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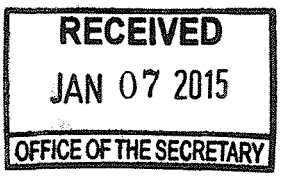
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE
PROCEEDING File No. 3-16033



In the Matter of

AIRTOUCH COMMUNICATIONS, INC., HIDEYUKI KANAKUBO, AND JEROME KAISER, CPA,

Respondents.

RESPONDENTS' OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF RESPONDENTS' EXPERTS ALLAN KLEIDON AND MICHAEL KUNKEL

I. INTRODUCTION

The Division seeks to prevent Respondents from presenting any expert testimony from Michael Kunkel or Dr. Allan Kleidon. With respect to each expert, however, the Division's motion relies on false premises and should be denied for multiple, independent reasons.

Mr. Kunkel's expert report offers critical evidence demolishing the linchpin of the Division's case—that Messrs. Kanakubo and Kaiser "concealed" the existence of the TM Cell fulfillment and logistics agreement from others at AirTouch because they believed the agreement precluded the company from recognizing revenue on its sale to TM Cell. Specifically, Mr. Kunkel conducted a forensic analysis of a hard drive used to back up AirTouch's network shared drive, and concluded that a copy of the TM Cell agreement was sitting on the company's network shared drive in plain sight, accessible to anyone with access to the drive, throughout the relevant time period. The Division asks that Mr. Kunkel's report be excluded, purportedly because "the Division has never had access to this drive, and the respondents have refused to disclose it without imposing several [unreasonable] conditions." Mot. at 1. These assertions are false and misleading.

First, the Division's claim that it "did not have access" to the drive is based entirely on the Division's decision not to inspect the drive as part of its investigation. This decision was made despite the fact that Mr. Kaiser testified at length during his investigative testimony as to the existence of the shared drive and his belief that the allegedly offending agreement was on it and accessible. Against this backdrop there is simply no basis for the SEC to claim it was denied access to the drive. Second, AirTouch has not "refused" to disclose the hard drive; to the contrary, the company stands ready to provide the hard drive to the Division's expert upon the Division's agreement to a reasonable set of terms designed to protect large volumes of confidential, privileged and/or irrelevant material contained on the hard drive.

The Division fares no better with respect to Dr. Kleidon. It badly misconstrues Dr. Kleidon's report, complaining that Dr. Kleidon focuses "only" on loss causation, when Dr. Kleidon is plainly analyzing stock price movement to look at the issue of materiality, not loss causation. In fact, the Division's own expert, Dr. Tabak, offers opinions on precisely the same topics that are the subject of Dr. Kleidon's opinion. And with respect to Dr. Kleidon's limited opinions regarding shareholder loss (which amount to only two paragraphs of his report), the Division concedes that those opinions are relevant to any determination of remedies.

II. MR. KUNKEL'S TESTIMONY SHOULD NOT BE EXCLUDED.

A. The Hard Drive Was Disclosed By Respondents During The Division's Investigation, But The Division Never Asked For It.

The Division's motion to exclude Mr. Kunkel's report is first premised on the Division's assertion that the AirTouch hard drive examined by Mr. Kunkel was previously "undisclosed," and that "the Division has never had access to this drive." Mot. at 1, 5, 9. However, as noted above and explained below, the existence of the AirTouch shared drive—and the fact that it likely contained a copy of the supposedly "concealed" fulfillment and logistics agreement—*was* disclosed to the Division during its investigation. Mr. Kaiser informed the Division, in sworn testimony given on November 21, 2013, that an executed version of the fulfillment and logistics agreement likely "would have been scanned and saved" on a "shared drive" to which Ms. Chan (the company's controller) would have had access:

> Q. If Ms. Chan wanted to obtain a copy of the logistics agreement – the fulfillment and logistics agreement with TM Cell, who did she have to go to in order to obtain a copy?
>
> A. Typically, an agreement like this, once it is executed, once it's fully executed, would have been scanned and saved on line . . . .
>
> Q. When you say "saving documents on line," what do you mean? Do you mean like a shared drive?

A. Yes, we had a shared drive. I don't recall the exact letter. It was a drive that contained documents.

See Ex. A (Kaiser Tr. at 149:1-22).

In the nine months that elapsed between Mr. Kaiser's testimony and the Order Instituting Proceedings ("OIP") in this matter, the Division could have used its broad subpoena powers to ask AirTouch to provide a copy of the drive referenced by Mr. Kaiser during his testimony.[1] Yet the Division never did so. Instead, without ever seeking to obtain the evidence that would have conclusively refuted its claims of concealment, the Division alleged in the OIP that Messrs. Kanakubo and Kaiser "concealed" the existence of the agreement from others at the company (including the controller). *See* OIP ¶ 26.

This supposed "concealment" by Messrs. Kanakubo and Kaiser is the linchpin of the Division's case, and thus it is perhaps unsurprising that the Division seeks to exclude the exculpatory evidence contained in Mr. Kunkel's report. The Division asserts that "Kanakubo and Kaiser made sure that the [*sic*] AirTouch's board, controller and auditors never found about [*sic*] the TM Cell warehouse contract." Mot. at 3. Mr. Kunkel's report, however, demolishes this utterly conclusory assertion and reveals the truth—that Messrs. Kanakubo and Kaiser did not try to conceal the fulfillment and logistics agreement, for the simple reason that it was located on AirTouch's shared network drive from August 20, 2012 through November 27, 2012 and most likely beyond. *See* Kunkel Report ¶ 5. For at least that time period, AirTouch's controller—or anyone else who accessed the Company's shared network drive—could have located the fulfillment and logistics agreement, read it, analyