAVE SOME  
10      MORE.

11                  THE COURT:  LET ME MAKE IT VERY -- WE ARE  
12      GOING TO HAVE THIS COME UP AGAIN AND AGAIN WITH THIS  
13      WITNESS.  THE FACT THAT THE AMERICAN BANKERS ASSOCIATION  
14      HAS A GOOD REPUTATION AND IS RELIABLE OVER THE YEARS IS  
15      INTERESTING, BUT IT DOES NOT SAY ANYTHING ABOUT THIS  
16      PARTICULAR STUDY THAT YOU ARE TRYING TO GET THE RESULTS,  
17      NOT IN, BUT TO INFLUENCE HIS OPINION.  IN ORDER TO DO  
18      THAT YOU HAVE TO QUALIFY THE SURVEY, AND I DON'T KNOW  
19      WHERE THAT DATA IS.

20      BY MR. TODD:

21      Q.       MR. CLARK, DID YOU OBTAIN THE SURVEY FROM  
22      AMERICAN BANKER?

23      A.       NO.

24      Q.       DID YOU INVESTIGATE THE RELIABILITY OF THIS  
25      SURVEY FROM AMERICAN BANKER?

1       A.        I SPOKE WITH INDIVIDUALS IN THE PAYMENT INDUSTRY  
2       AND I CAME TO VIEW THIS -- EVEN PRIOR TO THOSE  
3       CONVERSATIONS, I CAME TO VIEW THIS SET OF STATISTICS  
4       WITH SOME SENSE OF THE FACT THAT TRADITIONAL PAYMENT  
5       CARDS WERE A VERY DOMINANT PAYMENT TOOL ON THE INTERNET.

6       Q.        DO YOU KNOW WHEN THIS SURVEY WAS CONDUCTED?

7       A.        WELL, THE RESULTS WERE PUBLISHED IN APRIL OF  
8       2006 IN AMERICAN BANKER. I'M NOT SURE EXACTLY BUT I  
9       THINK THE JUPITER RESEARCH WAS COMPLETED IN THE -- IN A  
10      FEW MONTHS BEFORE THAT PUBLICATION OF APRIL.

11                   THE COURT: BY THE WAY, THERE IS NOTHING  
12      WRONG WITH ADMITTING INTO EVIDENCE THE FACT THAT HE READ  
13      THIS AND RELIED UPON IT, BUT THE NUMBERS ARE NOT  
14      ADMISSIBLE IN THE CASE. HIS OPINION IS ADMISSIBLE.

15                   MR. TODD: YES, YOUR HONOR.

16                   THE COURT: WE ARE NOT GOING TO GO  
17      THROUGH THE BACK DOOR WHAT WE CAN'T GET THROUGH THE  
18      FRONT DOOR. I KNOW THAT IS NOT YOUR INTENT.

19                   MR. TODD: THAT IS NOT MY INTENT, YOUR  
20      HONOR.

21                   THE COURT: OF COURSE.

22      BY MR. TODD:

23      Q.        DID YOU USE THIS INFORMATION IN FORMING YOUR  
24      EXPERT OPINION?

25      A.        YES.

1 Q. DO YOU KNOW WHAT THE GREEN SECTION OF THIS CHART  
2 REPRESENTS?

3 MR. HARRIS: OBJECTION, LACK OF  
4 FOUNDATION. THE WITNESS TESTIFIED HE NEVER EVEN  
5 OBTAINED THIS SURVEY OR READ IT. IN ADDITION HE  
6 CERTAINLY HAS NOT EXPLAINED METHODOLOGY OF IT SUFFICIENT  
7 TO ALLOW HIM TO TESTIFY ABOUT THIS SURVEY.

8 THE COURT: HE HAS TESTIFIED THAT HE  
9 DIDN'T LOOK AT THE INSIDES OF THE SURVEY. HE OBVIOUSLY  
10 HAS SEEN THIS PIE CHART, WHICH IS A CONCLUSION. HE CAN  
11 ONLY TESTIFY THAT I CONSIDERED IT. I HAVE AN OPINION  
12 BASED ON MY EXPERTISE AND MY CONSIDERATION OF THIS  
13 SURVEY OF WHAT THESE PERCENTAGES ARE, BUT WE ARE NOT  
14 GOING TO GET THE AMERICAN BANKERS IN THAT WAY.

15 MR. TODD: I'M NOT TRYING TO DO THAT.  
16 I'M ONLY ASKING YOUR HONOR THAT IF HE HAS AN OPINION  
17 ABOUT WHAT THE 19 -- THE GREEN PORTION OF THIS CHART  
18 REPRESENTS.  
19 BY MR. TODD:

20 Q. MR. CLARK, DO YOU HAVE AN OPINION ABOUT WHAT THE  
21 GREEN PORTION OF THIS CHART REPRESENTS?

22 A. YES.

23 Q. HOW DID YOU REACH THAT OPINION?

24 A. I SAW THE BAR CHART THAT BACKED UP THIS PIE  
25 CHART, WHICH I CREATED, AND THE "OTHER" CATEGORY

1 CONSISTED OF PAYPAL AND ONLINE GIFT CERTIFICATES.

2 THE COURT: NOW I THOUGHT THIS WAS A

3 DOCUMENT THAT CAME FROM THE SURVEY.

4 MR. TODD: YES, YOUR HONOR.

5 THE COURT: NOTHING OBJECTIONABLE ABOUT

6 HIM GIVING HIS OPINION.

7 BY MR. TODD:

8 Q. DO YOU HAVE AN OPINION ON WHAT THE RED PORTION

9 OF THE PIE CHART REPRESENTS?

10 A. YEAH. AGAIN, ON THIS BAR CHART TABLE THAT I SAW

11 IN THE AMERICAN BANKER, IT WAS VERY SPECIFIC. IT

12 CONSISTS OF CREDIT CARDS AND DEBIT CARDS.

13 Q. AND SO YOU WERE ABLE TO FORM AN OPINION ON THE

14 RATIO OF THE USE OF CREDIT CARDS AND DEBIT CARDS VERSUS

15 OTHER PAYMENT VEHICLES BASED ON THAT STUDY?

16 A. YES.

17 Q. CAN I BRING UP DEFENDANT'S EXHIBIT 93, 0011.

18 CAN WE HIGHLIGHT FOOTNOTE 11. NOW MR. CLARK, YOU

19 MENTIONED THAT IN YOUR OPINION THE GREEN PORTION OF THAT

20 CHART CONSISTED OF PAYPAL, IS THAT CORRECT?

21 A. YES.

22 Q. NOW, MR. CLARK, WHAT DOES FOOTNOTE 5 SAY?

23 A. PAYPAL'S POLICIES REQUIRE THE USER TO PROVIDE A

24 BANK ACCOUNT OR CREDIT CARD NUMBER.

25 Q. SO IN YOUR OPINION IS PAYPAL ALSO TIED TO A



1 PAYMENT CARD OR BANK ACCOUNT?

2 MR. HARRIS: OBJECTION, LEADING.

3 THE COURT: SUSTAINED.

4 BY MR. TODD:

5 Q. MR. CLARK, DO YOU HAVE AN OPINION ABOUT WHETHER  
6 PAYPAL ACCOUNTS ARE TIED TO A BANK ACCOUNT OR CREDIT  
7 CARD ACCOUNT?

8 A. PAYPAL, YES.

9 Q. AND WHAT IS THE BASIS FOR YOUR OPINION?

10 A. I'VE TAKEN A LOOK AT PAYPAL'S WEBSITE. I HAVE  
11 TALKED WITH PAYPAL'S EXECUTIVES. I'M GENERALLY  
12 KNOWLEDGEABLE ABOUT PAYPAL AND HOW THAT PRODUCT WORKS.

13 Q. AND SO WHAT IS YOUR OPINION ON WHETHER PAYPAL  
14 ACCOUNTS ARE TIED TO A BANK ACCOUNT OR CREDIT CARD?

15 A. A PAYPAL ACCOUNT IS DEFINITELY TIED TO A BANK  
16 ACCOUNT OR CREDIT CARD.

17 Q. OKAY.

18 I'M SHOWING YOU WHAT HAS BEEN MARKED  
19 AS --

20 THE COURT: EXCUSE ME FOR INTERRUPTING,  
21 BUT I HAVE NOT BEEN ABLE TO KEEP UP ENTIRELY. WHAT  
22 ABOUT PAYPAL HAS DEMONSTRATED, IF AT ALL, IN THE PIE  
23 CHART?

24 MR. TODD: I WILL ASK MR. CLARK TO  
25 CLARIFY IT.

1 BY MR. TODD:

2 Q. MR. CLARK, COULD YOU CLARIFY --

3 THE COURT: HE MAYBE DID IT PERFECTLY. I  
4 JUST DIDN'T GET IT.

5 BY MR. TODD:

6 Q. MR. CLARK, IN YOUR OPINION, IS PAYPAL  
7 REPRESENTED IN THIS CHART?

8 A. YES.

9 Q. AND WHAT IS THE BASIS FOR YOUR OPINION?

10 A. THE DATA I SAW IN THE AMERICAN BANKER FROM THE  
11 JUPITER RESEARCH STUDY.

12 Q. AND BASED ON YOUR OPINION, WHERE IS PAYPAL  
13 REPRESENTED IN THIS CHART?

14 A. IT'S THE MAJOR PART OF THE "OTHER" 19 PERCENT.

15 THE COURT: THANK YOU.

16 BY MR. TODD:

17 Q. I'M SHOWING YOU WHAT HAS BEEN MARKED AS  
18 DEFENDANT'S EXHIBIT 97. MR. CLARK, IS THIS A FIGURE IN  
19 YOUR EXPERT REPORT?

20 A. YES.

21 Q. WHAT IS THE SOURCE OF THIS FIGURE?

22 A. THIS IS FROM SHOP.ORG WHICH I TALKED ABOUT  
23 BEFORE AS ONE OF THE PRIMARY IN-DEPTH REPORTS THAT I  
24 OBTAINED FOR THIS EXPERT REPORT.

25 Q. DID YOU CONSIDER THEIR METHODOLOGY IN SELECTING

1 THIS INFORMATION?

2 A. YES, I DID.

3 Q. AND DID YOU -- ARE YOU SATISFIED WITH THE  
4 METHODOLOGY USED TO PRODUCE THIS INFORMATION?

5 A. YES. SHOP.ORG HAS BEEN DOING THIS FOR SEVEN OR  
6 EIGHT YEARS. IT IS CONSIDERED THE MOST RELIABLE SOURCE  
7 OF THIS DATA AND THEIR METHODOLOGY WAS VERY SOUND FROM  
8 MY POINT OF VIEW AS I LOOKED THROUGH THE ENTIRE REPORT.

9 Q. AND DO YOU HAVE AN OPINION ABOUT THE LEVEL AT  
10 WHICH ONLINE RETAIL SALES ARE INCREASING ON THE  
11 INTERNET?

12 A. YES.

13 Q. AND WHAT IS THE BASIS FOR THAT OPINION?

14 MR. HARRIS: OBJECTION. LACK OF  
15 FOUNDATION. THE WITNESS HAS NOT TESTIFIED WHAT THE  
16 METHODOLOGY WAS OF THIS SURVEY. HE NEEDS TO DO THAT IN  
17 ORDER TO TESTIFY THEN THAT IT IS SUFFICIENT IN HIS FIELD  
18 TO FORM THE BASIS FOR AN OPINION.

19 THE COURT: I DON'T KNOW THAT THE CASE  
20 LAW REQUIRES HIM TO PRESENT ALL OF THE DETAILS AND  
21 METHODOLOGY AND WORK DONE BY THE SURVEYOR IN ORDER TO  
22 COMMENT ON THE SURVEY. THE CASE LAW DOES NOT SAY THAT.  
23 IT JUST SAYS THAT HE HAS TO BE KNOWLEDGEABLE IN WHAT  
24 METHODOLOGY IS USUALLY USED AND WHETHER THE METHODOLOGY  
25 USED HERE BY I GUESS SHOP.ORG WAS A METHODOLOGY ACCEPTED

1 BY HIM AS UTILIZED IN THIS TYPE OF SURVEY. AND THAT IT  
2 IS IN HIS OPINION, EFFICACIOUS AND USEFUL. HE DOES NOT  
3 HAVE TO SAY WHAT EACH BRICK IN THE ANALYSIS WAS. I  
4 DON'T THINK THE CASES SAY THAT. I THINK I HAVE CAPTURED  
5 THE IDEA OF THE CASE. THAT IS MY BEST EFFORT ANYWAY.  
6 THE CASES WE HAVE BEEN USING FOR THE LAST SEVERAL WEEKS  
7 IS WHAT I'M TRYING TO CAPTURE. SO THE OBJECTION IS  
8 OVERRULED. THE OPINION ABOUT THE LEVEL AT WHICH ONLINE  
9 RETAIL SALES ARE INCREASING ON THE INTERNET, HE HAS AN  
10 OPINION. AND THE NEXT QUESTION WAS WHAT IS THE BASIS  
11 FOR THAT OPINION. THAT IS THE QUESTION THAT IS PENDING  
12 NOW. OBJECTION TO THAT QUESTION IS OVERRULED.

13 BY MR. TODD:

14 Q. MR. CLAR, WHAT IS YOUR BASIS FOR THAT OPINION?

15 A. I TOOK A LOOK AT THE DATA IN THE SHOP.ORG STUDY  
16 AND IT WAS CLEAR TO ME THAT THE GROWTH IN THE PERIOD OF  
17 2002 TO 2005 WAS DRAMATIC, WAS HIGH, AND THAT THIS --  
18 THE ONLINE CHANNEL WAS PROBABLY THE MAJOR GROWTH CHANNEL  
19 IN THE UNITED STATES VERSUS OTHER CHANNELS.

20 Q. NOW, SO TO BE CLEAR, WHAT IS YOUR OPINION ABOUT  
21 THE ONLINE GROWTH OF RETAIL SALES ON THE INTERNET?

22 A. IT'S HIGH. IT'S VERY DRAMATIC.

23 Q. ARE GOODS AND SERVICES THE ONLY THING THAT  
24 PEOPLE ARE BUYING ONLINE?

25 A. NO.

1 Q. WHAT ELSE ARE PEOPLE BUYING ONLINE?

2 A. DIGITAL CONTENT.

3 Q. I'M SHOWING YOU WHAT HAS BEEN MARKED AS  
4 DEFENDANT'S EXHIBIT 13, PAGE 0013.

5 A. YES.

6 Q. MR. CLARK, DO YOU HAVE AN OPINION ON THE GROWTH  
7 OF ONLINE CONTENT, OF PAID ONLINE CONTENT ON THE  
8 INTERNET?

9 A. YES.

10 Q. HOW DID YOU -- WHAT IS THE BASIS FOR THAT  
11 OPINION?

12 A. I TOOK A LOOK AT ONLINE PUBLISHERS ASSOCIATION  
13 ANNUAL SURVEY, WHICH I INDICATED WAS ONE OF MY SECONDARY  
14 SOURCES. AND THIS IS A STUDY THAT THEY HAVE PUT OUT FOR  
15 A NUMBER OF YEARS, AND IT WAS CLEAR FROM THAT DATA THAT  
16 ONLINE DIGITAL CONTENT WAS GROWING RAPIDLY.

17 Q. DID YOU REVIEW THE METHODOLOGY OF THAT SURVEY?

18 A. YES.

19 Q. DID YOU SATISFY YOURSELF WITH THE METHODOLOGY OF  
20 THAT SURVEY?

21 A. YES.

22 Q. AND BASED ON YOUR REVIEW OF THAT DATA, WHAT IS  
23 YOUR OPINION ON THE LEVEL OF GROWTH OF PAID ONLINE  
24 CONTENT ON THE INTERNET?

25 A. IT'S ONE OF THE LARGER GROWTH AREAS ON THE

1 INTERNET.

2 Q. MR. CLARK, BASED ON YOUR REVIEW OF THESE STUDIES  
3 FROM THE AMERICAN BANKERS ASSOCIATION, FROM THE PAID  
4 ONLINE CONTENT REPORT AND FROM SHOP.ORG, WHAT IS YOUR  
5 OPINION ABOUT THE LEVEL OF USE OF PAYMENT CARDS ON THE  
6 WEB TODAY?

7 A. TRADITIONAL PAYMENT CARDS ARE THE MAJOR PAYMENT  
8 VEHICLE ON THE INTERNET, AND THE INTERNET IS A  
9 MAINSTREAM ACTIVITY IN THE U.S.

10 Q. THE INTERNET IS A MAINSTREAM ACTIVITY?

11 A. THE WEB, EXCUSE ME.

12 Q. WHAT DO YOU MEAN BY MAINSTREAM ACTIVITY?

13 A. I MEAN THAT IT'S A DISTRIBUTION CHANNEL,  
14 PURCHASING CHANNEL THAT CONSUMERS ARE VERY COMFORTABLE  
15 WITH, THAT MERCHANTS ARE VERY COMFORTABLE WITH, AND IT'S  
16 NO LONGER AS IT WAS MAYBE SIX OR SEVEN YEARS AGO, A NEW  
17 WAY FOR INDIVIDUALS TO PURCHASE GOODS AND SERVICES.  
18 IT'S A RATHER REGULAR AND MAJOR WAY U.S. CONSUMERS  
19 PURCHASE GOODS AND SERVICES AND DIGITAL CONTENT ON THE  
20 INTERNET.

21 MR. HARRIS: OBJECTION. MOVE TO STRIKE  
22 ONLY THE PORTION REFERRING THAT CONSUMERS ARE VERY  
23 COMFORTABLE. THERE HAS BEEN NO EVIDENCE IN THE RECORD  
24 OF ANY SURVEYS ON THAT FIGURE. HE CERTAINLY HAS  
25 PROVIDED EVIDENCE ABOUT THE USE OF PAYMENT CARDS ON THE

1 INTERNET, SO I DON'T OBJECT TO THAT, THE REMAINDER OF  
2 THE STATEMENT.

3 THE COURT: MR. TODD.

4 MR. TODD: NO OBJECTION TO THAT BEING  
5 STRICKEN AT THIS TIME. WE'LL COME BACK TO THAT, YOUR  
6 HONOR, JUST SO LONG AS WE AGREE ON WHAT IS BEING  
7 STRICKEN.

8 THE COURT: I BELIEVE HIS ANSWER WAS I  
9 MEAN IT'S A DISTRIBUTION CHANNEL, PURCHASING CHANNEL  
10 THAT CONSUMERS ARE VERY COMFORTABLE WITH, PERIOD, THAT  
11 MERCHANTS ARE VERY COMFORTABLE WITH, NO LONGER A NEW WAY  
12 FOR INDIVIDUALS TO PURCHASE GOODS. STRIKE OUT THE  
13 SENTENCE "I MEAN, THAT IT'S A DISTRIBUTION CHANNEL,  
14 PURCHASING CHANNEL THAT CONSUMERS ARE VERY COMFORTABLE  
15 WITH." THOSE WORDS ARE TO BE STRICKEN. THE REST OF THE  
16 ANSWER STANDS.

17 MR. TODD: COURT'S INDULGENCE, YOUR  
18 HONOR.

19 THE COURT: SURE.

20 (PAUSE.)

21 BY MR. TODD:

22 Q. MR. CLARK, I DIRECT YOUR ATTENTION TO  
23 DEFENDANT'S EXHIBIT 93, PAGE 0012.

24 A. YES.

25 Q. THE LAST SENTENCE OF THE PARAGRAPH NEAR THE PIE

1 CHART.

2 A. YES.

3 Q. COULD YOU READ THAT SENTENCE ALOUD, JUST FOR THE  
4 COURT'S ATTENTION, NOT FOR THE TRUTH OF THE MATTER  
5 ASSERTED.

6 A. CURRENTLY, 66 PERCENT OF CONSUMERS FEEL  
7 COMFORTABLE, THAT IS IN QUOTES, OR COMPLETELY  
8 COMFORTABLE, THAT IS ALSO IN QUOTES, WITH USING CREDIT  
9 CARDS FOR ONLINE SHOPPING AND 50 PERCENT FEEL  
10 COMFORTABLE WITH USING DEBIT CARDS.

11 Q. MR. CLARK, DO YOU HAVE AN OPINION ON THE --  
12 WHETHER CONSUMERS FEEL COMFORTABLE OR COMPLETELY  
13 COMFORTABLE WITH USING CREDIT OR DEBIT CARDS ON THE  
14 INTERNET FOR SHOPPING?

15 A. YES.

16 Q. WHAT IS THE SOURCE OF THAT OPINION?

17 A. THE AMERICAN BANKERS ASSOCIATION STUDY, PAYMENT  
18 STUDY I THINK I FOOTNOTED ON THIS PAGE. MAYBE WE CAN GO  
19 DOWN TO THE FOOTNOTE AND TAKE A LOOK AT THAT.

20 Q. I THINK THAT IS JUST A PAGE CITE. HAVE YOU  
21 REVIEWED THAT PART OF THE STUDY AS WELL?

22 A. YES.

23 Q. AND WAS THERE ANYTHING DIFFERENT ABOUT THE  
24 METHODOLOGY IN THAT PART OF THE STUDY THAT YOU  
25 CONSIDERED?



1 A. WELL --

2 THE COURT: EXCUSE ME. HE DID NOT REVIEW  
3 THE METHODOLOGY OF THAT STUDY.

4 MR. TODD: YES, YOUR HONOR. I'M SORRY.  
5 ACTUALLY, YOUR HONOR, I THINK THIS IS A DIFFERENT STUDY  
6 WE ARE TALKING ABOUT NOW. THIS IS THE --

7 THE COURT: PAYMENT STUDY.

8 MR. TODD: THIS IS A STUDY BY DOVE  
9 CONSULTING.

10 THE COURT: SOMEBODY CAN EXPLAIN THAT. I  
11 FOULED IT UP.

12 BY MR. TODD:

13 Q. MR. CLARK, ARE YOU REFERRING TO THE ARTICLE THAT  
14 REPORTED A STUDY OR ARE YOU REFERRING TO THE AMERICAN  
15 BANKERS ASSOCIATION STUDY?

16 A. THE AMERICAN BANKERS ASSOCIATION. IF I MIGHT  
17 JUST -- TWO TERMS HERE ARE VERY CONFUSING. THERE'S A  
18 NEWSLETTER CALLED AMERICAN BANKER. THEN THERE'S A TRADE  
19 ASSOCIATION CALLED THE AMERICAN BANKERS ASSOCIATION. SO  
20 THOSE TWO TERMS WE ARE USING, AND THEY CAN BE CONFUSING.  
21 SO AGAIN, AMERICAN BANKER IS A BANKING NEWSLETTER THAT  
22 IS PUT OUT, NOT BY THE ABA, THE AMERICAN BANKERS  
23 ASSOCIATION. AND THEN THE ABA STANDS FOR THE AMERICAN  
24 BANKERS ASSOCIATION. IN THIS CASE THE AMERICAN BANKERS  
25 ASSOCIATION HAD FIELDDED A STUDY WHICH I REVIEWED. IT IS

1 ABOUT 400 PAGES LONG. IT'S A STUDY --

2 THE COURT: PAYMENT STUDY OF OCTOBER

3 2005?

4 THE WITNESS: YES, SIR.

5 THE COURT: EXCUSE ME. GO AHEAD. I'M

6 SORRY.

7 THE WITNESS: AND SO THAT -- THE AMERICAN

8 BANKERS ASSOCIATION STUDY IS THE SOURCE OF THE DATA FOR

9 FEELING COMFORTABLE OR NOT FEELING COMFORTABLE.

10 BY MR. TODD:

11 Q. YOU ARE SATISFIED WITH THE METHODOLOGY OF THAT

12 STUDY?

13 A. YES.

14 Q. AS IT RELATES TO THE STANDARDS USED IN THE

15 PAYMENT CARD INDUSTRY?

16 A. YES.

17 Q. AND SO WHAT'S YOUR OPINION ON CONSUMERS' LEVEL

18 OF COMFORT WITH USING CREDIT AND DEBIT CARDS ON THE

19 INTERNET?

20 A. I THINK -- MY OPINION IS THAT CONSUMERS ARE

21 QUITE COMFORTABLE WITH USING PAYMENT CARDS ON THE

22 INTERNET.

23 Q. MR. CLARK, DO YOU HAVE --

24 MR. TODD: I'M SORRY, YOUR HONOR. IT IS

25 ELEVEN O'CLOCK. I KNOW WE SOMETIMES TAKE OUR BREAK AT

1 THAT TIME.

2 THE COURT: I DON'T KNOW HOW MUCH MORE  
3 YOU HAVE ON DIRECT.

4 MR. TODD: QUITE A BIT, YOUR HONOR.

5 THE COURT: 10 MINUTE RECESS. WE ARE OFF  
6 THE RECORD. COUNSEL ARE EXCUSED. THE WITNESS CAN WALK  
7 AROUND, GET SOME EXERCISE.

8 THE WITNESS: THANK YOU, YOUR HONOR.

9 (BREAK TAKEN.)

10 THE COURT: THE RECESS IS CONCLUDED. YOU  
11 ARE WELCOME TO HAVE A SEAT.

12 THE WITNESS: THANK YOU.

13 THE COURT: CONTINUE WITH YOUR  
14 QUESTIONING.

15 MR. TODD: THANK YOU.

16 BY MR. TODD:

17 Q. MR. CLARK, DO YOU HAVE AN OPINION ON ADULTS'  
18 ACCESS TO TRADITIONAL PAYMENT CARDS?

19 A. YES.

20 Q. HOW HAVE YOU REACHED THAT OPINION?

21 A. BASED ON A COUPLE OF SOURCES.

22 Q. WHAT ARE THOSE SOURCES?

23 A. THE U.S. CENSUS DATA, INFORMATION FROM CFSI, AND  
24 MY CONSULTING EXPERIENCE.

25 Q. CAN WE BRING UP DEFENDANT'S EXHIBIT 93 -0036.

1 MR. CLARK, THIS IS ANOTHER PAGE IN YOUR EXPERT REPORT?

2 A. YES.

3 Q. AND WHAT IS -- ACTUALLY IF WE CAN ZOOM IN ON THE  
4 WHOLE THING FIRST, MR. BYRDSONG.

5 WHAT IS THIS INFORMATION?

6 A. THIS IS DATA THAT I DREW FROM THE U.S. CENSUS  
7 WEBSITE, AND IT SHOWS THE NUMBER OF INDIVIDUALS IN THE  
8 U.S. FOR EACH AGE FROM AGE 30 THROUGH AGE 100.

9 Q. AND AS OF WHAT DATE IS THIS DATA?

10 A. THIS IS THE U.S. CENSUS'S NOVEMBER 2005  
11 ESTIMATE, THEIR LATEST ESTIMATE.

12 Q. AND IF WE COULD ZOOM IN ON THE BOTTOM. WHAT IS  
13 THE TOTAL U.S. POPULATION APPROXIMATELY?

14 A. IT'S APPROXIMATELY 297 -- 298 MILLION.

15 Q. IF WE CAN HIGHLIGHT THE SECOND AND THIRD LINES.  
16 APPROXIMATELY WHAT IS THE ADULT POPULATION?

17 A. IT'S APPROXIMATELY 224 MILLION.

18 Q. CAN WE BRING UP WHAT HAS BEEN MARKED AS  
19 DEFENDANT'S EXHIBIT 440? WHAT IS THIS DOCUMENT,  
20 MR. CLARK?

21 A. THIS IS A CONFERENCE BROCHURE FOR JUNE OF THIS  
22 YEAR ON THE UNBANKED MARKETPLACE.

23 Q. AND WHO PUT ON THIS CONFERENCE?

24 A. CFSI.

25 Q. AND DID YOU ATTEND THIS CONFERENCE?

1 A. YES, I DID.

2 Q. WHY DID YOU ATTEND THIS CONFERENCE?

3 A. CFSI IS REALLY THE LEADING INFORMATION SOURCE OF  
4 THE UNBANKED MARKETPLACE, AND I WANTED TO ATTEND THIS  
5 CONFERENCE IN JUNE TO MAKE SURE I WAS UP-TO-DATE ON THIS  
6 MARKETPLACE AND INFORMATION THAT WAS PROVIDED AT THE  
7 CONFERENCE.

8 Q. CAN WE TURN TO THE SECOND PAGE. CAN WE  
9 HIGHLIGHT THE SECOND BULLET POINT AND ZOOM IN ON IT --  
10 THE FIRST BULLET POINT AND ZOOM IN ON IT.

11 BASED ON THIS CONFERENCE AND THIS  
12 CONFERENCE BROCHURE, DID YOU DETERMINE THE NUMBER OF  
13 UNBANKED ADULTS?

14 MR. HARRIS: OBJECTION, LACK OF  
15 FOUNDATION.

16 MR. TODD: MR. CLARK.

17 THE COURT: HE JUST ASKED WHETHER HE  
18 DETERMINED IT. THAT OBJECTION IS OVERRULED.

19 YES OR NO TO THAT.

20 THE WITNESS: YES.

21 BY MR. TODD:

22 Q. HOW DID YOU DETERMINE THAT NUMBER?

23 A. I DETERMINED THAT NUMBER TO BE 28 MILLION AND IT  
24 WAS BASED ON DISCUSSION AT THE CONFERENCE.

25 MR. HARRIS: OBJECTION, MOVE TO STRIKE AS

1 NON-RESPONSIVE, AT LEAST THE FIRST SENTENCE WAS.

2 THE COURT: THE MOTION TO STRIKE THE  
3 WHOLE ANSWER IS GRANTED. THE WITNESS WAS ANSWERING A  
4 QUESTION THAT WAS NOT ASKED ULTIMATELY ON THE EXACT  
5 NUMBERS. WE ARE STILL WORKING ON THE ISSUE OF HOW HE  
6 DETERMINED WHATEVER HE IS WORKING ON.

7 BY MR. TODD:

8 Q. HOW DID YOU DETERMINE -- YOU TESTIFIED THAT YOU  
9 ATTENDED THIS CONFERENCE, CORRECT?

10 A. YES.

11 Q. AND HOW DID YOU DETERMINE THE NUMBER OF UNBANKED  
12 ADULTS?

13 A. I TALKED WITH THE PARTICIPANTS AT THE  
14 CONFERENCE, JENNIFER TESHER IS THE EXECUTIVE DIRECTOR OF  
15 CFSI; A PRESENTER FROM -- TIM RAMSEY FROM BEARING  
16 POINT -- B-E-A-R-I-N-G, I FORGET WHETHER IT IS TWO WORDS  
17 BUT IT'S CAPITAL P-O-I-N-T, I CAN'T REMEMBER WHETHER IT  
18 IS TWO SEPARATE WORDS OR ALL ROLLED TOGETHER, CAPITAL B,  
19 CAPITAL P -- WHO WAS A PRESENTER ON STATISTICS FOR THE  
20 UNBANKED. I LEARNED THAT --

21 THE COURT: DON'T TELL US WHAT YOU  
22 LEARNED YET. WE ARE STILL WORKING ON HOW YOU LEARNED  
23 IT.

24 BY MR. TODD:

25 Q. WHAT DID YOU LEARN?

1                   MR. HARRIS:  OBJECTION, LACK OF  
2                   FOUNDATION.  THERE IS NO EVIDENCE THAT HE REVIEWED THE  
3                   BEARING POINT STUDY THAT ACCORDING TO THIS DOCUMENT IS  
4                   THE BASIS OF THIS, OR THAT HE KNOWS THE METHODOLOGY OF  
5                   THAT STUDY.

6                   THE COURT:  MR. TODD, WHAT IS YOUR  
7                   RESPONSE?

8                   MR. TODD:  YOUR HONOR, HE HAS TESTIFIED  
9                   THAT HE ATTENDED THIS CONFERENCE AT WHICH THE NUMBER OF  
10                  UNBANKED ADULTS WAS DISCUSSED.

11                  THE COURT:  THE WHOLE ISSUE IS WHETHER IT  
12                  IS HEARSAY OR NOT.

13                  MR. TODD:  YES, YOUR HONOR, BUT, AGAIN,  
14                  WE ARE NOT SEEKING TO ADMIT THE NUMBER INTO EVIDENCE.  
15                  WE ARE MERELY INTRODUCING THIS AS EXPERT RELIANCE  
16                  MATERIAL.  THEREFORE THE HEARSAY OBJECTION DOES NOT  
17                  APPLY.

18                  THE COURT:  I GUESS HE CAN TESTIFY THAT  
19                  HE WENT THERE, HE HEARD SOME THINGS, HE CONSIDERED IT.

20                  MR. TODD:  THAT'S CORRECT.

21                  THE COURT:  AND REACHED HIS OWN  
22                  CONCLUSION.  THAT IS THE BEST HE CAN DO.

23                  MR. TODD:  THAT'S CORRECT, YOUR HONOR.  
24                  THAT IS ALL WE ARE SEEKING TO DO HERE TODAY FOR ALL THIS  
25                  TESTIMONY.

1 THE COURT: MR. HARRIS.

2 MR. HARRIS: YOUR HONOR, THE WITNESS IN  
3 HIS REPORT HAS AN OPINION ABOUT THIS EXACT FIGURE. SO  
4 I'M NOT SURE WHAT IT MEANS TO SAY HE IS NOT RELYING ON  
5 IT FOR THE TRUTH. HE HAS AN OPINION.

6 THE COURT: I'M NOT SUGGESTING THAT I'M  
7 GOING TO ADMIT IT INTO EVIDENCE FOR THE TRUTH OR ADMIT  
8 IT INTO EVIDENCE AT ALL. I'M SAYING HE HAS -- HE HAS  
9 THE RIGHT UNDER THE LAW TO REACH HIS OWN OPINION. I  
10 DON'T BELIEVE THE -- BECAUSE HE HAS NOT STUDIED THE  
11 SURVEY THAT THE SURVEY RESULTS GO IN AT ALL FOR THE  
12 TRUTH OF THE MATTER ASSERTED.

13 MR. TODD: THAT'S CORRECT, YOUR HONOR.  
14 WE ARE NOT SEEKING ADMISSION OF THIS DOCUMENT.

15 THE COURT: YOU SEEK HIS OPINION. THAT  
16 IS ALL YOU CAN GET.

17 MR. TODD: THAT'S CORRECT, YOUR HONOR.  
18 THANK YOU, YOUR HONOR.

19 BY MR. TODD:

20 Q. MR. CLARK, YOU TESTIFIED THAT YOU HAD  
21 CONVERSATIONS WITH INDIVIDUALS AT THIS CONFERENCE, AND  
22 YOU ATTENDED THE CONFERENCE ITSELF, CORRECT?

23 A. YES.

24 Q. AND BASED ON YOUR ATTENDANCE AT THAT CONFERENCE,  
25 DID YOU FORM AN OPINION ON THE NUMBER OF UNBANKED



1 ADULTS?

2 A. YES.

3 Q. DID YOU BASE -- WHAT IS THE BASIS FOR YOUR  
4 OPINION?

5 A. I LISTENED TO THE PRESENTATION BY TIM RAMSEY OF  
6 BEARING POINT WHO DISCUSSED THIS STATISTIC AND OTHER  
7 STATISTICS AND REFERRED TO THE FACT THAT HE HAD  
8 DEVELOPED THIS WORK FOR VISA AND THAT VISA WAS USING  
9 THESE NUMBERS ON A REGULAR BASIS AND THAT CFSI WAS USING  
10 THESE NUMBERS ON A REGULAR BASIS. MR. RAMSEY TALKED  
11 ABOUT WHAT SOUNDED TO ME TO BE A VERY THOROUGH ANALYSIS  
12 OF SECONDARY DATA POINTS. AS ALL CONSULTANTS AT  
13 CONFERENCES, THEY ARE NOT APT TO REVEAL EXACTLY THEIR  
14 METHODOLOGY FOR DEVELOPING STATISTICS, BUT A NUMBER OF  
15 GOVERNMENT SOURCES WERE USED TO GATHER DATA AND I WAS  
16 VERY IMPRESSED WITH THE FACT THAT BOTH VISA AND CFSI HAD  
17 ADOPTED THE WORK THAT BEARING POINT HAD DONE AS  
18 DEFINITIVE IN THE UNBANKED AND IMMIGRANT POPULATION  
19 AREA.

20 Q. SO YOU WERE SATISFIED WITH THE --

21 THE COURT: DON'T ASK A LEADING QUESTION,  
22 PLEASE.

23 BY MR. TODD:

24 Q. WERE YOU SATISFIED WITH THE METHODOLOGY THAT  
25 THEY DISCUSSED AT THE CONFERENCE FOR GATHERING THIS

1 DATA?

2 A. YES.

3 Q. DID THE METHODOLOGY SATISFY THE STANDARD FOR  
4 DATA AS YOU ARE FAMILIAR WITH THE STANDARD IN THE  
5 PAYMENT CARD INDUSTRY?

6 A. YES.

7 Q. BASED ON THIS INFORMATION, WHAT IS YOUR OPINION  
8 ON THE NUMBER OF UNBANKED ADULTS?

9 A. MY OPINION IS THAT UNBANKED ADULTS, AN ESTIMATE  
10 OF 28 MILLION FOR UNBANKED ADULTS IS A VERY RELIABLE  
11 NUMBER.

12 Q. DOES IT REALLY MATTER WHETHER THE NUMBER IS  
13 HIGHER OR LOWER FOR YOUR OPINION?

14 MR. HARRIS: OBJECTION, VAGUE.

15 THE COURT: MATTER FOR WHAT PURPOSE?

16 IT'S VAGUE. SUSTAINED.

17 BY MR. TODD:

18 Q. WE WILL BACK UP FOR A MINUTE, YOUR HONOR.

19 WHAT DOES UNBANKED MEAN, MR. CLARK?

20 A. UNBANKED IS A TERM THAT IS COMMONLY USED IN THE  
21 PAYMENT INDUSTRY FOR INDIVIDUALS WITHOUT A CREDIT OR  
22 DEBIT CARD.

23 Q. SO WHAT CAN INDIVIDUALS WITHOUT CREDIT OR DEBIT  
24 CARD DO?

25 A. THOSE INDIVIDUALS CAN --

1 MR. HARRIS: OBJECTION, VAGUE.

2 BY MR. TODD:

3 Q. WHAT CAN THEY DO IF THEY WANT TO PURCHASE --

4 THE COURT: THE QUESTION IS WITHDRAWN.  
5 POSING ANOTHER QUESTION.

6 BY MR. TODD:

7 Q. WHAT CAN INDIVIDUALS THAT DON'T HAVE A DEBIT OR  
8 CREDIT CARD DO IF THEY WANT TO PURCHASE GOODS, SERVICES  
9 OR ACCESS TO CONTENT ON THE INTERNET?

10 A. THEY CAN ACQUIRE A RELOADABLE PREPAID CARD. IN  
11 FACT, THE INFORMATION FROM CFSI'S STUDIES HAVE SHOWN  
12 THAT THE UNBANKED POPULATION USES ON A REGULAR BASIS  
13 PREPAID CARDS.

14 MR. HARRIS: OBJECTION, MOVE TO STRIKE  
15 THAT LAST SENTENCE. THERE IS NO OPINION IN THE REPORTS  
16 THAT USERS OF -- THAT THERE IS EVIDENCE THAT UNBANKED  
17 INDIVIDUALS USE RELOADABLE PREPAID CARDS. THAT OPINION  
18 IS NOT IN THE REPORT.

19 THE COURT: ALSO VOLUNTEERED BY THE  
20 WITNESS IN THE MIDST OF HIS ANSWER. IN ORDER TO -- YOU  
21 HAVE TO BE SOMEWHAT EFFICIENT. THE COURT STRIKES OUT  
22 THE ANSWER AND THE QUESTION AND THE QUESTIONER CAN START  
23 OVER ON THE SUBJECT IF HE WOULD LIKE TO.

24 (REQUESTED PORTION READ BACK.)

25 THE WITNESS: THEY CAN ACQUIRE A

1 RELOADABLE PREPAID CARD.

2 MR. TODD: THANK YOU, MR. CLARK.

3 BY MR. TODD:

4 Q. CAN YOU BRING UP WHAT HAS BEEN MARKED AS  
5 DEFENDANT'S EXHIBIT 100.

6 MR. CLARK, IS THIS A CHART THAT IS IN  
7 YOUR EXPERT REPORT?

8 A. YES, IT IS.

9 Q. AND DID YOU PREPARE THIS CHART?

10 A. YES, I DID.

11 Q. WHAT IS THE SOURCE FOR YOUR INFORMATION IN THIS  
12 CHART?

13 A. A COUPLE OF SOURCES: THE U.S. CENSUS FOR TOTAL  
14 POPULATION STATISTICS, CFSI FOR UNBANKED AND  
15 UNREGISTERED, AND MY CONSULTING EXPERIENCE.

16 Q. AND TO BE CLEAR, THIS IS BASED ON YOUR OPINION  
17 ABOUT THE NUMBER OF UNBANKED INDIVIDUALS, IS THAT  
18 CORRECT?

19 A. YES. THIS IS DEFINITELY MY OPINION.

20 Q. SO COULD YOU JUST REVIEW, WHAT DOES THE FIRST  
21 COLUMN SHOW?

22 A. THIS IS THE TOTAL NUMBER OF U.S. ADULTS WHICH WE  
23 SAW ON THE TABLE IN THE BACK OF MY REPORT.

24 Q. AND WHAT DOES THE SECOND COLUMN SHOW?

25 A. THIS IS THE NUMBER OF BANKED ADULTS.

1 Q. HOW DID YOU DERIVE THIS INFORMATION?

2 A. WELL, I FIRST STARTED WITH LOOKING AT THE  
3 UNBANKED AND THE UNREGISTERED.

4 Q. AND THEN WHAT DID YOU DO?

5 A. I WAS SATISFIED THAT THE -- MY -- A GOOD  
6 ESTIMATE FROM MY POINT OF VIEW FOR THE UNBANKED WAS 28  
7 MILLION, AND THAT A GOOD RELIABLE ESTIMATE FOR THE  
8 UNREGISTERED NUMBER OF ADULTS WAS 11 MILLION.

9 Q. WE HAVE NOT TALKED ABOUT UNREGISTERED YET. WHAT  
10 IS AN UNREGISTERED -- WHAT'S UNREGISTERED MEAN IN THIS  
11 COLUMN?

12 A. IT'S BASICALLY UNDOCUMENTED IMMIGRANTS IN THE  
13 UNITED STATES.

14 Q. DO YOU HAVE AN OPINION ON THE NUMBER OF  
15 UNDOCUMENTED IMMIGRANTS IN THE UNITED STATES?

16 A. YES.

17 Q. CAN WE BRING UP DEFENDANT'S EXHIBIT -- LET'S GO  
18 BACK FOR A MINUTE AND NOT TALK ABOUT UNREGISTERED.  
19 LET'S GO BACK TO BANKED. HOW EXACTLY DID YOU DERIVE THE  
20 NUMBER OF BANKED ADULTS?

21 A. I SUBTRACTED THE NUMBER -- THE NUMBER OF  
22 UNBANKED AT 28 MILLION, UNREGISTERED AT 11 MILLION,  
23 WHICH IS A TOTAL OF 39 MILLION ADULTS FROM THE 224  
24 MILLION, APPROXIMATELY, TOTAL ADULTS TO COME UP WITH  
25 APPROXIMATELY 185 MILLION ADULTS IN THE U.S. THAT ARE

1 BANKED, WHICH MEANS HAVE A CREDIT CARD OR DEBIT CARD.

2 Q. CAN WE GO TO DEFENDANT'S EXHIBIT 93, PAGE 0020.

3 THIS IS A PAGE FROM YOUR REPORT, CORRECT?

4 A. YES, IT IS.

5 Q. CAN WE HIGHLIGHT FOOTNOTE -- ZOOM IN ON FOOTNOTE

6 36. MR. CLARK, I STARTED TO ASK YOU, DO YOU HAVE AN

7 OPINION ON THE NUMBER OF UNREGISTERED ADULTS IN THIS

8 COUNTRY?

9 A. YES.

10 Q. AND WHAT IS THE BASIS FOR YOUR OPINION?

11 A. AGAIN, IT GOES BACK TO CFSI AND THE DATA THEY

12 PROVIDED AT THE CONFERENCE.

13 Q. OKAY.

14 BASED ON THE DATA AT THE CONFERENCE, DID

15 YOU DETERMINE -- DID YOU DETERMINE A NUMBER OF

16 UNREGISTERED IMMIGRANTS?

17 A. YES.

18 Q. WHAT WAS THAT NUMBER?

19 A. IN MY OPINION, IT'S 11 MILLION.

20 Q. NOW, CAN UNREGISTERED ADULTS IN THIS COUNTRY

21 -- DO YOU HAVE AN OPINION ON WHETHER UNREGISTERED ADULTS

22 IN THIS COUNTRY CAN OBTAIN DEBIT OR CREDIT CARDS?

23 A. YES.

24 Q. WHAT IS THIS BASIS FOR YOUR OPINION?

25 A. THERE WAS AN ARTICLE I SAW IN THE LOS ANGELES

1 TIMES, AND IT'S THE BASIS OF THIS FOOTNOTE THAT WE ARE  
2 LOOKING AT ON THE SCREEN.

3 Q. AND COULD YOU READ THE HIGHLIGHTED SENTENCE  
4 ALOUD?

5 A. YES. "FOR EXAMPLE, 'UNDOCUMENTED IMMIGRANTS  
6 ALSO CAN GET MEXICAN GOVERNMENT ISSUED IDENTIFICATIONS,  
7 CALLED MATRICULA CONSULAR CARDS, WHICH THEY CAN USE TO  
8 OPEN BANK ACCOUNTS, OBTAIN CREDIT AND PURCHASE INSURANCE  
9 IN THE U.S.'"

10 Q. BASED ON THIS INFORMATION, DO YOU HAVE AN  
11 OPINION ABOUT WHETHER SOME UNREGISTERED IMMIGRANTS MAY  
12 BE ABLE TO OBTAIN CREDIT OR DEBIT CARDS?

13 A. YES.

14 Q. WHAT IS THAT OPINION?

15 A. MY OPINION IS THAT SOME UNREGISTERED IMMIGRANTS  
16 CAN, IN FACT, OBTAIN THESE CARDS.

17 Q. DO YOU HAVE AN OPINION ON WHETHER UNREGISTERED  
18 IMMIGRANTS CAN OBTAIN RELOADABLE PREPAID CARDS?

19 A. YES.

20 Q. AND WHAT IS THE BASIS FOR THAT OPINION?

21 A. THE SAME SOURCE AS WE HAVE JUST BEEN LOOKING AT  
22 AND READING.

23 Q. OKAY.

24 SO BASED ON THAT SOURCE, CAN SOME  
25 UNREGISTERED IMMIGRANTS ALSO OBTAIN RELOADABLE PREPAID

1 CARDS?

2 A. YES.

3 Q. AND RETURNING TO THE UNBANKED, MR. CLARK, DO YOU  
4 HAVE AN OPINION ON WHETHER THE UNBANKED CAN OBTAIN A  
5 RELOADABLE PREPAID CARD?

6 A. YES.

7 Q. NOW, CAN EVERY -- MR. CLARK, IN YOUR OPINION,  
8 CAN EVERY ADULT WITH A TRADITIONAL PAYMENT CARD ALWAYS  
9 MAKE AN ONLINE PURCHASE?

10 A. NO.

11 Q. WHAT IS THE BASIS FOR THAT OPINION?

12 A. MY YEARS IN THE PAYMENT SYSTEMS INDUSTRY.

13 Q. OKAY.

14 WHAT SPECIFICALLY IN YOUR YEARS IN THE  
15 PAYMENT INDUSTRY INFORMS YOUR OPINION?

16 A. AT ANY ONE POINT IN TIME, THERE IS A SMALL  
17 NUMBER, PROBABLY 3 TO 4 PERCENT, OF THE ACCOUNTS THAT  
18 ARE DELINQUENT, PAYMENT CARD ACCOUNTS ARE DELINQUENT,  
19 AND THEREFORE AN ADULT -- A SMALL, A VERY TINY NUMBER OF  
20 ADULTS AT ANY ONE POINT IN TIME MIGHT NOT BE ABLE TO  
21 MAKE A PURCHASE.

22 Q. HOW DO YOU KNOW THAT INFORMATION?

23 A. THIS IS A STANDARD STATISTIC. IT'S FAIRLY  
24 CONSISTENT YEAR-TO-YEAR IN THE PAYMENT SYSTEMS INDUSTRY.

25 Q. WHAT DOES A PERSON DO WHOSE PAYMENT CARD IS



1       BLOCKED BECAUSE THEY ARE DELINQUENT?  WHAT CAN A PERSON  
2       WHO WANTS TO PURCHASE GOODS AND SERVICES ON THE INTERNET  
3       OR ACCESS TO ONLINE CONTENT, WHAT CAN THAT PERSON DO IF  
4       THEIR PAYMENT CARD IS BLOCKED BECAUSE THEY HAVE A ZERO  
5       BALANCE OR BECAUSE THEY ARE DELINQUENT?

6       A.       THEY CAN USE ANOTHER CREDIT OR DEBIT CARD OR  
7       THEY COULD OBTAIN A RELOADABLE PREPAID CARD.

8       Q.       THANK YOU, MR. CLARK.

9                       MR. CLARK, DO YOU HAVE AN OPINION ON THE  
10       NUMBER OF CHILDREN WITH ACCESS TO TRADITIONAL PAYMENT  
11       CARDS?

12       A.       YES, I DO.

13       Q.       HOW DID YOU REACH THAT OPINION?

14       A.       A COUPLE OF SOURCES, U.S. CENSUS DATA AND THE  
15       STUDY FROM TEENAGE RESEARCH UNLIMITED.

16       Q.       CAN WE BRING UP DEFENDANT'S EXHIBIT 93, PAGE  
17       0036.  JUST TO REFRESH MY RECOLLECTION, THIS IS THE DATA  
18       FROM THE NOVEMBER 2005 U.S. CENSUS ESTIMATE, IS THAT  
19       CORRECT?

20       A.       YES, IT IS.

21       Q.       AND CAN WE HIGHLIGHT THE SECOND LINE AT THE  
22       BOTTOM.  MR. CLARK, DO YOU HAVE AN ESTIMATE FOR THE U.S.  
23       POPULATION AGE 12 TO 17?

24       A.       YES.  ACCORDING TO THE U.S. CENSUS IT'S 25.5  
25       MILLION INDIVIDUALS.

1 Q. AND CAN WE BRING UP DEFENDANT'S EXHIBIT 93, PAGE  
2 0021. CAN WE FOCUS ON THE BOX ON THE PAGE. MR. CLARK,  
3 THIS IS A BOX THAT IS CONTAINED IN YOUR EXPERT REPORT?

4 A. YES, IT IS.

5 Q. AND YOU PREPARED THIS BOX?

6 A. YES, I DID.

7 Q. AND WHAT IS THE SOURCE OF THIS INFORMATION?

8 A. TEENAGE RESEARCH UNLIMITED.

9 Q. AND I SEE A SECOND SOURCE IDENTIFIED. WHAT WAS  
10 THE SECOND SOURCE?

11 A. THE WALL STREET JOURNAL, JANUARY 16TH, 2006.

12 Q. JUST SO WE ARE ALL CLEAR HERE, AT THE TIME YOU  
13 PREPARED THIS REPORT, HAD YOU PURCHASED THE TEENAGE --  
14 FULL ACCESS TO THE TEENAGE RESEARCH UNLIMITED REPORT?

15 A. NO.

16 Q. SO HOW DID YOU OBTAIN THIS DATA?

17 A. I SAW THE ARTICLE IN THE WALL STREET JOURNAL ON  
18 JANUARY 16TH. I CONTACTED THE REPORTER AND ASKED WHAT  
19 GOOD SOURCES SHE HAD USED IN HER STORY. AND SHE SAID  
20 THAT SHE WENT TO A NUMBER OF CARD COMPANIES AND BANKS  
21 AND THIRD PARTY RESEARCH FIRMS. AND THE ONLY CREDIBLE  
22 INFORMATION SHE COULD OBTAIN WAS FROM TEENAGE RESEARCH  
23 UNLIMITED AND SHE PROCEEDED TO PUBLISH THAT.

24 Q. AND WHAT DID YOU DO AFTER YOU LEARNED THAT  
25 INFORMATION?

1 A. I CONTACTED TEENAGE RESEARCH UNLIMITED AND SPOKE  
2 TO THEM ABOUT THEIR STUDY.

3 Q. AND WHAT DID THAT CONVERSATION ENTAIL?

4 A. I ASKED TEENAGE RESEARCH UNLIMITED BACKGROUND ON  
5 THE COMPANY. I ASKED THEM TO LOOK AT THEIR  
6 QUESTIONNAIRE. I ASKED THEM WHO THEIR CLIENTS WERE. I  
7 ASKED THEM ABOUT THEIR METHODOLOGY FOR THE STUDY.

8 Q. WERE YOU SATISFIED WITH THEIR METHODOLOGY?

9 A. YES, I WAS. THEY HAVE BEEN DOING THIS FOR 24  
10 YEARS AND THEY HAD A LARGE SAMPLE SIZE, WHICH INDICATED  
11 TO ME IT WOULD BE REPRESENTATIVE AND QUANTITATIVE -- AND  
12 A QUANTITATIVE STUDY.

13 Q. AND THIS -- WERE YOU SATISFIED THAT THIS  
14 METHODOLOGY WAS CONSISTENT WITH THE STANDARDS USED IN  
15 THE PAYMENT CARD INDUSTRY?

16 A. YES.

17 Q. BASED ON THIS INFORMATION, DID YOU -- DO YOU  
18 HAVE AN OPINION ON THE NUMBER OF TEENS THAT HAVE  
19 ACCESS -- I'M SORRY, THAT HAVE A CREDIT CARD OR A DEBIT  
20 CARD?

21 A. YES.

22 Q. AND WHAT IS THAT OPINION?

23 A. APPROXIMATELY 11 PERCENT OF THE 12 TO  
24 17-YEAR-OLDS HAVE A CREDIT CARD OR DEBIT CARD IN THEIR  
25 OWN NAME.

1 Q. AND WHAT DO YOU MEAN BY IN THEIR OWN NAME?

2 A. THESE ARE TEENS THAT HAVE A CARD THAT HAS THEIR  
3 NAME ON IT, BUT IT IS AN EXTRA CARD ON THEIR PARENTS'  
4 ACCOUNT AND -- OR THEIR PARENT HAS CO-SIGNED FOR AN  
5 ACCOUNT FOR THE CHILD.

6 Q. NOW, ARE THESE THE ONLY CHILDREN THAT HAVE  
7 ACCESS TO PAYMENT CARDS?

8 A. NO.

9 Q. HOW ELSE MIGHT A CHILD HAVE ACCESS TO A PAYMENT  
10 CARD?

11 A. A CHILD MIGHT OBTAIN IT FROM THE PARENT, THEIR  
12 PARENT.

13 Q. WHAT DO YOU MEAN BY THAT?

14 A. IN ANY PARTICULAR SITUATION, A CHILD MIGHT  
15 APPROACH A PARENT AND SAY, WE HAVE TALKED ABOUT BUYING  
16 COMPUTER EQUIPMENT, IS IT POSSIBLE FOR ME TO BORROW YOUR  
17 PAYMENT CARD SO THAT I CAN PURCHASE THIS FROM DELL  
18 ONLINE SO I CAN USE IT IN MY WORK AT SCHOOL.

19 Q. IS THERE ANY OTHER MEANS BY WHICH A TEEN MIGHT  
20 HAVE ACCESS TO A PAYMENT CARD IN YOUR OPINION?

21 A. YES.

22 Q. AND WHAT IS THE BASIS FOR YOUR OPINION?

23 A. THEY MIGHT BORROW IT FROM A FRIEND.

24 Q. I'M SORRY. WHAT IS THE BASIS FOR YOUR OPINION?

25 A. MY EXPERIENCE IN THE PAYMENT SYSTEMS INDUSTRY.

1 Q. WHAT IS YOUR OPINION?

2 A. THAT THEY -- A CHILD MIGHT BORROW IT FROM A  
3 FRIEND.

4 Q. WERE YOU ABLE TO FIND ANY DATA ON THE NUMBER OF  
5 CHILDREN THAT MIGHT BORROW A CARD FROM A FRIEND?

6 A. NO.

7 Q. IS THERE ANY OTHER WAY THAT A MINOR MIGHT GET  
8 ACCESS TO A TRADITIONAL PAYMENT CARD IN YOUR OPINION?

9 A. NO.

10 Q. NOW, MR. CLARK, WHEN THESE CHILDREN HAVE ACCESS  
11 TO A PAYMENT CARD, WHETHER THEY ARE BORROWING IT FROM  
12 THEIR PARENT OR WHETHER IT IS IN THEIR OWN NAME, DO YOU  
13 HAVE AN OPINION ON WHETHER PARENTS HAVE ANY KNOWLEDGE OF  
14 THEIR ACTIVITIES, PURCHASING ACTIVITIES WITH THESE  
15 CARDS?

16 MR. HARRIS: OBJECTION, VAGUE. MR. TODD  
17 SPOKE ABOUT PAYMENT CARDS. I DON'T THINK IT IS CLEAR  
18 WHAT HE IS SPEAKING OF. THERE HAVE BEEN DIFFERENT TERMS  
19 USED IN THIS TESTIMONY SO FAR.

20 THE COURT: THE QUESTION IS VAGUE. I'LL  
21 SUSTAIN THE OBJECTION. ONE THING YOU DID WAS INCLUDE  
22 TWO POSSIBILITIES IN THE QUESTION WHEN THERE WERE OTHERS  
23 CONSIDERED BY THE WITNESS IN PRIOR ANSWERS.

24 MR. TODD: YES, YOUR HONOR.

25 BY MR. TODD:

1 Q. MR. CLARK, DO YOU HAVE AN OPINION ABOUT WHETHER  
2 CHILDREN MAY HAVE ACCESS TO OTHER TYPES OF TRADITIONAL  
3 PAYMENT CARDS?

4 THE COURT: EXCUSE ME. THAT IS A VAGUE  
5 QUESTION, OTHER TYPES OF --

6 MR. TODD: I'M ABOUT TO ASK HIM WHAT ARE  
7 THE TYPES. I'M JUST ASKING IF HE HAS AN OPINION. WE  
8 HAVE HAD TESTIMONY ABOUT CREDIT, DEBIT AND RELOADABLE  
9 PREPAID CARDS.  
10 BY MR. TODD:

11 Q. DO YOU HAVE AN OPINION ABOUT WHETHER MINORS HAVE  
12 ACCESS TO RELOADABLE PREPAID CARDS?

13 A. YES.

14 Q. WHAT IS THE BASIS FOR THAT OPINION?

15 A. THE MERCATOR REPORT AND MY CONSULTING  
16 EXPERIENCE.

17 MR. TODD: COURT'S INDULGENCE, YOUR  
18 HONOR?

19 THE COURT: SURE.

20 MR. TODD: IF WE CAN BRING UP DEFENDANT'S  
21 EXHIBIT 99.

22 BY MR. TODD:

23 Q. MR. CLARK, YOU JUST MENTIONED THE MERCATOR  
24 CONSULTING?

25 A. YES.

1 Q. THIS IS A REPORT THAT YOU PURCHASED?

2 A. YES.

3 Q. AND DID YOU REVIEW THE METHODOLOGY OF THAT  
4 REPORT?

5 A. YES, I DID AT QUITE A LENGTH.

6 Q. OKAY. WERE YOU SATISFIED WITH THE METHODOLOGY  
7 OF THAT REPORT?

8 A. YES.

9 Q. AND BASED ON YOUR REVIEW OF THAT REPORT, WERE  
10 YOU ABLE TO FORM AN OPINION ON THE TYPES, THE SHARE OF  
11 THE MARKET THAT PREPAID CARDS CONSTITUTE, SHARE OF THE  
12 MARKETPLACE?

13 A. YES.

14 Q. JUST AGAIN TO REMOVE ANY CONFUSION, THERE ARE  
15 MORE THAN ONE TYPE OF RELOADABLE PREPAID CARD?

16 A. YES, THERE ARE.

17 Q. AND WHAT ARE THE DIFFERENT TYPES?

18 A. THE MAJOR BREAKDOWNS ARE CLOSED LOOP, PREPAID  
19 CARDS AND OPEN LOOPED PREPAID CARDS.

20 Q. AND WHAT IS A CLOSED LOOP PREPAID CARD?

21 A. THIS IS A PREPAID CARD THAT AN INDIVIDUAL GETS  
22 FROM A RETAILER OR TELECOM COMPANY. IT IS ONLY USEFUL  
23 IN THAT RETAILER OR TELECOM'S FIRM. FOR EXAMPLE, IT  
24 MIGHT BE A GAP CARD, SO IT'S ONLY USEFUL AT A GAP STORE  
25 OR A GAP WEBSITE. THAT TYPE OF CARD IS CALLED A CLOSED

1 LOOP PREPAID CARD.

2 Q. AND THEN THERE IS AN ANOTHER TYPE OF PREPAID  
3 CARD?

4 MR. HARRIS: OBJECTION, LEADING.

5 BY MR. TODD:

6 Q. IS THERE ANOTHER TYPE OF PREPAID CARD?

7 A. YES.

8 Q. WHAT IS THE OTHER TYPE OF PREPAID CARD?

9 A. OPEN CARDS AND -- EXCUSE ME, OPEN CARDS.

10 Q. WHAT'S AN OPEN CARD?

11 A. THESE ARE CARDS THAT ARE ISSUED BY AMERICAN  
12 EXPRESS, VISA, MASTERCARD AND DISCOVER. AND THEY CAN BE  
13 USED AT ANY PLACE THOSE CARDS ARE USED, WHICH MEANS  
14 THERE IS AN OPEN NETWORK OR MUCH WIDER PLACE, A GROUP OF  
15 MERCHANTS THAT AN INDIVIDUAL CAN MAKE PURCHASES OF GOODS  
16 AND SERVICES.

17 Q. AND SO YOU SAID YOU REVIEWED THE DATA FROM THE  
18 MERCATOR REPORT?

19 A. YES.

20 Q. AND BASED ON THAT DATA REVIEW, DO YOU HAVE AN  
21 OPINION ON THE RATIO OF CLOSED AND OPEN PREPAID CARDS IN  
22 DOLLAR VOLUME?

23 A. YES.

24 Q. WHAT IS THAT OPINION?

25 A. THAT OPEN IS A VERY SMALL PERCENTAGE OF THE



1 VOLUME.

2 Q. NOW, ON THIS CHART, THERE IS DATA FOR 2005,  
3 2006, 2007, 2008. WHAT IS THAT DATA?

4 A. THIS REPORT WAS PUBLISHED IN JULY OF 2005 SO  
5 THOSE ARE ESTIMATES.

6 Q. SO 2004 IS THE FIRM DATA?

7 A. YES.

8 Q. AS OF 2004, WHAT WAS THE APPROXIMATE RATIO OF  
9 CLOSED VERSUS OPEN PREPAID CARDS?

10 A. VIRTUALLY ALL CLOSED.

11 Q. MR. CLARK, BASED ON YOUR REVIEW OF THE DATA FROM  
12 MERCATOR, DO YOU HAVE AN OPINION ON THE RATIO OF OPEN  
13 PREPAID CARD DOLLAR VOLUME VERSUS CREDIT AND DEBIT  
14 PREPAID CARD DOLLAR VOLUME?

15 A. YES.

16 Q. WHAT IS THAT OPINION?

17 A. IT IS A VERY SMALL PERCENTAGE.

18 Q. AND AGAIN, THERE ARE TWO DIFFERENT PIE CHARTS  
19 HERE, ONE'S FOR 2005, ONE IS FOR 2008. WHAT IS 2008?

20 A. IT'S A LITTLE BIT LARGER PERCENTAGE, BUT IT'S  
21 STILL A VERY SMALL PERCENTAGE.

22 Q. IS 2008 FIRM DATA?

23 A. NO. THAT IS AN ESTIMATE OR A FORECAST.

24 Q. NOW, THIS WAS A REPORT THAT YOU HAD IN YOUR  
25 POSSESSION AT THE TIME YOU PREPARED YOUR EXPERT REPORT?

1 A. YES.

2 Q. NOW, SINCE THAT TIME, HAVE YOU COME ACROSS ANY  
3 UPDATED INFORMATION?

4 A. YES.

5 Q. WHAT IS THAT UPDATED INFORMATION?

6 MR. HARRIS: OBJECTION ON THE GROUND THAT  
7 THIS REPORT -- WHATEVER INFORMATION IT IS IS NOT  
8 INFORMATION THAT IS CONTAINED IN HIS REPORT OR HAS BEEN  
9 DISCLOSED AS A BASIS FOR HIS TESTIMONY.

10 MR. TODD: YOUR HONOR, THIS IS 26 E  
11 SUPPLEMENTATION, WE LISTED THIS EXHIBIT ON OCTOBER 3RD  
12 AND WE ALSO DISCLOSED TO PLAINTIFFS -- WELL, ACTUALLY,  
13 STRIKE THE SECOND THING BUT WE DID LIST THIS EXHIBIT IN  
14 OUR OCTOBER 3RD LIST OF TRIAL EXHIBITS WITH THE COURT  
15 THAT WE ARE ABOUT TO DISCUSS.

16 MR. HARRIS: YOUR HONOR, THE COURT HAS  
17 BEEN CONSISTENT ABOUT NOT ALLOWING SOURCES OF DATA THAT  
18 WERE NOT INCLUDED IN ANY OF THE EXPERT REPORTS.

19 THE COURT: NOT IN HIS EXPERT REPORT. IT  
20 IS AN ADDITIONAL PIECE OF PAPER. OBJECTION SUSTAINED.

21 MR. TODD: JUST TRYING TO UPDATE THE  
22 INFORMATION, YOUR HONOR.

23 THE COURT: I KNOW WHAT YOU ARE TRYING TO  
24 DO, BUT IT HAS NOT BEEN DISCLOSED.

25 MR. TODD: IT WAS DISCLOSED ON OCTOBER

1 3RD, YOUR HONOR.

2 THE COURT: HIS OPINION HAS NOT BEEN  
3 DISCLOSED. THIS PIECE OF PAPER MAY HAVE BEEN DISCLOSED.  
4 NO AMENDMENT TO THE REPORT WAS DISCLOSED.

5 MR. TODD: THAT IS FINE, YOUR HONOR. I  
6 DON'T NEED THAT INFORMATION IN EVIDENCE.

7 BY MR. TODD:

8 Q. MR. CLARK, RETURNING TO DEFENDANT'S EXHIBIT 93,  
9 PAGE 0021. IF WE CAN ZOOM IN ON THE BOX AGAIN. I  
10 WONDER IF WE GOT A LITTLE SIDETRACKED THERE. WE WERE  
11 TALKING ABOUT THE -- YOUR OPINION ABOUT THE NUMBER OF  
12 TEENS WITH A CREDIT OR DEBIT CARD IN THEIR OWN NAME.

13 A. YES.

14 Q. AND WE WERE ALSO REVIEWING WHETHER YOU HAD AN  
15 OPINION ABOUT TEENS THAT MIGHT HAVE ACCESS TO CARDS?

16 A. YES.

17 Q. LET'S BACK UP TO THE FIRST SECTION. SO TEENS  
18 THAT HAVE A CARD IN THEIR OWN NAME. WHAT DOES THAT  
19 MEAN?

20 A. THIS MEANS THEY HAVE AN EXTRA CARD ON THEIR  
21 PARENT'S ACCOUNT AND/OR THEIR PARENT HAS CO-SIGNED FOR  
22 THEIR CARD.

23 Q. SO WHAT DOES IT MEAN IF IT'S AN EXTRA CARD ON  
24 THEIR PARENTS' ACCOUNT?

25 THE COURT: WHAT DOES IT MEAN ABOUT WHAT?

1 THE QUESTION IS VAGUE.

2 BY MR. TODD:

3 Q. WHAT DO YOU MEAN WHEN YOU SAY EXTRA CARD ON  
4 THEIR PARENTS' ACCOUNT?

5 A. THAT MEANS THE PARENT HAS AUTHORIZED THE CHILD  
6 TO HAVE THE CARD, AND THE PARENT REVIEWS THE BILLING  
7 STATEMENT WHICH COVERS BOTH THE PARENTS' AND THE CHILD  
8 PAYMENT TRANSACTIONS.

9 Q. AND WHAT DO YOU MEAN BY BILLING STATEMENT?

10 A. THE BILLING STATEMENT IS A STATEMENT THAT GOES  
11 TO ALL PAYMENT CARD ACCOUNT HOLDERS. IT CAN BE VIEWED  
12 ONLINE. IT ALSO COMES IN THE MAIL. IT ALSO --  
13 CARDHOLDERS CAN ACCESS TRANSACTIONS BY -- OVER THE  
14 PHONE.

15 Q. AND WHAT IS THE SIGNIFICANCE OF THE FACT THAT  
16 -- THE EXTRA CARD ACTIVITY APPEARS ON THE STATEMENT?

17 MR. HARRIS: OBJECTION, VAGUE.

18 THE COURT: SUSTAINED. WHAT IS THE  
19 SIGNIFICANCE TO WHAT?

20 BY MR. TODD:

21 Q. OKAY. YOU MENTIONED THAT THE EXTRA CARD APPEARS  
22 ON THE STATEMENT. IS THAT RELEVANT TO YOUR OPINION  
23 ABOUT MINORS' ACCESS TO PAYMENT CARDS?

24 A. YES.

25 Q. WHY IS IT RELEVANT?

1           A.           IT'S VERY IMPORTANT BECAUSE PARENTS CAN  
2           SUPERVISE AND MONITOR THE ACTIVITY OF THEIR CHILDREN  
3           THROUGH THE PAYMENT CARD BILLING STATEMENT.

4                       MR. HARRIS:  OBJECTION, MOVE TO STRIKE  
5           FOR LACK OF FOUNDATION.  THE WITNESS HAS TESTIFIED HE  
6           DOES NOT HAVE ANY EXPERTISE IN PARENTAL CONDUCT, HAS NO  
7           DATA.  HE HAS NOT CITED ANY DATA THAT PARENTS WILL DO  
8           THIS.  THIS IS NOT WITHIN HIS FIELD OF EXPERTISE.  
9           PARENTAL SUPERVISION.

10                      MR. TODD:  FIRST OF ALL, HE IS NOT  
11           TESTIFYING THAT THEY WILL, YOUR HONOR.  HE WAS SIMPLY  
12           TESTIFYING THAT BASED ON -- THAT BASED -- WELL, LET'S  
13           JUST WITHDRAW THE QUESTION.

14                      THE COURT:  HE HAS TESTIFIED THAT THE  
15           STATEMENT COMES IN AND IS REVIEWED BY A PARENT.  HE SAID  
16           THAT.

17                      MR. TODD:  YES, YOUR HONOR.

18                      THE COURT:  THAT IS HOW MECHANICALLY IT  
19           WORKS.  I INFER FROM THAT THAT ALL PURCHASES ON THAT  
20           ACCOUNT FOR THAT BILLING PERIOD ARE ON THE SAME BILLING  
21           STATEMENT.  THEY MAY BE SEGREGATED, BUT AT LEAST THEY  
22           ARE ALL ON THERE.  THAT IS IN THE RECORD.  THIS  
23           OBJECTION IS SUSTAINED.

24                      MR. TODD:  OKAY.

25           BY MR. TODD:

1 Q. NOW, MR. CLARK --

2 THE COURT: YOU CAN ARGUE FACTS FROM

3 THAT, BUT THAT IS SOMETHING ELSE.

4 BY MR. TODD:

5 Q. MR. CLARK, WHAT ABOUT CARDS THAT ARE CO-SIGNED

6 BY A PARENT? YOU MENTIONED CARDS THAT WERE CO-SIGNED BY

7 A PARENT, IS THAT CORRECT?

8 A. YES.

9 Q. WHAT DOES THAT MEAN WHEN A PARENT CO-SIGNS FOR

10 THE CARD?

11 A. THAT THE PARENT CAN MONITOR AND SUPERVISE THE

12 CHILD'S ACTIVITY THROUGH THE BILLING STATEMENT.

13 Q. HOW DO YOU KNOW THAT?

14 A. IT'S COMMON PRACTICE IN THE PAYMENT INDUSTRY

15 THAT CARDHOLDERS ARE ENCOURAGED TO REVIEW THEIR BILLING

16 STATEMENTS FOR ERRONEOUS OR FRAUDULENT CHARGES.

17 Q. WHY DO YOU SAY IT'S IMPORTANT FOR THE CARD

18 COMPANIES?

19 A. THE CARD COMPANIES ARE VERY INTERESTED IN THAT

20 CONSUMERS ARE HAPPY WITH THE PRODUCT AND THAT IT WORKS

21 PROPERLY.

22 Q. YOU SAY THE CARD COMPANIES ARE INTERESTED IN

23 THIS. HAVE THEY TAKEN ANY STEPS TO ENCOURAGE

24 CARDHOLDERS TO REVIEW THEIR BILLING STATEMENTS?

25 A. YES.

1 Q. WHAT ARE THOSE STEPS?

2 A. THE CARD ISSUING COMPANIES ACTIVELY WORK WITH  
3 NEW CARDHOLDERS AS WELL AS EXISTING CARDHOLDERS THROUGH  
4 COMMUNICATIONS THEY SEND TO THEM, THROUGH INFORMATION ON  
5 THE WEBSITE THAT A CARDHOLDER SHOULD VERY CLOSELY  
6 MONITOR AND REVIEW CHARGES ON THE PAYMENT CARD SO THAT  
7 THE CARD WORKS PROPERLY FROM THE CARDHOLDER'S POINT OF  
8 VIEW.

9 Q. THANK YOU, MR. CLARK.

10 NOW, MR. CLARK, DO YOU HAVE AN OPINION ON  
11 THE NUMBER OF MINORS THAT HAVE ACCESS TO TRADITIONAL  
12 PAYMENT CARDS THAT ARE NOT CO-SIGNED CARDS OR ISSUED IN  
13 THEIR OWN NAME?

14 A. YES.

15 Q. HOW DID YOU REACH THAT OPINION?

16 A. IT'S BASED ON DATA FROM TEENAGE RESEARCH  
17 UNLIMITED.

18 Q. IS THERE ANY OTHER BASIS?

19 A. MY EXPERIENCE IN THE PAYMENT SYSTEM.

20 Q. STARTING WITH YOUR EXPERIENCE IN THE PAYMENT  
21 SYSTEMS INDUSTRY, WHAT IS THE RELEVANT EXPERIENCE ABOUT  
22 MINORS' ACCESS TO TRADITIONAL PAYMENT CARDS?

23 THE COURT: THE QUESTION IS CONFUSING.  
24 ARE YOU ASKING HIM WHAT THE EXPERIENTIAL -- WHAT HIS  
25 BACKGROUND WAS OR ARE YOU ASKING HIM TO GIVE SUBSTANCE?

1 BY MR. TODD:

2 Q. WHAT IS THE SUBSTANCE OF YOUR EXPERIENCE  
3 CONCERNING MINORS' ACCESS TO TRADITIONAL PAYMENT CARDS?

4 A. THAT ON OCCASION MINORS WILL BORROW CARDS.

5 Q. AND BASED ON YOUR EXPERIENCE IN THE PAYMENT  
6 INDUSTRY, DID YOU PRODUCE AN ESTIMATE ON THE NUMBER OF  
7 MINORS THAT HAVE ACCESS TO PAYMENT CARDS BEYOND THOSE  
8 THAT HAVE THEM CO-SIGNED OR ISSUED IN THEIR OWN NAME?

9 A. YES.

10 Q. AND WHAT IS THAT ESTIMATE?

11 A. IT'S APPROXIMATELY AN ADDITIONAL 11 PERCENT OF  
12 THE SAME 12 TO 17 POPULATION OF 25.5 MILLION TEENS.

13 Q. OKAY.

14 NOW, MR. CLARK, AFTER YOU PRODUCED YOUR  
15 EXPERT REPORT, YOU TESTIFIED EARLIER THAT YOU HAVE  
16 OBTAINED THE RESEARCH FROM TEENAGE RESEARCH UNLIMITED.

17 A. YES.

18 Q. WHEN DID YOU OBTAIN THAT RESEARCH, THE ACTUAL  
19 REPORT?

20 A. ROUGHLY IN THE JUNE, JULY PERIOD.

21 Q. THAT WAS AFTER YOU ISSUED YOUR EXPERT REPORT?

22 A. YES, IT WAS AFTER MY MAY 8TH EXPERT REPORT.

23 Q. AND WERE YOU DEPOSED ABOUT -- YOU WERE DEPOSED  
24 IN THIS CASE, CORRECT?

25 A. YES.



1 Q. AND WAS DEPOSITION TESTIMONY TAKEN ABOUT YOUR  
2 OPINIONS ABOUT THE TEENAGE RESEARCH REPORT?

3 A. YES, EXTENSIVE.

4 Q. OKAY. WHY DID YOU OBTAIN THE REPORT AFTER YOUR  
5 MAY 8 REPORT? WHY DID YOU OBTAIN THE REPORT FROM  
6 TEENAGE RESEARCH UNLIMITED AFTER YOU ISSUED YOUR MAY 8  
7 REPORT?

8 A. I FELT IT WOULD PROVIDE SOME SUPPLEMENTAL  
9 INFORMATION ON THE NUMBERS OR SURROUNDING CARDS THAT  
10 TEENAGERS HAVE IN THEIR OWN RIGHT AND THAT THEY BORROW  
11 AND I WANTED TO LOOK AT THAT DATA FOR DIFFERENT AGE  
12 GROUPS.

13 Q. NOW, WHEN YOU DID YOUR ANALYSIS IN THE MAY 8  
14 EXPERT REPORT, YOU FOCUSED ON THE NUMBER OF TEENS AGE 12  
15 TO 17, IS THAT CORRECT?

16 A. THAT'S RIGHT.

17 Q. WERE YOU ABLE TO OBTAIN ANY MORE SPECIFIC  
18 INFORMATION WHEN YOU OBTAINED THIS ADDITIONAL  
19 INFORMATION FROM TEENAGE RESEARCH UNLIMITED?

20 A. YES, I WAS.

21 Q. COULD WE TURN TO DEFENDANT'S EXHIBIT 438 WHICH I  
22 BELIEVE WAS DISCUSSED UNDER A DIFFERENT EXHIBIT NUMBER  
23 AT PROFESSOR MANN'S TESTIMONY.

24 THIS IS DATA YOU OBTAINED FROM TEENAGE  
25 RESEARCH UNLIMITED?

1                   MR. HARRIS: OBJECTION, YOUR HONOR. THIS  
2                   DOCUMENT AND REPORT WAS NOT IN MR. CLARK'S POSSESSION.  
3                   IT IS NOT A DOCUMENT HE RELIED ON IN PREPARING HIS  
4                   REPORT OR HIS OPINION.

5                   MR. TODD: YOUR HONOR, WE HAVE HEARD  
6                   TESTIMONY FROM MR. CLARK THAT HE OBTAINED THIS DOCUMENT  
7                   WITHIN THE EXPERT DISCOVERY PERIOD AND THAT DEPOSITION  
8                   TESTIMONY WAS OBTAINED BY PLAINTIFFS ABOUT HIS OPINION  
9                   ON THIS REPORT.

10                  THE COURT: WAS THIS EXHIBIT --  
11                  OBVIOUSLY, I ASSUME IT WAS USED AND MARKED AT THE  
12                  DEPOSITION SINCE IT HAS A DEPOSITION STICKER AS EXHIBIT  
13                  NUMBER 9.

14                  MR. TODD: YES, YOUR HONOR, THAT'S  
15                  CORRECT.

16                  THE COURT: BOTH COUNSEL KNOW THAT THESE  
17                  PAGES WERE AT THE DEPOSITION OF MR. CLARK. CORRECT?

18                  MR. HARRIS: YES.

19                  THE COURT: WAS HE QUESTIONED ABOUT  
20                  THESE?

21                  MR. TODD: YES, YOUR HONOR.

22                  THE COURT: THIS REPORT.

23                  MR. TODD: WE HAVE TESTIMONY THAT HE WAS  
24                  QUESTIONED ABOUT THESE REPORTS.

25                  THE COURT: MR. HARRIS, WHY CAN'T IT BE

1 USED?

2 MR. HARRIS: CONSISTENT WITH THE APPROACH  
3 OF OTHER EXPERTS IN THIS CASE, THIS IS NOT A DOCUMENT  
4 THAT HE RELIED ON OR CITED AS A DOCUMENT HE RELIED ON IN  
5 HIS REPORT. WHAT HE RELIED ON IN HIS REPORT WAS A  
6 CONVERSATION HE HAD WITH AN EMPLOYEE OF THIS  
7 ORGANIZATION. THAT WAS THE DATA HE RELIED ON. THIS  
8 DATA DID NOT -- IS NOT IN HIS REPORT. IT WAS NOT THE  
9 BASIS OF HIS REPORT. HE CAN TESTIFY ABOUT THE  
10 CONVERSATION HE HAD, BUT THAT IS ALL HE HAD. THAT IS  
11 WHAT HE CONSIDERED SUFFICIENT TO FORM HIS OPINIONS, NOT  
12 THIS REPORT.

13 MR. TODD: YOUR HONOR, THAT FLIES IN THE  
14 FACE OF RULE 26 E. I UNDERSTAND YOUR HONOR'S RULINGS  
15 WITH RESPECT TO DOCUMENTS THAT WERE NOT PRE-DISCLOSED  
16 DURING THE EXPERT DISCOVERY PERIOD AND ABOUT WHICH  
17 OPINION TESTIMONY WAS NOT PROVIDED OR ELICITED.  
18 HOWEVER, IN THIS CASE WE HAVE CONTRARY TESTIMONY THAT  
19 THE DOCUMENT WAS PROVIDED DURING THE EXPERT DISCOVERY  
20 PERIOD AND HIS, MR. CLARK'S OPINION WAS ELICITED AND  
21 OBTAINED BY PLAINTIFFS. AND INDEED PROFESSOR MANN ALSO  
22 ELICITED HIS OPINION ON THIS DOCUMENT DURING THE EXPERT  
23 DISCOVERY PERIOD AND HERE IN OPEN COURT. SO CERTAINLY  
24 MR. CLARK SHOULD BE ABLE TO, PURSUANT TO 26 E, TO  
25 DISCUSS THIS DOCUMENT FOR THIS COURT TODAY.

1 MR. HARRIS: YOUR HONOR, PROFESSOR MANN  
2 FILED AN EXPERT REPORT THAT RELIED ON THIS DOCUMENT OR  
3 DISCUSSED IT AT LEAST. MR. CLARK DID NOT AMEND HIS  
4 REPORT TO INCLUDE THIS OR INCLUDE ANY ANALYSIS OF THIS.

5 THE COURT: I DON'T HAVE THE EXACT  
6 QUESTIONS AND ANSWERS AT THE DEPOSITION SO I DON'T KNOW  
7 HOW MUCH EXPERTISE BASED ON THIS REPORT WAS DISCLOSED OR  
8 OPINIONS WERE DISCLOSED BY MR. CLARK. SOMEBODY HELP ME  
9 WITH THAT.

10 MR. TODD: YOUR HONOR, FIRST OF ALL, THIS  
11 INFORMATION WAS NOT PART OF PROFESSOR MANN'S EXPERT  
12 REPORT. IT WAS PROVIDED TO PLAINTIFFS AFTER EXPERT --  
13 PROFESSOR MANN'S EXPERT REPORT WAS ISSUED. IN FACT, I  
14 BELIEVE THAT IS THE REASON THAT MR. CLARK OBTAINED THIS  
15 INFORMATION. BOTH MR. CLARK AND PROFESSOR MANN WERE  
16 QUESTIONED AT LENGTH ABOUT THIS INFORMATION.

17 THE COURT: YOU DID NOT ANSWER MY  
18 QUESTION.

19 MR. TODD: YES, SIR.

20 THE COURT: SOMEONE CHARACTERIZE THE  
21 EXTENT TO WHICH THE EXHIBIT NUMBER 9 AT THE DEPOSITION,  
22 THE CLARK DEPOSITION WAS USED IN THE QUESTIONING AND  
23 WHETHER OR NOT MR. CLARK GAVE ANY OPINIONS BASED ON  
24 EXHIBIT 9 OR AUGMENTED HIS OPINIONS THAT HE GAVE IN HIS  
25 REPORT OR ANYTHING LIKE THAT.

1 MR. TODD: YES, YOUR HONOR. WELL, I CAN  
2 ASK THE WITNESS ABOUT THIS, YOUR HONOR.

3 THE COURT: SOMEBODY WAS AT THE  
4 DEPOSITION. THEY CAN TELL ME IF THERE WAS A DISCLOSURE  
5 BY HIM THAT SINCE HIS EXPERT REPORT WAS WRITTEN THAT HE  
6 CAME UPON THIS MATERIAL AS AN ADJUNCT TO HIS WORK, THAT  
7 HE WAS QUESTIONED ABOUT IT AND GAVE OPINIONS ON IT, THEN  
8 PLAINTIFFS HAD NOTICE OF ALL OF THAT AT THE TIME OF THE  
9 DEPOSITION.

10 MR. TODD: YOUR HONOR, IF I COULD DIRECT  
11 YOUR ATTENTION TO MR. CLARK'S AUGUST 3RD, 2006  
12 DEPOSITION TESTIMONY. WE HAVE HERE ON PAGE 146 A  
13 QUESTION FROM MR. HARRIS. WHY DON'T WE GO AHEAD AND  
14 MARK THAT AS EXHIBIT 9 I GUESS, CLARK EXHIBIT 9  
15 IDENTIFIED. AND FOR THE RECORD EXHIBIT 9 IS DEFENDANT'S  
16 EXHIBIT 438. IF YOU TURN I BELIEVE TO PAGE 7, QUESTION  
17 20: I THINK THAT'S THE QUESTION ON WHICH THE DATA YOU  
18 USE IS BASED, IS THAT RIGHT?

19 ANSWER: YES, THAT IS THE RIGHT ONE.

20 QUESTION: DO YOU KNOW THE WORDING OF  
21 THIS QUESTION?

22 ANSWER: HANG ON A MINUTE. LET ME THINK.  
23 THIS IS THE SEQUENCE, THREE OR FOUR QUESTIONS IN THIS  
24 PILE HERE. THE FIRST QUESTION IS, HAVE YOU EVER BOUGHT  
25 -- ON THE FRONT, HAVE YOU EVER BOUGHT ONLINE. AND WE

1       START WITH THAT AND ACROSS THE TOP ARE DIFFERENT AGE  
2       SEGMENTS. SO EVERYONE CAN LOOK AT THAT AGE THAT THEY  
3       WOULD LIKE TO LOOK AT. SO THE FIRST THING KIDS ARE  
4       ASKED IS HAVE THEY BOUGHT ONLINE, SOME SAY YES AND SOME  
5       SAY NO. SO THESE TABLES ARE JUST A SUBSET THAT SAY YES.

6                        AND I'M WONDERING WHAT SPECIFICALLY WAS  
7       QUESTION 20, DO YOU KNOW?

8                        THE WITNESS: YES.

9                        QUESTION: OKAY. WHAT WAS QUESTION 20?  
10       HOW DID YOU PAY FOR YOUR LAST ON LINE PURCHASE?

11                      AS YOU CAN SEE, YOUR HONOR, CONTINUING  
12       FOR SEVERAL PAGES IS EXTENSIVE QUESTIONING ELICITING HIS  
13       OPINION ON THIS DOCUMENT. AND THERE ARE ADDITIONAL  
14       DOCUMENTS CONCERNING THE TEENAGE RESEARCH UNLIMITED FOR  
15       WHICH THERE IS SIMILAR TESTIMONY ELICITED. I WOULD BE  
16       HAPPY TO REVIEW THOSE IF PLAINTIFF REQUIRES, BUT I THINK  
17       I'VE SATISFIED THE COURT THAT THERE HAS BEEN ADEQUATE  
18       DISCLOSURE. AND AGAIN, YOUR HONOR, PROFESSOR MANN DID  
19       NOT HAVE THIS DOCUMENT IN HIS POSSESSION AT THE TIME  
20       THAT HE ISSUED HIS JULY 6TH, 2006 REBUTTAL REPORT, THE  
21       ONLY REPORT HE ISSUED IN THIS CASE, AND HE WAS ALLOWED  
22       TO TESTIFY AT LENGTH ON THIS DOCUMENT.

23                      THE COURT: MR. HARRIS, WHY IS IT  
24       INAPPROPRIATE SINCE HE HAD ACCESS TO THIS DOCUMENT AND  
25       HAD OPPORTUNITY TO QUESTION THE WITNESS AT LENGTH ABOUT

1       THEM, WHY IS IT NOW IN THE CASE'S EXPERT OPINION ON  
2       WHICH YOU -- ON WHICH THE DEFENDANT CAN RELY?

3                   MR. HARRIS:  THE BASIS WOULD BE, THIS IS  
4       HEARSAY.  IT DID NOT FORM THE BASIS OF HIS REPORT.  
5       THEREFORE DOES NOT COME IN THROUGH THE EXCEPTION FOR  
6       HEARSAY FOR MATERIAL THAT FORMS THE BASIS FOR HIS  
7       REPORT.

8                   MR. TODD:  YOUR HONOR, THE EXCEPTION FOR  
9       HEARSAY DOES NOT CONCERN THE REPORT.  IT CONCERNS EXPERT  
10      TESTIMONY.

11                  THE COURT:  WHAT IS THE PENDING QUESTION.  
12      DOES ANYONE KNOW?

13                  MR. TODD:  I'M SORRY, YOUR HONOR.  I  
14      THINK IT WAS -- I WAS ABOUT TO ASK HIM WHAT THIS  
15      DOCUMENT WAS AND THAT IS AS FAR AS WE GOT, BUT I NO  
16      LONGER RECALL, YOUR HONOR.

17                  THE COURT:  I DON'T KNOW WHETHER MISS  
18      WHITE CAN GO BACK THAT FAR AND GET THE QUESTION OR  
19      SHOULD WE JUST START OVER.  I DON'T WANT TO HAVE TO REDO  
20      THE ARGUMENT JUST BECAUSE THE LANGUAGE OF THE QUESTION  
21      CHANGED A LITTLE BIT.  LET ME TELL YOU WHAT MY RULING  
22      IS.  MY RULING IS THAT THE OPINIONS OF THE WITNESS THAT  
23      WERE DISCLOSED AT THE DEPOSITION AND THE MATERIALS IN  
24      DEPOSITION EXHIBIT NUMBER 9 -- WHICH IS 438 001, IS THAT  
25      CORRECT?

1 MR. TODD: YES. THROUGH AS WELL AS 438,  
2 007 AND 438 0010.

3 THE COURT: I HAVE BEEN ADVISED THAT  
4 THESE PAPERS WERE AVAILABLE AND USED AT THE DEPOSITION  
5 TO QUESTION THE EXPERT AFTER HE WROTE HIS ORIGINAL  
6 REPORT. THE PLAINTIFFS HAD ALL THE OPPORTUNITY THEY  
7 NEEDED TO QUESTION HIM ABOUT THEM AND THAT WAS DONE AND  
8 THEREFORE IT IS A PROPER SUBJECT OF QUESTIONING AT  
9 TRIAL. THAT IS MY RULING. THERE IS NO PREJUDICE TO THE  
10 PLAINTIFFS. THEY HAD OPPORTUNITY TO PURSUE THE SUBJECT  
11 AND THEY DID.

12 BY MR. TODD:

13 Q. MR. CLARK, WHAT IS THIS DOCUMENT?

14 THE COURT: WHAT DOCUMENT ARE YOU SHOWING  
15 HIM, PLEASE?

16 BY MR. TODD:

17 Q. THIS IS DEFENDANT'S EXHIBIT 438. MR. CLARK,  
18 WHAT IS THIS DOCUMENT?

19 A. THIS IS A SET OF DATA TABLES FROM TEENAGE  
20 RESEARCH UNLIMITED ON THEIR SPRING 2006 SURVEY OF THE  
21 TEEN MARKET, AND IT SHOWS DATA FOR VARIOUS AGE GROUPS.

22 Q. AND CAN WE TURN TO PAGE 0010? WHAT IS THIS  
23 DOCUMENT?

24 A. THIS IS THE ANSWERS IN THE SURVEY TO QUESTION D  
25 4 IN THE TEENAGE RESEARCH UNLIMITED SURVEY OF SPRING



1 2006.

2 Q. IF I CAN BRING UP DEFENDANT'S EXHIBIT 405. CAN  
3 WE ZOOM IN ON THE BOX DOWN AT THE BOTTOM.

4 MR. CLARK, WHAT IS THIS DOCUMENT?

5 A. THESE ARE THE QUESTIONS -- THIS IS THE  
6 QUESTIONNAIRE FOR THE SPRING 2006 TEENAGE RESEARCH  
7 UNLIMITED SURVEY.

8 Q. OKAY. WERE YOU DEPOSED ABOUT THIS DOCUMENT AT  
9 YOUR DEPOSITION AS WELL?

10 A. YES. EXTENSIVELY.

11 Q. IF WE COULD TURN TO PAGE --

12 MR. TODD: COURT'S INDULGENCE, YOUR  
13 HONOR.

14 (PAUSE.)

15 THE COURT: 4 AND 5 IS NOT IN THE GROUP  
16 YOU GAVE ME UNLESS IT IS IN THE SECOND FOLDER.

17 MR. TODD: I BELIEVE IT'S IN THE SECOND  
18 FOLDER, YOUR HONOR. MY APOLOGIES.

19 BY MR. TODD:

20 Q. IN WE CAN TURN TO PAGE 0009. CAN WE ZOOM IN ON  
21 QUESTION 4.

22 MR. TODD: YOUR HONOR, WOULD YOU LIKE MY  
23 COPY?

24 THE COURT: I'M DIGGING. I HAVE IT.

25 MR. TODD: YES, YOUR HONOR.

1 THE COURT: YOU MAY PROCEED.

2 BY MR. TODD:

3 Q. MR. CLARK, WHAT'S QUESTION 4?

4 A. THIS IS A QUESTION IN THE SPRING 2006 TEENAGE  
5 RESEARCH UNLIMITED QUESTIONNAIRE.

6 Q. WHAT DOES THE QUESTION ASK?

7 A. IT ASKS THE TEEN: DO YOU HAVE -- AND THERE IS  
8 AN ARRAY OF THINGS. IT SAYS FILL IN ALL THAT APPLY.

9 Q. AND WHAT IS PROVIDED AFTERWARDS, AFTER THE  
10 QUESTION?

11 A. 11 POSSIBILITIES FOR A TEEN TO FILL IN, SAVINGS  
12 ACCOUNT, CHECKING ACCOUNT, DEBIT CARD IN YOUR NAME,  
13 ACCESS TO A PARENT'S DEBIT CARD, INTEREST IN GETTING A  
14 DEBIT CARD IN YOUR NAME, STOCKS OR BONDS, MUTUAL FUNDS,  
15 A CERTIFICATE OF DEPOSIT, A CREDIT CARD IN YOUR NAME,  
16 ACCESS TO A PARENT'S CREDIT CARD, INTEREST IN GETTING A  
17 CREDIT CARD IN YOUR NAME.

18 Q. AND TO BE CLEAR, IN RESPONDING TO THIS, THE  
19 INSTRUCTION WAS TO FILL IN ALL THAT APPLY?

20 A. YES.

21 Q. IF WE COULD GO BACK TO DEFENDANT'S EXHIBIT  
22 438-0010. ZOOM IN ON THIS DATA TABLE.

23 WHAT IS THIS DATA TABLE?

24 A. THIS SHOWS THE ANSWERS TO THE QUESTIONS -- TO  
25 THE QUESTION WE JUST LOOKED AT. IT'S -- ON THE

1 LEFT-HAND SIDE ARE THE VARIOUS BANKING AND INVESTING  
2 ACCOUNTS OR INSTRUMENTS A TEENAGER MIGHT HAVE, AND  
3 ACROSS THE TOP VARIOUS AGE GROUPS SO YOU CAN LOOK AT  
4 DIFFERENT AGE GROUPS AND THEIR USE OF THESE TYPES OF  
5 ACCOUNTS.

6 Q. AND IS THERE SPECIFIC DATA FOR 12 TO 16?

7 A. YES, THERE IS.

8 Q. CAN WE HIGHLIGHT THE DATA FOR 12 TO 16.

9 NOW WE SEE IN THIS AN ANSWER FOR DEBIT  
10 CARD IN YOUR NAME FOR 12 TO 16. HOW MANY TEENS, WHAT  
11 PERCENTAGE OF TEENS HAVE HAD A DEBIT CARD IN THEIR NAME?

12 A. 5.5 PERCENT.

13 Q. AND THEN FURTHER DOWN THERE IS CREDIT CARD IN  
14 YOUR NAME. WHAT PERCENT OF TEENS AGE 12 TO 16 SAID THEY  
15 HAD A CREDIT CARD IN THEIR NAME?

16 A. 2.2 PERCENT.

17 Q. AND THEN FURTHER DOWN IT SAYS, ACCESS TO A  
18 PARENT'S CREDIT CARD. WHAT PERCENT OF TEENS AGE 12 TO  
19 16 SAID THEY HAD ACCESS TO A PARENT'S CREDIT CARD?

20 A. 5.1 PERCENT.

21 Q. FURTHER BELOW THAT IT SAYS ACCESS TO A PARENT'S  
22 DEBIT CARD. WHAT PERCENT OF TEENS AGE 12 TO 16 SAID  
23 THEY HAD ACCESS TO A PARENT'S DEBIT CARD?

24 A. 4.4 PERCENT.

25 Q. MR. CLARK, DID THIS INFORMATION ABOUT ACCESS TO

1 A PARENT'S CREDIT CARD AND ACCESS TO A PARENT'S DEBIT  
2 CARD PROVIDE YOU WITH ADDITIONAL INFORMATION ON WHICH TO  
3 BASE AN OPINION?

4 A. YES.

5 Q. DO YOU HAVE AN OPINION ON THE NUMBER OF TEENS  
6 AGE 12 TO 16 THAT HAVE ACCESS TO A TRADITIONAL PAYMENT  
7 CARD?

8 A. YES.

9 Q. CAN WE BRING UP WHAT HAS BEEN MARKED AS  
10 DEFENDANT'S DEMONSTRATIVE 13, PAGE 2.

11 MR. HARRIS: I HAVE SEVERAL OBJECTIONS TO  
12 THE USE OF THIS DEMONSTRATIVE.

13 THE COURT: LET ME GET UP TO DATE HERE.  
14 HAS A COPY BEEN GIVEN TO ME?

15 MR. TODD: IT SHOULD BE IN THE VERY BACK.

16 THE COURT: OF THE FIRST FOLDER?

17 MR. TODD: OF THE LARGER FOLDER, YES.

18 THE COURT: THE NUMBER IS WHAT, PLEASE?

19 MR. TODD: DEMONSTRATIVE 13.

20 THE COURT: IT DOES NOT LOOK LIKE  
21 ANYTHING.

22 THE WITNESS: I THINK IT IS THE SECOND  
23 PAGE, YOUR HONOR.

24 THE COURT: NOW YOU TELL ME.

25 MR. TODD: SORRY, YOUR HONOR, MY MISTAKE.

1                   THE COURT: WELL, WE HAVE THE PAGE IN  
2 FRONT OF US. WAS THERE A QUESTION PENDING OR JUST AN  
3 OBJECTION TO THE WHOLE PROCESS?

4                   MR. HARRIS: I HAVE AN OBJECTION TO THE  
5 WHOLE PROCESS.

6                   THE COURT: EXPLAIN THAT, PLEASE.

7                   MR. HARRIS: THE OBJECTION IS THAT THE  
8 CHART ON THE RIGHT SIDE, TEENS WITH TRADITIONAL PAYMENT  
9 CARDS, CONTAINS FACTS AND OPINION THAT ARE NOT IN MR.  
10 MANN'S REPORT -- I MEAN MR. CLARK'S, EXCUSE ME. IN  
11 PARTICULAR, UNDER HIGHLIGHTS, THE FIRST BULLET, BASED ON  
12 THE ABOVE TRU DATA, 8 PERCENT OF 12 TO 16 YEARS OLD HAVE  
13 EXTRA CARD. THERE IS NO OPINION IN MR. CLARK'S REPORT  
14 ABOUT 12 TO 16-YEAR-OLDS. SO THIS IS A NEW OPINION THAT  
15 IS NOT PROVIDED OR DISCLOSED IN HIS REPORT.

16                   MR. TODD: YOUR HONOR, WE HAVE BEEN  
17 THROUGH THIS. THIS WAS OPINION THAT WAS OBTAINED DURING  
18 THE DEPOSITION AND THIS IS SIMPLY A DEMONSTRATIVE TO  
19 HELP MR. CLARK EXPLAIN HIS OPINION TO THIS COURT.

20                   MR. HARRIS: YOUR HONOR, IT IS ONE THING  
21 TO HAVE ADDITIONAL DATA TO SUPPORT AN EXISTING OPINION.  
22 THAT IS NOT THE SITUATION. THIS IS A NEW OPINION.  
23 THERE IS NO OPINION IN THE REPORT ABOUT 12 TO  
24 16-YEAR-OLDS, THERE IS NO OPINION IN PARTICULAR THAT  
25 EIGHT PERCENT OF 12 TO 16-YEAR-OLDS HAVE CARDS. THE

1 OPINION IN THE REPORT IS ABOUT 12 TO 17-YEAR-OLDS AND  
2 THAT OPINION IS 11 PERCENT. THIS WOULD BE A CHANGE TO  
3 HIS OPINION AND TO THE FIGURES IN HIS REPORT. IT IS  
4 CLEARLY BEYOND THE SCOPE OF HIS REPORT.

5 MR. TODD: YOUR HONOR, WE ARE NOT  
6 CONTESTING THAT THIS IS BEYOND THE SCOPE OF THE MAY 8,  
7 2006 REPORT, BUT PURSUANT TO RULE 26 E AND THE  
8 ESTABLISHED CASE LAW OF THE 3RD CIRCUIT, AN EXPERT IS  
9 ENTITLED SUPPLEMENT HIS OPINION AT LEAST THROUGHOUT THE  
10 DISCLOSURE PERIOD. INDEED THERE IS A 3RD CIRCUIT CASE  
11 THAT SAID AN EXPERT IS ENTITLED TO SUPPLEMENT OR CORRECT  
12 HIS TESTIMONY UP THROUGH THE TIME OF THE DAUBERT  
13 HEARING. AND THIS IS AN EXAMPLE -- THIS IS A  
14 DEMONSTRATIVE. IT'S NOT BEING -- WE ARE NOT SEEKING  
15 ADMISSION OF THIS DOCUMENT. THAT MERELY ILLUSTRATES HOW  
16 MR. CLARK HAS SUPPLEMENTED HIS OPINION AND THAT OPINION  
17 WAS ELICITED DURING EXPERT DISCOVERY.

18 MR. HARRIS: THAT IS INCORRECT. THERE  
19 WAS NO QUESTIONS ASKED ABOUT 12 TO 16 YEAR OLDS AT HIS  
20 DEPOSITION. THIS OPINION ABOUT EIGHT PERCENT OF 12 TO  
21 16-YEAR OLDS DID NOT COME OUT AT HIS DEPOSITION. MR.  
22 CLARK HAS HAD THIS DATA SINCE JULY, ACCORDING TO HIS  
23 TESTIMONY. HE DID NOT AMEND HIS REPORT TO INCLUDE THIS  
24 ADDITIONAL OPINION OR TO MODIFY THE OPINION THAT HE HAS  
25 IN HIS REPORT THAT 11 PERCENT OF 12 TO 17 YEAR OLDS HAVE

1 PAYMENT CARDS. THIS IS A NEW OPINION, A MODIFICATION TO  
2 WHAT IS IN HIS REPORT. IT WOULD CHANGE ALL OF THE  
3 FIGURES IN HIS REPORT. THIS IS THE FIRST TIME LAST  
4 NIGHT THAT PLAINTIFFS HAD ANY NOTICE OF THIS OPINION.

5 MR. TODD: YOUR HONOR, IF I MAY,  
6 PROFESSOR MANN ALSO PRODUCED A DEMONSTRATIVE THE  
7 BUSINESS DAY BEFORE -- AT FIVE O'CLOCK OF THE BUSINESS  
8 DAY BEFORE HE TESTIFIED. THAT DEMONSTRATIVE ALSO DID  
9 NOT CONTAIN ANY -- WAS NOT BASED ON ANY INFORMATION IN  
10 HIS REPORT. HE HAD ALSO CHANGED THE ANALYSIS OF THE  
11 AGE -- IT FOCUSED SPECIFICALLY ON 16 YEAR OLDS. THIS IS  
12 NO DIFFERENT, YOUR HONOR, THAN PROFESSOR MANN'S  
13 DEMONSTRATIVE WHICH THIS COURT ALLOWED PROFESSOR MANN TO  
14 DISCUSS.

15 MR. HARRIS: PROFESSOR MANN'S  
16 DEMONSTRATIVE DID NOT CHANGE ANY OF THE OPINIONS IN HIS  
17 REPORT. THIS IS A CHANGE FROM 11 PERCENT TO 8 PERCENT.

18 MR. TODD: ACTUALLY, YOUR HONOR, I  
19 BELIEVE HE -- THE PURPOSE OF THAT DEMONSTRATIVE WAS TO  
20 SHOW THAT EVEN BASED ON TEENAGE RESEARCH UNLIMITED, IN  
21 PROFESSOR MANN'S OPINION, 37 PERCENT OF TEENS HAD ACCESS  
22 TO PAYMENT CARDS.

23 MR. HARRIS: THAT IS CONSISTENT WITH HIS  
24 OPINIONS WHICH WAS THAT HIS OPINION WAS THAT THE TEENAGE  
25 RESEARCH DATA UNDERCOUNTED THE AMOUNT OF TEENS WITH

1 PAYMENT CARDS. THIS IS NOT CONSISTENT WITH MR. CLARK'S  
2 OPINION. HE IS CHANGING IT FROM 11 PERCENT TO 8  
3 PERCENT.

4 MR. TODD: YOUR HONOR, AGAIN, THE 3RD  
5 CIRCUIT CASE LAW IS CLEAR ON THIS THAT AN EXPERT  
6 PURSUANT TO 26 E IS ENTITLED TO AMEND OR SUPPLEMENT HIS  
7 OPINION.

8 THE COURT: ON A TIMELY BASIS. THAT IS  
9 THE INTENTION OF THE RULE OF ADEQUATE DISCLOSURE IS  
10 MET -- THE SENSE OF THE RULE IS MET. THIS I FIND AS A  
11 FACT BASED ON THE REPRESENTATION OF COUNSEL NOT DENIED  
12 -- FOR THE PLAINTIFFS NOT DENIED BY COUNSEL FOR THE  
13 DEFENDANT THAT THE 12 TO 16 ESTIMATE OF 8 PERCENT WAS  
14 NOT DISCLOSED AT THE TIME OF THE DEPOSITION, THAT THE  
15 PLAINTIFFS HAD NO OPPORTUNITY TO EXAMINE THE WITNESS ON  
16 IT AND IT WOULD CHANGE ALL THE NUMBERS IN THE ANALYSIS  
17 AND THAT THERE WOULD BE NO TESTIMONY ON THAT NUMBER. I  
18 CAN'T -- I ALSO FIND THAT SAYING THAT SOMETHING IS A  
19 DEMONSTRATIVE EXHIBIT DOES NOT MAKE IT SO. IT IS BEING  
20 OFFERED FOR THE SUBSTANCE OF WHAT IS IN THERE. SO IT  
21 WILL NOT BE RECEIVED INTO THE RECORD AS A SUBSTANTIVE  
22 BASIS FOR AN OPINION.

23 MR. TODD: IF I CAN MOVE TO RECONSIDER ON  
24 THE LIMITED BASIS THAT WE DO DENY THAT HIS OPINION  
25 WAS -- THAT THE SUBJECT OF 12 TO 16 WAS DISCUSSED AT HIS



1 DEPOSITION AND --

2 THE COURT: SOMEBODY IS MISTAKEN.

3 MR. TODD: YES, YOUR HONOR. IF WE CAN  
4 BRING UP HIS DEPOSITION TESTIMONY, WE WILL -- I CAN  
5 EITHER DO THIS AT THE LUNCH BREAK. WE CAN MOVE ON FOR  
6 NOW, I CAN DO THIS AT THE LUNCH BREAK AND GET THE EXACT  
7 TESTIMONY. BUT IF WE LOOK RIGHT HERE ACTUALLY ON PAGE  
8 149, THE QUESTION WAS: WHAT? AND THE ANSWER WAS, IF  
9 YOU LOOK AT COLUMNS 12 THROUGH 17 AND 12 THROUGH 16 AND  
10 LOOK AT DEBIT AND CREDIT IN YOUR NAME -- CREDIT CARD IN  
11 YOUR NAME AND ACCESS TO PARENT'S CREDIT CARD, DEBIT CARD  
12 IN YOUR NAME, CREDIT CARD IN YOUR NAME, THOSE ARE THE  
13 NUMBERS, 12 TO 17. 12 TO 16 IS OBVIOUSLY A SMALLER  
14 GROUP. THOSE NUMBERS ARE THE ONES THAT ARE IN MY  
15 REPORT.

16 THOSE ARE YOUR 11 PERCENT?

17 ANSWER: YES. AND IF YOU TAKE A LOOK AT  
18 THE ACCESS TO PARENT'S CREDIT CARD AND ACCESS TO  
19 PARENT'S DEBIT CARD AND IF YOU LOOK AT 12 TO 16, IT'S  
20 ABOUT 10 PERCENT. IF YOU LOOK AT 12 TO 17, IT'S ABOUT  
21 12 PERCENT, WHICH BRACKETS MY ADDITIONAL GROUP OF 11  
22 PERCENT ASSUMPTION.

23 MR. HARRIS: I DON'T SEE HOW THIS  
24 INDICATES THAT MR. CLARK WOULD BE TESTIFYING TO 8  
25 PERCENT OF 12 TO 16 YEAR OLDS. IT IS INCONSISTENT EVEN

1 WITH WHAT HE SAID HERE. WE DID NOT HAVE ANY NOTICE THAT  
2 HE WOULD BE REVISING HIS OPINION IN THIS REGARD.

3 THE COURT: MY RULING STANDS.

4 MR. TODD: YOUR HONOR --

5 BY MR. TODD:

6 Q. MR. CLARK, DOES THIS INFORMATION FROM TEENAGE  
7 RESEARCH UNLIMITED PROVIDE ADDITIONAL SUPPORT FOR YOUR  
8 ESTIMATE THAT AN ADDITIONAL 11 PERCENT OF CHILDREN HAVE  
9 ACCESS TO CREDIT OR DEBIT CARDS?

10 A. YES.

11 Q. SO MR. CLARK, WHAT IS YOUR OPINION -- AT THE  
12 TIME YOU ISSUED YOUR REPORT, WHAT IS YOUR OPINION ON  
13 MINORS' ACCESS TO TRADITIONAL PAYMENT CARDS?

14 A. THAT 22 PERCENT OF THE 12 TO 17-YEAR OLDS HAVE  
15 ACCESS TO TRADITIONAL PAYMENT CARDS.

16 Q. AND MR. CLARK, HOW CERTAIN ARE YOU ABOUT THE  
17 ACCURACY OF THIS ESTIMATE?

18 A. QUITE CERTAIN.

19 Q. WHAT IF YOUR ESTIMATE IS OFF?

20 MR. HARRIS: OBJECTION, VAGUE.

21 THE COURT: SUSTAINED.

22 BY MR. TODD:

23 Q. WHAT IF YOUR ESTIMATE IS NOT ENTIRELY ACCURATE?  
24 DOES THAT CHANGE YOUR OPINION ABOUT THE EFFECTIVENESS OF  
25 PAYMENT CARDS?

1 MR. HARRIS: OBJECTION, VAGUE.

2 THE COURT: SUSTAINED.

3 BY MR. TODD:

4 Q. WHAT IF YOUR ESTIMATE IS NOT ACCURATE? DOES  
5 THAT CHANGE YOUR OPINION ABOUT MINORS' ACCESS TO  
6 TRADITIONAL PAYMENT CARDS?

7 MR. HARRIS: IT'S THE SAME QUESTION.

8 THE COURT: SAME QUESTION. SUSTAINED.

9 BY MR. TODD:

10 Q. MR. CLARK, DOES IT MATTER WHETHER YOUR OPINION  
11 IS ENTIRELY ACCURATE?

12 MR. HARRIS: OBJECTION. VAGUE.

13 THE COURT: OVERRULED. WE'VE GOT TO GET  
14 THROUGH THIS QUESTION SOMEHOW. ONE OF MY COLLEAGUES  
15 ONCE SAID, IN REPORTING AN OCCASION IN THE COURTROOM,  
16 YOUR HONOR, I HAVE BEEN ASKING QUESTIONS AND YOU KEEP  
17 SUSTAINING THE OBJECTION. I KNOW YOU DON'T HAVE TO GIVE  
18 A REASON, BUT PLEASE HELP ME OUT. HE SAID WHAT IS THE  
19 REASON WHY YOU SUSTAINED THE OBJECTION? AND MY  
20 COLLEAGUE SAID, IT WAS HIS TURN. I DENY ANY FRIVOLITY  
21 OF THAT NATURE IN MY COURTROOM. WE ARE GOING TO LET HIM  
22 ANSWER IT. DOES IT MATTER? THAT IS THE QUESTION.

23 THE WITNESS: NOT REALLY.

24 BY MR. TODD:

25 Q. WHY NOT?

1 A. BECAUSE THE MOST IMPORTANT POINT IS THAT THE  
2 TEENAGERS ARE SUPERVISED AND MONITORED BY THEIR PARENTS'  
3 THROUGH THE CARD BILLING STATEMENT.

4 MR. HARRIS: OBJECTION AND MOVE TO  
5 STRIKE. THE WITNESS IS NOT AN EXPERT IN SUPERVISION.  
6 HE CAN TESTIFY ABOUT THE FACTS BUT NOT --

7 THE COURT: THE OBJECTION IS SUSTAINED.  
8 IT IS STRICKEN OUT. HE ALREADY HAS NOT BEEN ALLOWED TO  
9 TESTIFY ABOUT THAT ISSUE.  
10 BY MR. TODD:

11 Q. OKAY. I WILL ASK THE SAME QUESTION AND  
12 HOPEFULLY WE WILL ELICIT A DIFFERENT ANSWER.

13 THE COURT: I DON'T KNOW THAT.

14 MR. TODD: WE WILL HAVE TO SEE.

15 THE COURT: I THINK IF YOU MAKE YOUR  
16 QUESTION MORE PRECISE, MAYBE YOU WILL GET THE RIGHT  
17 ANSWER.

18 MR. TODD: SURE.

19 BY MR. TODD:

20 Q. WHY IS IT NOT SIGNIFICANT IF YOUR ESTIMATE IS  
21 OFF?

22 THE COURT: YOU ARE LIABLE TO GET THE  
23 SAME ANSWER, BUT YOU CAN'T DISCUSS THE SUBJECT OF  
24 SUPERVISION. THERE ARE OTHER ASPECTS OF DYNAMICS THAT  
25 ASSIST YOU. YOU ARE WELCOME TO INCLUDE THOSE.

1 MR. TODD: THE QUESTION IS WITHDRAWN,  
2 YOUR HONOR.

3 BY MR. TODD:

4 Q. MR. CLARK, YOU TESTIFIED EARLIER THAT CHILDREN  
5 WHO HAVE A CARD IN THEIR OWN NAME, OR CHILDREN THAT HAVE  
6 A CO-SIGNED CARD, THAT CARD ACTIVITY APPEARS ON A  
7 BILLING STATEMENT, IS THAT CORRECT?

8 A. YES.

9 Q. SO WITH RESPECT TO YOUR ESTIMATE OF THE NUMBER  
10 OF CHILDREN THAT HAVE ACCESS TO TRADITIONAL PAYMENT  
11 CARDS, DOES IT MATTER IF YOUR ESTIMATE IS NOT ENTIRELY  
12 ACCURATE?

13 A. NO.

14 Q. WHY NOT?

15 A. THE IMPORTANT ELEMENT IS THAT PAYMENT  
16 TRANSACTIONS APPEAR ON A CARD BILLING STATEMENT, AND  
17 THAT IS A TOOL THAT SOMEBODY CAN USE TO SEE HOW PAYMENT  
18 CARDS HAVE BEEN USED.

19 MR. TODD: THANK YOU, MR. CLARK. YOUR  
20 HONOR, IT IS 12:30. I WAS ABOUT TO ASK MR. CLARK ABOUT  
21 HIS NEXT OPINION.

22 THE COURT: LET'S TAKE AN HOUR OFF FOR A  
23 MID DAY RECESS, PLEASE. COUNSEL ARE EXCUSED. WE ARE  
24 OFF THE RECORD.

25 (LUNCH BREAK TAKEN.)



1 IS NOT REALLY BINDING BETWEEN A LENDER AND AN INDIVIDUAL  
2 UNTIL THEY HAVE REACHED AGE OF MAJORITY. SO FOR A  
3 CREDIT CARD, A CARD COMPANY HAS A GREAT FINANCIAL RISK  
4 IN LOANING A MINOR MONEY.

5 Q. WHAT ABOUT DEBIT CARDS?

6 A. WITH DEBIT CARDS, THERE IS ALSO A FINANCIAL  
7 RISK. THERE IS POSSIBILITY FOR AN OVERDRAFT ON THE  
8 CHECKING ACCOUNT. AN INDIVIDUAL CAN USE THE PAYMENT  
9 CARD, THE DEBIT CARD, TO EXCEED THE LIMIT, AND BY THE  
10 TIME THE CHARGE COMES BACK TO THE BANK OR THE CARD  
11 ISSUING COMPANY, THERE ARE NO FUNDS IN THE ACCOUNT AND  
12 THE ACCOUNT IS OVERDRAWN.

13 Q. AND HOW DOES THAT RELATE TO CARD ISSUERS'  
14 WILLINGNESS TO ISSUE DEBIT CARDS TO MINORS?

15 A. CARD COMPANIES ARE NOT WILLING TO ISSUE DEBIT  
16 CARDS TO MINORS.

17 Q. WHY? BASED ON WHAT YOU ARE TALKING ABOUT  
18 BEFORE. I'M JUST TRYING TO UNDERSTAND THAT PART OF IT.

19 A. REPHRASE THE QUESTION.

20 Q. YOU WERE TESTIFYING ABOUT THE RISK OF AN  
21 OVERDRAFT?

22 A. YES.

23 Q. HOW DOES THAT RISK RELATE TO THEIR WILLINGNESS  
24 TO ISSUE A DEBIT CARD TO MINORS?

25 A. WELL, AS I DESCRIBED, THIS IS A FINANCIAL RISK

1 FOR THE CARD ISSUER TO END UP IN AN OVERDRAFT SITUATION  
2 WHERE A MINOR WITH A DEBIT CARD OWES THE CARD COMPANY  
3 SOME MONEY.

4 Q. AND FROM THE PERSPECTIVE OF CARD ISSUERS, ARE  
5 THERE ANY OTHER REASONS THAT THEY ARE NOT WILLING TO  
6 ISSUE CREDIT OR DEBIT CARDS TO MINORS?

7 A. YES. THERE IS ALSO A REGULATORY RISK.

8 Q. WHAT IS THAT REGULATORY RISK?

9 A. THE CARD ISSUING COMPANIES VIEW THE PATRIOT ACT  
10 AS REQUIRING THAT THE CARD ISSUER TO KNOW THE CUSTOMER  
11 AND --

12 Q. CAN YOU EXPLAIN THAT?

13 A. YES. THE PATRIOT ACT KNOW YOUR CUSTOMER  
14 PROVISION REQUIRES THAT THE CARD-ISSUING COMPANY KNOW  
15 THE NAME, ADDRESS, DATE OF BIRTH, SOCIAL SECURITY NUMBER  
16 AND PHONE NUMBER FOR AN INDIVIDUAL THAT THEY ISSUE CARDS  
17 TO.

18 Q. AND WHAT PREVENTS THEM FROM ISSUING A CARD TO A  
19 MINOR THAT KNOWS ALL THIS INFORMATION?

20 A. THAT WOULD BE A FRAUDULENT TRANSACTION AND THE  
21 CARD-ISSUING COMPANIES ARE VERY CONCERNED ABOUT THEM  
22 BEING NOT IN COMPLIANCE WITH THE PATRIOT ACT.

23 MR. HARRIS: OBJECTION AND MOVE TO  
24 STRIKE. THERE IS NO OPINION IN THE REPORT ABOUT ISSUING  
25 CARDS TO MINORS BEING A FRAUDULENT TRANSACTION.



1 THE COURT: I'M CONCERNED WHETHER THE  
2 WITNESS UNDERSTOOD THE QUESTION.

3 THE QUESTION WAS: ARE THERE OTHER  
4 REASONS WHY THEY ARE NOT WILLING TO ISSUE CARDS OR DEBIT  
5 CARDS TO MINORS, AND THE INTERDICTION OF THE EXTRA  
6 INFORMATION IS DESCRIBED BY MR. CLARK. AND THEN THE  
7 QUESTION I THOUGHT HE MIGHT HAVE MISUNDERSTOOD: AND  
8 WHAT PREVENTS THEM FROM ISSUING THE CARD TO A MINOR THAT  
9 KNOWS ALL THIS INFORMATION. THERE IS NO SUGGESTION THAT  
10 IT IS FALSE. I DON'T KNOW THAT THE WITNESS UNDERSTOOD  
11 THE QUESTION.

12 MR. TODD: LET ME TRY TO REPHRASE, YOUR  
13 HONOR.

14 BY MR. TODD:

15 Q. IF A -- HYPOTHETICALLY, IF A CHILD WERE TO KNOW  
16 AND BE ABLE TO PROVIDE A BANK THE NAME, THEIR ADDRESS,  
17 THEIR SOCIAL SECURITY NUMBER AND THE TELEPHONE NUMBER  
18 AND ANY OTHER INFORMATION THE BANK REQUIRES UNDER THE --  
19 IN ORDER TO KNOW ITS CUSTOMER, WOULD THE CARD COMPANY BE  
20 WILLING TO ISSUE THAT MINOR A CREDIT OR DEBIT CARD?

21 A. NO.

22 Q. WHY NOT?

23 A. BECAUSE THEY WOULD WANT TO VERIFY THAT THE  
24 INDIVIDUAL WAS AN ADULT.

25 MR. HARRIS: OBJECTION. LACK OF

1 FOUNDATION. THERE HAS BEEN NO FOUNDATION LAID FOR THIS  
2 LAST STATEMENT THAT THEY WANT TO VERIFY THAT THE WITNESS  
3 IS AN ADULT. I BELIEVE THIS QUESTION WAS IN THE CONTEXT  
4 OF THE PATRIOT ACT. IF NOT, I WITHDRAW MY OBJECTION.

5 THE COURT: I'M A LITTLE CONFUSED ABOUT  
6 THE LINE OF QUESTIONING MYSELF.

7 MR. TODD: I'M WILLING TO WITHDRAW THE  
8 QUESTION, YOUR HONOR.

9 THE COURT: I WANT TO MAKE SURE THAT THE  
10 QUESTION BEFORE THAT THAT WAS WITHDRAWN, TOO. WE DID  
11 NOT QUITE GET THAT ON THE RECORD.

12 MR. TODD: I'M SORRY, YOUR HONOR.

13 THE COURT: THE QUESTION BEFORE THAT WAS  
14 WITHDRAWN ALSO. AND WE DIDN'T PUT THAT ON THE RECORD.  
15 THE ONE WHERE I SAID I WAS CONFUSED. THERE WAS AN  
16 OBJECTION WHICH I NEVER RULED ON, ON THE GROUND THAT IT  
17 IS IMPLIEDLY WITHDRAWN.

18 MR. TODD: OKAY. BUT THE HYPOTHETICAL  
19 QUESTION HE ANSWERED, WHERE HE SAID NO, IS THAT STILL ON  
20 THE RECORD OR DO I HAVE TO ASK THAT AGAIN?

21 THE COURT: THE QUESTION WAS, WOULD THE  
22 COMPANY BE WILLING TO ISSUE THAT MINOR A CREDIT CARD OR  
23 DEBIT CARD AND THE WITNESS ANSWERED NO. AND THEN YOU  
24 ASKED WHY NOT. IS THAT THE ONE YOU WANT TO REPHRASE?

25 MR. TODD: REPHRASE. SURE.

1 THE COURT: THE WHY NOT QUESTION AND  
2 ANSWER IS WITHDRAWN.

3 MR. TODD: THANK YOU, YOUR HONOR, FOR  
4 CLARIFYING THAT.

5 BY MR. TODD:

6 Q. MR. CLARK, ARE THERE OTHER REASONS THAT A CARD  
7 COMPANY WOULD BE UNWILLING TO ISSUE A CREDIT OR DEBIT  
8 CARD TO A MINOR IF THAT MINOR KNEW THEIR NAME, ADDRESS,  
9 SOCIAL SECURITY NUMBER, BIRTH DATE, TELEPHONE NUMBER AND  
10 OTHER INFORMATION REQUIRED BY THE BANK?

11 THE COURT: THAT IS THE SAME QUESTION.  
12 YOU ASKED IT A DIFFERENT WAY.

13 MR. TODD: I WAS TRYING TO REFRESH THE  
14 WITNESS' RECOLLECTION.

15 BY MR. TODD:

16 Q. MR. CLARK, DO YOU KNOW WHY CARD COMPANIES ARE  
17 NOT WILLING TO ISSUE CARDS TO MINORS THAT HAPPEN TO KNOW  
18 ALL THIS INFORMATION?

19 A. ON THE REGULATORY POINT THAT I WAS TALKING ABOUT  
20 BEFORE, CARD-ISSUING COMPANIES FEEL THAT TO BE IN  
21 COMPLIANCE WITH THE PATRIOT ACT THEY CAN ONLY ISSUE A  
22 CREDIT CARD OR DEBIT CARD TO SOMEONE OF AGE OF MAJORITY.

23 MR. HARRIS: MOVE TO STRIKE, YOUR HONOR.  
24 THERE IS NO OPINION IN THIS REPORT THAT SAYS THAT AS A  
25 RESULT OF THE PATRIOT ACT, PAYMENT CARD COMPANIES ARE

1 NOT WILLING TO ISSUE CREDIT CARDS. NOWHERE IN THE  
2 REPORT DOES IT SAY THAT BECAUSE OF THE PATRIOT ACT THEY  
3 WON'T ISSUE CREDIT CARDS TO MINORS.

4 THE COURT: MR. TODD.

5 MR. TODD: THE COURT'S INDULGENCE, YOUR  
6 HONOR. IF I CAN DIRECT THIS COURT'S ATTENTION TO PAGE  
7 0018 OF DEFENDANT'S EXHIBIT 93.

8 THE COURT: 0018?

9 MR. TODD: YES.

10 THE COURT: BATES NUMBER?

11 MR. TODD: YES, BATES NUMBER 0018. THERE  
12 IS A SENTENCE THAT READS ABOVE --

13 THE COURT: WHERE IS IT?

14 MR. TODD: IN THE MIDDLE PARAGRAPH UNDER  
15 PREPAID --

16 THE COURT: OVER THE LAST THREE OR FOUR  
17 YEARS, THAT PARAGRAPH?

18 MR. TODD: YES, IN THAT PARAGRAPH, THE  
19 LAST SENTENCE: FOR RELOADABLE CARDS, THE PATRIOT ACT  
20 REQUIRES THAT THE CARD ISSUER COLLECT CERTAIN  
21 INFORMATION AS PART OF THE PATRIOT ACT'S  
22 KNOW-YOUR-CUSTOMER PROVISION, EXAMPLE, NAME, ADDRESS,  
23 PHONE NUMBER, BIRTH DATE. AND THERE IS A CITATION IN  
24 THE FOOTNOTE TO THE PATRIOT ACT AND THE RELEVANT  
25 REGULATORY PROVISION.

1                   MR. HARRIS:  AND THE WITNESS HAS ALREADY  
2                   TESTIFIED TO THAT.  BUT WHAT IS NOT IN THE REPORT IS A  
3                   STATEMENT THAT BECAUSE OF THE PATRIOT ACT THEY WON'T  
4                   ISSUE CREDIT CARDS TO MINORS OR PAYMENT CARDS TO MINORS.  
5                   THIS JUST SAYS THEY HAVE TO COLLECT THEIR INFORMATION.  
6                   THERE IS NO OPINION IN THE REPORT THAT SAYS BECAUSE OF  
7                   THE PATRIOT ACT THEY WON'T ISSUE PAYMENT CARDS TO  
8                   MINORS.  THAT WOULD BE A NEW OPINION.

9                   THE COURT:  MR. TODD, YOUR REFERENCE AND  
10                  READING OF THE MATERIAL ON PAGE BATES 0018 DOES NOT  
11                  COMPRISE A RESPONSE TO THE QUESTION.

12                  MR. TODD:  AT THIS TIME, YOUR HONOR, I'M  
13                  WILLING TO WITHDRAW THE ANSWER BECAUSE -- BUT I WILL TRY  
14                  TO LINK THIS TOGETHER AND BRING IT BACK LATER AS TO WHY  
15                  THIS IS RELEVANT.

16                  THE COURT:  STRIKE THE QUESTION AND THE  
17                  ANSWER.  THE ANSWER THAT -- THE QUESTION THAT GAVE RISE  
18                  TO THE RESPONSE NO IS STRICKEN, AND THE OBJECTION TO THE  
19                  QUESTION, OR MOTION TO STRIKE THE ANSWER, BECAUSE OF THE  
20                  ADULT PORTION OF THE PATRIOT ACT IS STRICKEN AS WELL.

21                  MR. TODD:  OKAY.

22                  BY MR. TODD:

23                  Q.           MR. CLARK, YOU TESTIFIED EARLIER ABOUT THE AGE  
24                  OF MAJORITY LAWS.

25                  A.           YES.

1 Q. IS THERE ANYTHING ABOUT THE AGE OF MAJORITY LAWS  
2 THAT MAKES CARD ISSUERS RELUCTANT TO ISSUE CREDIT OR  
3 DEBIT CARDS TO MINORS?

4 A. YES.

5 Q. AND WHAT IS THAT?

6 A. EACH INDIVIDUAL STATE HAS AN AGE OF MAJORITY  
7 LAW, AND THE MINIMUM AGE IS 18 WITH, I BELIEVE, ONE  
8 EXCEPTION, UTAH, WHERE, IF YOU ARE MARRIED, YOU CAN --  
9 THE AGE OF MAJORITY AT ANY AGE. BUT WITH THAT ONE  
10 EXCEPTION, I BELIEVE ALL STATES HAVE AGE OF MAJORITY  
11 LAWS WITH MINIMUM OF 18, AND CARD-ISSUING COMPANIES,  
12 BECAUSE OF THE FINANCIAL RISKS I TALKED ABOUT EARLIER,  
13 ARE UNWILLING TO ISSUE A CREDIT OR DEBIT CARD TO A  
14 MINOR.

15 Q. SO MR. CLARK, WHAT IS YOUR OPINION ABOUT CARD  
16 ISSUERS' WILLINGNESS TO ISSUE DEBIT AND CREDIT CARDS  
17 DIRECTLY TO MINORS WITHOUT THE CONSENT OF THE PARENTS?

18 THE COURT: SPEAK UP, PLEASE, WITHOUT  
19 WHAT?

20 BY MR. TODD:

21 Q. WHAT IS YOUR OPINION ON CARD ISSUERS'  
22 WILLINGNESS TO ISSUE DEBIT AND CREDIT CARDS DIRECTLY TO  
23 MINORS WITHOUT THE CONSENT OF THEIR PARENTS?

24 A. CARD ISSUERS ARE UNWILLING TO DO THAT.

25 Q. MR. CLARK, DO YOU HAVE AN OPINION ON THE

1 WILLINGNESS OF CARD ISSUERS TO ISSUE RELOADABLE PREPAID  
2 CARDS TO MINORS?

3 A. YES.

4 Q. HOW DID YOU REACH THAT OPINION?

5 A. MY CONSULTING WORK WITH PREPAID ISSUERS.

6 Q. AND WHAT DID YOU LEARN FROM THOSE CONSULTING  
7 PROJECTS?

8 MR. HARRIS: OBJECTION. OUTSIDE OF THE  
9 REPORT. THERE IS NO OPINION IN THE REPORT ABOUT WHETHER  
10 CARD COMPANIES WILL ISSUE RELOADABLE PREPAID CARDS TO  
11 MINORS.

12 THE COURT: MR. TODD, CAN YOU FIND IT?  
13 IS IT IN THERE?

14 MR. TODD: YOUR HONOR, I THINK WE HAVE  
15 THE PAGE ON 0018 THAT WE DISCUSSED BEFORE.

16 THE COURT: OF DEFENDANT'S EXHIBIT 93?

17 MR. TODD: OF DEFENDANT'S EXHIBIT 93.  
18 RELATES TO THIS TOPIC OF PATRIOT ACT REQUIREMENTS. AND  
19 SO CERTAINLY -- AND THAT IS IN THE SECTION ON PREPAID  
20 CARDS. CERTAINLY WE CAN HAVE TESTIMONY CONCERNING HOW  
21 THE KNOW-YOUR-CUSTOMER PROVISION RELATES TO THE PREPAID  
22 CARDS.

23 MR. HARRIS: YOUR HONOR, THERE IS NO  
24 STATEMENT IN HERE THAT CARD COMPANIES WILL NOT ISSUE  
25 CARDS TO MINORS. IN ADDITION, THE ONLY TESTIMONY ABOUT

1 THE PATRIOT ACT IS THAT IT REQUIRES COLLECTION OF BIRTH  
2 DATE. THERE IS NO TESTIMONY IN THE RECORD AND NO  
3 OPINION IN THE REPORT THAT THE PATRIOT ACT FORBIDS CARD  
4 COMPANIES FROM ISSUING CARDS TO MINORS. THERE IS NO  
5 STATEMENT IN THIS REPORT, NO OPINION THAT CARD COMPANIES  
6 WILL NOT ISSUE RELOADABLE CARDS TO MINORS.

7 MR. TODD: YOUR HONOR, I THINK IN THE  
8 DEPOSITION TESTIMONY, MR. CLARK'S OPINION ON RELOADABLE  
9 PREPAID CARDS WAS OBTAINED. AND WITH THE COURT'S  
10 INDULGENCE, I CAN BRING THAT TESTIMONY UP.

11 ON THE SCREEN, WE HAVE PAGE 292 OF  
12 MR. CLARK'S DEPOSITION AND WE HAD A COLLOQUY GOING ON.

13 THE COURT: YOU BETTER GET NEAR THE  
14 MICROPHONE.

15 MR. TODD: WE HAD A COLLOQUY GOING ON AND  
16 THE STATEMENT IS, I WAS -- THAT BEGINS IN THIS COLLOQUY,  
17 I WAS ASKED --

18 THE COURT: WHO WAS ASKING THE QUESTION?

19 MR. TODD: I'M ACTUALLY NOT SURE, YOUR  
20 HONOR. IF WE COULD BACK UP A LITTLE BIT.

21 MR. HARRIS: I THINK IT WAS MYSELF.

22 THE COURT: OKAY.

23 MR. TODD: I THINK THIS IS MR. CLARK  
24 CLARIFYING, TRYING TO CLARIFY A QUESTION. I WAS ASKING  
25 HIM WHAT THE MERCHANT POLICIES WERE FOR NONRELOADABLE



1 AND RELOADABLE CARDS. AND THE QUESTION FROM MR. HARRIS  
2 WAS, AND WHAT DID HE SAY?

3 HIS ANSWER WAS, HE SAID THAT AGE  
4 VERIFICATION WAS VERY SKETCHY ON NONRELOADABLE CARDS.  
5 THIS CONCERNS ACTUALLY NONRELOADABLE CARDS. THIS IS  
6 CORRECT. SOME MERCHANTS ARE SUPPOSED TO CHECK, BUT THEY  
7 DIDN'T ALWAYS. BUT ON RELOADABLE CARDS SINCE THEY WERE  
8 COVERED UNDER THE PATRIOT ACT YOU HAD TO KNOW THE  
9 CUSTOMER WITH A NAME, ADDRESS AND BIRTH DATE, THAT HIS  
10 IMPRESSION WAS THAT MOST MERCHANTS ASKED FOR AGE  
11 IDENTIFICATION AND PHONE NUMBERS AND ADDRESSES BEFORE  
12 THEY WOULD SELL A RELOADABLE PREPAID CARD.

13 HE DIDN'T SAY ALL MERCHANTS?

14 THE WITNESS: NO, HE DID NOT.

15 AND THE QUESTION WAS THEN: IF HE ASKED  
16 FOR AGE VERIFICATION, THAT DOESN'T MEAN THAT THEY  
17 REFUSED TO PROVIDE CARDS TO PEOPLE UNDER THE AGE OF  
18 CONSENT, RIGHT?

19 ANSWER: IT'S POSSIBLE. I DIDN'T ASK  
20 THAT QUESTION.

21 AND THEN THE QUESTION WAS: SO IT'S  
22 POSSIBLE A MERCHANT WOULD NOT ASK FOR AGE VERIFICATION?

23 AND THE ANSWER WAS: IT'S POSSIBLE.

24 SO -- AND THIS IS NOT PROBABLY THE ONLY  
25 TESTIMONY CONCERNING THE SUBJECT, YOUR HONOR, BUT THIS

1 IS TESTIMONY THAT PLAINTIFFS TRIED TO ELICIT FROM  
2 MR. CLARK ABOUT HIS UNDERSTANDING.

3 I THINK IF WE BACK HIGHER UP, WE MIGHT BE  
4 ABLE TO FIND A MORE DIRECT QUESTION ABOUT HIS OPINION.

5 MR. HARRIS: YOUR HONOR, I'D MAKE TWO  
6 POINTS. ONE IS, THE MERE FACT THAT HE SAYS SOMETHING IN  
7 HIS DEPOSITION DOES NOT MODIFY HIS REPORT. I'M ALLOWED  
8 TO ASK HIM ALL SORTS OF QUESTIONS IN HIS DEPOSITION. IT  
9 DOES NOT MEAN THAT HE HAS MODIFIED HIS REPORT AND CAN  
10 MODIFY OR PROVIDE NEW OPINIONS IN HIS REPORT.

11 IN ADDITION, AS YOU SAW FROM THE  
12 TESTIMONY HERE, IN THAT DEPOSITION, HE DID NOT GIVE AN  
13 OPINION THAT MINORS CANNOT GET RELOADABLE PREPAID CARDS.  
14 THAT EXCERPT DID NOT PROVIDE THAT OPINION. REGARDLESS,  
15 THE MAIN BASIS FOR MY OBJECTION IS THAT IT IS NOT IN THE  
16 REPORT. MR. TODD HAS NOT IDENTIFIED ANYTHING IN THE  
17 REPORT WHERE AN OPINION IS PROVIDED THAT CARD COMPANIES  
18 WILL NOT ISSUE RELOADABLE CARDS TO MINORS.

19 THE COURT: OBJECTION SUSTAINED.

20 BY MR. TODD:

21 Q. MR. CLARK, DO YOU HAVE AN OPINION ON THE  
22 REGULATORY PROVISIONS THAT RELOADABLE PREPAID CARD  
23 ISSUERS FOLLOW?

24 A. YES.

25 Q. HOW DID YOU REACH THAT OPINION?

1 A. THROUGH MY CONSULTING WORK.

2 Q. AND WHAT DID YOU LEARN FROM THOSE CONSULTING  
3 PROJECTS?

4 A. THAT CARD-ISSUING COMPANIES FOR PREPAID --  
5 RELOADABLE PREPAID CARDS VIEW COMPLIANCE WITH THE  
6 PATRIOT ACT TO MEAN THAT THEY CAN ONLY ISSUE CARDS TO  
7 ADULTS.

8 MR. HARRIS: OBJECTION AND MOVE TO  
9 STRIKE.

10 THE COURT: WELL, I'M GOING TO STRIKE IT.  
11 BUT ONCE AGAIN YOU ARE TARDY. THE QUESTION WAS VAGUE.  
12 HE WAS ALL SET TO GIVE THE ANSWER THAT HIS PROPONENT PUT  
13 HIM ON THE STAND FOR AND THAT IS EXACTLY WHAT HE DID.  
14 I'M GOING TO STRIKE IT OUT BECAUSE THE WITNESS SHOULD  
15 KNOW BY NOW THAT IT IS NOT ADMISSIBLE IN ANY EVENT.

16 BY MR. TODD:

17 Q. WHAT DID YOU LEARN -- MR. CLARK, YOU TESTIFIED  
18 THAT YOU'VE DONE CONSULTING PROJECTS WITH PREPAID CARD  
19 ISSUERS, IS THAT CORRECT?

20 A. YES.

21 Q. AND WHAT HAVE YOU LEARNED FROM THOSE CONSULTING  
22 PROJECTS ABOUT CARD ISSUERS' REGULATORY INTERPRETATION  
23 OF THE KNOW-YOUR-CUSTOMER PROVISION?

24 MR. HARRIS: OBJECTION, VAGUE.

25 THE COURT: SUSTAINED. THE OBJECTION IS

1 SUSTAINED.

2 HE CAN GIVE US HIS --

3 MR. TODD: WELL, I'M JUST TRYING TO LAY  
4 THE FOUNDATION BEFORE WE GET TO THE OPINION.

5 THE COURT: THE QUESTION IS VAGUE AND SO  
6 BROAD THAT THE WITNESS CAN SAY ALMOST ANYTHING.

7 BY MR. TODD:

8 Q. HAVE YOU LEARNED ANYTHING ABOUT CARD ISSUERS'  
9 INTERPRETATION -- RELOADABLE PREPAID CARD ISSUERS'  
10 INTERPRETATION OF THEIR OBLIGATIONS ABOUT THE  
11 KNOW-YOUR-CUSTOMER PROVISIONS?

12 A. YES.

13 Q. WHAT HAVE YOU LEARNED ABOUT THEIR INTERPRETATION  
14 OF THOSE OBLIGATIONS?

15 MR. HARRIS: OBJECTION, VAGUE. THIS IS  
16 THE SAME QUESTION.

17 THE COURT: SUSTAINED.

18 BY MR. TODD:

19 Q. HAVE YOU LEARNED WHETHER RELOADABLE PREPAID CARD  
20 ISSUERS FOLLOW THE KNOW-YOUR-CUSTOMER PROVISION FROM  
21 YOUR CONSULTING ENGAGEMENTS?

22 A. YES.

23 Q. DO THEY FOLLOW THE KNOW-YOUR-CUSTOMER  
24 PROVISIONS -- DO RELOADABLE PREPAID CARD ISSUERS FOLLOW  
25 THE KNOW-YOUR-CUSTOMER PROVISIONS --

1 MR. HARRIS: OBJECTION.

2 BY MR. TODD:

3 Q. -- BASED ON YOUR KNOWLEDGE OF YOUR CONSULTING  
4 ENGAGEMENTS?

5 MR. HARRIS: OBJECTION, VAGUE. IF HE IS  
6 ONLY ASKING WHETHER THE PATRIOT ACT APPLIES TO  
7 RELOADABLE CARDS, THAT HAS BEEN ASKED AND ANSWERED. IF  
8 HE IS ASKING WHETHER, AS A RESULT, THEY WILL NOT ISSUE  
9 RELOADABLE CARDS TO MINORS, THAT IS OUTSIDE OF THE  
10 REPORT.

11 MR. TODD: I'M NOT -- YOUR HONOR, THE  
12 QUESTION IS VERY CLEARLY CONFINED TO WHETHER OR NOT THEY  
13 FOLLOW -- THEY INTERPRET THE ACT AS APPLYING TO THEM.

14 THE COURT: WHETHER THEY INTERPRET --

15 MR. TODD: THE ACT AS APPLYING TO THEIR  
16 ACTIVITY.

17 MR. HARRIS: I WITHDRAW MY OBJECTION  
18 THEN.

19 THE COURT: IT HAS ALREADY BEEN ASKED.  
20 BUT I'M SURE HIS ANSWER IS YES.

21 YOU MAY ANSWER, SIR.

22 THE WITNESS: YES.

23 BY MR. TODD:

24 Q. MR. CLARK, WHAT IS A GIFT CARD?

25 A. A GIFT CARD IS A RELOADABLE CARD THAT AN

1 INDIVIDUAL GIVES TO A FRIEND OR FAMILY MEMBER.

2 Q. YOU SAY IT'S A RELOADABLE GIFT CARD?

3 A. I'M SORRY, IT'S A PREPAID CARD. I'M SORRY, I  
4 MISSPOKE.

5 Q. AND COULD YOU EXPLAIN AGAIN WHAT A GIFT CARD IS?

6 THE COURT: HE SAID IT'S NOW A PREPAID  
7 CARD GIVEN AS A GIFT TO SOMEONE.

8 BY MR. TODD:

9 Q. IS A GIFT CARD A RELOADABLE CARD?

10 A. NO.

11 Q. ARE THERE DIFFERENT TYPES OF GIFT CARDS?

12 A. VERY DEFINITELY.

13 Q. WHAT ARE THE DIFFERENT TYPES?

14 A. THERE ARE CLOSED SYSTEM CARD -- GIFT CARDS,  
15 WHICH ARE ISSUED BY RETAILERS AND TELECOM COMPANIES.  
16 AND THEY CAN ONLY BE USED AT THAT MERCHANT.

17 Q. NOW, ARE THERE OTHER NAMES THESE CLOSED SYSTEM  
18 GIFT CARDS ARE KNOWN BY?

19 A. I'M NOT SURE WHAT THE QUESTION IS.

20 Q. ARE THERE ANY OTHER NAMES THAT A CLOSED SYSTEM  
21 GIFT CARD IS KNOWN BY?

22 A. YES.

23 Q. WHAT IS ANOTHER NAME?

24 A. ONLINE GIFT CERTIFICATE.

25 Q. AND HOW DO YOU BUY AN ONLINE GIFT CERTIFICATE?

1 A. YOU PURCHASE THAT FROM THE MERCHANT THAT ISSUES  
2 THAT.

3 Q. HOW DO YOU PAY FOR IT?

4 A. WITH CASH.

5 Q. CAN YOU BUY THESE ONLINE?

6 A. YES.

7 Q. HOW DO YOU BUY THEM ONLINE?

8 A. IF YOU BUY THEM ONLINE, YOU GENERALLY PAY WITH A  
9 PAYMENT CARD.

10 Q. AND IS THERE A VISA OR MASTERCARD LOGO ON THESE  
11 ONLINE GIFT CERTIFICATES?

12 A. NO.

13 Q. DOES A RETAILER LIKE BARNES AND NOBLE HAVE AN  
14 ONLINE GIFT CERTIFICATE?

15 A. YES.

16 Q. AND JUST SO I UNDERSTAND THIS, IF I BUY A BARNES  
17 AND NOBLE GIFT CARD, CAN I USE IT ON THE BARNES AND  
18 NOBLE WEBSITE TO BUY A BOOK?

19 A. YES.

20 Q. WHAT IF I'M A MINOR, CAN I, AS A MINOR, USE THE  
21 BARNES AND NOBLE GIFT CARD TO BUY SOMETHING IN THE  
22 BARNES AND NOBLE WEBSITE?

23 A. YES.

24 Q. CAN I USE THAT BARNES AND NOBLE GIFT CARD TO BUY  
25 A BOOK ON AMAZON?

1 A. NO.

2 Q. WHY NOT?

3 A. THE CARD IS ONLY GOOD AT BARNES AND NOBLE.

4 Q. IS THIS TRUE FOR ALL CLOSED GIFT CARDS?

5 A. YES, THEY ARE ONLY GOOD AT THE MERCHANT THAT

6 ISSUES THEM.

7 Q. NOW, YOU MENTIONED ANOTHER TYPE OF GIFT CARD.

8 WHAT IS ANOTHER TYPE OF GIFT CARD?

9 A. THERE ARE OPEN GIFT CARDS THAT ARE ISSUED BY

10 AMERICAN EXPRESS, VISA, MASTERCARD AND DISCOVER.

11 Q. AND WHERE CAN YOU BUY AN OPEN GIFT CARD?

12 A. YOU CAN BUY THEM AT MERCHANTS, YOU CAN BUY THEM

13 ONLINE. YOU CAN BUY THEM AT A BANK BRANCH.

14 Q. HOW DO YOU OBTAIN AN OPEN GIFT CARD FROM A BANK?

15 A. YOU PROVIDE CASH, AND THE CARD IS LOADED WITH

16 THAT AMOUNT OF MONEY.

17 Q. IS THAT THE SAME AT A RETAILER?

18 A. AT A RETAILER, GENERALLY THESE -- YES, THE

19 ANSWER IS YES. GENERALLY THESE CARDS ARE ON A RACK AT

20 THE CHECK-OUT COUNTER.

21 Q. IS THERE ANYTHING DIFFERENT WHEN YOU BUY A CARD

22 AT A RETAILER VERSUS WHEN YOU BUY IT AT A BANK?

23 A. WHAT TYPE OF CARD ARE YOU TALKING ABOUT?

24 Q. OPEN GIFT CARD.

25 A. FOR --



1 THE COURT: ANYTHING DIFFERENT, HE SAID.

2 BY MR. TODD:

3 Q. ANYTHING DIFFERENT ABOUT THE WAY -- WHEN YOU BUY  
4 AN OPEN GIFT CARD AT A BANK VERSUS WHEN YOU BUY AN OPEN  
5 GIFT CARD AT A RETAIL STORE?

6 A. I'M NOT CLEAR ON WHAT YOU ARE LOOKING FOR.

7 MR. TODD: I WITHDRAW THE QUESTION, YOUR  
8 HONOR.

9 BY MR. TODD:

10 Q. MR. CLARK, DO YOU HAVE AN OPINION ABOUT THE  
11 NUMBER OF OPEN GIFT CARDS THAT HAVE BEEN ISSUED?

12 A. YES.

13 Q. HOW DID YOU REACH THAT OPINION?

14 A. IT'S BASED ON THE MERCATOR REPORT.

15 Q. AND I'M GOING TO BRING UP WHAT WE HAVE  
16 PREVIOUSLY MARKED AS DEFENDANT'S EXHIBIT 99. THIS IS A  
17 -- YOUR -- THE SOURCE OF THIS INFORMATION IS WHAT AGAIN?

18 A. THIS IS BASED ON THE MERCATOR REPORT THAT I  
19 PURCHASED.

20 Q. AND DID YOU REVIEW THE METHODOLOGY FOR THAT  
21 REPORT?

22 A. YES.

23 Q. AND YOU ARE SATISFIED WITH THAT METHODOLOGY?

24 A. YES.

25 Q. AND WHAT DOES IT SHOW THE RELATIVE VOLUME IS FOR

1 OPEN PREPAID CARDS VERSUS CREDIT AND DEBIT CARDS IN  
2 2005?

3 A. IT SHOWS THAT OPEN PREPAID IS LESS THAN 1  
4 PERCENT OF CREDIT AND DEBIT CARDS.

5 Q. MR. CLARK, DO YOU HAVE AN OPINION ON ONLINE  
6 MERCHANTS' ABILITY TO DECLINE OPEN GIFT CARDS FOR  
7 PURCHASES?

8 A. YES.

9 Q. HOW DID YOU REACH THAT OPINION?

10 A. THROUGH CONVERSATIONS AND DEPOSITIONS AND CARD  
11 POLICIES.

12 Q. LET'S START WITH CARD COMPANY POLICIES. CAN WE  
13 BRING UP YOUR REPORT, EXHIBIT 93, PAGE 0020? CAN WE  
14 HIGHLIGHT FOOTNOTE 32.

15 MR. CLARK, WHAT DOES FOOTNOTE 32 SAY?

16 A. SOME ONLINE MERCHANTS MAY DECLINE YOUR SALE  
17 BASED ON THEIR ADDRESS VERIFICATION PROCESS.

18 Q. AND WHAT IS THE SOURCE FOR THIS QUOTE?

19 A. THIS IS FROM DISCOVER'S WEBSITE.

20 Q. AND ARE THERE ANY OTHER CARD COMPANIES THAT HAVE  
21 THIS KIND OF RESTRICTION ON GIFT CARDS?

22 A. VISA.

23 Q. I'M SHOWING YOU DEFENDANT'S EXHIBIT 93, 0019.  
24 CAN WE HIGHLIGHT FOOTNOTE 31, WHICH CONTINUES ON THE  
25 NEXT PAGE.

1 MR. CLARK, CAN YOU READ THE SENTENCE  
2 BEGINNING, "ADDITIONALLY," AND WE WILL MOVE TO THE NEXT  
3 PAGE.

4 A. ADDITIONALLY, A MERCHANT DOES HAVE THE  
5 DISCRETION TO DECLINE THE CARD IF THEY DO NOT CHOOSE TO  
6 ACCEPT IT AS A CREDIT CARD.

7 Q. YOU ALSO MENTIONED THE CCBILL TESTIMONY, IS THAT  
8 CORRECT?

9 A. YES.

10 Q. YOU CITED THAT IN YOUR REPORT?

11 A. YES.

12 Q. DID YOU ATTEND THAT DEPOSITION?

13 A. I ATTENDED THE CCBILL DEPOSITION.

14 Q. CAN WE BRING UP PAGE 0020 OF YOUR REPORT AND  
15 HIGHLIGHT FOOTNOTE 33?

16 THE COURT: PAGE AGAIN, PLEASE. 0020?

17 MR. TODD: YES, SIR.

18 BY MR. TODD:

19 Q. MR. CLARK, THIS IS A CITATION TO THE CCBILL  
20 DEPOSITION. IS THAT THE CORRECT CITATION FOR THAT  
21 DEPOSITION?

22 A. NO, IT IS NOT.

23 Q. DID YOU MEAN TO CITE DIFFERENT TESTIMONY?

24 A. YES.

25 MR. TODD: YOUR HONOR, JUST --

1 THE COURT: THE FOOTNOTE, I GOT LOST.

2 MR. TODD: FOOTNOTE 33.

3 THE COURT: OKAY.

4 MR. TODD: CAN WE BRING UP THE TESTIMONY  
5 OF IRA CADWELL AS IT WAS READ INTO THE RECORD ON OCTOBER  
6 31ST, 2006.

7 AND CAN WE TURN TO PAGE 173, LINE 24, TO  
8 174, LINE 11.

9 BY MR. TODD:

10 Q. MR. CLARK, CAN YOU READ THIS QUESTION AND ANSWER  
11 ALOUD?

12 MR. HARRIS: OBJECTION, YOUR HONOR. I  
13 HAVE TWO OBJECTIONS TO THIS. ONE IS, THIS DOCUMENT --  
14 THIS TRANSCRIPT WAS NOT IDENTIFIED TO US YESTERDAY AS  
15 MATERIAL THAT WOULD BE USED IN THE DIRECT EXAMINATION.

16 THE SECOND IS --

17 THE COURT: WHAT DOCUMENT ARE YOU  
18 REFERRING TO?

19 MR. HARRIS: THIS IS A DEPOSITION OF  
20 RONALD CADWELL.

21 MR. TODD: THIS WAS THE DEPOSITION THAT  
22 WAS REFERRED TO IN THE REPORT, YOUR HONOR. I'M JUST  
23 TRYING TO CORRECT THE PAGE CITE.

24 MR. HARRIS: MY SECOND OBJECTION IS THAT  
25 TODAY IS THE FIRST TIME WE HAVE RECEIVED ANY CORRECTION

1 TO THIS REPORT.

2 THE COURT: ANY WHAT TO THIS REPORT?

3 MR. HARRIS: CORRECTION.

4 THE COURT: WHY IS IT APPROPRIATE, MR.  
5 TODD?

6 MR. TODD: YOUR HONOR, WE ARE JUST TRYING  
7 TO GET THE RECORD ACCURATE. THE REPORTS CONTAIN ERRORS,  
8 AND HIS TESTIMONY WAS BASED ON -- HIS OPINION TESTIMONY,  
9 WHICH WE HAVE YET TO ELICIT, WAS BASED, IN PART, ON HIS  
10 ATTENDANCE AT THE CCBILL DEPOSITION. WE ARE JUST TRYING  
11 TO GET AN ACCURATE BASIS FOR THAT DEPOSITION FOR THE  
12 RECORD. THIS IS THE TESTIMONY AT THE DEPOSITION THAT HE  
13 ATTENDED.

14 MR. HARRIS: YOUR HONOR, THIS DOCUMENT  
15 SHOULD HAVE BEEN IDENTIFIED FOR US YESTERDAY, AND THIS  
16 CORRECTION SHOULD HAVE BEEN MADE MONTHS AGO WHEN THEY  
17 WERE AWARE THAT THE CITATION THEY MADE DID NOT SUPPORT  
18 THE CLAIM THAT THEY WERE MAKING.

19 THE COURT: THE OBJECTION IS SUSTAINED.

20 IT'S STALE NEWS, MR. TODD.

21 BY MR. TODD:

22 Q. MR. CLARK, YOU ATTENDED THE DEPOSITION OF IRA  
23 CADWELL?

24 A. YES.

25 Q. DO YOU RECALL ANY TESTIMONY FROM MR. CADWELL

1 THAT IS RELEVANT TO ONLINE MERCHANTS DECLINING TO ACCEPT  
2 OPEN GIFT CARDS?

3 A. YES.

4 Q. WHAT IS YOUR RECOLLECTION OF WHAT MR. CADWELL  
5 SAID?

6 A. THAT A CREDIT CARD NUMBER, EXPIRATION DATE, A  
7 BILLING ADDRESS AND A THREE-DIGIT CODE WERE GENERAL DATA  
8 ELEMENTS THAT WERE PROVIDED TO AUTHORIZE THE  
9 TRANSACTION.

10 Q. NOW, HOW DOES THIS RELATE TO OPEN GIFT CARDS?

11 A. GIFT CARDS DO NOT HAVE AN ADDRESS TIED TO THAT  
12 PAYMENT CARD.

13 Q. AND YOU TESTIFIED EARLIER, WHEN YOU BUY A GIFT  
14 CARD, YOU JUST PROVIDE CASH?

15 A. THAT'S CORRECT.

16 Q. SO THEY DON'T RECORD ANY INFORMATION ABOUT WHO  
17 THE CUSTOMER IS?

18 A. THAT'S CORRECT.

19 Q. SO MR. CLARK, WHAT IS YOUR OPINION -- I'M SORRY.  
20 THERE IS -- YOU MENTIONED A THIRD BASIS FOR YOUR  
21 OPINION?

22 A. YES.

23 Q. I BELIEVE IT WAS A TELEPHONE CONVERSATION.

24 CAN WE TURN TO DEFENDANT'S EXHIBIT 93,  
25 PAGE 0019, FOOTNOTE 26.

1                                   THIS IS A TELEPHONE CONVERSATION YOU HAD  
2 WITH TIM MILLER?

3       A.            THAT'S CORRECT.

4       Q.            WHO IS TIM MILLER?

5       A.            TIM MILLER IS SENIOR VICE-PRESIDENT RISK  
6 MANAGEMENT AT NOVA, WHICH IS A MAJOR MERCHANT PROCESSOR  
7 IN THE UNITED STATES.

8       Q.            AND WHEN DID YOU HAVE THAT CONVERSATION?

9       A.            IN APRIL OF THIS PAST YEAR.

10      Q.            AND WHAT DID YOU DISCUSS?

11     A.            I WAS ASKING TIM MILLER ABOUT THE STANDARD  
12 PROCESSING APPROACHES THAT ONLINE MERCHANTS USE.

13     Q.            AND BASED ON THAT CONVERSATION, WHAT DID YOU  
14 DETERMINE?

15     A.            THAT IN THE -- FOR ONLINE MERCHANTS IT WAS  
16 RELATIVELY STANDARD TO COLLECT, AS PART OF THE  
17 AUTHORIZATION RECORD, A THREE-DIGIT SECURITY CODE AND A  
18 BILLING ADDRESS.

19     Q.            MR. CLARK, WHAT IS YOUR OPINION ABOUT ONLINE  
20 MERCHANTS' ABILITY TO DECLINE OPEN GIFT CARDS?

21     A.            ONLINE MERCHANTS HAVE THE ABILITY TO DECLINE  
22 OPEN GIFT CARDS.

23     Q.            MR. CLARK, DO YOU HAVE AN OPINION ON THE PAYMENT  
24 CARD COMPANIES' ABILITY TO REQUIRE COMPLIANCE WITH  
25 APPLICABLE U.S. LAW WITH BOTH FOREIGN AND DOMESTIC

1 MERCHANTS?

2 A. YES.

3 Q. HOW DID YOU REACH THAT OPINION?

4 A. BASED ON A COUPLE OF SOURCES, DEPOSITION  
5 TESTIMONY AND A CONVERSATION WITH AN INDIVIDUAL AT  
6 AMERICAN EXPRESS.

7 Q. I'M SHOWING YOU DEFENDANT'S EXHIBIT 93, 0016.

8 CAN WE HIGHLIGHT FOOTNOTE 19?

9 MR. CLARK, YOU CITED THE TESTIMONY OF  
10 EDMUND GARABEDIAN IN THAT FOOTNOTE?

11 A. YES.

12 Q. DID YOU ATTEND THAT DEPOSITION?

13 A. YES, I DID.

14 Q. WHAT DID YOU LEARN FROM THAT DEPOSITION?

15 A. THAT AMERICAN EXPRESS HAS WORLDWIDE POLICIES  
16 THAT HAVE U.S. LAW EMBEDDED IN THEM, AND THAT MERCHANTS  
17 WORLDWIDE HAD TO BE IN COMPLIANCE.

18 Q. CAN WE HIGHLIGHT ON PAGE 0016, CAN WE HIGHLIGHT  
19 FOOTNOTE 20. YOU ALSO CITED THE DEPOSITION TESTIMONY OF  
20 JOSHUA PEIREZ?

21 A. YES.

22 Q. WHO'S JOSHUA PEIREZ?

23 A. HE IS A SENIOR INDIVIDUAL AT MASTERCARD.

24 Q. AND YOU ATTENDED THIS DEPOSITION?

25 A. YES.



1 Q. JUST FOR THE RECORD, WHO DOES EDMUND GARABEDIAN  
2 WORK FOR?

3 A. AMERICAN EXPRESS.

4 Q. JOSHUA PEIREZ -- AND CAN WE BRING UP THE  
5 TESTIMONY OF JOSHUA PEIREZ THAT WAS READ INTO THE RECORD  
6 ON OCTOBER 31, 2006.

7 AND JUST TO BE CLEAR, THIS IS THE SAME  
8 TESTIMONY THAT WAS CITED IN HIS REPORT.

9 IF WE CAN TURN TO PAGE 250, LINE 24, TO  
10 251, LINE 4.

11 MR. CLARK, CAN YOU READ THAT TESTIMONY?

12 A. THE QUESTION IS: SO, FOR EXAMPLE, IF A FOREIGN  
13 MERCHANT IS DOING BUSINESS WITH A U.S. CUSTOMER, DO THE  
14 MASTERCARD RULES REQUIRE THE FOREIGN MERCHANT TO COMPLY  
15 WITH APPLICABLE U.S. LAW?

16 ANSWER: IT WILL DEPEND ON WHETHER THAT  
17 LAW IS APPLICABLE, ASSUMING IT APPLIES, YES.

18 Q. BASED ON THIS TESTIMONY, WHAT DID YOU DETERMINE?

19 MR. HARRIS: OBJECTION, VAGUE.

20 THE COURT: SUSTAINED.

21 BY MR. TODD:

22 Q. BASED ON YOUR TESTIMONY, WHAT DID YOU DETERMINE  
23 ABOUT THE CARD COMPANY'S POLICIES REQUIRING COMPLIANCE  
24 OF FOREIGN MERCHANTS WITH APPLICABLE U.S. LAW?

25 A. THAT U.S. CARD COMPANIES HAVE THE ABILITY TO --

1 THROUGH THEIR WORLDWIDE POLICIES WITH MERCHANTS, TO HAVE  
2 THEM COMPLY WITH THOSE POLICIES.

3 Q. NOW, YOU ALSO MENTIONED A TELEPHONE  
4 CONVERSATION?

5 A. YES.

6 Q. WHO DID YOU SPEAK TO?

7 A. PAT PATTERSON.

8 Q. WHEN DID YOU SPEAK TO HER?

9 A. IN APRIL OF THIS PAST YEAR.

10 Q. WHO IS SHE?

11 A. PAT PATTERSON IS CURRENTLY RETIRED, BUT SHE  
12 SPENT 30 YEARS IN AMERICAN EXPRESS'S LEGAL OFFICE AS ONE  
13 OF THEIR LEADING ATTORNEYS. AND HER LAST ASSIGNMENT,  
14 PRIOR TO RETIRING, WAS WORKING ON WORLDWIDE MERCHANT  
15 POLICIES FOR AMERICAN EXPRESS IN THE LEGAL OFFICE OF  
16 AMERICAN EXPRESS.

17 Q. AND WHAT DID YOU DISCUSS?

18 A. I ASKED HER ABOUT SITUATIONS WHERE AMERICAN  
19 EXPRESS HAD EMBEDDED U.S. LAWS IN THEIR WORLDWIDE  
20 MERCHANT POLICIES.

21 Q. AND BASED ON WHAT SHE TOLD YOU, WHAT DID YOU  
22 DETERMINE ABOUT AMERICAN EXPRESS'S EMBEDDING OF  
23 APPLICABLE U.S. LAW INTO THEIR WORLDWIDE MERCHANT  
24 POLICIES?

25 A. SHE INDICATED THAT IT WAS APPROPRIATE THAT

1 AMERICAN EXPRESS DO THAT, AND IN FACT THEY HAD DONE THAT  
2 BEFORE. AN EXAMPLE SHE CITED WAS THE TRUTH IN LENDING  
3 ACT AND FAIR CREDIT BILLING.

4 Q. OKAY. IS THERE ANYTHING ELSE YOU CONSIDERED IN  
5 FORMING YOUR OPINION?

6 A. YES.

7 Q. I'M SHOWING YOU DEFENDANT'S EXHIBIT 93, PAGE  
8 0046.

9 A. YES.

10 Q. JUST TO BE CLEAR, THIS IS A PAGE IN YOUR REPORT?

11 A. YES, IT IS.

12 Q. AND IT SAYS AT THE TOP: EXPANDING THE MISSION  
13 OF THE FINANCIAL COALITION AGAINST CHILD PORNOGRAPHY?

14 A. YES.

15 Q. WHAT IS THE FINANCIAL COALITION AGAINST CHILD  
16 PORNOGRAPHY?

17 A. IT WAS A GROUP THAT WAS ORGANIZED THIS PAST --  
18 WENT INTO EFFECT THIS PAST MARCH. IT IS A COALITION OF  
19 THE LEADING CARD COMPANIES, INTERNET COMPANIES AND LAW  
20 ENFORCEMENT.

21 Q. WHO ARE SOME OF ITS MEMBERS?

22 A. AMERICAN EXPRESS, CHASE, CITIGROUP, MASTERCARD,  
23 VISA, WELLS FARGO, THE LEADING CARD COMPANIES.

24 Q. AND IS THERE ANY PARTICIPATION BY LAW  
25 ENFORCEMENT?

1 A. YES.

2 Q. AND WHAT ARE THE GOALS OF THE FINANCIAL  
3 COALITION?

4 A. TO IDENTIFY AND INVESTIGATE ILLEGAL TRANSACTIONS  
5 IN CHILD PORNOGRAPHY.

6 Q. AND HOW DOES IT WORK?

7 A. THEY HAVE A TIPLINE. THEY MIGHT GET TIPS FROM  
8 OTHER PLACES BUT THEY HAVE A FORMAL TIPLINE, WHICH IS  
9 EITHER AN 800 NUMBER OR AN E-MAIL, AND THEY COLLECT  
10 INFORMATION THAT WAY, AND THEN THEY WORK COOPERATIVELY  
11 TO INVESTIGATE THESE CASES.

12 Q. AND HOW ARE THE CARD COMPANIES INVOLVED IN  
13 INVESTIGATING THESE CASES?

14 A. THE CARD COMPANIES PROVIDE INFORMATION ON  
15 SUSPICIOUS TRANSACTIONS AND PROBLEM WEBSITES FOR LAW  
16 ENFORCEMENT.

17 Q. AND IS THERE ANYTHING ELSE THEY DO?

18 A. YES. IF APPROPRIATE, THEY -- THE CARD COMPANIES  
19 WILL TURN OFF WEBSITE OPERATORS FOR ILLEGAL ACTIVITY.

20 Q. AND WHAT DO YOU MEAN BY TURN OFF THE WEBSITE  
21 OPERATORS?

22 A. TERMINATE THE MERCHANT AGREEMENT THAT ALLOWS  
23 THEM TO HONOR AND ACCEPT PAYMENT THROUGH PAYMENT CARDS.

24 Q. OKAY.

25 MR. CLARK, BASED ON YOUR REVIEW OF

1 PAYMENT CARD POLICIES AND THE OTHER INFORMATION WE HAVE  
2 DISCUSSED, WHAT IS YOUR OPINION ABOUT PAYMENT CARD  
3 COMPANIES' ABILITY TO REQUIRE COMPLIANCE OF DOMESTIC AND  
4 FOREIGN MERCHANTS WITH APPLICABLE U.S. LAW?

5 A. THE CARD COMPANIES HAVE THE ABILITY TO REQUIRE  
6 COMPLIANCE FROM THE WORLDWIDE MERCHANTS.

7 Q. MR. CLARK, DO YOU HAVE AN OPINION ABOUT THE COPA  
8 COMMISSION REPORT'S FINDINGS ABOUT THE EFFECTIVENESS OF  
9 PAYMENT CARDS?

10 A. YES.

11 Q. HOW DID YOU REACH THAT OPINION?

12 A. I READ THE STUDY.

13 Q. I'M SHOWING YOU WHAT HAS BEEN MARKED AS  
14 DEFENDANT'S EXHIBIT 419 WHICH, YOUR HONOR, I BELIEVE,  
15 HAS ACTUALLY BEEN PREVIOUSLY ADMITTED TO THIS COURT,  
16 PERHAPS AS PLAINTIFFS' EXHIBIT 6, WAS THAT? ANYWAY --

17 MR. HARRIS: THAT'S RIGHT.

18 MR. VAN KWAWEGEN: THAT'S RIGHT.

19 MR. TODD: THANK YOU.

20 BY MR. TODD:

21 Q. MR. CLARK, WHAT IS THIS DOCUMENT?

22 A. THIS IS ENTITLED COMMISSION ON CHILD ON-LINE  
23 PROTECTION, WHICH IS A REPORT TO CONGRESS DATED OCTOBER  
24 20TH, 2000.

25 Q. AND THIS IS THE DOCUMENT YOU CONSIDERED IN

1 FORMING YOUR OPINION?

2 A. YES.

3 Q. ALL RIGHT. CAN WE TURN TO PAGE 2?

4 MR. HARRIS: OBJECTION, YOUR HONOR. THIS  
5 DOCUMENT WAS NOT IDENTIFIED TO US YESTERDAY AS A  
6 DOCUMENT THAT WOULD BE USED IN THE DIRECT EXAMINATION.

7 THE COURT: MR. TODD, WHAT'S YOUR  
8 RESPONSE?

9 MR. TODD: I'M SORRY, YOUR HONOR. IT IS  
10 A DOCUMENT THAT IS CLEARLY IDENTIFIED IN HIS REPORT, AND  
11 IF WE ACCIDENTALLY OMITTED THIS DOCUMENT, I DON'T SEE  
12 THE HARM TO PLAINTIFFS IN THAT THE DOCUMENT HAS IN FACT  
13 BEEN ADMITTED INTO EVIDENCE AS PLAINTIFFS' EXHIBIT 6.  
14 MR. CLARK INDEED SHOULD BE ABLE TO RESPOND.

15 THE COURT: I'M TRYING TO FIND IT. I  
16 CAN'T EVEN FIND IT. DEALING WITH THE OBJECTION, LET'S  
17 FIND OUT A LITTLE BIT MORE ABOUT HOW IT IS GOING TO BE  
18 USED.

19 MR. TODD: AGAIN, WE ARE NOT --

20 THE COURT: THE IDEA OF DISCLOSING  
21 EXHIBITS IS A COURT REQUIREMENT FOR THE EFFICIENT  
22 HANDLING OF THE PREPARATION FOR THE DAY. IT'S NOT SOME  
23 NEVER-TO-BE-BROKEN RULE. IT'S A REQUIREMENT. BUT IF  
24 THERE IS NO PREJUDICE, I'M NOT GOING TO FORCE A RULE.  
25 DOES IT APPEAR THAT THE DESIGNATION OF THE DOCUMENT WAS

1 OVERLOOKED, OR WHAT IS THE CAUSE?

2 MR. TODD: YES, YOUR HONOR. I THINK IT  
3 WAS ACCIDENTALLY OVERLOOKED.

4 MR. HARRIS: I WILL WITHDRAW THE  
5 OBJECTION.

6 MR. TODD: I WANT TO THANK COUNSEL FOR  
7 ALLOWING ME TO PROCEED.

8 BY MR. TODD:

9 Q. CAN WE TURN TO PAGE 2 --

10 THE COURT: IF YOU TELL ME WHERE THE  
11 REPORT IS IN THE GROUP OF MATERIALS YOU GAVE ME.  
12 EXHIBIT 419?

13 MR. TODD: YES, YOUR HONOR.

14 THE COURT: I CAN'T FIND IT.

15 MR. TODD: I'M SURE WE HAVE AN EXTRA  
16 COPY. WITH THE COURT'S INDULGENCE, I WILL SECURE A COPY  
17 MOMENTARILY.

18 THE COURT: IT MIGHT BE IN THE SECOND  
19 GROUP. I JUST DON'T KNOW.

20 MR. TODD: YES, YOUR HONOR. IT'S IN THE  
21 SECOND GROUP OF DOCUMENTS.

22 THE COURT: I SPY. IT'S HERE.

23 MR. TODD: I APOLOGIZE FOR THEM BEING OUT  
24 OF ORDER, YOUR HONOR.

25 THE COURT: NOT THE FIRST TIME. I'M

1 STILL ALIVE. BOTH SIDES HAVE MADE MY DAY INTERESTING IN  
2 THAT RESPECT.

3 MR. TODD: WE TRY, YOUR HONOR.

4 THE COURT: PAGE NUMBER, PLEASE.

5 MR. TODD: TURNING TO PAGE 2, YOUR HONOR,  
6 0002, BATES NUMBER.

7 THE COURT: SURE.

8 BY MR. TODD:

9 Q. MR. CLARK, WHO ARE SOME OF THE COMMISSION  
10 MEMBERS?

11 A. THERE'S A GENTLEMAN FROM THE INTERNET CONTENT  
12 RATING ASSOCIATION, A GENTLEMAN FROM SECURITY SOFTWARE  
13 SYSTEMS, A GENTLEMAN FROM ROCKY MOUNTAIN COLLEGE, A  
14 GENTLEMAN FROM SAN JOSE STATE UNIVERSITY, A GENTLEMAN  
15 FROM WALT DISNEY. THERE ARE ABOUT 18 NAMES ON THIS  
16 LIST.

17 Q. ARE ANY OF THE MEMBERS ASSOCIATED WITH THE  
18 PAYMENT INDUSTRY TO YOUR KNOWLEDGE?

19 A. NO.

20 Q. CAN WE TURN TO BATES PAGE 0014. AND WE ARE  
21 GOING TO HIGHLIGHT THE TWO SENTENCES NEAR THE BOTTOM.

22 MR. CLARK, CAN YOU READ THE TWO SENTENCES  
23 AT THE BOTTOM PARAGRAPH ALOUD?

24 A. THIS COMMISSION ACTED UNDER SIGNIFICANT TIME  
25 RESTRAINTS WITH LIMITED RESOURCES. WITH MORE TIME AND



1 APPROPRIATE FUNDING, IT WOULD HAVE CONDUCTED INDEPENDENT  
2 EVALUATIONS OF NEW TECHNOLOGIES AND HELD FURTHER  
3 HEARINGS THAT WOULD LIKELY HAVE ELICITED MORE USEFUL  
4 INFORMATION.

5 THE COURT: WHY DON'T YOU READ THE LAST  
6 SENTENCE, PLEASE?

7 MR. TODD: SURE.

8 THE COURT: PUT IT IN CONTEXT.

9 THE WITNESS: NEVERTHELESS --

10 THE COURT: NONETHELESS --

11 THE WITNESS: EXCUSE ME. NONETHELESS,  
12 THE RECORD PROVIDES AMPLE SUPPORT FOR THE EVALUATIONS  
13 AND RECOMMENDATIONS THAT FOLLOW.

14 BY MR. TODD:

15 Q. WHAT DO THOSE FIRST TWO SENTENCES MEAN TO YOU,  
16 MR. CLARK?

17 A. THAT THERE IS LIMITED TIME TO PREPARE THIS AND  
18 THERE WAS NO INDEPENDENT RESEARCH THAT WAS CONDUCTED.

19 Q. CAN WE TURN TO PAGE -- BATES PAGE 0025.

20 MR. CLARK, WHAT IS THIS SECTION OF THE  
21 REPORT?

22 A. THIS IS THE STUDY'S DISCUSSION OF CREDIT CARDS.

23 Q. TO YOUR KNOWLEDGE, IS THERE ANY OTHER DISCUSSION  
24 OF PAYMENT CARDS OR CREDIT CARDS ANYWHERE ELSE IN THE  
25 REPORT?

1 A. NO.

2 Q. MR. CLARK, DID YOU REVIEW THE COMMISSION'S  
3 CONCLUSIONS, WHICH I THINK THEY LABELLED COMMENTARY IN  
4 THIS SECTION?

5 A. YES.

6 Q. CAN WE RETURN TO DEFENDANT'S EXHIBIT 93. IF WE  
7 CAN TURN TO PAGE 0023?

8 THE COURT: ARE YOU FINISHED WITH THIS  
9 PAGE?

10 MR. TODD: WE MIGHT BRING IT BACK, YOUR  
11 HONOR, BUT I DOUBT IT.

12 MR. TODD: IF WE CAN HIGHLIGHT THE BOX AT  
13 THE BOTTOM OF THE PAGE AND ZOOM IN.

14 BY MR. TODD:

15 Q. NOW, WHAT ARE THESE TWO BOXES HERE, MR. CLARK?

16 A. ON THE LEFT-HAND SIDE, THESE ARE DIRECT QUOTES  
17 FROM THE PAGE WE JUST LOOKED AT IN THE STUDY, FROM THE  
18 COMMISSION STUDY. AND ON THE RIGHT-HAND ARE MY COMMENTS  
19 AND OPINIONS.

20 Q. OKAY.

21 MR. CLARK, STARTING WITH THE FIRST  
22 BULLET, WHAT DID THE COMMISSION FIND?

23 A. THIS IS REFERRING TO CREDIT CARDS AS YOU  
24 REMEMBER FROM THE PAGE BEFORE.

25 Q. YES.

1 A. IT QUOTES THAT -- THE EXCERPT IS "WOULD MAKE  
2 SOME CONTENT INACCESSIBLE TO THOSE USERS WITHOUT CREDIT  
3 CARDS."

4 Q. WHAT IS YOUR REACTION TO THIS FINDING?

5 A. IT IS OBSOLETE.

6 Q. WHAT'S YOUR OPINION IN RESPONSE?

7 A. RELOADABLE PREPAID CARDS CAN BE OBTAINED BY  
8 ADULTS TO USE ON THE INTERNET.

9 Q. MOVING ON TO THE SECOND BULLET POINT. WHAT DID  
10 THE COMMISSION FIND?

11 A. DELAY IN BILLING MEANS THAT UNAUTHORIZED ACCESS  
12 TO HARMFUL TO MINOR MATERIALS WOULD OCCUR.

13 Q. AND WHAT IS YOUR REACTION TO THIS FINDING?

14 A. THIS IS ALSO OBSOLETE.

15 Q. AND WHAT IS YOUR OPINION IN RESPONSE?

16 A. PARENTS CAN ACCESS TRANSACTION RECORDS AND  
17 BILLING STATEMENTS ON A VERY TIMELY BASIS.

18 Q. MOVING TO THE THIRD BULLET POINT. WHAT DID THE  
19 COMMISSION FIND?

20 A. COLLECTION OF INDIVIDUALLY IDENTIFIABLE  
21 INFORMATION AT CENTRAL POINTS VIA THE SYSTEM POSES  
22 PRIVACY RISKS.

23 Q. WHAT'S YOUR REACTION TO THIS FINDING?

24 A. AGAIN, I FELT THAT THIS WAS OBSOLETE.

25 Q. AND WHAT IS YOUR OPINION IN RESPONSE?

1 A. CONSUMERS HAVE BEEN VERY WILLING TO PURCHASE ON  
2 THE INTERNET.

3 Q. AND THE FOURTH BULLET POINT, WHAT DID THE  
4 COMMISSION FIND?

5 A. IT IS UNCLEAR HOW THIS SYSTEM WOULD APPLY TO  
6 SITES OUTSIDE THE U.S.

7 Q. AND WHAT IS YOUR REACTION TO THIS FINDING?

8 A. BASICALLY I THINK IT IS INCORRECT.

9 Q. AND WHAT IS YOUR OPINION IN RESPONSE?

10 A. CARD COMPANIES HAVE WORLDWIDE POLICIES ALLOWING  
11 THEM TO CUT OFF NONCOMPLIANT WEBSITE OPERATORS.

12 Q. AND MOVING TO THE FIFTH BULLET POINT, WHAT DID  
13 THE COMMISSION FIND?

14 A. SOME CHILDREN HAVE ACCESS TO CREDIT CARDS.

15 Q. AND WHAT IS YOUR REACTION TO THIS FINDING?

16 A. THAT IT'S AN INCOMPLETE STATEMENT.

17 Q. AND WHAT IS YOUR OPINION IN RESPONSE?

18 A. AGE OF MAJORITY LAWS EXCLUDE CHILDREN FROM  
19 OWNING CARDS EXCEPT AS CONSENTED TO AND SUPERVISED BY  
20 ADULTS.

21 Q. MR. CLARK, DO YOU HAVE AN OPINION ON THE  
22 EFFECTIVENESS OF THE USE OF TRADITIONAL PAYMENT CARDS ON  
23 THE WEB IN PREVENTING MINORS FROM ACCESSING HARMFUL TO  
24 MINORS CONTENT?

25 A. YES.

1 Q. AND WHAT IS YOUR OPINION?

2 MR. HARRIS: OBJECTION. OUTSIDE OF THE  
3 SCOPE OF THE WITNESS' EXPERTISE. HE CAN CERTAINLY  
4 TESTIFY AS TO FACTS OF PAYMENT CARDS AND WHO HAS THEM,  
5 BUT HE IS NOT AN EXPERT IN THE ADULT CONTENT ON THE WEB  
6 AND ON OBTAINING ACCESS TO THAT CONTENT.

7 MR. TODD: YOUR HONOR, I THINK THE  
8 OPINION WE ARE TRYING TO ELICIT HERE ONLY RELATES TO  
9 WHAT ROLE PAYMENT CARDS PLAY. IT HAS NOTHING TO DO WITH  
10 ANY SPECIALIZED KNOWLEDGE ABOUT ADULT CONTENT SITES.  
11 IT'S JUST IN HOW --

12 THE COURT: THERE IS NO TESTIMONY IN THE  
13 RECORD LAYING A FOUNDATION FOR WHETHER CREDIT CARD --  
14 USE OF CREDIT CARDS IN ACCESS TO ADULT WEBSITES IS THE  
15 SAME OR DIFFERENT THAN ANY OTHERS. YOU ARE PRESUMING  
16 SOMETHING IN YOUR QUESTION, PERHAPS. I DON'T KNOW  
17 WHETHER IT'S IN HIS REPORT OR NOT. MR. HARRIS CAN TELL  
18 ME.

19 MR. HARRIS: THERE IS AN OPINION IN HIS  
20 REPORT ABOUT THE EFFECTIVENESS OF PAYMENT CARDS IN  
21 PREVENTING ACCESS TO ADULT CONTENT ONLINE. SO MY  
22 OBJECTION IS NOT THAT IT'S NOT IN THE REPORT, IT'S THAT  
23 HE IS NOT QUALIFIED TO TAKE THIS ADDITIONAL STEP FROM  
24 LAYING OUT THE FACTS OF THE PAYMENT CARD INDUSTRY TO  
25 OPINING ON WHETHER THIS WILL PREVENT CHILDREN FROM

1 GETTING ACCESS TO ADULT CONTENT.

2 THE COURT: MR. TODD.

3 MR. TODD: I WILL WITHDRAW THE QUESTION,  
4 YOUR HONOR, AND TRY A NARROWER QUESTION.

5 THE COURT: ALL RIGHT.

6 BY MR. TODD:

7 Q. MR. CLARK, DO YOU HAVE AN OPINION ON THE  
8 EFFECTIVENESS OF PAYMENT CARDS IN LIMITING MINORS'  
9 ACCESS TO GOODS, SERVICES, MATERIAL OR ONLINE CONTENT ON  
10 THE WEB?

11 A. YES. TRADITIONAL PAYMENT CARDS WILL BE HIGHLY  
12 EFFECTIVE IN LIMITING THAT.

13 Q. I'M SHOWING YOU WHAT HAS BEEN MARKED AS  
14 DEFENDANT'S DEMONSTRATIVE 14.

15 MR. CLARK, IS THIS A DEMONSTRATIVE  
16 EXHIBIT THAT YOU PREPARED?

17 A. YES, THAT'S CORRECT.

18 Q. AND WHAT IS THE PURPOSE OF THIS DEMONSTRATIVE?

19 A. IT'S BASICALLY TO SUMMARIZE MY OPINION ON THE  
20 EFFECTIVENESS OF PAYMENT CARDS.

21 MR. HARRIS: YOUR HONOR, I OBJECT TO THIS  
22 REPORT -- I'M SORRY, TO THIS DEMONSTRATIVE. IT AGAIN  
23 REACHES THE CONCLUSION ABOUT ATTAINING ACCESS TO ADULT  
24 SEXUAL WEBSITES WHICH IS BEYOND ANYTHING THAT HAS BEEN  
25 LAID OUT IN THE RECORD AND IS BEYOND THIS WITNESS'S

1 EXPERTISE.

2 MR. TODD: YOUR HONOR, I GUESS IF WE  
3 COULD SORT OF MOVE THROUGH THIS A PIECE AT A TIME AND  
4 THEN RETURN TO THE STATEMENT AT THE TOP OF THE PAGE AND  
5 SEE IF WE HAVE --

6 THE COURT: THE QUESTION IS WITHDRAWN.

7 MR. TODD: YES.

8 BY MR. TODD:

9 Q. MR. CLARK, DID YOU PREPARE -- BEGINNING WITH THE  
10 BOX ON THE FAR LEFT THAT SAYS FIVE CHARACTERISTICS, DID  
11 YOU PREPARE THAT BOX?

12 A. YES, I DID.

13 Q. AND --

14 A. THESE CHARACTERISTICS ARE THE ONES THAT I  
15 MENTIONED IN MY EXPERT REPORT.

16 Q. AND WHAT ARE THESE FIVE -- FIVE CHARACTERISTICS  
17 OF WHAT?

18 A. THESE ARE FIVE UNIQUE CHARACTERISTICS OF  
19 TRADITIONAL PAYMENT CARDS.

20 Q. WHAT ARE THOSE FIVE CHARACTERISTICS?

21 A. THE FIRST ONE IS THAT THEY HAVE HIGH ADOPTION  
22 RATES BY WEBSITE OPERATORS AND CONSUMERS. THE SECOND  
23 ONE INDICATES THAT THEY HAVE WIDESPREAD ACCESS BY  
24 ADULTS. AND THE THIRD IS THAT THEY HAVE LIMITED ACCESS  
25 BY CHILDREN. AND FOUR, THE TRADITIONAL PAYMENT CARDS

1 CREATE A BILLING RECORD. AND FIVE, THAT WORLDWIDE  
2 POLICIES OF CARD COMPANIES ARE UNIQUE TO TRADITIONAL  
3 PAYMENT CARDS.

4 Q. IF WE COULD MOVE ON TO THE SECOND BOX.

5 A. THIS IS --

6 MR. HARRIS: YOUR HONOR, THERE ARE ITEMS  
7 IN THE SECOND BOX THAT I OBJECT TO. IN PARTICULAR, THE  
8 TOP PORTION OF IT IS A CHART THAT HAS BEEN ALTERED FROM  
9 THE CHART AS IT EXISTED IN THE REPORT. LANGUAGE WAS  
10 INSERTED, EXPLAINING -- GIVING AN OPINION AS TO WHAT  
11 TRADITIONAL CARDS MEANS IN THIS REPORT. THAT OPINION IS  
12 NOT IN THE REPORT AS TO WHAT THIS TERM TRADITIONAL CARDS  
13 MEANS IN THIS JUPITER RESEARCH STUDY.

14 MR. TODD: YOUR HONOR, IF WE GO BACK TO  
15 DEFENDANT'S EXHIBIT 93, BATES PAGE 0011, LOOK AT THE PIE  
16 CHART THERE, IT DOES SAY TRADITIONAL CARDS.

17 MR. HARRIS: THAT IS NOT MY OBJECTION.  
18 MY OBJECTION IS, MR. CLARK HAS ADDED AN OPINION THAT  
19 THIS JUPITER RESEARCH SURVEY, WHEN IT USES THE WORD  
20 TRADITIONAL CARDS, MEANS CREDIT, DEBIT, PREPAID  
21 RELOADABLE FOR AMEX, DINERS, DISCOVER, MASTERCARD, VISA  
22 AND OTHER MEANS, PAYPAL, ELECTRONIC CHECK AND STORED  
23 VALUE. THAT OPINION IS NOT IN HIS REPORT.

24 MR. TODD: YOUR HONOR --

25 MR. HARRIS: AND WE DO NOT KNOW IF THAT



1 IS WHAT JUPITER RESEARCH MEANT WHEN THEY USED THE TERM  
2 TRADITIONAL CARD.

3 MR. TODD: YOUR HONOR, WE ALREADY HEARD  
4 TESTIMONY THAT MR. CLARK CREATED THIS PIE CHART HIMSELF,  
5 AND SO THE VALUE OF THIS CHART IN THE REPORT, AND THIS  
6 REPRESENTS MR. CLARK'S OPINION, AND IT'S NOT BEING  
7 OFFERED FOR THE TRUTH OF THE MATTER OF WHAT AMERICAN  
8 BANKER ITSELF FOUND.

9 THE COURT: I DON'T THINK YOU CAN SLICE  
10 IT THAT THIN. I'M HAVING DIFFICULTY WITH WHAT THE  
11 RECORD WILL ULTIMATELY ALLOW A FACTFINDER TO INFER.

12 MR. TODD: SURE. WE CAN TAKE DOWN THE  
13 DEMONSTRATIVE EXHIBIT.

14 YOUR HONOR, AT THIS TIME, I MOVE THAT  
15 DEFENDANT'S EXHIBIT 93 BE ADMITTED INTO EVIDENCE, WHICH  
16 IS --

17 THE COURT: YOU DID NOT DO IT BEFORE?  
18 IT'S BEEN SO LONG, I FORGOT.

19 MR. TODD: WE HAVE YET TO MOVE IT INTO  
20 EVIDENCE, YOUR HONOR.

21 MR. HARRIS: NO OBJECTION, SUBJECT TO --

22 THE COURT: I'M CONFIDENT THAT IT WAS  
23 OFFERED, BUT I HAVE TO LOOK IT UP BECAUSE I REMEMBER MY  
24 SAYING THAT IT'S OFFERED IN THE RECORD WITHOUT OBJECTION  
25 AND PLACING THE BURDEN ON PLAINTIFFS' COUNSEL TO OBJECT

1 TO ANY INDIVIDUAL PORTIONS THEY FOUND APPROPRIATE. ALL  
2 THAT IS TAKEN BACK AT THE PLACE. WITH THOSE  
3 LIMITATIONS, DEFENDANT'S 93 IS RECEIVED INTO EVIDENCE.

4 (DEFENDANT'S EXHIBIT 93 ADMITTED INTO  
5 EVIDENCE.)

6 BY MR. TODD:

7 Q. MR. CLARK, DID YOU REVIEW THE REPORT OF MICHAEL  
8 RUSSO THAT WAS ISSUED ON MAY 8, 2006?

9 A. YES.

10 Q. DID YOU ISSUE A REBUTTAL REPORT --

11 A. YES.

12 Q. -- ON JULY 6TH, 2006?

13 A. YES.

14 Q. DID YOU REVIEW THE TESTIMONY OF MICHAEL RUSSO  
15 THAT WAS GIVEN IN THIS COURT ON OCTOBER 25TH, 2006?

16 A. YES.

17 Q. CAN WE BRING UP THE TESTIMONY OF MICHAEL RUSSO  
18 FROM OCTOBER 25TH, 2006?

19 THE COURT: PUT IT ON THE SCREEN, THE  
20 TRIAL TRANSCRIPT PORTION?

21 MR. TODD: YES, YOUR HONOR. THIS IS PAGE  
22 152, LINE 3.

23 BY MR. TODD:

24 Q. MR. CLARK, DO YOU RECALL THAT MR. RUSSO WAS  
25 ASKED IF HE KNEW THE MINIMUM INFORMATION THAT AN

1 INTERNET PAYMENT SERVICE PROVIDER NEEDS IN ORDER TO  
2 PROCESS A PAYMENT?

3 A. YES.

4 Q. AND DO YOU RECALL HE ANSWERED THAT AT A MINIMUM  
5 THEY ARE GOING TO NEED THE PAYMENT CARD NUMBER AND THE  
6 EXPIRATION DATE?

7 A. YES.

8 Q. YOU RECALL THIS TESTIMONY?

9 A. YES.

10 Q. DO YOU AGREE WITH MR. RUSSO'S ASSERTION?

11 A. NO.

12 Q. WHAT IS THE BASIS FOR YOUR DISAGREEMENT?

13 A. MY OPINION ON THE -- WHAT IS STANDARD PRACTICES  
14 FOR ONLINE MERCHANTS IN TERMS OF PROCESSING  
15 TRANSACTIONS.

16 THE COURT: REMIND ME WHAT IPSP MEANS.

17 MR. TODD: INTERNET PAYMENT SERVICE  
18 PROVIDER, YOUR HONOR.

19 THE COURT: THANK YOU.

20 MR. TODD: JUST FOR THE RECORD, THOSE ARE  
21 INTERMEDIARIES THAT WORK BETWEEN THE CARD ISSUER AND THE  
22 MERCHANTS -- I'M SORRY, NOT THE CARD ISSUER, THE  
23 MERCHANT ACQUIRING BANK AND THE MERCHANTS.

24 THE COURT: THANK YOU.

25 BY MR. TODD:

1 Q. CAN WE BRING UP PLAINTIFFS' EXHIBIT 34.

2 THE COURT: PLAINTIFFS' EXHIBIT?

3 MR. TODD: YES, PLAINTIFFS' EXHIBIT 34.

4 THIS IS IN THE BACK, YOUR HONOR, OF THE LARGE -- OF THE  
5 LARGER FOLDER.

6 THE COURT: PLAINTIFFS' 25. LET ME SEE,  
7 I ASSUME IT IS AFTER THAT.

8 MR. TODD: I CAN PROVIDE YOU ANOTHER COPY  
9 IF YOURS IS MISSING.

10 THE COURT: I FOUND IT.

11 BY MR. TODD:

12 Q. MR. CLARK, WHAT IS THIS DOCUMENT?

13 A. THIS IS PROFESSOR MANN'S REBUTTAL EXPERT REPORT  
14 ON JULY 6TH, 2006.

15 Q. TO YOUR KNOWLEDGE, DID PROFESSOR MANN ISSUE A  
16 PRINCIPAL EXPERT REPORT ON MAY 8, 2006 WHEN THE OTHER  
17 PRINCIPAL EXPERT REPORTS WERE DUE?

18 A. NO.

19 Q. MR. CLARK, ARE YOU FAMILIAR WITH PROFESSOR  
20 MANN'S REBUTTAL REPORT?

21 A. YES.

22 Q. DID YOU PREPARE A SURREBUTTAL TO THIS REBUTTAL?

23 A. NO.

24 Q. MR. CLARK, DID PLAINTIFFS OBTAIN YOUR DEPOSITION  
25 TESTIMONY ABOUT PROFESSOR MANN'S REBUTTAL?

1 A. YES, EXTENSIVELY.

2 Q. DID THEY OBTAIN YOUR OPINIONS ABOUT THE CONTENTS  
3 OF THIS REBUTTAL?

4 A. YES.

5 Q. MR. CLARK, DID YOU WITNESS THE TESTIMONY THAT  
6 PROFESSOR MANN GAVE IN THIS COURT ON NOVEMBER 6, 2006?

7 A. YES.

8 Q. AND DID YOU REVIEW THE TESTIMONY AFTERWARD?

9 A. YES, I DID.

10 Q. CAN WE BRING UP PAGE 92 OF PROFESSOR MANN'S  
11 TESTIMONY. CAN WE BEGIN ON LINE 23, CONTINUING ONTO THE  
12 NEXT PAGE. MR. CLARK, CAN YOU READ THE QUESTION  
13 BEGINNING ON PAGE -- LINE 23 AND CONTINUE THROUGH TO  
14 PAGE 93, LINE 4.

15 A. THE QUESTION IS: IN YOUR OPINION, PROFESSOR  
16 MANN, IS THE EXTENT TO WHICH CHILDREN COULD SHOP ONLINE  
17 RELEVANT TO UNDERSTANDING THE EXTENT TO WHICH THEY HAVE  
18 PAYMENT CARDS?

19 ANSWER: YES.

20 QUESTION: CAN YOU SPEAK GENERALLY WHY  
21 YOU BELIEVE IT IS RELEVANT?

22 ANSWER: BECAUSE ALMOST ALL INTERNET  
23 RETAIL TRANSACTIONS USE PAYMENT CARDS.

24 Q. MR. CLARK, TO YOUR KNOWLEDGE, DOES KNOWING THE  
25 PERCENT OF TEENS ONLINE -- I'M SORRY, TO YOUR KNOWLEDGE,

1 DOES KNOWING THE PERCENT OF TEENS THAT MAKE ONLINE  
2 PURCHASES GIVE A COMPLETE DEPICTION ABOUT TEENS' ACCESS  
3 TO CREDIT, DEBIT AND RELOADABLE PREPAID CARDS?

4 A. NO.

5 Q. CAN WE BRING UP WHAT HAS BEEN MARKED AS  
6 DEFENDANT'S EXHIBIT 405. THIS IS THE TEENAGE RESEARCH  
7 QUESTIONNAIRE, IS THAT CORRECT?

8 A. YES.

9 MR. TODD: YOUR HONOR, DO YOU NEED A  
10 MOMENT?

11 THE COURT: YES, JUST A MINUTE. 405.  
12 I'LL FIND IT.

13 MR. TODD: I HAVE ANOTHER COPY FOR THE  
14 COURT IF THAT IS EASIER.

15 THE COURT: I DON'T KNOW WHAT BATCH IT IS  
16 IN. THAT IS THE PROBLEM.

17 MR. TODD: IT'S IN THE SMALLER BATCH,  
18 YOUR HONOR.

19 THE COURT: YES, IT IS. I HAVE IT. IT  
20 WILL TAKE A MINUTE TO PULL IT OUT.

21 THE COURT: PLEASE PROCEED.

22 BY MR. TODD:

23 Q. CAN WE TURN TO PAGE 0008. CAN WE ZOOM IN ON  
24 QUESTIONS 17 AND 20? MR. CLARK, WHAT DOES QUESTION 17  
25 SAY?

1 A. HAVE YOU EVER BOUGHT ANYTHING ONLINE?

2 Q. WHAT DO THE ANSWERS SAY?

3 A. THE POSSIBILITY TO FILL IN YES OR NO.

4 Q. CAN YOU READ QUESTION 20?

5 A. YES.

6 Q. WHAT IS QUESTION 20?

7 A. HOW DID YOU PAY FOR YOUR LAST ONLINE PURCHASE?

8 Q. WHAT'S BELOW THE QUESTION?

9 A. THERE ARE SIX POSSIBILITIES TO BE CHECKED OFF.

10 ONE IS DEBIT CARD, SECOND IS OWN CREDIT CARD, THIRD IS

11 ONLINE GIFT CERTIFICATE, FOURTH IS ONLINE BUYING SERVICE

12 LIKE PAYPAL, PARENT'S CREDIT CARD, AND OTHER.

13 Q. MR. CLARK, CAN WE TURN TO PAGE -- I'M SORRY,

14 DEFENDANT'S EXHIBIT 438.

15 THE COURT: ARE YOU COMING BACK TO THIS

16 ONE AGAIN?

17 MR. TODD: NO, YOUR HONOR.

18 BY MR. TODD:

19 Q. MR. CLARK, JUST TO CONFIRM. WE HAVE DISCUSSED

20 THIS BEFORE. THESE ARE THE RESPONSES TO QUESTION 17 WE

21 ARE LOOKING AT ON THE SCREEN, IS THAT CORRECT?

22 A. YES. FROM TEENAGE RESEARCH UNLIMITED, SPRING

23 2006 SURVEY.

24 Q. WHAT DOES THIS SHOW FOR TEENS AGE 12 TO 16?

25 A. THAT 35.5 PERCENT HAVE ANSWERED YES AND 60.9

1 PERCENT HAVE ANSWERED NO. AND THERE IS A SMALL NUMBER  
2 OF NO ANSWER.

3 Q. CAN WE TURN TO PAGE 0007. CAN YOU READ SOME OF  
4 THE ANSWERS PROVIDED FOR AGE 12 TO 16. TO BE CLEAR,  
5 THIS IS -- WHAT IS THIS DOCUMENT?

6 A. THIS IS DATA FROM THE TEENAGE UNLIMITED SURVEY,  
7 SPRING 2006 DATA TABLE.

8 Q. WHAT QUESTION IS IT RESPONSIVE TO?

9 A. THE ONLINE PURCHASE PAYMENT METHOD QUESTION THAT  
10 I JUST READ IN NUMBER 20 IN THE QUESTIONNAIRE.

11 Q. OKAY.

12 FOR THE AGE 12 TO 16, WHAT RESPONSES --  
13 WHAT ARE THE PERCENT RESPONSES THAT WERE PROVIDED BY THE  
14 SURVEY RESPONDENTS?

15 A. I'M GOING TO ROUND THEM TO THE NEAREST WHOLE  
16 NUMBER. ABOUT 59 PERCENT USED PARENT'S CREDIT CARD;  
17 ABOUT 7 PERCENT, DEBIT CARD; ABOUT 11 PERCENT, ONLINE  
18 BUYING SERVICE, WHICH IS INDICATED AS PAYPAL; THEIR OWN  
19 CREDIT CARD, 1.6 OR 2 PERCENT IF YOU ROUND IT; ONLINE  
20 GIFT CERTIFICATE, NEARLY 7 PERCENT; AND THEN OTHER,  
21 ABOUT 14 PERCENT; AND THEN A SMALL NO ANSWER.

22 Q. SO, MR. CLARK, DOES KNOWING THE PERCENT OF TEENS  
23 THAT MAKE ONLINE PURCHASE GIVE A COMPLETE DEPICTION  
24 ABOUT TEENS' ACCESS TO CREDIT, DEBIT AND RELOADABLE  
25 PREPAID CARDS?



1 A. NO.

2 Q. SO DOES -- CAN WE BRING UP DEFENDANT'S EXHIBIT

3 404. MR. CLARK, DO YOU RECOGNIZE THIS DOCUMENT?

4 A. YES. THIS IS A STORY FROM INTERNET -- AN

5 ARTICLE FROM INTERNET RETAILER, DATED MAY 12, 2006.

6 Q. AND WAS THIS AN ARTICLE CITED BY PROFESSOR MANN

7 IN HIS EXPERT REPORT, TO YOUR KNOWLEDGE?

8 A. YES.

9 Q. DOES THE -- DO YOU SEE ANY INFORMATION IN THE

10 ARTICLE ABOUT THE NUMBER OF TEENS MAKING ONLINE

11 PURCHASES?

12 A. YES.

13 Q. NOW, CAN YOU TELL FROM THIS ARTICLE WHAT

14 QUESTIONS THE TEENS WERE ASKED?

15 A. NO.

16 Q. CAN YOU TELL FROM THIS ARTICLE HOW TEENS -- WHAT

17 TEENS USED TO PAY FOR THEIR ONLINE PURCHASES?

18 A. NO.

19 Q. MR. CLARK, WHAT DID YOU DO IN RESPONSE TO SEEING

20 THIS ARTICLE IN PROFESSOR MANN'S REPORT?

21 A. I BOUGHT THE STUDY.

22 Q. I'M SHOWING YOU WHAT HAS BEEN MARKED AS

23 DEFENDANT'S EXHIBIT 466. FOR THE RECORD, YOUR HONOR

24 -- MR. CLARK, WHAT IS THIS DOCUMENT?

25 MR. HARRIS: OBJECTION, YOUR HONOR. THIS

1 DOCUMENT WAS FIRST PROVIDED TO PLAINTIFFS THIS MORNING A  
2 COUPLE OF MINUTES BEFORE THE TESTIMONY STARTED. NOT  
3 ONLY IT WAS NOT DISCLOSED LAST NIGHT, BUT THIS IS THE  
4 FIRST TIME THE DOCUMENT -- THIS REPORT HAS EVER BEEN  
5 IDENTIFIED.

6 MR. TODD: YES, YOUR HONOR. I WAS JUST  
7 ABOUT TO SAY, NOTHING ABOUT THIS DOCUMENT IS BEING  
8 ADMITTED FOR THE TRUTH OF THE MATTER ASSERTED, NOR -- IT  
9 IS SIMPLY BEING ELICITED FOR REBUTTAL PURPOSES, FOR THE  
10 PURPOSES OF REBUTTING ASSERTIONS THAT PROFESSOR MANN  
11 MADE ABOUT THE NUMBER OF TEENS SHOPPING ONLINE. AND FOR  
12 THAT LIMITED PURPOSE, I WOULD LIKE TO ASK MR. CLARK SOME  
13 QUESTIONS ABOUT THAT DOCUMENT.

14 MR. HARRIS: YOUR HONOR, WE HAVE HAD ZERO  
15 NOTICE ABOUT THIS. THEY HAVE BEEN AWARE OF THIS ARTICLE  
16 THAT THEY CITED TO THAT IS PLAINTIFF EXHIBIT 404 FOR A  
17 MONTH AS IT IS CITED IN PROFESSOR MANN'S REPORT. TODAY  
18 IS NOT THE APPROPRIATE DAY TO PROVIDE US FOR THE FIRST  
19 TIME AN INDICATION THAT THEY WILL BE USING A DOCUMENT  
20 THAT HAS NEVER BEEN IDENTIFIED TO US BEFORE.

21 MR. TODD: MY ONLY RESPONSE IS THAT THIS  
22 IS SIMPLY FOR THE PURPOSES OF REBUTTING PROFESSOR MANN'S  
23 TESTIMONY.

24 THE COURT: IT DOES NOT MAKE ANY  
25 DIFFERENCE WHETHER IT'S REBUTTAL OR NOT. YOU HAVE A

1 DUTY TO DISCLOSE IT. HAVE YOU MET THE DUTY, DO YOU  
2 THINK?

3 MR. TODD: I THINK THAT FOR THIS LIMITED  
4 PURPOSE IT IS REASONABLE SINCE WE ARE NOT SEEKING  
5 MR. CLARK'S OPINION ABOUT THE -- WE ARE NOT SEEKING ANY  
6 OPINION BASED ON CONSIDERATION OF THIS MATERIAL AND WE  
7 ARE NOT CONSIDERING -- WE ARE NOT SEEKING ANY STATEMENTS  
8 ABOUT THE DOCUMENT TO BE ADMITTED FOR THE TRUTH OF THE  
9 MATTER ASSERTED, PLAINTIFFS HAVE ROUTINELY HANDED US  
10 BINDERS OF DOCUMENTS BEFORE CROSS EXAMINATION WHICH IS  
11 USED FOR, YOU KNOW, TO UNDERMINE THE CREDIBILITY OR  
12 IMPEACH THE WITNESS. I DON'T SEE HOW THIS IS ANY  
13 DIFFERENT HERE.

14 MR. HARRIS: I WOULD NOT BE OBJECTING IF  
15 THEY HAD USED THIS DOCUMENT TO CROSS EXAMINE PROFESSOR  
16 MANN. HOWEVER, THIS IS DIRECT TESTIMONY. AND TO  
17 PROVIDE US WITH THIS DOCUMENT THE FIRST TIME MINUTES  
18 BEFORE HIS TESTIMONY, A DOCUMENT THAT HAS NEVER EVEN  
19 BEEN IDENTIFIED IN THIS LITIGATION BEFORE IS  
20 INAPPROPRIATE.

21 THE COURT: DOES THIS PURPORT TO BE A  
22 STUDY THAT DR. MANN CONSIDERED?

23 MR. HARRIS: HE DID NOT LOOK AT THIS  
24 STUDY. HE CONSIDERED THE ARTICLE THAT IS EXHIBIT 404,  
25 BUT HE DID NOT LOOK AT THE STUDY.

1 MR. TODD: SO THIS ARTICLE WILL HELP  
2 ELUCIDATE THE CLAIM THAT HE MADE BASED ON THAT ARTICLE,  
3 YOUR HONOR. AGAIN, IT IS ONLY BEING -- I REALLY DON'T  
4 SEE THE DIFFERENCE.

5 THE COURT: WHAT'S THE "ONLY" MEAN? YOU  
6 ARE TRYING TO UNDERMINE THE TESTIMONY OF DR. MANN. THAT  
7 IS ONLY WHAT YOU ARE DOING.

8 MR. TODD: THAT IS CORRECT, YOUR HONOR,  
9 AND I DON'T SEE THE DIFFERENCE BETWEEN SURPRISING  
10 SOMEONE WITH A DOCUMENT IN CROSS EXAMINATION VERSUS  
11 PROVIDING THE DOCUMENT TO ASK A WITNESS TO RESPOND.

12 THE COURT: THERE IS A BIG DIFFERENCE  
13 BETWEEN USING DOCUMENTS IN CROSS AND ON DIRECT. THE  
14 OBJECTION IS SUSTAINED.

15 BY MR. TODD:

16 Q. MR. CLARK -- YOU CAN TAKE THE DOCUMENT DOWN.  
17 MR. CLARK, DO YOU RECALL PROFESSOR MANN'S OPINION THAT  
18 THE CARD COMPANIES WON'T TURN OFF FOREIGN MERCHANTS THAT  
19 REFUSE TO COMPLY WITH COPA?

20 A. YES.

21 Q. DO YOU AGREE WITH THAT OPINION?

22 A. NO.

23 Q. WHAT IS THE BASIS FOR YOUR DISAGREEMENT?

24 A. AS I HAVE TESTIFIED EARLIER, U.S. CARD COMPANIES  
25 HAVE THE ABILITY TO MAKE ALL THEIR MERCHANTS WORLDWIDE

1 COMPLY WITH THEIR CARD POLICIES.

2 Q. MR. CLARK, DID YOU ATTEND THE DEPOSITION OF  
3 GINGER BERGMAN?

4 A. YES.

5 Q. DID YOU REVIEW THE TESTIMONY OF GINGER BERGMAN  
6 AS IT WAS READ INTO THE RECORD IN THIS CASE?

7 A. YES.

8 Q. CAN WE BRING UP THE TESTIMONY OF GINGER BERGMAN  
9 FROM NOVEMBER 7TH, 2006, MR. BYRDSONG. CAN WE TURN TO  
10 PAGE 4 -- ACTUALLY LET'S SKIP AHEAD TO PAGE 31 OF THE  
11 TESTIMONY, BEGINNING ON LINE 1 THROUGH 9.

12 MR. CLARK, CAN YOU READ --

13 THE COURT: SOMETHING HAPPENED.

14 MR. TODD: WE SKIPPED AHEAD TO A  
15 DIFFERENT PART OF THE TESTIMONY ON PAGE 31, YOUR HONOR.

16 BY MR. TODD:

17 Q. MR. CLARK, CAN YOU READ MS. BERGMAN'S -- THE  
18 QUESTIONS AND ANSWERS CONCERNING MS. BERGMAN'S TESTIMONY  
19 FROM LINE 1 THROUGH LINE 9?

20 A. YES.

21 QUESTION: DOES VISA EVER CATEGORIZE SOME  
22 MERCHANTS AS HIGH RISK?

23 ANSWER: THERE ARE CERTAIN CATEGORIES OF  
24 SOME MERCHANTS THAT ARE CONSIDERED HIGH RISK.

25 QUESTION: WHAT ARE THOSE?

1                   ANSWER: MCC 5962, WHICH IS THE DIRECT  
2                   MARKETING OF TRAVEL RELATED PACKAGES; MCC 5967, WHICH IS  
3                   THE INBOUND TELEMARKETING; AND MCC 5966, WHICH IS THE  
4                   OUTBOUND TELEMARKETING.

5                   Q.           AND CAN WE PROCEED NOW TO PAGE 32, LINES 11 TO  
6                   17. MR. CLARK, CAN YOU READ THE QUESTIONS AND ANSWERS  
7                   TO MS. BERGMAN HERE.

8                   A.           YES.

9                                 QUESTION: DOES VISA IMPOSE ADDITIONAL  
10                   REQUIREMENTS ON ACQUIRERS FOR DEALING WITH HIGH-RISK  
11                   MERCHANTS?

12                                ANSWER: ACQUIRERS ARE RESPONSIBLE FOR  
13                   MONITORING HIGH-RISK MERCHANTS ON A DAILY BUSINESS  
14                   BASIS, LOOKING AT THEIR SALES ACTIVITY, CHARGEBACKS,  
15                   CREDITS, ROUTINE MONITORING THAT AS A BEST PRACTICE YOU  
16                   WOULD DO REGARDLESS OF ANY VISA REQUIREMENTS.

17                   Q.           MR. CLARK, DOES THIS TESTIMONY RELATE TO ANY OF  
18                   THE OPINIONS PROFFERED IN YOUR EXPERT REPORT?

19                   A.           YES.

20                   Q.           AND DOES IT -- DO YOU RECALL WHICH OPINION IT  
21                   RELATES TO?

22                   A.           IT SUPPORTS MY OPINION ON THE ACTIVITIES OF THE  
23                   U.S. CARD COMPANIES TO INSURE THAT THEIR MERCHANTS  
24                   COMPLY WITH POLICY.

25                   Q.           AND IF WE CAN BRING UP THE TESTIMONY OF IRA

1 CADWELL THAT WAS READ INTO THE RECORD ON OCTOBER 31,  
2 2006 AND TURN TO PAGE 188, BEGINNING ON LINE 21. COULD  
3 YOU READ BEGINNING LINE 21 THROUGH TO LINE 25.

4 A. YES.

5 QUESTION: TO THE BEST OF YOUR KNOWLEDGE,  
6 DO THE CREDIT CARD ASSOCIATIONS' REPRESENTATIVES GO TO  
7 THE WEBSITE CCBILL'S CLIENTS IN ORDER TO MONITOR  
8 COMPLIANCE WITH THE RULES SET BY THE CREDIT CARD  
9 ASSOCIATIONS?

10 ANSWER: YES.

11 Q. DOES THIS RELATE TO ANY OF THE OPINIONS  
12 PROFFERED IN YOUR EXPERT REPORT?

13 A. YES.

14 Q. WHICH OPINION?

15 A. THAT THE U.S. CARD COMPANIES ARE VERY ACTIVE IN  
16 ENSURING THAT THEIR MERCHANTS COMPLY WITH THEIR MERCHANT  
17 AGREEMENTS.

18 Q. AND HOW IS IT RELATED?

19 A. THIS IS A CARD ASSOCIATION POLICY. IT REQUIRES  
20 CHECKING IN ON CERTAIN ASPECTS OF THE WEBSITES FOR  
21 INDIVIDUALS THAT ARE ACCEPTING VISA CARDS.

22 Q. DOES IT SUPPORT/CONTRADICT YOUR OPINION?

23 A. IT SUPPORTS MY OPINION.

24 MR. TODD: IF I COULD HAVE A MOMENT TO  
25 CONFER WITH COUNSEL, YOUR HONOR.

1 THE COURT: SURELY.

2 (PAUSE.)

3 MR. TODD: I'M SORRY, YOUR HONOR. JUST A  
4 MOMENT.

5 MR. HARRIS: YOUR HONOR, I HAVE AN  
6 OBJECTION TO A PORTION OF THE TESTIMONY THAT WAS JUST  
7 READ.

8 THE COURT: WAIT AND GIVE COUNSEL THE  
9 COURTESY OF FINISHING UP.

10 MR. HARRIS: I'M SORRY. MY APOLOGIES.

11 MR. TODD: I HAVE NO MORE QUESTIONS FOR  
12 THIS WITNESS, YOUR HONOR.

13 THE COURT: DID YOU SAY NO MORE OR A FEW  
14 MORE?

15 MR. TODD: I HAVE NO MORE QUESTIONS, BUT  
16 I GUESS I WILL STAY HERE TO RESPOND TO MR. HARRIS.

17 MR. HARRIS: I WILL WITHDRAW AND JUST  
18 HANDLE IT ON CROSS EXAMINATION.

19 THE COURT: ALL RIGHT.  
20 YOU MAY CROSS EXAMINE.

21 CROSS EXAMINATION

22 BY MR. HARRIS:

23 Q. GOOD AFTERNOON.

24 A. GOOD AFTERNOON.

25 Q. BEFORE YOUR WORK IN THIS MATTER, YOU HAD NO



1       PROFESSIONAL EXPERIENCE WITH ONLINE USE OF CREDIT CARDS  
2       BY MINORS, CORRECT?

3       A.       YOU HAVE TO CLARIFY THAT QUESTION.

4       Q.       DID YOU HAVE PROFESSIONAL EXPERIENCE WITH THE  
5       ONLINE USE OF CREDIT CARDS BY MINORS BEFORE YOU BEGAN  
6       THIS ENGAGEMENT?

7       A.       I GUESS I'M CONFUSED BY WHAT YOU MEAN BY ONLINE  
8       USE BY MINORS.

9       Q.       DO YOU KNOW WHAT ONLINE MEANS?

10      A.       YES.

11      Q.       DO YOU KNOW WHAT MINORS ARE?

12      A.       DOES THIS HAVE TO DO WITH PURCHASING THINGS? I  
13      JUST DON'T UNDERSTAND. SEEKING INFORMATION --

14      Q.       WITH MINORS ENTERING CREDIT CARD INFORMATION  
15      ONLINE. DID YOU HAVE ANY PROFESSIONAL EXPERIENCE WITH  
16      THAT BEFORE THIS ENGAGEMENT?

17      A.       NO.

18      Q.       IN THAT SAME MANNER, YOU DID NOT HAVE ANY  
19      PROFESSIONAL EXPERIENCE WITH ONLINE USE OF DEBIT CARDS  
20      BY MINORS, DID YOU?

21      A.       NO.

22      Q.       AND LIKEWISE, YOU HAD NO PROFESSIONAL EXPERIENCE  
23      WITH ONLINE USE OF PREPAID CARDS BY MINORS, EITHER,  
24      RIGHT?

25      A.       NO.

1 Q. AND BEFORE YOUR WORK IN THIS MATTER, YOU HAD NO  
2 PROFESSIONAL EXPERIENCE ON THE USE OF PREPAID CARDS BY  
3 MINORS UNDER 18, PERIOD, RIGHT?

4 A. COULD YOU REPEAT THAT? THERE ARE A LOT OF  
5 CLAUSES IN THAT.

6 Q. BEFORE YOUR WORK ON THIS MATTER, YOU HAD NO  
7 PROFESSIONAL EXPERIENCE ON THE USE OF PREPAID CARDS BY  
8 CHILDREN UNDER 18?

9 A. I'M TRYING TO REMEMBER IF I HAD A COUPLE OF  
10 CONSULTING ASSIGNMENTS IN THAT AREA. I'M NOT SURE.

11 Q. NOW, YOU GAVE AN OPINION ABOUT USING TRADITIONAL  
12 PAYMENT CARDS TO PREVENT MINORS FROM ACCESSING GOODS AND  
13 SERVICES PROVIDED ON THE WEB. DO YOU REMEMBER THAT?

14 A. WHAT ARE YOU REFERRING TO?

15 Q. WELL, YOU SAID THERE WOULD BE -- USING  
16 TRADITIONAL PAYMENT CARDS WOULD BE EFFECTIVE IN  
17 PREVENTING MINORS FROM ACCESSING GOODS AND SERVICES SOLD  
18 ON THE WEB?

19 A. I GUESS I'M NOT CLEAR ON WHAT SOURCE YOU ARE  
20 QUOTING ME FROM, SO I MIGHT LOOK AT IT AND THINK ABOUT  
21 THE QUESTION.

22 Q. IT WAS JUST YOUR TESTIMONY TODAY. THAT IS ALL  
23 I'M TALKING ABOUT?

24 A. JUST TESTIMONY TODAY?

25 Q. YES.

1 A. CAN YOU REPEAT THE QUESTION?

2 Q. SURE. YOU GAVE AN OPINION THAT USING  
3 TRADITIONAL PAYMENT CARDS WOULD BE EFFECTIVE IN  
4 PREVENTING MINORS FROM ACCESSING GOODS AND SERVICES  
5 PROVIDED ON THE WEB, DO YOU REMEMBER THAT?

6 A. YES.

7 Q. OKAY. NOW, THAT OPINION DOES NOT ADDRESS  
8 WHETHER NONCOMMERCIAL WEBSITES WOULD REQUIRE PAYMENT  
9 CARDS, DOES IT?

10 A. NO.

11 Q. LIKewise, IT DOES NOT ADDRESS WHETHER PROVIDERS  
12 OF INTERNET CONTENT OTHER THAN WEBSITES WOULD REQUIRE  
13 PAYMENT CARDS, RIGHT?

14 A. I'M UNCLEAR ON THAT QUESTION.

15 Q. WELL, YOU ARE NOT -- YOU DID NOT GIVE AN OPINION  
16 CONSIDERING WHETHER INTERNET CONTENT PROVIDERS OF  
17 CONTENT SUCH AS USENET OR INSTANT MESSAGING WOULD  
18 REQUIRE PAYMENT CARDS, RIGHT?

19 A. THAT'S CORRECT.

20 Q. AND YOU AGREE THAT TRADITIONAL PAYMENT CARDS  
21 CANNOT BE USED TO VERIFY WHETHER AN INDIVIDUAL IS OVER  
22 17, RIGHT?

23 A. THAT'S CORRECT.

24 Q. AND THAT IS BECAUSE MINORS UNDER 17 IN FACT HAVE  
25 ACCESS TO CREDIT CARDS, DEBIT CARDS, AND RELOADABLE

1 PREPAID CARDS, RIGHT?

2 A. YES.

3 Q. AND IN FACT YOU ESTIMATE THAT 5.6 MILLION MINORS  
4 UNDER 17 HAVE ACCESS TO WHAT YOU CALL TRADITIONAL  
5 PAYMENT CARDS, RIGHT?

6 A. YES.

7 Q. I WOULD LIKE TO WALK THROUGH HOW YOU CALCULATED  
8 THE 5.8 MILLION FIGURE. AND YOU STARTED OFF BY  
9 CALCULATING THAT --

10 A. IF I MIGHT. I THINK IT WAS 5.6, WASN'T IT?

11 Q. I'M SORRY. YOU ARE RIGHT. THAT WILL MAKE IT  
12 EASIER TO DO THE MATH.

13 NOW, YOU STARTED OFF BY CALCULATING THAT  
14 2.8 MILLION MINORS HAVE THEIR OWN CREDIT CARD, DEBIT  
15 CARD OR RELOADABLE PAYMENT CARD, CORRECT?

16 A. YES.

17 Q. AND THEN YOU DOUBLE THIS NUMBER TO ACCOUNT FOR  
18 MINORS WHO CAN BORROW A TRADITIONAL PAYMENT CARD FOR  
19 THEIR USE ON THE INTERNET?

20 A. YES.

21 Q. AND SO THAT IS 5.6 MILLION MINORS FROM ZERO TO  
22 17 WHO HAVE A TRADITIONAL PAYMENT CARD?

23 A. THAT'S CORRECT.

24 Q. AND THEN YOU DIVIDED THAT NUMBER BY THE TOTAL  
25 NUMBER OF MINORS AGE ZERO TO 17 AS REPORTED BY THE U.S.

1 CENSUS?

2 A. YES.

3 Q. AND THAT EQUALED 8 PERCENT OF MINORS AGE 0 TO  
4 17, RIGHT?

5 A. YES.

6 Q. I WOULD LIKE TO TALK ABOUT YOUR DOUBLING  
7 ASSUMPTION. IN YOUR OPINION IT'S A REASONABLE  
8 ASSUMPTION TO DOUBLE THE NUMBER OF MINORS THAT HAVE  
9 THEIR OWN TRADITIONAL PAYMENT CARD TO ACCOUNT FOR  
10 BORROWING, RIGHT?

11 A. I DREW ON MY LENGTHY PAYMENT SYSTEMS EXPERIENCE  
12 TO DEVELOP A JUDGMENT AND AN ESTIMATE FOR THIS EXPERT  
13 REPORT.

14 Q. SO THE ANSWER IS YES, YOU DO THINK THAT IS A  
15 REASONABLE ASSUMPTION TO MAKE?

16 A. WELL, IF YOU ARE SUGGESTING THAT EVERY TIME ONE  
17 WANTS TO COME UP WITH A NEW NUMBER BY DOUBLING IT THAT  
18 IS HOW YOU DO IT, I THINK THAT INFERENCE IS WRONG.

19 Q. I'M SORRY. I'M ASKING, IN YOUR OPINION, IS IT A  
20 REASONABLE ASSUMPTION TO DOUBLE THE NUMBER OF MINORS WHO  
21 HAVE THEIR OWN TRADITIONAL PAYMENT CARD IN ORDER TO  
22 ACCOUNT FOR BORROWING OF CARDS?

23 A. IN THIS CASE, I FELT IT WAS REASONABLE TO HAVE  
24 AN EQUAL NUMBER OF MINORS THAT MIGHT BORROW.

25 Q. AND WHEN YOU ISSUED YOUR REPORT, YOUR BASIS FOR

1 DOUBLING WAS YOUR EXPERIENCE IN THE PAYMENT CARD  
2 INDUSTRY?

3 A. YES.

4 Q. CORRECT? BUT WHEN YOU MADE THIS DOUBLING  
5 ASSUMPTION, YOU DIDN'T HAVE ANY EXPERIENCE IN THE  
6 INDUSTRY IN TERMS OF HOW MANY MINORS CAN BORROW PAYMENT  
7 CARDS, RIGHT?

8 A. NO. I HAVE HAD A LOT OF EXPERIENCE IN THE  
9 PAYMENT SYSTEM INDUSTRY IN TERMS OF HOW INDIVIDUALS,  
10 BOTH ADULTS AND MINORS, USE CARDS, AND I THOUGHT THAT  
11 THIS WAS QUITE A REASONABLE ASSUMPTION.

12 Q. LET ME TRY THAT AGAIN.

13 WHEN YOU MADE THIS DOUBLING ASSUMPTION,  
14 YOU DIDN'T HAVE ANY EXPERIENCE IN THE INDUSTRY IN TERMS  
15 OF HOW MANY MINORS CAN BORROW PAYMENT CARDS, DID YOU?

16 A. I HAD NO SPECIFIC DATA.

17 Q. AND YOU HAD NO EXPERIENCE EITHER, DID YOU?

18 A. NO, I THINK THAT IS INCORRECT. I HAVE ANSWERED  
19 THAT QUESTION. I HAD NO SPECIFIC DATA. THAT IS  
20 CORRECT.

21 Q. YOU HAD NO SPECIFIC EXPERIENCE IN THE INDUSTRY  
22 IN TERMS OF HOW MANY MINORS COULD BORROW PAYMENT CARDS,  
23 DID YOU?

24 A. I HAVE INDICATED THAT BASED ON MY YEARS OF  
25 EXPERIENCE IN THE PAYMENT SYSTEMS INDUSTRY THAT I FELT

1 THAT THIS WAS A REASONABLE AND APPROPRIATE ASSUMPTION,  
2 AND THAT IS WHAT I PUT IN MY EXPERT REPORT.

3 Q. THAT WAS NOT MY QUESTION. MY QUESTION IS, YOU  
4 DID NOT HAVE ANY EXPERIENCE IN THE INDUSTRY IN TERMS OF  
5 HOW MANY MINORS CAN BORROW PAYMENT CARDS, DID YOU?

6 MR. TODD: OBJECTION, ASKED AND ANSWERED  
7 THREE OR FOUR TIMES.

8 THE COURT: I DISAGREE. HE HAS NOT  
9 ANSWERED IT YET. OVERRULED.

10 THE WITNESS: REPEAT THE QUESTION,  
11 PLEASE.

12 BY MR. HARRIS:

13 Q. YOU DID NOT HAVE ANY EXPERIENCE IN THE INDUSTRY  
14 IN TERMS OF HOW MANY MINORS CAN BORROW PAYMENT CARDS,  
15 RIGHT?

16 A. I GUESS THAT IS CORRECT.

17 Q. NOW, I WANT TO TALK ABOUT YOUR ESTIMATE THAT  
18 THERE IS 2.8 MILLION MINORS IN THE U.S. WHO HAVE THEIR  
19 OWN TRADITIONAL PAYMENT CARD. TO GET THE 2.8 MILLION  
20 FIGURE, YOU FOUND DATA THAT INDICATED THAT 2.8 MILLION  
21 MINORS AGE 12 TO 17 HAVE TRADITIONAL PAYMENT CARDS,  
22 RIGHT?

23 A. YES.

24 Q. AND YOU THEN ASSUMED THAT NO MINORS UNDER 12  
25 HAVE TRADITIONAL PAYMENT CARDS, RIGHT?

1 A. THAT'S CORRECT.

2 Q. AND SO YOU THEREFORE DECIDED THAT, IN TOTAL,  
3 THERE ARE 2.8 MILLION MINORS AGE ZERO TO 17 WHO HAD  
4 TRADITIONAL PAYMENT CARDS, RIGHT?

5 A. THAT'S CORRECT.

6 Q. AND IF IN FACT THERE ARE MINORS UNDER 12 WHO  
7 HAVE TRADITIONAL PAYMENT CARDS, THE 2.8 MILLION FIGURE  
8 WOULD INCREASE, RIGHT?

9 A. THAT IS A HYPOTHETICAL QUESTION, AND IT'S  
10 DIFFICULT TO ANSWER A HYPOTHETICAL QUESTION.

11 Q. WELL, THIS ONE IS PRETTY EASY.

12 IF THERE ARE MINORS UNDER 12 WHO HAVE  
13 TRADITIONAL PAYMENT CARDS, THE 2.8 MILLION FIGURE WOULD  
14 INCREASE, WOULDN'T IT?

15 A. HYPOTHETICALLY, YES.

16 Q. AS WOULD THE 5.6 MILLION FIGURE, RIGHT?

17 A. HYPOTHETICALLY, YES.

18 Q. AS WOULD YOUR 8 PERCENT FIGURE, RIGHT?

19 A. HYPOTHETICALLY, YES.

20 Q. LET'S TURN TO PAGE -- TURN TO YOUR REPORT, WHICH  
21 IS DEFENDANT'S 93.

22 A. WHERE AM I GOING TO FIND THAT?

23 Q. IT'S IN THE BINDER I GAVE YOU.

24 THE COURT: DOCUMENT IN THE BINDER.  
25 DEFENDANT'S 93.



1 THE WITNESS: THANK YOU.

2 THE COURT: IT'S EXCITING TO HELP SOMEONE  
3 ELSE FOR A CHANGE. USUALLY I'M ASKING SOMEONE TO HELP  
4 ME.

5 THE WITNESS: THANK YOU, YOUR HONOR.

6 BY MR. HARRIS:

7 Q. AND COULD YOU REFER TO PAGE 19 OF YOUR REPORT?  
8 THE REPORT NUMBERS, AS OPPOSED TO THE BATES NUMBERING.  
9 I'M USING AN OLD COPY THAT DOES NOT HAVE THE LATEST  
10 BATES NUMBERING ON IT.

11 A. YES.

12 THE COURT: BATES 0021.

13 MR. HARRIS: HELPFUL AGAIN. BATES 0021.

14 BY MR. HARRIS:

15 Q. NOW, IF YOU LOOK AT THE -- YOU SEE THE CHART  
16 THAT YOU HAVE TESTIFIED ABOUT?

17 A. ARE YOU REFERRING TO FIGURE 3.6.1?

18 Q. YES. IF YOU TURN TO THE LEFT OF THAT, YOU HAVE  
19 A SENTENCE THAT SAYS: FURTHER, FEW, IF ANY, CHILDREN  
20 UNDER 12 HAVE A TRADITIONAL PAYMENT CARD. DO YOU SEE  
21 THAT?

22 A. YES.

23 Q. AND IN YOUR REPORT, YOU DON'T CITE ANY SUPPORT  
24 THERE, AT THAT SENTENCE, FOR THAT, DO YOU?

25 A. NO.

1 Q. AND THERE IS NO REASON TO BELIEVE THAT 12 YEAR  
2 OLDS WOULD HAVE TRADITIONAL PAYMENT CARDS BUT ZERO 11  
3 YEAR OLDS IN THE ENTIRE COUNTRY WOULD HAVE TRADITIONAL  
4 PAYMENT CARDS, IS THERE?

5 A. I'M NOT SURE WHAT REASONING YOU WOULD USE TO  
6 CONCLUDE THAT.

7 Q. AND IN FACT YOU SAY FEW, IF ANY. YOU DON'T SAY  
8 NO CHILDREN UNDER 12 HAVE A TRADITIONAL PAYMENT CARD, DO  
9 YOU?

10 A. YES, MY STATEMENT IS FEW, IF ANY.

11 Q. I WANT TO TALK ABOUT YOUR CALCULATION THAT 2.8  
12 MINORS 12 THROUGH 17 HAVE THEIR OWN TRADITIONAL PAYMENT  
13 CARD. THE WAY YOU CALCULATED THAT 2.8 MILLION IS YOU  
14 FOUND EVIDENCE THAT 11 PERCENT OF MINORS AGE 12 TO 17  
15 HAVE A TRADITIONAL PAYMENT CARD, AND THEN YOU MULTIPLIED  
16 THAT BY THE NUMBER OF MINORS AGE 12 TO 17 ACCORDING TO  
17 THE CENSUS, WHICH IS 25.5 MILLION, AND THAT GOT YOU THE  
18 2.8 MILLION FIGURE, IS THAT RIGHT?

19 A. YES.

20 Q. SO IT'S 11 PERCENT TIMES 25.5 MILLION?

21 A. YES.

22 Q. AND STILL LOOKING AT PAGE 19 OF YOUR REPORT.  
23 THE EVIDENCE YOU CITE FOR THIS IS THE TEENAGE RESEARCH  
24 UNLIMITED DATA, RIGHT?

25 A. IN FIGURE 3.6.1, YES.

1 Q. AND THE 2006 DATA IS LOCATED IN TWO COLUMNS.

2 THE 2006 COLUMN UNDER CREDIT CARDS AND THE 2006 COLUMN

3 UNDER DEBIT CARDS, RIGHT?

4 A. YES.

5 Q. AND THEN IF YOU LOOK AT THE ROW THAT SAYS TOTAL,

6 THAT SHOWS YOU THAT 3 PERCENT OF MINORS IN 2006 HAD A

7 CREDIT CARD AND 8 PERCENT OF MINORS IN 2006 HAD A DEBIT

8 CARD?

9 A. YES.

10 Q. AND THEN YOU ADD THAT UP TO 11 PERCENT, RIGHT?

11 A. CORRECT.

12 Q. AND YOU NOTE IN THE TEXT IN FIGURE 3.6.1 THAT

13 THERE IS VIRTUALLY NO OVERLAP BETWEEN DEBIT AND CREDIT

14 PERCENTAGES, RIGHT?

15 A. YES.

16 Q. SO ACCORDING TO THE TRU DATA, 11 PERCENT OF

17 MINORS AGE 12 TO 17 CURRENTLY HAVE THEIR OWN DEBIT OR

18 CREDIT CARD, RIGHT?

19 A. THEY HAVE A CARD THAT IS AN EXTRA CARD ON THEIR

20 PARENTS' ACCOUNT OR IS CO-SIGNED BY THEIR PARENT.

21 Q. THIS CHART DOES NOT MENTION THE TERM "RELOADABLE

22 PREPAID CARDS," DOES IT?

23 A. NO.

24 Q. AND IF YOU LOOK AT YOUR REPORT, YOU LOOK AT THE

25 SENTENCE RIGHT BELOW FIGURE 3.6.1, YOUR SENTENCE SAYS:

1 MY ESTIMATE IS THAT ABOUT 11 PERCENT OF CHILDREN AGE 12  
2 TO 17 (25.5 MILLION, U.S. CENSUS) OR 2.8 MILLION  
3 CHILDREN HAVE EITHER A CREDIT CARD OR DEBIT CARD, DO YOU  
4 SEE THAT?

5 A. YES.

6 Q. AND YOUR SENTENCE DOES NOT MENTION RELOADABLE  
7 PREPAID CARDS EITHER, DOES IT?

8 A. NO.

9 Q. AND WHEN YOU WROTE YOUR REPORT, YOU DIDN'T  
10 ACTUALLY HAVE THE 2006 SURVEY REPORT FROM TEENAGE  
11 RESEARCH UNLIMITED, RIGHT?

12 A. I HAD DATA FROM THE REPORT, BUT I DIDN'T HAVE  
13 THE FULL SET OF DATA. I HAD DATA FOR THIS INFORMATION  
14 BUT NOT ALL THE DATA.

15 Q. YOUR DATA WAS BASED ON A PHONE CONVERSATION WITH  
16 AN EMPLOYEE OF TEENAGE RESEARCH UNLIMITED, RIGHT?

17 A. YES.

18 Q. YOU DID NOT ASK THIS EMPLOYEE WHETHER THE 11  
19 PERCENT FIGURE INCLUDED MINORS THAT HAVE RELOADABLE  
20 PREPAID CARDS, DID YOU?

21 A. I BELIEVE I DID. I BELIEVE WE COVERED THAT IN  
22 MY DEPOSITION.

23 Q. LET ME JUST ASK THIS AGAIN. MAKE SURE I'M  
24 GETTING YOUR TESTIMONY RIGHT TODAY. YOU DID NOT ASK  
25 THIS EMPLOYEE WHETHER THE 11 PERCENT FIGURE INCLUDED

1 MINORS THAT HAVE PREPAID CARDS, RIGHT?

2 A. I SAID I BELIEVE I DID.

3 Q. OKAY. YOU REMEMBER YOU WERE DEPOSED EARLIER IN  
4 THIS CASE?

5 A. YES, ON AUGUST 3RD.

6 Q. YOU WERE UNDER OATH, YOU TESTIFIED TRUTHFULLY,  
7 CORRECT?

8 A. I TESTIFIED TRUTHFULLY THEN AND I'M TESTIFYING  
9 TRUTHFULLY NOW.

10 Q. CAN WE PULL UP THE DEPOSITION TRANSCRIPT?

11 MR. HARRIS: YOUR HONOR, IF YOU COULD  
12 SWITCH THE MONITOR. THANK YOU.

13 COULD YOU PULL UP PAGE 136, LINE 4 TO 9.  
14 BY MR. HARRIS:

15 Q. YOU SEE THAT THE QUESTION AND ANSWER HERE WAS:

16 QUESTION: THAT WAS NOT MY QUESTION. I  
17 WANT TO KNOW WHETHER YOU ASKED HIM DOES THE CATEGORY  
18 DEBIT CARD INCLUDE PREPAID CARDS?

19 ANSWER: I'M NOT SURE THAT'S A RELEVANT  
20 QUESTION.

21 QUESTION: SO YOU DID NOT ASK THAT  
22 QUESTION?

23 ANSWER: NO.

24 THAT WAS YOUR TESTIMONY IN YOUR  
25 DEPOSITION, RIGHT?

1 A. IT APPEARS TO BE. IS THIS MY COMPLETE  
2 DISCUSSION ON THIS TOPIC IN THE TESTIMONY?

3 Q. AS FAR AS I KNOW IT IS, YES. I'M SURE IF  
4 DEFENSE COUNSEL BELIEVES THERE IS ANY OTHER THING  
5 RELEVANT IN THERE, HE WILL POINT IT OUT.

6 I WOULD LIKE TO ASK YOU ABOUT THE SURVEY  
7 DATA.

8 I BELIEVE YOU WERE ALREADY ASKED SOME  
9 THINGS ABOUT IT. COULD YOU TURN TO DEFENDANT'S EXHIBIT  
10 405?

11 A. YES.

12 Q. IF YOU COULD TURN TO THE PAGE THAT IS BATES  
13 STAMPED 0009?

14 A. YES.

15 Q. AND YOU HAVE ALREADY TESTIFIED ABOUT QUESTION  
16 D 4 ON THIS PAGE THAT STARTS: DO YOU HAVE, AND THEN  
17 SAYS: FILL IN ALL THAT APPLY?

18 A. YES.

19 Q. THIS IS THE QUESTION THAT FORMS THE BASIS FOR  
20 THE 11 PERCENT FIGURE IN YOUR REPORT, RIGHT?

21 A. YES.

22 Q. AND THE TERM PREPAID CARD DOES NOT APPEAR IN  
23 THIS QUESTION, DOES IT?

24 A. THAT'S CORRECT.

25 Q. LET'S TURN TO DEFENDANT'S EXHIBIT 406, AND TURN

1 TO PAGE 10 OF THIS. I THINK IT'S THE LAST PAGE IN THE  
2 DOCUMENT.

3 A. I'M SORRY. I GOT LOST. WHAT TAB AM I LOOKING  
4 AT?

5 Q. DEFENDANT'S EXHIBIT 406?

6 A. THANK YOU.

7 Q. TURN TO PAGE 10, WHICH IS THE LAST PAGE.

8 A. YES.

9 Q. AND THIS TABLE PROVIDES THE 2006 RESULTS THAT  
10 LED TO YOUR CONCLUSION THAT THERE WERE 11 PERCENT OF  
11 MINORS WITH A DEBIT OR CREDIT CARD, CORRECT?

12 A. YES.

13 Q. AND THE TERM PREPAID CARD DOES NOT APPEAR ON  
14 THIS, IN THIS TABLE, DOES IT?

15 A. THE WORDS PREPAID DON'T APPEAR HERE. HOW A TEEN  
16 MIGHT ANSWER QUESTIONS ABOUT DEBIT CARDS IS ANOTHER  
17 MATTER.

18 Q. IN FACT, YOU DON'T KNOW WHETHER WHEN TEENS  
19 ANSWERED THIS QUESTION, THEY WOULD HAVE ANSWERED YES IF  
20 THEY HAD A PREPAID CARD, DO YOU?

21 A. NO.

22 THE COURT: WE ARE GOING TO TAKE A  
23 TEN-MINUTE RECESS. THE COURT IS IN RECESS FOR 10  
24 MINUTES. COUNSEL ARE EXCUSED. WE ARE OFF THE RECORD.

25 (BREAK TAKEN.)

1 THE COURT: EVERYONE, PLEASE BE SEATED.

2 MR. HARRIS.

3 MR. HANSEN: MR. HARRIS IS ON HIS WAY,  
4 I'M SORRY, I APOLOGIZE.

5 MR. TODD: I CAN DO THE CROSS, YOUR  
6 HONOR.

7 MR. HARRIS: MY APOLOGIES. I'M SURE YOU  
8 COULD.

9 THE COURT: YOU MAY PROCEED.  
10 BY MR. HARRIS:

11 Q. WE WERE DISCUSSING THE TEENAGE RESEARCH  
12 UNLIMITED DATA. AND TO THE EXTENT THAT MINORS HAVE  
13 PREPAID CARDS WHICH ARE NOT REFLECTED IN THE TEENAGE  
14 RESEARCH UNLIMITED DATA, YOUR ESTIMATE THAT 11 PERCENT  
15 OF U.S. MINORS BETWEEN 12 AND 17 HAVE THEIR OWN  
16 TRADITIONAL PAYMENT CARD, THAT ESTIMATE WOULD BE TOO  
17 LOW, CORRECT?

18 A. HYPOTHETICALLY, YES.

19 Q. AS WOULD YOUR ESTIMATE THAT 2.8 MILLION MINORS  
20 AGE 0 TO 17 HAVE THEIR OWN TRADITIONAL PAYMENT CARDS,  
21 RIGHT?

22 THE COURT: WHAT'S YOUR QUESTION?

23 BY MR. HARRIS:

24 Q. THE SAME FACTUAL PREDICATE AS BEFORE. TO THE  
25 EXTENT THAT MINORS HAVE PREPAID CARDS THAT ARE NOT



1 REFLECTED IN THE TRU DATA, YOUR ESTIMATE THAT 2.8  
2 MILLION MINORS AGE 0 TO 17 HAVE THEIR OWN TRADITIONAL  
3 PAYMENT CARD WOULD BE TOO LOW, CORRECT?

4 A. WELL, I THINK THERE IS SOME OVERLAP IN THIS  
5 TABLE.

6 Q. CAN YOU ANSWER MY QUESTION FIRST?

7 A. SURE.

8 Q. SO DO YOU -- YOU AGREE THAT TO THE EXTENT THAT  
9 MINORS HAVE PREPAID CARDS WHICH ARE NOT REFLECTED IN THE  
10 TEENAGE RESEARCH UNLIMITED DATA, YOUR ESTIMATE THAT 2.8  
11 MILLION MINORS AGE 0 TO 17 HAVE THEIR OWN TRADITIONAL  
12 PAYMENT CARD, THAT ESTIMATE WOULD BE TOO LOW, CORRECT?

13 A. YES.

14 Q. WHEN YOU ISSUED YOUR REPORT, YOU DID NOT KNOW  
15 HOW MANY MINORS HAVE PREPAID CARDS, RIGHT?

16 A. I HAD A GENERAL SENSE. I DIDN'T HAVE A SPECIFIC  
17 STATISTIC THAT I COULD SOURCE.

18 Q. YOU HAD NOT SEEN ANY DATA ON THAT, HAD YOU, AT  
19 THE TIME YOU ISSUED YOUR REPORT?

20 A. NO, I THINK THAT IS INCORRECT. AS I SAID, I  
21 THINK I HAD A GENERAL SENSE, BUT I DIDN'T HAVE A  
22 SPECIFIC NUMBER THAT I COULD SOURCE WITH A GREAT DEAL OF  
23 CREDIBILITY.

24 Q. COULD WE PULL UP PAGE 90 OF THE DEPOSITION  
25 TRANSCRIPT, LINE 15 TO 19.

1 PAGE 90, LINES 15 TO 19. DO YOU SEE THE  
2 QUESTION AND ANSWER?

3 QUESTION: DO YOU KNOW HOW MANY --

4 THE COURT: IT IS NOT ON THE SCREEN.

5 MR. HARRIS: I'M SORRY. MY APOLOGIES.

6 BY MR. HARRIS:

7 Q. DO YOU SEE THE QUESTION: DO YOU KNOW HOW MANY  
8 MINORS HAVE A PREPAID CARD?

9 ANSWER: I DON'T HAVE ANY DATA WITH ME  
10 TODAY.

11 QUESTION: HAVE YOU EVER SEEN ANY DATA ON  
12 THAT?

13 ANSWER: NO.

14 THAT WAS YOUR TESTIMONY, RIGHT?

15 A. YES. IT APPEARS TO BE MY TESTIMONY, YES.

16 Q. AND IN PARTICULAR YOU DIDN'T KNOW HOW MANY  
17 MINORS HAD RELOADABLE PREPAID CARDS, DID YOU?

18 A. WELL, I WOULD LIKE TO GO BACK TO THIS. MY  
19 ANSWER WAS, I DON'T HAVE ANY DATA WITH ME TODAY.

20 THE COURT: IT'S A DIFFERENT QUESTION.

21 BY MR. HARRIS:

22 Q. SIR, THE QUESTION IS, YOU DON'T KNOW HOW MANY  
23 MINORS HAD RELOADABLE PREPAID CARDS, DID YOU?

24 THE COURT: AT THE CERTAIN TIME.

25 BY MR. HARRIS:

1 Q. AT THE TIME YOU ISSUED YOUR REPORT?

2 A. THAT'S CORRECT.

3 Q. AND YOU DIDN'T KNOW HOW MANY MINORS COULD BORROW  
4 RELOADABLE PREPAID CARDS EITHER, DID YOU?

5 A. NO, I DIDN'T HAVE A PRECISE STATISTIC AND A GOOD  
6 SOURCE FOR THAT.

7 Q. AND I BELIEVE YOU TESTIFIED TODAY THAT BECAUSE  
8 OF AGE OF CONSENT LAWS, CARD COMPANIES ARE RELUCTANT TO  
9 ISSUE CREDIT AND DEBIT CARDS TO MINORS BECAUSE OF THE  
10 FINANCIAL RISK OF LOANING THE MONEY, RIGHT?

11 A. SOUNDS SIMILAR TO SOMETHING I SAID.

12 Q. AND WITH RELOADABLE PREPAID CARDS, THE CARD  
13 COMPANIES DO NOT LOAN MONEY, DO THEY?

14 A. CORRECT.

15 Q. I WANT TO TALK ABOUT YOUR ASSUMPTION THAT  
16 WEBSITE OPERATORS WILL REFUSE TO ACCEPT NONRELOADABLE  
17 PREPAID CARDS. YOU ARE NOT CLAIMING THAT ALL WEBSITES  
18 WILL REFUSE TO ACCEPT NONRELOADABLE PREPAID CARDS, ARE  
19 YOU?

20 A. I'M NOT SURE I USED THE WORD REFUSE.

21 Q. YOUR OPINION IS JUST THAT THEY MAY DECLINE TO  
22 ACCEPT NONRELOADABLE PREPAID CARDS, RIGHT?

23 A. I THINK MY WORDING HAD TO DO WITH HAVING  
24 THE ABILITY.

25 Q. YOU ARE NOT OPINING THAT THEY WILL REFUSE TO

1 ACCEPT, RIGHT?

2 A. MY TESTIMONY HAD TO DO WITH THEIR ABILITY TO DO  
3 IT.

4 Q. AND IN FACT WHEN YOU PREPARED YOUR REPORT, YOU  
5 DIDN'T KNOW WHAT PERCENTAGE OF THE WEBSITES IN FACT  
6 DECLINED TO ACCEPT NONRELOADABLE PREPAID CARDS, ISN'T  
7 THAT RIGHT?

8 A. A PRECISE STATISTIC WITH A RELIABLE, CREDIBLE  
9 SOURCE, NO.

10 Q. AND IN FACT, WEBSITE OPERATORS ARE NOT REQUIRED  
11 BY ANYONE TO DECLINE NONRELOADABLE PREPAID CARDS, ISN'T  
12 THAT RIGHT?

13 A. IN THE PAYMENT INDUSTRY, IT'S COMMONLY ACCEPTED  
14 PRACTICE, AS A RESULT OF CARD COMPANIES', MERCHANT  
15 ACQUIRERS' AND CARD ISSUERS' REQUIREMENTS AND OPERATING  
16 POLICIES TO PROCESS A BILLING ADDRESS ON A REQUEST FOR  
17 AUTHORIZATION FOR -- BY AN ONLINE MERCHANT, AND  
18 NONRELOADABLE PREPAID CARDS DO NOT HAVE A BILLING  
19 ADDRESS CONNECTED TO THEM AND THEREFORE CANNOT BE USED.

20 MR. HARRIS: MOVE TO STRIKE AS  
21 NON-RESPONSIVE. MY QUESTION WAS --

22 THE COURT: STRIKE IT OUT. START AGAIN.  
23 BY MR. HARRIS:

24 Q. WEBSITE OPERATORS ARE NOT REQUIRED BY ANYONE TO  
25 DECLINE NONRELOADABLE PREPAID CARDS, ARE THEY?

1 A. IT'S NOT CLEAR TO ME WHETHER THERE IS AN  
2 ASSOCIATION OR CARD COMPANY POLICY OR NOT.

3 Q. IT'S NOT YOUR OPINION THAT WEBSITE OPERATORS ARE  
4 REQUIRED TO DECLINE NONRELOADABLE PREPAID CARDS, IS IT?

5 A. IT'S MY OPINION THAT WEBSITE OPERATORS ARE --  
6 FOLLOW STANDARD OPERATING PROCEDURES, AND THE WORD  
7 REQUIREMENT, I THINK, IS A CONFUSING TERM HERE.

8 Q. OKAY. YOU ARE NOT GIVING AN OPINION THAT  
9 WEBSITE OPERATORS ARE REQUIRED TO DECLINE NONRELOADABLE  
10 PREPAID CARDS, ARE YOU?

11 A. NO. I SAID I WAS TALKING ABOUT THEIR ABILITY.

12 Q. OKAY. AND THE REASON YOU THINK SOME WEBSITES  
13 MIGHT DECLINE TO ACCEPT NONRELOADABLE PREPAID CARDS IS  
14 BECAUSE SUCH CARDS DON'T HAVE A BILLING ADDRESS  
15 ASSOCIATED WITH THEM?

16 A. YES, PRECISELY.

17 Q. AND LET'S LOOK AT SOME OF THE DATA YOU REFERENCE  
18 IN YOUR REPORT. IF YOU COULD TURN TO PAGE 18 OF YOUR  
19 REPORT. I THINK THAT IS PROBABLY BATES STAMP 20.

20 THE COURT: EXHIBIT 93.

21 MR. HARRIS: YES, THANK YOU.

22 BY MR. HARRIS:

23 Q. PAGE 18, BATES STAMP 20 AND --

24 A. IS THE RIGHT PAGE UP ON THE SCREEN?

25 Q. YES, I BELIEVE SO.

1 A. THANK YOU.

2 Q. AND IF YOU COULD LOOK AT FOOTNOTE 32, WHICH IS

3 ONE OF THE PIECES OF DATA YOU CITED ON THIS ISSUE.

4 A. YES.

5 Q. THAT IS BATES STAMP 20, AND THEN INTERNAL

6 REFERENCE 18. I'M LOOKING AT FOOTNOTE 32. THIS IS,

7 DISCOVER GIFT CARD FREQUENTLY ASKED QUESTIONS, CORRECT?

8 A. THAT'S CORRECT.

9 Q. AND THIS ONLY SAYS SOME ONLINE MERCHANTS, RIGHT?

10 A. THAT IS WHAT THE QUOTE SAYS, YES.

11 Q. AND YOU DON'T KNOW WHAT PERCENTAGE SOME

12 REPRESENTS, DO YOU?

13 A. FOR DISCOVER CARDS?

14 Q. YES. YOU DON'T KNOW WHAT PERCENTAGE SOME

15 REPRESENTS, DO YOU?

16 A. NO.

17 Q. AND IT SAYS: MAY DECLINE. THIS DOES NOT

18 INDICATE THAT THEY WILL DECLINE, RIGHT?

19 A. YES, THE VERB IS MAY.

20 Q. AND LET'S LOOK AT THE PRIOR PAGE OF THE

21 REPORT -- OF YOUR REPORT, TO PAGE 17, BATES STAMP 0019,

22 AND LOOK AT ANOTHER PIECE OF EVIDENCE YOU CITED, WHICH

23 WAS FOOTNOTE 31, A DISCUSSION OF VISA GIFT CARDS. AND

24 YOU TESTIFIED ABOUT THE SENTENCE THAT STARTS,

25 ADDITIONALLY, THE BOTTOM SENTENCE ON THE PAGE. AND THAT

1 SENTENCE ONLY SAYS THAT MERCHANTS HAVE DISCRETION TO  
2 DECLINE THE CARD. IT DOES NOT SAY THAT THEY WILL  
3 DECLINE THE CARD, DOES IT?

4 A. THAT'S CORRECT.

5 Q. AND YOU CAN'T QUANTIFY WHAT PERCENTAGE OF ONLINE  
6 MERCHANTS WILL DECLINE TO PROCESS A NONRELOADABLE  
7 PREPAID CARD, CAN YOU?

8 A. COULD YOU REPEAT THE QUESTION, PLEASE?

9 Q. AND YOU CAN'T QUANTIFY WHAT PERCENTAGE OF ONLINE  
10 MERCHANTS WILL DECLINE TO PROCESS A NONRELOADABLE CARD,  
11 CORRECT?

12 A. SO YOU ARE LOOKING FOR A QUANTIFICATION OF THE  
13 NUMBER OF MERCHANTS THAT WILL DECLINE?

14 Q. YOU CAN'T QUANTIFY THAT, CAN YOU?

15 A. I'M TRYING TO UNDERSTAND WHAT YOU ARE ASKING ME  
16 TO QUANTIFY. IS IT THE NUMBER OF MERCHANTS IN THE U.S.?

17 Q. THE PERCENTAGE OF ONLINE MERCHANTS.

18 A. IS IT THE NUMBER OF TRANSACTIONS, IS IT THE  
19 DOLLAR AMOUNT? WHAT ARE YOU TRYING TO GET ME TO  
20 QUANTIFY?

21 Q. CAN YOU QUANTIFY WHAT PERCENTAGE OF ONLINE  
22 MERCHANTS WILL DECLINE TO PROCESS A NONRELOADABLE CARD?

23 A. YES.

24 Q. TODAY, YOU THINK YOU CAN QUANTIFY THAT?

25 A. IT'S NOT CLEAR TO ME WHAT I HAVE SAID BEFORE ON

1 THE MATTER.

2 Q. LET'S PULL UP YOUR DEPOSITION, PAGE 170. YOU

3 CAN START AT PAGE 170, LINE 24.

4 A. YES, I HAVE READ THAT, BUT IT STOPS THERE. I

5 DON'T SEE THE ANSWER.

6 Q. ON 170, THE QUESTION IS: SO YOU CANNOT QUANTIFY

7 FOR ME WHAT PERCENTAGE OF ONLINE MERCHANTS WILL DECLINE

8 TO -- AND THEN WE NEED TO SWITCH TO THE NEXT PAGE, 171.

9 AND THEN IT CONTINUES -- TO PROCESS A NONRELOADABLE GIFT

10 CARD, RIGHT?

11 AND THE ANSWER IS NO.

12 THAT WAS YOUR TESTIMONY, CORRECT?

13 A. YES.

14 Q. AND IN YOUR OPINION, PAYMENT PROCESSORS FOR

15 COMMERCIAL ADULT SEXUAL CONTENT WEBSITES DO NOT

16 GENERALLY ACCEPT NONRELOADABLE PREPAID CARDS, IS THAT

17 RIGHT?

18 A. COULD YOU REPEAT THE QUESTION?

19 Q. IS IT YOUR OPINION THAT PAYMENT PROCESSORS FOR

20 COMMERCIAL ADULT SEXUAL CONTENT WEBSITES DO NOT

21 GENERALLY ACCEPT NONRELOADABLE PREPAID CARDS, IS THAT

22 YOUR OPINION?

23 A. I DON'T KNOW.

24 Q. ARE YOU OFFERING AN OPINION ON WHETHER PAYMENT

25 CARD PROCESSORS FOR COMMERCIAL ADULT SEXUAL CONTENT



1 WEBSITES WILL ACCEPT NONRELOADABLE PREPAID CARDS?

2 A. YOU MEAN OCCASIONALLY, REGULARLY? I'M TRYING TO  
3 UNDERSTAND YOUR QUESTION. IT'S VERY CONFUSING.

4 Q. ARE YOU OFFERING AN OPINION ON WHETHER  
5 COMMERCIAL ADULT SEXUAL CONTENT WEBSITES WILL REGULARLY  
6 ACCEPT NONRELOADABLE PREPAID CARDS?

7 A. IT'S MY SENSE THAT MANY NON -- THAT A NUMBER OF  
8 NONRELOADABLE PREPAID CARDS ARE TURNED DOWN BY ONLINE  
9 MERCHANTS, AND IN PARTICULAR COMMERCIAL SEXUAL -- ADULT  
10 SEXUAL WEBSITES.

11 Q. ARE YOU GIVING AN OPINION ABOUT WHETHER THE  
12 PAYMENT PROCESSORS FOR COMMERCIAL ADULT SEXUAL CONTENT  
13 WEBSITES WILL ACCEPT NONRELOADABLE PREPAID CARDS?

14 A. WHAT DO YOU MEAN BY PAYMENT PROCESSOR?

15 Q. FOR INSTANCE, CCBILL.

16 A. I THINK THERE ARE DIFFERENT OPERATING APPROACHES  
17 FOR -- CCBILL HAS A NUMBER OF CLIENTS. AND I THINK  
18 PROBABLY ACROSS THEIR CLIENT BASE THEY HAVE DIFFERENT  
19 OPERATING APPROACHES FOR EACH OF THE CLIENTS. THEY  
20 MIGHT VARY IN A WIDE ARRAY OF MEASURES. I DON'T HAVE  
21 DATA ON WHAT THE INDIVIDUAL POLICIES AND PROCEDURES ARE  
22 FOR EACH OF THEIR CLIENTS. BUT MY GENERAL SENSE IS THAT  
23 ACROSS CCBILL'S CLIENT BASE, THAT A NUMBER WOULD IN FACT  
24 DECLINE.

25 Q. SO YOU THINK THERE IS A VARIATION, SOME WILL

1 ACCEPT NONRELOADABLE PREPAID CARDS AND SOME WILL  
2 DECLINE, IS THAT YOUR OPINION?

3 A. YES.

4 Q. AND YOU CAN'T QUANTIFY WHICH PERCENTAGE WILL  
5 ACCEPT VERSUS DECLINE, RIGHT?

6 A. NO.

7 Q. AND YOU TESTIFIED YOU HAVE REVIEWED THE  
8 DEPOSITION OF RON CADWELL OF CCBILL, CORRECT?

9 A. YES.

10 Q. LET'S TURN TO PLAINTIFFS' EXHIBIT 361, WHICH IS  
11 THE CADWELL DEPOSITION TRANSCRIPT.

12 THE COURT: DATED MARCH 7, 2006. THE  
13 DEPOSITION IS DATED MARCH 7, 2006.

14 MR. HARRIS: THANK YOU.

15 BY MR. HARRIS:

16 Q. IF YOU WOULD TURN TO PAGE 76, LINE 2.

17 A. YES.

18 Q. AND DO YOU SEE THE QUESTION AND ANSWER:

19 QUESTION: IN ORDER TO PROCESS THAT  
20 INFORMATION WITH THAT PREPAID CREDIT CARD OR PREPAID  
21 DEBIT CARD, I THINK YOU REFER TO THEM, YOU WOULD ONLY  
22 REQUIRE THE CREDIT CARD NUMBER AND PERHAPS -- PERHAPS  
23 THE EXPIRATION DATE?

24 ANSWER: CORRECT.

25 DO YOU SEE THAT?

1 A. YES.

2 Q. AND THAT INDICATES THAT CCBILL WOULD ACCEPT A  
3 NONRELOADABLE PREPAID CARD, ISN'T THAT RIGHT?

4 A. NO, I DON'T SEE THAT ON THIS PAGE. I DON'T SEE  
5 THE -- TALKING ABOUT RELOADABLE OR NONRELOADABLE. I  
6 JUST SEE A WORD CALLED PREPAID. SO IT'S DIFFICULT FOR  
7 ME TO KNOW WHAT TYPE OF PREPAID CARDS WE ARE TALKING  
8 ABOUT HERE.

9 Q. YOU HAVE GIVEN TESTIMONY THAT THE REASON SOME  
10 MERCHANTS MIGHT DECLINE NONRELOADABLE PREPAID CARDS IS  
11 BECAUSE THEY DO NOT HAVE AN ADDRESS, RIGHT?

12 A. CORRECT.

13 Q. AND THIS INDICATES THAT CCBILL ONLY REQUIRES  
14 CREDIT CARD NUMBER AND PERHAPS THE EXPIRATION DATE,  
15 DOESN'T IT?

16 A. I'M TRYING TO UNDERSTAND WHAT A PREPAID CREDIT  
17 CARD IS FIRST. THAT IS VERY CONFUSING.

18 Q. THIS INDICATES THAT CCBILL ONLY REQUIRES A  
19 CREDIT CARD NUMBER AND PERHAPS THE EXPIRATION DATE,  
20 DOESN'T IT?

21 A. WELL, I'M VERY CONFUSED BY THE TERMS IN HERE.  
22 THESE ARE NOT TERMS THAT I'M REGULARLY AWARE OF. I  
23 DON'T KNOW WHAT A PREPAID CREDIT CARD IS. WHAT IS THAT?

24 Q. THIS INDICATES THAT THEY WOULD ACCEPT  
25 NONRELOADABLE PREPAID CARDS, DOESN'T IT?

1 A. NO, IT DOESN'T.

2 Q. LET'S PULL UP --

3 A. I'M HAVING TROUBLE UNDERSTANDING THE LANGUAGE  
4 HERE, AND I THINK IT'S RATHER UNFAIR THAT YOU DON'T  
5 QUALIFY -- EXPLAIN THE LANGUAGE SO I CAN ANSWER THE  
6 QUESTION TRUTHFULLY.

7 Q. LET'S PULL UP YOUR DEPOSITION TRANSCRIPT AT 168,  
8 PAGE 168.

9 A. I SHOULD BE LOOKING AT THE SCREEN NOW?

10 Q. YES. LINE 9, DO YOU SEE -- START WITH LINE 2.

11 QUESTION: IN ORDER TO PROCESS THAT  
12 INFORMATION FOR THAT PREPAID CARD OR PREPAID DEBIT CARD,  
13 I THINK YOU REFER TO THEM, YOU WOULD ONLY REQUIRE THE  
14 CREDIT CARD NUMBER AND PERHAPS THE EXPIRATION DATE?

15 ANSWER: CORRECT.

16 DO YOU SEE THAT?

17 ANSWER: YES.

18 THEN COULD YOU CONTINUE ON TO FOLLOW THE  
19 REST OF THAT FROM LINE 8 ON TO LINE 16.

20 QUESTION: THAT INDICATES THAT CCBILL  
21 WILL ACCEPT A PREPAID CARD WITH JUST A CREDIT CARD AND  
22 PERHAPS THE EXPIRATION DATE, RIGHT?

23 ANSWER: AS I READ THESE COUPLE LINES,

24 YES.

25 QUESTION: INDICATING THAT THEY WOULD

1 ACCEPT A NONRELOADABLE PREPAID CARD, RIGHT?

2 ANSWER: AS I READ THESE COUPLE LINES,

3 THAT WOULD BE THE CONCLUSION YOU WOULD DRAW.

4 THAT WAS YOUR TESTIMONY AT YOUR

5 DEPOSITION, CORRECT?

6 A. YES. AND IT LOOKS LIKE I READ THE INFORMATION

7 TOO QUICKLY BECAUSE NOW I'M TOTALLY CONFUSED ON THIS

8 PAGE ALSO, AND THE QUESTION, THAT INDICATES THAT CCBILL

9 WILL ACCEPT A PREPAID CARD WITH JUST A CREDIT CARD.

10 WHAT DOES THAT MEAN? DOES THAT MEAN CREDIT CARD NUMBER?

11 DOES THAT MEAN CREDIT CARD? I GUESS I READ THIS TOO

12 HASTILY. THIS IS IN AUGUST FOR THE DEPOSITION, I GUESS.

13 Q. AT YOUR DEPOSITION, YOU WERE ABLE TO DRAW A

14 CONCLUSION BASED ON READING THIS SECTION OF THE CCBILL

15 TRANSCRIPT, RIGHT?

16 A. AS I SAID, I THINK I ACTED TOO HASTILY IN THAT

17 LINE OF QUESTIONING AND HAVING YOU NOW REFERRING ME BACK

18 TO THIS, IT'S HELPFUL, BECAUSE I WAS MOVING TOO HASTILY

19 AT THAT TIME. I DON'T UNDERSTAND SOME OF THE WORDS

20 THERE, AND I DON'T UNDERSTAND SOME OF THE WORDS IN THE

21 EARLIER INDICATION THAT YOU SHOWED ME. SO THESE ARE

22 WORDS THAT I GUESS I MISTAKINGLY READ THROUGH. I

23 APOLOGIZE FOR DOING THAT, BUT I MOVED TOO HASTILY. I'M

24 SORRY.

25 Q. OKAY. OTHER THAN REQUIRING A BILLING ADDRESS,

1       THERE IS NO WAY FOR A WEBSITE TO DISTINGUISH BETWEEN  
2       RELOADABLE PREPAID AND NONRELOADABLE PREPAID CARDS,  
3       RIGHT?

4       A.       I'M NOT SURE.  THERE IS A LARGE NUMBER OF TYPES  
5       OF PREPAID CARDS SO I'M GOING TO HAVE TO THINK ABOUT  
6       THAT.  RESTATE THE QUESTION AND LET ME THINK ABOUT IT  
7       FOR A MINUTE.

8       Q.       SURE.  OTHER THAN THE BILLING ADDRESS, IS THERE  
9       ANY WAY FOR A WEBSITE OPERATOR TO DISTINGUISH BETWEEN A  
10      PREPAID RELOADABLE VERSUS NONRELOADABLE CARD?

11     A.       NONRELOADABLE PREPAID CARDS, THESE USUALLY HAVE  
12     SMALL DOLLAR AMOUNTS ON THEM.  SO WITH A DOLLAR AMOUNT  
13     OF 29 OR 30 BUCKS OR 40 BUCKS ON IT.  MANY OF THOSE  
14     CARDS DON'T WORK BECAUSE THE PERSON HAS ALREADY BOUGHT  
15     SOME MONEY, AND THERE IS LIMITED MONEY LEFT.  AND SO  
16     SOME OF THOSE TRANSACTIONS WON'T EVEN GO THROUGH, SO THE  
17     MERCHANT WILL HAVE AN AUTHORIZATION REQUEST AND THEN  
18     THAT AUTHORIZATION WILL FAIL.  AND WHETHER THE MERCHANT  
19     CAN CONCLUDE WHAT TYPE OF CARD THAT WAS, I'M NOT SURE.

20     Q.       SO YOU DON'T KNOW WHETHER THERE IS ANY WAY OTHER  
21     THAN REQUIRING A BILLING ADDRESS FOR A MERCHANT TO  
22     DISTINGUISH BETWEEN RELOADABLE PREPAID AND NONRELOADABLE  
23     PREPAID CARDS, RIGHT?

24     A.       YES.  THAT IS CLEARLY ONE OF THE KEY DIFFERENCES  
25     BETWEEN THE TWO.

1 Q. YOU DON'T --

2 A. BECAUSE A BILLING -- I'M SORRY.

3 Q. I THOUGHT YOU WERE FINISHING YOUR ANSWER.

4 A. IT'S CLEARLY ONE OF THE DIFFERENCES BECAUSE MANY  
5 ONLINE MERCHANTS REQUIRE A BILLING ADDRESS FOR  
6 AUTHORIZATION. AND IF A CARD DOES NOT HAVE A BILLING  
7 ADDRESS, IT'S NOT GOING TO GO THROUGH FOR AUTHORIZATION.

8 Q. YOU DON'T KNOW ANY OTHER WAY FOR A WEBSITE  
9 OPERATOR TO DISTINGUISH BETWEEN A PREPAID RELOADABLE  
10 VERSUS NONRELOADABLE CARD, RIGHT?

11 A. THAT IS THE MAJOR DIFFERENCE AT THE MOMENT THAT  
12 I CAN THINK OF.

13 Q. AND IT'S YOUR OPINION THAT THE TERM DEBIT  
14 ACCOUNT INCLUDES NONRELOADABLE PREPAID CARDS, RIGHT?

15 A. IT'S MY OPINION THAT THERE IS A GOOD DEAL OF  
16 CONFUSION IN THE MARKETPLACE OVER SOME OF THESE TERMS  
17 THAT WE ARE TALKING ABOUT TODAY AND THAT CARD COMPANIES  
18 TALK ABOUT. I THINK WE HAVE DISCUSSED ABOUT THIS --  
19 DISCUSSED THIS BEFORE IN ONE OF THE DEPOSITIONS, IT  
20 MIGHT HAVE BEEN WITH PROFESSOR MANN, THAT IN FACT A  
21 PREPAID DEBIT CARD SAYS DEBIT ON IT. IT DOES NOT SAY  
22 PREPAID DEBIT. SO IS IT POSSIBLE FOR A CONSUMER TO GET  
23 A CARD THAT SAYS THE WORD DEBIT ON IT, AND THEY MIGHT  
24 THINK IT'S A DEBIT CARD? THEY MIGHT THINK IT'S A  
25 PREPAID DEBIT CARD. THERE'S A LOT OF CONFUSION AROUND

1 THE TERMS DEBIT CARD AND PREPAID DEBIT CARD.

2 MR. HARRIS: MOVE TO STRIKE AS

3 NON-RESPONSIVE.

4 BY MR. HARRIS:

5 Q. MY QUESTION WAS, IN YOUR OPINION WHETHER THE  
6 TERM DEBIT ACCOUNT INCLUDES NONRELOADABLE PREPAID CARDS.

7 A. NOT INSIDE THE CARD COMPANIES, BUT I HAVE TWO  
8 OPINIONS ON THAT. WITHIN THE OFFICIAL LANGUAGE WITHIN  
9 THE CARD COMPANIES IS THAT IS NOT INCLUDED, BUT THE  
10 OFFICIAL LANGUAGE FOR CONSUMERS IN THIS COUNTRY, THERE  
11 IS DIFFERENT VOCABULARIES THAT IS USED BY THE CONSUMER  
12 POPULATION. SO IF YOU ARE TALKING ABOUT U.S. CARD  
13 COMPANIES, THE ANSWER WOULD BE NO. IF YOU ARE TALKING  
14 ABOUT CONSUMERS, THERE IS A WIDE ARRAY OF TERMS FOR SOME  
15 OF THESE CARDS.

16 Q. LET'S PULL UP YOUR DEPOSITION TRANSCRIPT, PAGE  
17 111. YOU CAN GO TO LINES 5 TO 25. HIGHLIGHT THOSE.

18 DO YOU SEE THE QUESTION AND ANSWER:

19 QUESTION: THAT WASN'T EXACTLY MY  
20 QUESTION. MY QUESTION WAS IF YOU THINK PREPAID CARDS  
21 FALL UNDER THE TERM DEBIT ACCOUNT AS IT'S USED IN THE  
22 AFFIRMATIVE DEFENSE SECTION OF COPA?

23 MR. TODD: OBJECTION. THIS IS DIFFERENT  
24 THAN THE TESTIMONY HE WAS JUST ELICITING BEFORE. THERE  
25 WAS NO MENTION OF COPA BEFORE.



1                   MR. HARRIS: I ASKED ABOUT THE TERM DEBIT  
2                   ACCOUNT.

3                   MR. TODD: YES, THERE WAS NO CONTEXT FOR  
4                   THAT TERM, YOUR HONOR, AND I THINK THE WITNESS WAS  
5                   SOMEWHAT CONFUSED.

6                   MR. HARRIS: I'M HAPPY TO ASK THE  
7                   QUESTION AGAIN.

8                   THE COURT: I'M TRYING TO FIGURE OUT  
9                   WHETHER YOU ARE GOING TO TRY TO SHOW THAT THERE WAS SOME  
10                  -- POSSIBLY TO GET AN ANSWER YOU WANT, OR IS THERE SOME  
11                  INCONSISTENCY IN HIS ANSWERS. AND I WILL ALLOW YOU TO  
12                  DO THAT. WHETHER THERE ARE OR WHAT WEIGHT TO BE GIVEN  
13                  TO THAT, I DON'T KNOW. I'M JUST MANAGING THE INFLUX OF  
14                  EVIDENCE. THE OBJECTION IS OVERRULED.

15                  BY MR. HARRIS:

16                  Q.            SO WOULD YOU LOOK AT THE QUESTION AND ANSWER  
17                  SERIES:

18                  QUESTION: THAT WASN'T EXACTLY MY  
19                  QUESTION. MY QUESTION WAS, IF YOU THINK PREPAID CARDS  
20                  FALL UNDER THE TERM DEBIT ACCOUNT AS IT'S USED IN THE  
21                  AFFIRMATIVE DEFENSE SECTION OF COPA.

22                  ANSWER: LET ME LOOK AT THE COPA STATUTE.  
23                  I'M NOT SURE. IS THIS THE SECTION YOU'RE REFERRING TO  
24                  (INDICATING)?

25                  QUESTION: YES.

1 (WITNESS REVIEWED THE DOCUMENT.)

2 ANSWER: I WOULD ASSUME THAT DEBIT  
3 ACCOUNT MEANS HERE BOTH A DEBIT CARD AND A PREPAID CARD.

4 QUESTION: AND IT WOULD INCLUDE BOTH  
5 RELOADABLE AND NONRELOADABLE PREPAID CARDS?

6 ANSWER: I HAVE NO IDEA.

7 COULD YOU CONTINUE ON FROM LINE 19 TO 25.

8 QUESTION: YOU JUST SAID YOU ASSUME THAT  
9 IT INCLUDES BOTH A DEBIT CARD AND A PREPAID CARD, RIGHT?

10 ANSWER: YES.

11 QUESTION: SO WHEN YOU JUST SAID PREPAID  
12 CARD, WERE YOU THINKING OF RELOADABLE AND NONRELOADABLE  
13 PREPAID CARDS?

14 ANSWER: I GUESS I WOULD ASSUME IT  
15 INCLUDES THAT.

16 THAT WAS YOUR TESTIMONY AT YOUR  
17 DEPOSITION, RIGHT?

18 MR. TODD: OBJECTION, RELEVANCE. THE  
19 WITNESS IS NOT AN EXPERT ON COPA'S MEANING AND HAS NOT  
20 PROFFERED ANY OPINION ON HOW THE STATUTE APPLIES IN THIS  
21 CASE. IN FACT, WHEN WE EVEN GOT NEAR THAT SUBJECT THE  
22 PLAINTIFFS STRONGLY OBJECTED.

23 THE COURT: MR. HARRIS, WHAT IS THE  
24 PURPOSE FOR YOUR REFERRING TO THE TRANSCRIPT?

25 MR. HARRIS: HE WAS PROFFERED AS AN

1 INDUSTRY EXPERT. I WOULD LIKE TO KNOW WHAT HIS OPINION  
2 OF THE TERM IS AS AN INDUSTRY EXPERT. IT'S A TERM THAT  
3 IS NOT DEFINED IN COPA. IT'S CERTAINLY RELEVANT WHAT HE  
4 THINKS THE TERM MEANS.

5 THE COURT: WHAT TERM PRECISELY ARE YOU  
6 AFTER?

7 MR. HARRIS: THE TERM DEBIT ACCOUNT,  
8 WHICH IS A TERM IN COPA. IT'S NOT DEFINED IN COPA, AND  
9 SO THE TESTIMONY OF INDUSTRY EXPERTS AS TO WHAT THAT  
10 TERM MEANS IS SOME EVIDENCE FOR THE COURT.

11 THE COURT: CROSS EXAMINATION, SO THE  
12 OBJECTION IS OVERRULED.

13 BY MR. HARRIS:

14 Q. NOW, YOU GAVE SOME TESTIMONY ABOUT CARD  
15 STATEMENTS?

16 A. DID I ANSWER THAT QUESTION?

17 Q. I'M SORRY. THE QUESTION WAS, WAS THIS YOUR  
18 TESTIMONY AT YOUR DEPOSITION?

19 A. YES. BUT I THINK SITTING HERE TODAY I HAVE A  
20 LITTLE MORE WISDOM THAN I DID ON AUGUST 3RD. THIS IS A  
21 THIRD AUDIENCE. AND I MISTAKENLY THOUGHT I COULD  
22 PRESUME WHAT THE LEGISLATORS THOUGHT WHEN THEY WERE  
23 DRAFTING THE COPA DOCUMENT, WHAT THIS TERM MEANT. I  
24 MISUNDERSTOOD. I THOUGHT YOU WERE ASKING ME, AS YOU  
25 JUST DID, AS AN INDUSTRY EXPERT. BUT THAT IS NOT REALLY

1           WHAT YOU ARE ASKING ME. YOU ARE ASKING ME TO INTUIT  
2           WHAT WAS IN A COPA DOCUMENT BY LEGISLATORS, AND WHAT  
3           THEIR TERMS MEANT. AND I THINK I WAS MISTAKEN TO EVEN  
4           ANSWER YOUR QUESTION BECAUSE IT'S NOT CLEAR. I DON'T  
5           KNOW WHAT THEY MEANT AND --

6                         THE COURT: EXCUSE ME, SIR. ALL YOU WERE  
7           ASKED TO ANSWER WAS THIS YOUR TESTIMONY. IT EITHER WAS  
8           OR IT WASN'T.

9                         THE WITNESS: IT'S CLEAR, IT'S TYPED  
10          HERE. IT IS MY TESTIMONY.

11         BY MR. HARRIS:

12         Q.           OKAY. YOU GAVE SOME TESTIMONY --

13                         THE COURT: IF COUNSEL WANTS TO ASK YOU  
14          MORE QUESTIONS ABOUT THAT, HE CAN DO THAT.

15                         THE WITNESS: THANK YOU.

16         BY MR. HARRIS:

17         Q.           YOU TESTIFIED ABOUT PAYMENT CARD STATEMENTS  
18          BEING ISSUED AND THEM GOING TO THE PARENTS IN SOME  
19          CONTEXT, DO YOU REMEMBER GIVING THAT TESTIMONY?

20         A.           I DON'T KNOW WHAT YOU'RE REFERRING TO. I HAVE  
21          SPOKEN ON MANY OCCASIONS ABOUT BILLING STATEMENTS GOING  
22          TO PARENTS.

23         Q.           OKAY. NOW, A PAYROLL CARD, A RELOADABLE PAYROLL  
24          CARD, SUCH AS THOSE ISSUED BY MCDONALDS TO THEIR  
25          EMPLOYEES, IS ISSUED IN THE NAME OF THE EMPLOYEE,

1 CORRECT?

2 A. YES, THAT'S CORRECT.

3 Q. IF THE EMPLOYEE IS A MINOR, IT WOULD GO -- IT  
4 WOULD BE ISSUED IN THE NAME OF THE MINOR, CORRECT?

5 A. THAT'S CORRECT.

6 Q. AND SO THAT BILLING STATEMENT WOULD GO TO THE  
7 MINOR, RIGHT?

8 A. THAT'S CORRECT.

9 Q. AND LIKEWISE, IF A MINOR OBTAINS A RELOADABLE  
10 PREPAID CARD IN THEIR OWN NAME, THE STATEMENT WOULD GO  
11 TO THE MINOR, RIGHT?

12 A. THAT'S CORRECT, BUT THAT DOESN'T MEAN AN ADULT  
13 WOULD NOT BE AWARE OF THAT CARD.

14 Q. AND IF A MINOR OBTAINED A CREDIT CARD WITHOUT  
15 THEIR PARENTS' CONSENT, THAT STATEMENT WOULD GO TO THE  
16 MINOR AS WELL, CORRECT?

17 A. REPEAT THE QUESTION.

18 MR. TODD: OBJECTION TO THE HYPOTHETICAL.

19 THE COURT: CROSS EXAMINATION. YOU CAN  
20 ASK HYPOTHETICALS OF EXPERTS ON CROSS EXAMINATION.

21 MR. HARRIS: LET ME REPEAT THE QUESTION  
22 FOR YOU.

23 THE WITNESS: THANK YOU.

24 BY MR. HARRIS:

25 Q. IF A MINOR RECEIVED A CREDIT CARD -- IF A MINOR

1 WAS -- LET ME STRIKE AND START AGAIN.

2 IF A MINOR WAS ISSUED A CREDIT CARD  
3 WITHOUT THEIR PARENTS' KNOWLEDGE OR CONSENT, THAT  
4 STATEMENT WOULD GO TO THE MINOR, CORRECT?

5 A. THAT'S CORRECT. THAT JUST HAPPENS VERY  
6 SELDOMLY.

7 Q. AND A DESCRIPTION ON THE PAYMENT STATEMENT WHEN  
8 SOMEONE VISITS AN ADULT WEBSITE MIGHT NOT IDENTIFY THE  
9 WEBSITE AS HAVING ADULT SEXUAL CONTENT, CORRECT?

10 A. THAT'S CORRECT.

11 Q. IT'S YOUR OPINION THAT VISA AND MASTERCARD WOULD  
12 NEED TO CHANGE THEIR POLICIES BEFORE THEY WOULD ALLOW  
13 ZERO DOLLAR TRANSACTIONS, CORRECT?

14 A. WHAT POLICIES ARE YOU REFERRING TO?

15 Q. VISA AND MASTERCARD CURRENTLY HAVE POLICIES THAT  
16 DO NOT ALLOW ZERO DOLLAR TRANSACTIONS, CORRECT?

17 A. YES.

18 Q. AND YOU HAVE NO EVIDENCE INDICATING THAT THE  
19 PAYMENT CARD COMPANIES ARE INTENDING TO CHANGE THOSE  
20 POLICIES REGARDING ZERO DOLLAR TRANSACTIONS, CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND IN ISSUING YOUR REPORT, YOU HAD NO OPINION  
23 AS TO WHETHER OR NOT THE PAYMENT CARD COMPANIES WOULD  
24 CHANGE THEIR POLICIES REGARDING ZERO DOLLAR  
25 TRANSACTIONS, CORRECT?

1 A. THAT WAS MY STATEMENT IN THE DEPOSITION -- OR  
2 THAT WAS WHERE? WHERE DID YOU SAY IT IS?

3 Q. WHEN YOU ISSUED YOUR REPORT, YOU HAD NO OPINION  
4 ON THAT, ON WHETHER THEY WOULD CHANGE THEIR POLICIES,  
5 CORRECT?

6 A. I THINK THAT IS CORRECT, YES.

7 Q. AND EVEN IF THE PAYMENT CARD COMPANIES WERE TO  
8 CHANGE THEIR POLICIES TO ALLOW ZERO DOLLAR TRANSACTIONS,  
9 IT WOULD NOT PROCESS THEM FOR FREE, CORRECT?

10 A. YES. IN FACT YOU AND I DISCUSSED THAT AT MY  
11 DEPOSITION.

12 Q. AND IN YOUR OPINION, THE WEBSITE WOULD HAVE TO  
13 PAY THESE COSTS FOR PROCESSING, CORRECT?

14 A. YES, THAT WOULD LIKELY BE THE SITUATION.

15 Q. AND EVEN IF ZERO DOLLAR TRANSACTIONS WERE  
16 ALLOWED, YOU DON'T KNOW WHETHER A ZERO DOLLAR  
17 TRANSACTION WOULD APPEAR ON A BILLING STATEMENT,  
18 CORRECT?

19 A. IT COULD VERY EASILY.

20 Q. YOU DON'T KNOW WHETHER IT WOULD APPEAR OR NOT,  
21 CORRECT?

22 A. I DON'T UNDERSTAND THAT QUESTION.

23 Q. YOU DON'T KNOW WHETHER A ZERO DOLLAR TRANSACTION  
24 WOULD APPEAR ON A BILLING STATEMENT, DO YOU?

25 A. IF THE ZERO DOLLAR TRANSACTION WAS CREATED BY

1 THE CARD COMPANIES THEN IN FACT IT WOULD APPEAR ON THE  
2 BILLING STATEMENT.

3 Q. OKAY. LET'S PULL UP YOUR DEPOSITION AT PAGE  
4 186, BEGINNING AT LINE 25. BLOW UP LINE 25.

5 QUESTION: WELL, SINCE THEY HAVE NEVER  
6 HAPPENED, YOU -- AND WE HAVE TO GO ON.

7 MR. TODD: OBJECTION. CAN WE SEE THE  
8 QUESTION BEFORE? IT APPEARS THAT THE ANSWER MIGHT BE  
9 RELEVANT TO THIS LINE OF QUESTIONING.

10 BY MR. HARRIS:

11 Q. WHY DON'T WE BACK UP TO -- I'M SORRY, TO PAGE  
12 186, STARTING AT LINE 17 TO THE END OF THE PAGE, AND  
13 THEN WE WILL FLIP ON TO 187.

14 YOU SEE THE QUESTION AND THE ANSWER  
15 SERIES?

16 QUESTION: AND YOU'VE NEVER SEEN A ZERO  
17 DOLLAR TRANSACTION APPEAR ON A STATEMENT EITHER, RIGHT?

18 ANSWER: IT DOESN'T.

19 QUESTION: THEY DON'T EXIST NOW, CORRECT?

20 ANSWER: THEY DON'T EXIST.

21 QUESTION: SO YOU DON'T KNOW WHETHER, IN  
22 FACT, IT WOULD APPEAR ON A STATEMENT OR NOT, RIGHT?

23 ANSWER: IT SHOULD.

24 QUESTION: WELL, SINCE THEY HAVE NEVER  
25 HAPPENED, YOU -- WE NEED TO GO OVER TO PAGE 187, LINES 1



1 THROUGH 7 -- YOU DON'T KNOW WHETHER IT WOULD APPEAR,  
2 RIGHT?

3 ANSWER: THAT'S TRUE.

4 THAT WAS YOUR TESTIMONY AT YOUR  
5 DEPOSITION, RIGHT?

6 A. IT'S A VERY CONFUSING SET OF CONVERSATIONS. CAN  
7 YOU JUST REPEAT YOUR QUESTION THAT YOU ASKED ME BEFORE  
8 YOU SHOWED ME MY TESTIMONY?

9 Q. EVEN IF ZERO DOLLAR TRANSACTIONS WERE ALLOWED,  
10 YOU DON'T KNOW WHETHER THE ZERO DOLLAR TRANSACTION WOULD  
11 APPEAR ON A BILLING STATEMENT, CORRECT?

12 A. YES, I SAID I THINK IT WOULD AND I THINK IN THIS  
13 DEPOSITION I SAID IT SHOULD. I'M NOT SURE WHY THOSE ARE  
14 DIFFERENT ANSWERS.

15 Q. MY QUESTION IS, YOU DON'T KNOW WHETHER IN FACT  
16 IT WOULD APPEAR ON A BILLING STATEMENT AND YOU DO NOT  
17 KNOW WHETHER IN FACT IT WOULD APPEAR ON A BILLING  
18 STATEMENT, CORRECT?

19 A. HOW DO I ANSWER THAT QUESTION?

20 Q. YES OR NO.

21 MR. TODD: OBJECTION. CALLS FOR  
22 SPECULATION. WE'RE DEEP INTO HYPOTHETICAL.

23 THE COURT: THIS IS CROSS EXAMINATION.  
24 HE IS NOT ANSWERING THE QUESTIONS DIRECTLY. THE  
25 QUESTIONER IS ENTITLED TO CROSS EXAMINE HIM UNTIL HE

1 GETS FINISHED.

2 BY MR. HARRIS:

3 Q. THE QUESTION IS: EVEN IF ZERO DOLLAR  
4 TRANSACTIONS WERE ALLOWED, YOU DON'T KNOW WHETHER THE  
5 ZERO DOLLAR TRANSACTION WOULD APPEAR ON A BILLING  
6 STATEMENT, CORRECT?

7 A. I THINK IT SHOULD.

8 Q. THAT IS NOT MY QUESTION. THE QUESTION IS, YOU  
9 DON'T KNOW WHETHER IT WOULD APPEAR ON A BILLING  
10 STATEMENT?

11 A. YES, I THINK IT WOULD.

12 Q. TODAY YOUR ANSWER IS YOU THINK IT -- YOU DO KNOW  
13 THAT IT WOULD APPEAR ON A BILLING STATEMENT?

14 THE COURT: THAT IS ENOUGH, COUNSEL. YOU  
15 HAVE EVERYTHING IN THE RECORD YOU NEED TO MAKE YOUR  
16 ARGUMENT.

17 BY MR. HARRIS:

18 Q. I WOULD LIKE TO TALK ABOUT YOUR ESTIMATE OF THE  
19 NUMBER OF ADULTS WHO DO NOT CURRENTLY HAVE CREDIT AND  
20 DEBIT CARDS.

21 YOU ESTIMATE THAT THERE ARE 39 MILLION  
22 ADULTS IN THE UNITED STATES WITHOUT TRADITIONAL PAYMENT  
23 CARDS?

24 A. NO, THAT IS NOT THE TERM I WOULD USE, WITHOUT  
25 TRADITIONAL CREDIT OR DEBIT CARDS.

1 Q. WITHOUT TRADITIONAL PAYMENT CARDS, IS THAT THE  
2 RIGHT TERM?

3 THE COURT: START OVER, PLEASE. YOU HAVE  
4 BITS AND PIECES OF THE QUESTION.  
5 BY MR. HARRIS:

6 Q. IT IS YOUR OPINION THAT THERE ARE 39 MILLION  
7 ADULTS IN THE UNITED STATES WITHOUT A TRADITIONAL  
8 PAYMENT CARD?

9 A. THAT IS NOT A TERM I HAVE USED IN MY REPORT OR  
10 TODAY.

11 Q. THE TERM TRADITIONAL PAYMENT CARD IS NOT A TERM  
12 YOU USED?

13 A. IT INCLUDES A WIDE ARRAY OF PRODUCTS. THESE  
14 FOLKS HAVE SOME AND NOT OTHERS. SO IT'S A VERY  
15 CONFUSING QUESTION TO ANSWER. IF I MIGHT JUST TELL YOU  
16 WHAT I'M INTENDING -- MAYBE I SHOULD NOT DO THIS -- BUT  
17 THEY DON'T HAVE TRADITIONAL CREDIT OR DEBIT CARDS BUT  
18 THEY DO HAVE AND USE TRADITIONAL PREPAID CARDS.

19 Q. YOUR TESTIMONY IS THAT THERE ARE 39 MILLION  
20 ADULTS WHO DO NOT HAVE TRADITIONAL CREDIT OR DEBIT  
21 CARDS?

22 A. YES.

23 Q. YOUR TESTIMONY IS THAT THEY MAY BE ABLE TO  
24 OBTAIN A RELOADABLE PREPAID CARD, IS THAT RIGHT?

25 A. YES.

1 Q. AND I WANT TO FOCUS ON HOW YOU CALCULATED THIS  
2 39 MILLION FIGURE. THAT IS BASED ON AN ESTIMATE OF 28  
3 MILLION UNBANKED ADULTS PLUS 11 MILLION UNDOCUMENTED  
4 ADULTS, IS THAT RIGHT?

5 A. THAT'S CORRECT.

6 Q. AND YOU BASE THE 28 MILLION ESTIMATE ON A  
7 BROCHURE FOR A CONFERENCE, RIGHT?

8 A. THAT IS ONE OF THE SOURCES.

9 Q. LET'S LOOK AT THAT BROCHURE, WHICH IS  
10 DEFENDANT'S EXHIBIT 440.

11 A. THAT IS IN MY BINDER, 440?

12 Q. YES. IF YOU LOOK AT THE SECOND PAGE, THERE IS  
13 A -- YOU HAVE LOOKED AT THIS BEFORE IN YOUR TESTIMONY  
14 TODAY. THERE IS A COLUMN ON THE RIGHT WITH SOME  
15 BULLETS?

16 A. YES.

17 Q. AND THE 28 MILLION FIGURE COMES FROM THAT FIRST  
18 BULLET, RIGHT?

19 A. YES.

20 Q. AND IT SAYS, FOR INSTANCE, AFTER THE 20 MILLION  
21 PEOPLE IT SAYS 12.2 PERCENT OF THE 230 MILLION PEOPLE IN  
22 THE UNITED STATES, DO YOU SEE THAT?

23 THE COURT: THE RECORD IS GOING TO BE A  
24 MESS. ASK THE QUESTION AGAIN. START OVER.

25 BY MR. HARRIS:

1 Q. IN THE COLUMN ON THE RIGHT, THE FIRST BULLET  
2 SAYS: THE UNBANKED SEGMENTS ACCOUNTS FOR APPROXIMATELY  
3 28 MILLION PEOPLE, 12.2 PERCENT OF THE 230 MILLION  
4 PEOPLE IN THE U.S. DO YOU SEE THAT?

5 A. YES, I DO.

6 Q. AND THAT IS A SOURCE FOR YOUR 28 MILLION FIGURE,  
7 CORRECT?

8 A. YES, THAT IS ONE SOURCE.

9 Q. OKAY. AND THEN THE NEXT BULLET SAYS THE  
10 UNDERBANKED SEGMENT IS APPROXIMATELY 44.7 MILLION  
11 PEOPLE, DO YOU SEE THAT?

12 A. YES, I SEE THAT BULLET.

13 Q. NOW, WHEN YOU REPORTED THE FIGURES FROM THIS  
14 BROCHURE IN YOUR REPORT, YOU DID NOT SEPARATELY BREAK  
15 OUT THIS UNDERBANKED SEGMENT, DID YOU?

16 A. THAT'S CORRECT. I WAS NOT INTERESTED IN THAT  
17 GROUP.

18 Q. YOU GROUPED THEM IN AS PART OF THE BANKED  
19 SEGMENT, CORRECT?

20 A. THEY ARE IN FACT IN THE BANKED SEGMENT.

21 Q. OKAY. IN ISSUING YOUR REPORT, YOU DIDN'T KNOW  
22 WHETHER THE 44.7 MILLION UNDERBANKED PEOPLE HAD A BANK  
23 ACCOUNT SUFFICIENT TO ALLOW THEM TO GET A DEBIT OR  
24 CREDIT CARD, RIGHT?

25 A. NO, THAT IS NOT CORRECT.

1 Q. CAN WE PULL UP YOUR DEPOSITION TRANSCRIPT, PAGE  
2 196. ON PAGE 196, GOING TO LINES 20 TO 23, AND BLOW  
3 THOSE UP.

4 YOU SEE THE QUESTION AND ANSWER:  
5 QUESTION: AND YOU DON'T KNOW WHETHER THE  
6 UNDERBANKED SEGMENT HAS A BANKING ACCOUNT SUFFICIENT TO  
7 ALLOW THEM TO GET A CREDIT OR DEBIT CARD?

8 ANSWER: I DON'T.

9 THAT WAS YOUR TESTIMONY AT YOUR  
10 DEPOSITION, RIGHT?

11 A. CAN I JUST READ A LITTLE MORE OF THE RECORD  
12 SINCE --

13 Q. WHY DON'T YOU REMOVE -- ARE YOU ABLE TO READ THE  
14 PAGE OR DO YOU WANT ME TO -- ARE YOU ABLE TO READ THE  
15 PAGE?

16 A. THAT'S FINE. IF I CAN HAVE A SECOND TO READ THE  
17 PAGE.

18 Q. MY QUESTION FOR YOU IS, WAS THIS YOUR TESTIMONY  
19 AT YOUR DEPOSITION.

20 ARE YOU -- I DON'T MEAN TO RUSH YOU. ARE  
21 YOU ABLE TO ANSWER MY QUESTION NOW, WHICH IS, WAS THIS  
22 YOUR TESTIMONY AT YOUR DEPOSITION?

23 A. YES, THIS IS MY TESTIMONY AT DEPOSITION.

24 Q. AND IF THE 44.7 MILLION UNDERBANKED ADULTS  
25 WOULDN'T BE ABLE TO GET A CREDIT OR DEBIT CARD, YOUR

1 FIGURE OF 39 MILLION ADULTS WHO CAN'T GET A DEBIT OR  
2 CREDIT CARD WOULD INCREASE, RIGHT?

3 A. IF THE HYPOTHETICAL WAS CORRECT. THAT'S  
4 CORRECT, BUT I DON'T AGREE WITH THE HYPOTHETICAL.

5 Q. NOW, IN YOUR OPINION, ADULTS WITHOUT BANK  
6 ACCOUNTS CAN TURN TO RELOADABLE PREPAID CARDS, IS THAT  
7 RIGHT?

8 A. COULD YOU REPEAT THE QUESTION, PLEASE?

9 Q. IN YOUR OPINION, ADULTS WITHOUT BANK ACCOUNTS  
10 CAN TURN TO RELOADABLE PREPAID CARDS, RIGHT?

11 A. YES.

12 Q. AND IN ORDER TO OBTAIN A RELOADABLE PREPAID  
13 CARD, YOU NEED TO PROVIDE CASH UP FRONT, RIGHT?

14 A. YES.

15 Q. AND YOU DON'T KNOW WHETHER THE 39 MILLION U.S.  
16 ADULTS THAT DON'T HAVE BASIC BANK ACCOUNTS HAVE EXCESS  
17 CASH TO PUT ON A RELOADABLE PREPAID CARD, DO YOU?

18 A. YES, I DO.

19 Q. WELL, THE PEOPLE WHO ARE UNBANKED OR UNDERBANKED  
20 ARE ALSO LESS LIKELY TO HAVE EXCESS CASH THAN THE  
21 SEGMENT OF THE POPULATION THAT HAS BANK ACCOUNTS, ISN'T  
22 THAT CORRECT?

23 A. THAT'S CORRECT, BUT THAT IS NOT A FULL  
24 UNDERSTANDING OF THAT MARKETPLACE.

25 Q. AND I WOULD LIKE TO TALK ABOUT YOUR TESTIMONY

1 ABOUT THE PAYMENT CARD COMPANIES ENFORCING U.S. LAWS.

2 A. YES.

3 Q. AND YOU SAID, TODAY YOUR TESTIMONY WAS THAT THE  
4 PAYMENT CARD COMPANIES COULD ENFORCE COPA OVERSEAS,  
5 CORRECT?

6 A. YES, I THINK I WAS USING THE PHRASING, HAVE  
7 THE ABILITY.

8 Q. YOU ARE NOT TESTIFYING THAT THEY WILL ENFORCE  
9 COPA OVERSEAS, RIGHT?

10 A. I'M NOT SURE. I PROBABLY SAID A COUPLE OF  
11 THINGS ON THE RECORD ON THIS MATTER. BUT AS TIME MOVES  
12 ON BETWEEN MAY AND AUGUST AND NOVEMBER, I HAVE MORE  
13 INFORMATION, AND I'M STRONGER IN MY OPINIONS IN WHAT  
14 THEY WILL OR WILL NOT DO IRREGARDLESS OF NOT HAVING  
15 ASKED THEM BUT AS I OBSERVE THINGS IN THE MARKETPLACE.

16 Q. I DON'T BELIEVE THAT WAS RESPONSIVE TO MY  
17 QUESTION BUT LET ME TRY IT AGAIN.

18 YOU ARE NOT TESTIFYING THAT THE PAYMENT  
19 CARD COMPANIES WILL ENFORCE COPA OVERSEAS, ARE YOU?

20 A. NO, I'M TALKING ABOUT THEIR ABILITY.

21 Q. AND YOU ATTENDED THE DEPOSITIONS OF  
22 REPRESENTATIVES OF VISA, MASTERCARD AND AMERICAN  
23 EXPRESS, CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND NONE OF THEM TESTIFIED THAT THE PAYMENT CARD



1 COMPANIES WILL ENFORCE COPA OVERSEAS, CORRECT?

2 A. I THINK IF WE TOOK A LOOK AT THE MASTERCARD

3 TESTIMONY, WE MIGHT FIND SOME INDICATIONS.

4 Q. YOU BELIEVE THAT SOMEONE FROM MASTERCARD SAID

5 THEY WILL ENFORCE COPA OVERSEAS?

6 A. NO. BUT IT MIGHT BE WORTHWHILE TODAY TO TAKE A

7 LOOK AT THE TESTIMONY. I THINK THERE IS WORDING IN

8 JOSHUA PEIREZ'S TESTIMONY THAT MASTERCARD WOULD IN FACT

9 TURN OFF MERCHANTS WHEREVER THEY WERE. I'M UNCLEAR. I

10 READ THAT DEPOSITION YESTERDAY AND I THINK THERE IS SOME

11 WORDING THERE. MAYBE IT IS WORTH LOOKING AT THAT

12 TESTIMONY.

13 Q. YOU ARE NOT AWARE OF ANYONE FROM A CREDIT CARD

14 COMPANY TESTIFYING THAT THEY WOULD ENFORCE COPA

15 OVERSEAS, ARE YOU?

16 A. I JUST GAVE YOU AN EXAMPLE OF A POSSIBILITY.

17 Q. BUT YOU DON'T KNOW ONE WAY OR THE OTHER, I

18 GUESS, SITTING HERE?

19 A. AS I SAID, IT'S UNCLEAR IN MY MIND.

20 Q. THE IDEA THAT THE PAYMENT CARD COMPANIES WOULD

21 ENFORCE COPA -- COULD ENFORCE COPA OVERSEAS FIRST

22 OCCURRED TO YOU BACK IN 2005, RIGHT?

23 A. COULD YOU GIVE ME THE QUESTION AGAIN?

24 Q. THE IDEA THAT THE PAYMENT CARD COMPANIES COULD

25 ENFORCE COPA OVERSEAS FIRST OCCURRED TO YOU IN 2005,

1 RIGHT?

2 A. THAT'S PROBABLY WHEN I FIRST STARTED THINKING  
3 ABOUT IT, YES.

4 Q. AND YOU TOLD THIS IDEA TO DEFENSE COUNSEL BACK  
5 THEN, RIGHT?

6 A. I'M SURE THAT YES, I SPOKE TO THEM ABOUT THIS  
7 IDEA.

8 Q. AND THIS WAS BEFORE THE DEPOSITIONS OF THE  
9 REPRESENTATIVES OF THE VISA, DISCOVER, MASTERCARD AND  
10 AMERICAN EXPRESS, RIGHT?

11 A. YES.

12 Q. BUT DEFENSE COUNSEL CHOSE NOT TO ASK ANY OF  
13 THOSE REPRESENTATIVES WHETHER THE PAYMENT CARD COMPANIES  
14 WOULD ENFORCE COPA OVERSEAS, RIGHT?

15 A. WELL, THAT IS WHY I SUGGESTED. I'M NOT SURE --  
16 THAT IS WHY I SUGGESTED WE TAKE A LOOK TODAY TOGETHER AT  
17 THE MASTERCARD TESTIMONY TO SEE WHAT THAT CONVERSATION  
18 WAS AND WHAT WAS ASKED AND WHAT THE ANSWER WAS. I  
19 BELIEVE THERE WAS A LINE OF QUESTIONING THAT LED  
20 MR. PEIREZ OF MASTERCARD TO INDICATE SOME OPINION ON THE  
21 WORLDWIDE POLICIES MASTERCARD HAD AND THEIR ABILITY TO  
22 ENFORCE THEM.

23 Q. LET'S PULL UP YOUR DEPOSITION TRANSCRIPT, PAGE  
24 212.

25 IF YOU COULD HIGHLIGHT LINE 21 THROUGH

1 25.

2 QUESTION: YOU ATTENDED SEVERAL  
3 DEPOSITIONS OF REPRESENTATIVES OF THE PAYMENT CARD  
4 COMPANIES, RIGHT?

5 ANSWER: YES.

6 Q. AND THEN IF YOU COULD TURN TO THE NEXT PAGE,  
7 213, HIGHLIGHT DOWN TO LINE 8.

8 QUESTION: AND THE DOJ ASKED QUESTIONS OF  
9 THOSE REPRESENTATIVES, RIGHT?

10 ANSWER: IN CROSS EXAMINATION.

11 QUESTION: AND DID, AT ANY OF THEM, THE  
12 DOJ ASK WHETHER THOSE COMPANIES WOULD ENFORCE COPA  
13 OVERSEAS IN THE MANNER YOU'VE DESCRIBED?

14 ANSWER: NO.

15 THAT WAS YOUR TESTIMONY AT YOUR  
16 DEPOSITION, CORRECT?

17 A. YES. BUT MY UNDERSTANDING OF YOUR QUESTION --  
18 AND MAYBE I SHOULD HAVE ASKED YOU TO CLARIFY IS, IT  
19 SOUNDED TO ME AS IF YOU WERE ASKING IF THE DOJ HAD ASKED  
20 THESE COMPANIES DIRECTLY THIS QUESTION. THIS IS A VERY  
21 CONFUSING PASSAGE HERE.

22 Q. IS THIS ANOTHER EXAMPLE OF SOMETHING WHERE YOU  
23 BELIEVE YOU MISUNDERSTOOD THINGS AND HAVE A DIFFERENT  
24 ANSWER TODAY THAN YOU DID AT YOUR DEPOSITION?

25 A. IT'S POSSIBLE.

1 Q. OKAY. YOU NEVER SUGGESTED TO DEFENSE COUNSEL AT  
2 THESE DEPOSITIONS THAT THEY ASK THE PAYMENT CARD COMPANY  
3 REPRESENTATIVES WHETHER THE COMPANIES WOULD ENFORCE COPA  
4 OVERSEAS, RIGHT?

5 A. I DON'T RECALL.

6 Q. AND IN PREPARING YOUR REPORT, YOU ALSO HAD  
7 CONVERSATIONS DIRECTLY WITH REPRESENTATIVES OF  
8 MASTERCARD, DISCOVER AND AMERICAN EXPRESS, RIGHT?

9 A. WHAT WAS THE LIST AGAIN?

10 Q. MASTERCARD, DISCOVER AND AMERICAN EXPRESS.

11 A. YES.

12 Q. AND THOSE CONVERSATIONS ALSO OCCURRED AFTER THIS  
13 IDEA OF OVERSEAS ENFORCEMENT OCCURRED TO YOU, CORRECT?

14 A. YES.

15 Q. AND DURING THOSE CONVERSATIONS, YOU NEVER ASKED  
16 ANY OF THEM WHETHER THE CARD COMPANIES WOULD ENFORCE  
17 COPA OVERSEAS, DID YOU?

18 A. NO.

19 Q. AND YOU DISCUSSED EARLIER TODAY SUPPORT FOR YOUR  
20 BELIEF THAT THE PAYMENT -- THAT THE PAYMENT CARD  
21 COMPANIES COULD ENFORCE COPA OVERSEAS, YOU DISCUSSED A  
22 TELEPHONE CONVERSATION WITH PAT PATTERSON OF AMERICAN --  
23 FORMERLY OF AMERICAN EXPRESS, RIGHT?

24 A. THAT'S CORRECT.

25 Q. AND DURING THIS TELEPHONE CONVERSATION, YOU DID

1 NOT ASK HER WHETHER THE PAYMENT CARD COMPANIES WOULD  
2 ENFORCE COPA OVERSEAS, DID YOU?

3 A. I DID NOT.

4 Q. AND IN FACT SHE ONLY TALKED ABOUT THE FAIR  
5 CREDIT BILLING ACT, RIGHT?

6 A. THAT'S CORRECT.

7 Q. AND SHE DIDN'T SAY THAT EVEN THE FAIR CREDIT  
8 BILLING ACT WAS ENFORCED IN EVERY COUNTRY, DID SHE?

9 A. I DIDN'T ASK THAT QUESTION AND I DID NOT HEAR  
10 HER OFFER ANY COMMENT ONE WAY OR THE OTHER.

11 Q. AND WEBSITES THAT ONLY HAVE REVENUES FROM  
12 ADVERTISING DO NOT NECESSARILY HAVE RELATIONSHIPS WITH  
13 PAYMENT CARD COMPANIES, RIGHT?

14 A. THAT'S CORRECT.

15 Q. AND PAYMENT CARD COMPANIES WOULD HAVE NO WAY TO  
16 ENFORCE COPA AGAINST SUCH WEBSITES, RIGHT?

17 A. THAT'S CORRECT.

18 Q. AND IN ISSUING YOUR REPORT, YOU DIDN'T KNOW THE  
19 PERCENTAGE OF OVERSEAS WEBSITES WITH HARMFUL TO MINORS  
20 CONTENT THAT DON'T HAVE RELATIONSHIPS WITH PAYMENT CARD  
21 COMPANIES, RIGHT?

22 A. THAT'S CORRECT.

23 Q. AND IF WE COULD TURN TO YOUR REPORT, WHICH IS  
24 DEFENDANT'S 93. LOOK AT PAGE 25 OF IT.

25 YOU SEE THE FIRST SENTENCE SAYS: IN

1 GENERAL, OVER 95 PERCENT OF COMMERCIAL WEBSITE OPERATORS  
2 IN THE U.S. ACCEPT TRADITIONAL PAYMENT CARDS, DO YOU SEE  
3 THAT?

4 A. YES.

5 Q. AND YOU LEARNED THIS FROM SPEAKING WITH MR. DOUG  
6 SCHWEGMAN OF CYBERSOURCE, RIGHT?

7 A. THAT'S CORRECT.

8 Q. AND THIS IS ONLY ABOUT U.S. COMMERCIAL WEBSITES.  
9 YOU DON'T HAVE ANY DATA IN YOUR REPORT ABOUT THE  
10 PERCENTAGE OF OVERSEAS WEBSITES WHO ACCEPT TRADITIONAL  
11 PAYMENT CARDS, RIGHT?

12 A. THERE IS NOTHING IN MY REPORT.

13 Q. AND IN ADDITION, WHEN MR. SCHWEGMAN REFERRED TO  
14 COMMERCIAL WEBSITES, HE WAS REFERRING TO WEBSITES THAT  
15 SELL PRODUCTS AND SERVICES ON THE INTERNET, RIGHT?

16 A. THAT'S CORRECT.

17 Q. AND THAT DEFINITION WOULD NOT INCLUDE WEBSITES  
18 THAT ONLY HAVE REVENUE FROM ADVERTISING, RIGHT?

19 A. I WOULD ASSUME THAT IS TRUE.

20 Q. SO THERE IS NO DATA IN YOUR REPORT ABOUT THE  
21 PERCENTAGE OF WEBSITES THAT ONLY HAVE REVENUE FROM  
22 ADVERTISING THAT DON'T HAVE A RELATIONSHIP WITH A  
23 PAYMENT CARD COMPANY, CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND YOU ARE FAMILIAR WITH THE TERM ACQUIRER OR

1 ACQUIRING BANK, IS THAT RIGHT?

2 A. YES.

3 Q. WHAT DOES THAT TERM MEAN?

4 A. THIS IS THE ENTITY THAT SIGNS THE MERCHANT TO  
5 HONOR CREDIT CARDS.

6 Q. AND VISA AND MASTERCARD REQUIRE THE ACQUIRING  
7 BANKS TO BE LOCATED IN THE SAME GEOGRAPHIC REGION AS THE  
8 WEBSITES WHOSE PAYMENTS THEY PROCESS, CORRECT?

9 A. I THINK THAT IS CORRECT.

10 Q. SO, FOR EXAMPLE, A FRENCH WEBSITE CAN ONLY HAVE  
11 A MERCHANT ACCOUNT WITH AN EU ACQUIRING BANK, PROBABLY A  
12 FRENCH BANK, RIGHT?

13 A. WELL, CERTAINLY AN EU BANK. I'M NOT SURE IF IT  
14 IS SPECIFIC JUST TO FRANCE.

15 Q. SO IS IT YOUR OPINION THAT THE EU BANK IS GOING  
16 TO FIGURE OUT WHAT IS HARMFUL TO MINORS FOR COMMUNITIES  
17 IN THE U.S.?

18 A. COULD YOU REPEAT THE QUESTION?

19 Q. IS IT YOUR OPINION THAT AN EU BANK IS GOING TO  
20 FIGURE OUT WHAT IS HARMFUL TO MINORS IN COMMUNITIES IN  
21 THE U.S.?

22 A. IF THERE ARE SOME STIPULATIONS OR PROVISIONS IN  
23 MASTERCARD'S WORLDWIDE POLICY MERCHANT AGREEMENTS, THEY  
24 WILL FIGURE THAT OUT.

25 Q. IS IT YOUR OPINION THAT THIS EU BANK IS GOING TO

1 REVIEW ALL OF THE CONTENT ON EVERY FRENCH WEBSITE THAT  
2 IT DEALS WITH TO DETERMINE WHETHER ANY OF THAT CONTENT  
3 IS HARMFUL TO MINORS IN ANY COMMUNITY IN THE U.S.?

4 A. I WAS NOT SUGGESTING THAT. ARE YOU TALKING  
5 ABOUT WEBSITES THAT CATER TO THE FRENCH CITIZENS OR  
6 WEBSITES THAT THE U.S. CUSTOMERS CAN SEE?

7 Q. ANY FRENCH WEBSITE THAT HAS CONTENT, IS IT YOUR  
8 OPINION THAT AN EU BANK IS GOING TO REVIEW THE CONTENT,  
9 ALL OF THE CONTENT ON EVERY FRENCH WEBSITE, TO DETERMINE  
10 WHETHER ANY OF IT IS HARMFUL TO MINORS IN ANY COMMUNITY  
11 IN THE U.S.?

12 A. WHAT I'M SAYING IS, IF MASTERCARD AND VISA AND  
13 AMERICAN EXPRESS AND DISCOVER -- LET'S SET ASIDE  
14 DISCOVER BECAUSE THEY ARE MOSTLY NORTH AMERICA -- IF THE  
15 FIRST THREE DECIDE ON SOME WORLDWIDE POLICIES THAT EMBED  
16 A U.S. REGULATION RELATIVE TO COPA, THEN SOME OF THE  
17 DETAILS THAT YOU ARE TALKING ABOUT WILL BE SORTED OUT.

18 Q. SO I'M ASKING FOR YOUR OPINION TODAY. IS IT  
19 YOUR OPINION THAT AN EU BANK IS GOING TO REVIEW ALL OF  
20 THE CONTENT ON EVERY FRENCH WEBSITE IT DEALS WITH TO  
21 DETERMINE WHETHER ANY OF THAT CONTENT IS HARMFUL TO  
22 MINORS IN COMMUNITIES IN THE U.S.?

23 A. I'M NOT SURE IF THAT WOULD BE PART OF THE  
24 IMPLEMENTATION OR NOT.

25 Q. YOU DON'T FEEL QUALIFIED TO DETERMINE WHETHER



1           CONTENT MEETS THE DEFINITION OF HARMFUL TO MINORS IN  
2           COPA, DO YOU?

3           A.           NO, I'M NOT GOING TO SIT HERE AS THE U.S.  
4           INDIVIDUAL WHO IS GOING TO MAKE THAT DECISION.

5           Q.           YOU DON'T KNOW WHETHER A FRENCH WEBSITE WOULD BE  
6           ABLE TO MAKE THAT DETERMINATION EITHER, DO YOU?

7           A.           I'M NOT SURE.

8           Q.           YOU DON'T KNOW WHETHER AN EU BANK WOULD BE ABLE  
9           TO MAKE THAT DETERMINATION EITHER, RIGHT?

10          A.           I'M NOT SURE.

11          Q.           AND YOU HAVE NO IDEA HOW A FRENCH WEBSITE WILL  
12          DECIDE WHAT IS HARMFUL TO MINORS IN COMMUNITIES IN THE  
13          U.S., DO YOU?

14          A.           I TRIED TO ANSWER YOUR QUESTION BEFORE, AND I  
15          HAVE SAID THAT IF AMERICAN EXPRESS, MASTERCARD AND VISA  
16          DECIDE ON WORLDWIDE POLICIES THAT EMBED COPA IN THEIR  
17          MERCHANT AGREEMENTS AROUND THE WORLD, THESE TYPES OF  
18          DETAILS WOULD BE SORTED OUT. I DON'T KNOW WHAT TACTICS  
19          WILL BE USED OR WHAT IMPLEMENTATION PLAN WILL BE BUT  
20          IT'S MY EXPERIENCE IN THE PAYMENT SYSTEMS THAT MANY U.S.  
21          -- LET ME BACK UP. THAT U.S. LAWS ARE IN FACT EMBEDDED  
22          IN WORLDWIDE POLICIES OF AMERICAN EXPRESS, MASTERCARD  
23          AND VISA AND THEY HAVE USED VARIOUS PROCESSES AND  
24          MECHANISMS TO SORT THESE DETAILS OUT FOR WORLDWIDE  
25          IMPLEMENTATION. THAT IS WHAT I'M SAYING.

1 Q. YOU ARE JUST SAYING THAT THE PAYMENT CARD  
2 COMPANIES WILL SET SOME WORLDWIDE POLICY REGARDING COPA.  
3 YOU ARE NOT GIVING AN OPINION WHAT THAT POLICY WILL BE,  
4 ARE YOU?

5 A. THAT'S CORRECT.

6 Q. AND YOU HAVE MENTIONED PAYMENT CARD COMPANY  
7 POLICIES THAT MERCHANTS NEED TO COMPLY WITH APPLICABLE  
8 LAWS. THAT POLICY DOES NOT APPLY TO EVERY LAW, DOES IT?

9 A. COULD YOU REPEAT THE QUESTION?

10 Q. SURE. I WILL GIVE YOU AN EXAMPLE. IF A  
11 MERCHANT ENGAGES IN DRUNK AND DISORDERLY CONDUCT, THE  
12 PAYMENT CARD COMPANY IS NOT GOING TO RESCIND THE  
13 AGREEMENT, RIGHT?

14 A. I'M NOT GOING TO SIT HERE AND OFFER OPINIONS ON  
15 THESE TYPES OF HYPOTHETICALS. I'M NOT A LAWYER AND I  
16 THINK THESE ARE HIGHLY SPECULATIVE QUESTIONS.

17 Q. WELL, YOU HAVE GIVEN AN OPINION THAT THE PAYMENT  
18 CARD COMPANIES MAY RESCIND AGREEMENTS. AND I WANT TO  
19 PROBE THE BASIS OF THAT. SO HERE IS THE HYPOTHETICAL.  
20 IF A MERCHANT ENGAGES IN DRUNK AND DISORDERLY CONDUCT,  
21 THE PAYMENT CARD COMPANY IS NOT GOING TO RESCIND THEIR  
22 AGREEMENT WITH THAT MERCHANT, ARE THEY?

23 A. I DON'T HAVE ANY COMMENT ON THAT.

24 Q. YOU DON'T HAVE A REASON TO BELIEVE THAT THEY  
25 WOULD RESCIND THEIR AGREEMENT JUST BECAUSE A MERCHANT

1 ENGAGES IN DRUNK AND DISORDERLY CONDUCT, RIGHT?

2 A. I HAVE NOT THOUGHT ABOUT IT. I DON'T HAVE AN  
3 OPINION TODAY.

4 Q. IN FACT THESE POLICIES ARE REALLY FOCUSED ON  
5 INAPPROPRIATE USE OF PAYMENT CARDS, RIGHT?

6 A. ARE YOU REFERRING TO PREVIOUS U.S. LAWS THAT  
7 HAVE BEEN EMBEDDED IN THE WORLDWIDE POLICIES?

8 Q. I'M REFERRING TO THE POLICIES YOU HAVE DISCUSSED  
9 OF THE PAYMENT CARD COMPANIES THAT MERCHANTS NEED TO  
10 COMPLY WITH ALL APPLICABLE LAWS. THOSE POLICIES ARE  
11 FOCUSED ON INAPPROPRIATE USE OF PAYMENT CARDS, RIGHT?

12 A. I'M NOT SURE I KNOW ALL THE CASES, SO I'D HATE  
13 TO MAKE A SWEEPING STATEMENT.

14 Q. BUT THE ONES THAT YOU ARE FAMILIAR WITH INVOLVE  
15 INAPPROPRIATE USE OF PAYMENT CARDS, RIGHT?

16 A. I THINK THAT IS PROBABLY FAIR.

17 Q. AND IF A WEBSITE ALLOWS UNRESTRICTED ACCESS TO  
18 HARMFUL TO MINORS CONTENT WITHOUT THE USE OF A PAYMENT  
19 CARD, THAT DOESN'T INVOLVE THE USE OF A PAYMENT CARD,  
20 RIGHT?

21 A. CAN YOU SAY THAT AGAIN.

22 Q. SURE. IF A WEBSITE ALLOWS UNRESTRICTED ACCESS  
23 TO HARMFUL TO MINORS CONTENT WITHOUT THE USE OF A  
24 PAYMENT CARD, THAT DOESN'T INVOLVE THE USE OF A PAYMENT  
25 CARD, RIGHT?

1 A. IT CERTAINLY DOES. IT TALKS ABOUT THE CARD  
2 COMPANIES' REPUTATIONS. FOR EXAMPLE, AMERICAN EXPRESS  
3 WILL NOT SIGN ADULT ENTERTAINMENT MERCHANTS AT ALL.

4 MR. HARRIS: MOVE TO STRIKE AS  
5 NON-RESPONSIVE.

6 THE COURT: ASK ANOTHER QUESTION,  
7 OR THE SAME ONE.

8 MR. HARRIS: I'M GOING TO TRY THE SAME  
9 ONE AGAIN, YOUR HONOR.

10 THE COURT: UNDERSTOOD.

11 BY MR. HARRIS:

12 Q. IF A WEBSITE ALLOWS UNRESTRICTED ACCESS TO  
13 HARMFUL TO MINORS CONTENT WITHOUT THE USE OF A CREDIT  
14 CARD, THAT ACCESS DOES NOT INVOLVE THE USE OF A CREDIT  
15 CARD, RIGHT?

16 A. THAT'S CORRECT.

17 Q. AND IF IT ALLOWS UNRESTRICTED ACCESS TO HARMFUL  
18 TO MINORS CONTENT WITHOUT THE USE OF ANY PAYMENT CARD --  
19 SORRY, IF IT ALLOWS UNRESTRICTED ACCESS TO HARMFUL TO  
20 MINORS CONTENT WITHOUT THE USE OF A PAYMENT CARD, THAT  
21 ACCESS DOES NOT INVOLVE THE USE OF A PAYMENT CARD,  
22 RIGHT?

23 A. THAT'S CORRECT.

24 Q. NOW, YOU MENTION CHILD PORNOGRAPHY --

25 THE COURT: WE HAVE TO DECIDE HOW MUCH

1 MORE CROSS AND HOW MUCH MORE REDIRECT THERE IS. IF  
2 THERE IS MORE THAN 10 OR 15 MINUTES, WE MAY AS WELL COME  
3 BACK TOMORROW MORNING.

4 MR. HARRIS: I THINK I HAVE 10 MINUTES.

5 MR. TODD: I WOULD SAY 5, YOUR HONOR.

6 THE COURT: DO YOU WANT TO STAY?

7 MR. HARRIS: IT'S NOT THAT DRAMATIC.

8 THE COURT: DOES COUNSEL WANT TO STAY AND  
9 FINISH IT?

10 MR. TODD: THAT'S FINE WITH ME, YOUR  
11 HONOR.

12 THE COURT: I'M SURE THE WITNESS WOULD  
13 PREFER THAT. ALL RIGHT. LET'S FINISH UP. I DON'T WANT  
14 TO RUSH YOU. I JUST WANT TO BRING YOUR ATTENTION TO THE  
15 ALTERNATIVES.

16 BY MR. HARRIS:

17 Q. AND YOU MENTIONED THE CHILD PORNOGRAPHY  
18 COALITION, CORRECT?

19 A. YES.

20 Q. DO YOU KNOW HOW LONG THE DISTRIBUTION OF CHILD  
21 PORNOGRAPHY HAS BEEN ILLEGAL IN THE U.S.?

22 A. NO.

23 Q. THE CHILD PORNOGRAPHY COALITION CAME INTO  
24 EXISTENCE IN 2006, RIGHT?

25 A. I SAID I DIDN'T KNOW.

1 Q. I'M SORRY, I WAS ASKING WHEN THE CHILD  
2 PORNOGRAPHY COALITION CAME INTO EXISTENCE. THAT WAS IN  
3 2006, RIGHT?

4 A. NO, I THINK MUCH EARLIER. I SPOKE WITH THEM  
5 LAST THURSDAY. THEY TALKED ABOUT ACTIVITIES MUCH BEFORE  
6 THAT.

7 Q. YOU THINK THE COALITION CAME INTO EXISTENCE  
8 BEFORE 2006?

9 A. ARE WE TALKING ABOUT THE FINANCIAL COALITION?  
10 ARE WE TALKING ABOUT THE COALITION BETWEEN LAW  
11 ENFORCEMENT AND THE EXPLOITED CHILD CENTER IN  
12 WASHINGTON, D.C.?

13 Q. I'M REFERRING TO THE FINANCIAL COALITION AGAINST  
14 CHILD PORNOGRAPHY THAT YOU CITE IN YOUR REPORT.

15 A. OH, OKAY.

16 Q. DO YOU KNOW WHEN THAT CAME INTO EXISTENCE?

17 A. THAT WAS ANNOUNCED IN MARCH OF 2006.

18 Q. AND THIS COALITION IS THE FIRST ATTEMPT THAT THE  
19 PAYMENT CARD INDUSTRY HAS MADE TO ENFORCE ANTI-CHILD  
20 PORNOGRAPHY LAWS OVERSEAS, CORRECT?

21 A. I DON'T KNOW.

22 Q. OKAY. LET'S PULL UP YOUR DEPOSITION, PAGE 242,  
23 LINES 10 TO 17, PLEASE.

24 DO YOU SEE THE QUESTION: AS FAR AS YOU  
25 KNOW, THIS COALITION IS THE FIRST ATTEMPT THAT THE

1 PAYMENT CARD INDUSTRY HAS MADE TO ENFORCE SUCH LAWS  
2 OVERSEAS?

3 ANSWER: YEAH, IT'S REALLY, YOU KNOW,  
4 IT'S THE PAYMENT CARD COMPANIES AND THE INTERNET  
5 COMPANIES AND LAW ENFORCEMENT THAT -- REALLY THE THREE  
6 GROUPS TOGETHER, IT'S THE FIRST CONCERTED EFFORT TO DO  
7 SOMETHING ABOUT CHILD PORNOGRAPHY THAT I'M AWARE OF.

8 THAT WAS YOUR TESTIMONY AT YOUR  
9 DEPOSITION, RIGHT?

10 A. YES. IT SAYS THAT I'M AWARE OF, AND I THINK  
11 THAT IS SIMILAR TO MY TESTIMONY HERE. I'M NOT SURE.

12 Q. I WANT TO TALK ABOUT SOME OF THE COSTS OF USING  
13 PAYMENT CARDS BRIEFLY.

14 IF YOU CAN TURN TO PAGE 25 OF YOUR  
15 REPORT. THAT IS NUMBER 93.

16 THE COURT: BATES 0027.

17 MR. HARRIS: YES, THANK YOU.

18 BY MR. HARRIS:

19 Q. NOW, YOU STATE THAT IF A MERCHANT SETS UP A  
20 MERCHANT ACCOUNT DIRECTLY WITH AN ACQUIRING BANK, THE  
21 MERCHANT WILL HAVE TO PAY THE BANK OPERATING COSTS OF  
22 2.5 PERCENT TO 5 PERCENT OF SALES DOLLAR VOLUME, RIGHT?

23 A. WHERE ARE YOU READING?

24 Q. I'M SORRY. I'M READING IN THE CHART 4.1.1, THE  
25 SECOND BULLET?

1 A. YOU SAID THE NUMBER 5 PERCENT, WHICH IS WHAT  
2 THREW ME OFF.

3 Q. 2.5 PERCENT TO 5 PERCENT. THE MERCHANT WILL  
4 HAVE TO PAY THE BANK 2.5 PERCENT TO 5 PERCENT OF SALES  
5 DOLLAR VOLUME, RIGHT?

6 A. YES. I SEE IT NOW.

7 Q. AND THEN IN APPROACH NUMBER TWO, IF, INSTEAD OF  
8 SETTING UP A MERCHANT ACCOUNT DIRECTLY, THEY COULD ALSO  
9 SET UP -- REGISTER WITH A THIRD-PARTY PAYMENT PROCESSOR,  
10 SUCH AS CCBILL, CORRECT?

11 A. THAT'S CORRECT.

12 Q. AND THE WEBSITE OPERATOR WOULD THEN HAVE TO PAY  
13 OPERATING FEES OF 8 TO 15 PERCENT OF SALES DOLLAR  
14 VOLUME, CORRECT?

15 A. THAT IS WHAT MY REPORT SAYS.

16 Q. NOW, YOUR OPINION, ONE IN THREE CUSTOMERS DO NOT  
17 FEEL COMFORTABLE USING CREDIT CARDS TO SHOP ONLINE,  
18 CORRECT?

19 A. WHICH PART OF MY REPORT AND WHAT STATISTICS ARE  
20 YOU REFERRING TO?

21 Q. DO YOU REMEMBER YOU TESTIFIED EARLIER ABOUT  
22 STUDIES -- WHY DON'T WE LOOK AT PAGE 10 OF YOUR REPORT.

23 A. THANK YOU.

24 Q. THE END OF THE CARRYOVER. IT'S BATES STAMP  
25 0012. I'M SLOWLY LEARNING.



1 DO YOU SEE AT THE END OF THE CARRYOVER  
2 PARAGRAPH THAT SENTENCE THAT STARTS, CURRENTLY?

3 A. YES.

4 Q. AND SO?

5 A. SO MAYBE.

6 Q. ONE-THIRD OF THE CUSTOMERS DO NOT FEEL  
7 COMFORTABLE USING CREDIT CARDS TO SHOP ONLINE, CORRECT?

8 A. YES, THAT IS WHAT I HAVE IN MY REPORT.

9 Q. AND 50 PERCENT OF THE CONSUMERS DO NOT FEEL  
10 COMFORTABLE USING DEBIT CARDS TO SHOP ONLINE, RIGHT?

11 A. YES, THAT IS WHAT IS IN MY REPORT.

12 Q. YOU DON'T KNOW WHAT PERCENTAGE OF CUSTOMERS FEEL  
13 COMFORTABLE USING DEBIT OR CREDIT CARDS SPECIFICALLY TO  
14 SHOP FOR ONLINE CONTENT, RIGHT?

15 A. NO.

16 Q. I THINK YOUR ANSWER MEANS NO, YOU DON'T KNOW  
17 WHAT PERCENTAGE FEEL COMFORTABLE USING DEBIT OR CREDIT  
18 CARDS TO SHOP SPECIFICALLY FOR ONLINE CONTENT, IS THAT  
19 CORRECT, YOU DON'T KNOW THAT PERCENTAGE?

20 A. I DON'T HAVE A STATISTIC IN MY REPORT NOR DO I  
21 HAVE ONE IN MY HEAD AT THE MOMENT.

22 Q. YOU FURTHER BELIEVE THAT REQUIRING USE OF A  
23 PAYMENT CARD IS LIKELY TO REDUCE THE NUMBER OF VISITORS  
24 TO A WEB SITE, RIGHT?

25 A. REPEAT THE QUESTION, PLEASE.

1 Q. REQUIRING THE USE OF A PAYMENT CARD IS LIKELY TO  
2 REDUCE THE NUMBER OF WEBSITE VISITORS, CORRECT?

3 A. YES, IT COULD.

4 Q. LIKELY TO, CORRECT?

5 A. I CAN'T REMEMBER WHAT PHRASING I USED.

6 Q. LET'S LOOK AT PAGE 28 OF YOUR REPORT, BATES  
7 STAMP 0030.

8 A. OKAY. THANK YOU.

9 Q. DO YOU SEE -- DO YOU SEE THE BOTTOM PARAGRAPH  
10 STARTING WITH REQUIRING AND THE FIFTH LINE IS A SENTENCE  
11 THAT STARTS, TO BE CLEAR, DO YOU SEE THAT?

12 A. YES.

13 Q. IT IS YOUR OPINION THAT REQUIRING THE USE OF A  
14 PAYMENT CARD IS LIKELY TO REDUCE THE NUMBER OF WEBSITE  
15 VISITORS, CORRECT?

16 A. YES, SO THAT IS MY PHRASING.

17 Q. YOU AGREE THAT IF, FOR EXAMPLE, SALON WAS  
18 REQUIRED TO REQUEST PAYMENT CARD INFORMATION BEFORE  
19 GRANTING ACCESS, THAT WOULD HAVE A NEGATIVE IMPACT ON  
20 THE NUMBER OF VISITORS TO THE SALON.COM WEBSITE, RIGHT?

21 A. CAN YOU REFRESH MY MEMORY ON WHAT SALON HAS ON  
22 THEIR WEBSITE?

23 Q. THEY ARE AN ONLINE MAGAZINE, NEWS, SOME ADULT  
24 CONTENT, A VARIETY OF INFORMATION AND THINGS SUCH AS  
25 THAT.

1 A. AND WHAT IS THEIR BUSINESS MODEL? DO THEY HAVE  
2 ADVERTISING REVENUE AND PRODUCTS AND SERVICES FOR SALE?

3 Q. THEY DO HAVE ADVERTISING REVENUE. I DON'T  
4 BELIEVE THEY SELL ANY PRODUCTS ON THE SITE BUT I COULD  
5 BE WRONG. BUT GENERALLY THEY ARE ADVERTISING BASED FOR  
6 THE MOST PART.

7 A. REPEAT YOUR QUESTION NOW.

8 Q. SURE. IF SALON WAS REQUIRED TO REQUEST PAYMENT  
9 CARD INFORMATION BEFORE GRANTING ACCESS, THAT WOULD HAVE  
10 A NEGATIVE IMPACT ON THE NUMBER OF VISITORS TO THE  
11 SALON.COM WEBSITE, CORRECT?

12 A. BUT I'M NOT SURE WHY THEY WOULD -- THEY WOULD DO  
13 THAT.

14 Q. BUT IF THEY DID, IT WOULD BE LIKELY TO REDUCE  
15 THE NUMBER OF VISITORS, RIGHT?

16 A. YES.

17 Q. AND THAT COULD NEGATIVELY IMPACT THEIR  
18 ADVERTISING REVENUE, RIGHT?

19 A. YES, IT COULD.

20 MR. HARRIS: I HAVE NO FURTHER QUESTIONS.

21 THE COURT: REDIRECT, MR. TODD.

22 MR. HARRIS, ANY EXHIBITS THAT YOU WANT  
23 IN?

24 MR. HARRIS: NO, YOUR HONOR.

25 THE COURT: PARDON ME?

1 MR. HARRIS: NO, YOUR HONOR, NO EXHIBITS.

2 THE COURT: THANK YOU.

3 REDIRECT EXAMINATION

4 BY MR. TODD:

5 Q. MR. CLARK, TO YOUR KNOWLEDGE, DO VISA  
6 REGULATIONS REQUIRE ACQUIRING BANKS TO MONITOR WEBSITES  
7 FOR CHILD PORNOGRAPHY?

8 A. YES, I THINK THEY DO.

9 Q. COULD WE BRING UP THE PEIREZ DEPOSITION THAT WAS  
10 JUST DISCUSSED, PAGE 213, LINES 8 TO 24.

11 MR. TODD: COURT'S INDULGENCE, YOUR  
12 HONOR?

13 (PAUSE.)

14 MR. TODD: I'M SORRY. IT'S THE CLARK  
15 DEPOSITION. IT'S PAGE 213, LINES 8 TO 24. MY  
16 APOLOGIES, YOUR HONOR.

17 THE COURT: YOU ARE EXCUSED.

18 MR. TODD: I BELIEVE --

19 THE COURT: NOT FROM THE ROOM.

20 BY MR. TODD:

21 Q. I BELIEVE THIS -- YOU WERE ASKED PREVIOUSLY,  
22 MR. CLARK, ABOUT YOUR TESTIMONY AT THE DEPOSITION. AND  
23 YOU WERE ASKED TO -- WHETHER OR NOT -- YOU WERE ASKED  
24 ABOUT THE DEPOSITION UP TO LINE 8 OF THE TRANSCRIPT, IS  
25 THAT CORRECT?

1 A. YES.

2 Q. WOULD YOU -- WITH ADDITIONAL -- WOULD YOU LIKE

3 TO REVIEW -- COULD YOU READ ALOUD LINES 8 TO 24?

4 A. SURE. THIS IS MR. PEIREZ TALKING, THE WITNESS?

5 Q. NO. THIS IS YOUR DEPOSITION. MY APOLOGIES.

6 A. WHAT LINES DO YOU WANT ME TO READ?

7 Q. YOU CAN BEGIN AT LINE 11.

8 A. THANK YOU.

9 THE WITNESS: WE DID LISTEN TO JOSHUA  
10 PEIREZ TALK ABOUT, I BELIEVE, IF NOT AT THAT SESSION,  
11 AROUND THAT TIME IN THE TRADE PRESS, JOSHUA PEIREZ  
12 TALKED ABOUT, IN THE TRADE PRESS FOR SURE, HIS  
13 EXCITEMENT -- MIGHT BE THE WRONG WORD, HIS -- THAT HE  
14 WAS PLEASED THAT THE CHILD PORNOGRAPHY COALITION HAD  
15 GOTTEN TOGETHER, AND HE'S QUOTED IN THAT AS SAYING THAT  
16 MASTERCARD IS PROUD TO BE PART OF THIS EFFORT AND IN  
17 FACT WILL DO THEIR PART TO TURN OFF MERCHANTS OVERSEAS  
18 RELATIVE TO CHILD PORNOGRAPHY, NOT RELATIVE TO ADULT  
19 SEXUAL CONTENT, BUT RELATIVE TO CHILD PORNOGRAPHY.

20 THAT'S IN MY -- THAT TRADE ARTICLE IS IN

21 A -- AN ARTICLE THAT'S IN MY SUPPORTING MATERIALS.

22 Q. THANK YOU, MR. CLARK. THAT WAS YOUR TESTIMONY

23 AT YOUR DEPOSITION?

24 A. YES.

25 Q. COULD WE BRING UP DEFENDANT'S EXHIBIT 407.

1 MR. CLARK, WHAT IS THIS?

2 A. THIS IS AN ALL ACCESS PREPAID CARD ISSUED BY  
3 NETSPEND, WHICH IS ONE OF THE LARGE U.S. ISSUERS OF  
4 RELOADABLE PREPAID CARDS.

5 Q. AND COULD YOU READ THE WORD THAT APPEARS ABOVE  
6 THE EAGLE?

7 A. YES. IT SAYS, DEBIT, AND THIS IS A PREPAID  
8 CARD.

9 Q. AND I THINK, CORRECT ME IF I'M WRONG, YOU  
10 TESTIFIED EARLIER THAT YOU DON'T KNOW WHETHER -- IF A  
11 CONSUMER WAS ASKED ABOUT WHAT KIND OF CARD THEY HAD, YOU  
12 DON'T KNOW WHETHER THEY WOULD CHARACTERIZE THIS CARD AS  
13 DEBIT OR PREPAID, IS THAT CORRECT?

14 A. THAT'S CORRECT.

15 Q. MR. CLARK, HAVE YOU BEEN ASKED BY THE DEPARTMENT  
16 OF JUSTICE TO RENDER AN OPINION ON THE MEANING OF  
17 STATUTORY TERMS IN THE CHILD ON-LINE PROTECTION ACT?

18 A. NO.

19 Q. MR. CLARK, YOU WERE ASKED A HYPOTHETICAL  
20 QUESTION ABOUT A MINOR THAT RECEIVED A CREDIT CARD, AND  
21 YOU WERE ASKED THE QUESTION, I BELIEVE, CONCERNED HIS  
22 RECEIPT OF THE BILLING STATEMENT AND WHETHER OR NOT THE  
23 PARENT WOULD BE AWARE OF THAT BILLING STATEMENT. DO YOU  
24 RECALL THAT QUESTION FROM MR. HARRIS?

25 A. I THINK SO.

1 Q. MR. CLARK, WHEN A CREDIT CARD COMPANY PRODUCES A  
2 BILLING STATEMENT, TO YOUR KNOWLEDGE, HOW DOES IT GET TO  
3 THE CUSTOMER?

4 MR. HARRIS: OBJECTION, VAGUE.

5 BY MR. TODD:

6 Q. IS IT --

7 THE COURT: I THINK HE ALREADY ANSWERED  
8 THAT BUT IT'S OKAY TO GO OVER IT AGAIN.

9 MR. TODD: I'M JUST ASKING HOW THE  
10 BILLING STATEMENT GETS INTO THE HAND OF THE CUSTOMER.

11 BY MR. TODD:

12 Q. DO YOU KNOW HOW THE BILLING STATEMENT GETS INTO  
13 THE HAND OF THE CUSTOMER?

14 A. BY CUSTOMER, YOU MEAN THE CARDHOLDER, THE  
15 ACCOUNT HOLDER?

16 Q. YES.

17 A. YES, IT'S AVAILABLE ONLINE. IT'S -- THE  
18 INFORMATION IS AVAILABLE BY CALLING THE CARD COMPANY.  
19 SO YOU CAN GET IT OVER THE PHONE. AND THE INFORMATION  
20 IS MAILED TO THE INDIVIDUAL, THE CARDHOLDER THAT IS  
21 ACCOUNTABLE FOR THAT ACCOUNT.

22 Q. IT IS MAILED TO THE BILLING ADDRESS OF THE  
23 CARDHOLDER, IS THAT CORRECT?

24 A. YES, IT IS.

25 Q. AND THEY -- TO YOUR KNOWLEDGE, DO CARD COMPANIES

1 ALLOW BILLING STATEMENTS TO BE SENT TO P.O. BOXES?

2 A. I'M NOT SURE BUT IT IS GENERALLY MAILED TO A  
3 RESIDENCE WHICH IS GENERALLY WHERE THE CARDHOLDER -- A  
4 RESIDENCE OR AN OFFICE POSSIBLY.

5 Q. AND IN THIS HYPOTHETICAL, WERE YOU ASKED ABOUT  
6 WHETHER THE MINOR WAS LIVING WITH THE PARENT OR NOT?

7 A. NO.

8 Q. MR. CLARK, YOU WERE ASKED TO PROVIDE TESTIMONY  
9 -- AN OPINION, EXPERT OPINION, ABOUT WHETHER ADULTS HAVE  
10 ACCESS TO TRADITIONAL PAYMENT CARDS?

11 A. YES.

12 Q. NOW, DOES YOUR LACK OF KNOWLEDGE ABOUT WHETHER  
13 THE UNDERBANKED MAY OR MAY NOT HAVE A CREDIT OR DEBIT  
14 CARD CHANGE YOUR OPINION ABOUT WHETHER THE UNDERBANKED  
15 HAD ACCESS TO SOME TYPE OF TRADITIONAL PAYMENT CARD?

16 A. THE LAST PART OF THE QUESTION YOU USED THE WORD  
17 UNDERBANKED?

18 Q. UNDERBANKED.

19 A. REPEAT THE QUESTION.

20 Q. DOES YOUR LACK OF KNOWLEDGE ABOUT WHETHER OR NOT  
21 THE UNDERBANKED HAVE ACCESS TO A CREDIT OR DEBIT CARD  
22 CHANGE YOUR EXPERT OPINION ABOUT WHETHER THEY HAVE  
23 ACCESS TO SOME FORM OF TRADITIONAL PAYMENT CARD?

24 A. AT THIS LATE HOUR, I'M HAVING TROUBLE FOLLOWING  
25 THE QUESTION.



1 Q. DOES YOUR EXPERT OPINION -- FIRST OF ALL, YOU  
2 TESTIFIED THAT THERE ARE THREE KINDS OF CARDS -- A  
3 TRADITIONAL PAYMENT CARD IS A TERM YOU ESPECIALLY  
4 CREATED FOR THIS REPORT, CORRECT?

5 A. THAT'S CORRECT.

6 Q. AND THERE WERE THREE KINDS OF CARDS THAT YOU  
7 WERE INCLUDING IN THE TERM TRADITIONAL PAYMENT CARD?

8 A. YES.

9 Q. WHAT WERE THOSE THREE KINDS OF CARDS?

10 A. CREDIT CARD, DEBIT CARD AND RELOADABLE PREPAID.

11 Q. AND DOES YOUR LACK OF KNOWLEDGE ABOUT WHETHER  
12 THE UNDERBANKED MAY HAVE A CREDIT OR DEBIT CARD, CHANGE  
13 YOUR EXPERT OPINION ABOUT WHETHER THEY HAVE ACCESS TO A  
14 RELOADABLE PREPAID CARD?

15 A. NO.

16 Q. CAN WE BRING UP DEFENDANT'S EXHIBIT 93, PAGE  
17 0030.

18 MR. TODD: CAN WE ZOOM IN?

19 COURT'S INDULGENCE, YOUR HONOR.

20 CAN WE ZOOM IN ON THE LAST PARAGRAPH?

21 BY MR. TODD:

22 Q. MR. CLARK, YOU WERE ASKED ABOUT WHETHER THE --  
23 REQUIRING THE USE OF A PAYMENT CARD WILL REDUCE THE  
24 NUMBER OF VISITORS, AND YOU WERE REFERRED TO YOUR  
25 REPORT, IS THAT CORRECT?

1 A. THAT'S CORRECT.

2 Q. COULD YOU, JUST FOR THE SAKE OF COMPLETENESS, DO  
3 YOU SEE THE SENTENCE BEGINNING, TO BE CLEAR?

4 A. YES.

5 Q. COULD YOU READ THAT SENTENCE AND THE FOLLOWING  
6 SENTENCE?

7 A. YES.

8 TO BE CLEAR, REQUIRING THE USE OF A  
9 PAYMENT CARD IS LIKELY TO REDUCE THE NUMBER OF WEBSITE  
10 VISITORS. BUT SUCH VISITORS WERE UNLIKELY TO MAKE A  
11 PURCHASE AND THUS UNLIKELY TO AFFECT BUSINESS RESULTS.

12 Q. COULD YOU READ THE NEXT SENTENCE?

13 A. BY CONTRAST, VISITORS INTENDING TO PURCHASE ARE  
14 NOT LIKELY TO BE DETERRED BY ENTERING A PAYMENT CARD AT  
15 THE ENTRY SCREEN BECAUSE THEY ARE LIKELY TO STILL SEE  
16 THE SAME BENEFITS AS BEFORE, CONVENIENCE, ANONYMITY.

17 Q. AND FOR THE SAKE OF COMPLETENESS, READ THE LAST  
18 SENTENCE.

19 A. MOREOVER, REQUIRING THE USE OF A PAYMENT CARD  
20 SHOULD LEAD TO REPEAT VISITS TO THE WEBSITE WHERE THE  
21 WEBSITE VISITOR HAS REGISTERED A PAYMENT CARD AND/OR  
22 OBTAINED A MEMBERSHIP FROM AUTOMATIC ACCESS IN THE  
23 FUTURE. THUS, REQUIRING THE USE OF PAYMENT CARD SHOULD  
24 IMPROVE REVENUE LEVELS.

25 Q. THANK YOU, MR. CLARK.

1 MR. TODD: MR. BYRDSONG, COULD WE BRING  
2 UP PAGE 136 OF MR. CLARK'S DEPOSITION.

3 MR. HARRIS: COUNSEL, CAN YOU SAY THE  
4 PAGE AGAIN?

5 MR. TODD: PAGE 136, LINES 10 TO 16.  
6 BY MR. TODD:

7 Q. PREVIOUSLY I THINK YOU WERE ASKED TO CONFIRM  
8 YOUR TESTIMONY UP TO LINE 9, IS THAT CORRECT?

9 A. I'VE FORGOTTEN THE CONTEXT OF THE TOPIC, BUT I  
10 WAS ASKED TO READ A LOT OF THINGS.

11 Q. COULD YOU READ THE TESTIMONY BEGINNING FROM  
12 LINES 10 THROUGH 16?

13 A. OKAY. AND THIS IS MY TESTIMONY FROM AUGUST 3RD?

14 Q. YES, MR. CLARK.

15 A. QUESTION: SO YOU DO NOT KNOW WHETHER THE  
16 CATEGORY DEBIT CARDS INCLUDES PREPAID CARDS?

17 ANSWER: I KNOW THAT THE CHILDREN WERE  
18 ASKED A QUESTION AND THEY REPORTED THEIR ANSWERS. AND  
19 IF NO ONE IS GIVING BACK AN ANSWER CALLED PREPAID CARD,  
20 THEN, YOU KNOW, I CAN'T LOOK UNDERNEATH THE HOOD OF THE  
21 DATA.

22 Q. THANK YOU, MR. CLARK.

23 MR. TODD: I HAVE NO MORE QUESTIONS FOR  
24 THIS WITNESS, UNLESS WE HAVE THE POSSIBILITY OF REDIRECT  
25 OR REREDIRECT, YOUR HONOR.

1 MR. HARRIS: NO QUESTIONS.

2 THE COURT: RECROSS.

3 MR. HARRIS: I HAVE NO QUESTIONS.

4 THE COURT: MR. CLARK, YOU ARE EXCUSED,  
5 SIR.

6 THE WITNESS: THANK YOU, YOUR HONOR.

7 THE COURT: LEAVE ANY BOOKS AND/OR PAPERS  
8 IN UNLESS THEY BELONG TO YOU.

9 THE WITNESS: THANK YOU. SORRY TO CREATE  
10 A DISTURBANCE HERE.

11 (WITNESS EXCUSED.)

12 THE COURT: OKAY. WHAT'S HAPPENING  
13 TOMORROW, MR. GOMEZ?

14 MR. GOMEZ: WE HAVE WITNESS SCOTT SMITH  
15 AND, AS I MENTIONED YESTERDAY, THERE ARE TWO EXHIBITS,  
16 91 AND 92.

17 THE COURT: WHAT IS MR. SMITH'S FIRST  
18 NAME?

19 MR. GOMEZ: SCOTT.

20 THE COURT: THANK YOU.

21 MR. GOMEZ: PROFESSOR SCOTT SMITH.

22 THE COURT: I KNEW IT AND FORGOT IT.

23 MR. GOMEZ: YES, YOUR HONOR. AND THAT  
24 WOULD CONCLUDE THE WITNESSES FOR THE DEFENDANT, YOUR  
25 HONOR.

1 THE COURT: DO YOU EXPECT ANY WITNESSES  
2 TOMORROW?

3 MR. HANSEN: WE DO NOT, YOUR HONOR. WE  
4 HAD ADVISED YOU YESTERDAY THAT WE MIGHT CALL PROFESSOR  
5 GELMAN. WE HAVE DECIDED PROFESSOR GELMAN'S TESTIMONY IS  
6 NOT NECESSARY. THE ONLY OTHER LOOSE END THAT WAS  
7 FLOATING AROUND OUT THERE WAS THE FLASH NETWORKS  
8 WITNESS. YOUR HONOR WILL RECALL THEY FILED A MOTION.  
9 THIS WAS THE ONE WHERE THE WITNESS MIGHT HAVE TO COME  
10 FROM ISRAEL. THAT MOTION IS NOW MOOT. WE ARE NOT GOING  
11 TO CALL ANYBODY FROM FLASH NETWORKS, SO WE INTEND TO  
12 CALL NO REBUTTAL WITNESSES.

13 THE COURT: THEN THE EVIDENTIARY RECORD  
14 SHOULD END TOMORROW, PROBABLY SOMETIME IN THE LATE  
15 MORNING.

16 MR. GOMEZ: I WOULD HOPE SO, YOUR HONOR.

17 THE COURT: DEPENDS ON HOW LONG SCOTT  
18 SMITH'S TESTIMONY TAKES.

19 MR. GOMEZ: YES, YOUR HONOR.

20 THE COURT: WHENEVER THE TESTIMONY ENDS  
21 TOMORROW AND THE EVIDENTIARY RECORD IS CLOSED, WE SHALL  
22 PLAN TO CONTINUE TO MEET FOR ADMINISTRATIVE PURPOSES FOR  
23 CASE MANAGEMENT UNTIL WE GET OUR WORK DONE.

24 MR. GOMEZ: YES, YOUR HONOR.

25 I HAD ONE QUESTION AND IT MAY BE IT'S

1           SOMETHING THAT SHOULD BE JUST DEFERRED UNTIL TOMORROW.  
2           THAT WAS JUST A QUESTION OF HOW LONG THE COURT  
3           ANTICIPATED CLOSING FOR EACH SIDE.

4                           THE COURT: WE WILL DO THAT TOMORROW.

5                           MR. GOMEZ: YES, YOUR HONOR.

6                           THE COURT: WE WILL HAVE THE TIME TO  
7           DISCUSS IT.

8                           MR. GOMEZ: YES, YOUR HONOR.

9                           THE COURT: THE COURT DAY IS CONCLUDED.  
10          COUNSEL ARE EXCUSED. WE ARE OFF THE RECORD.

11                           (COURT ADJOURNED AT 5:00 P.M.)

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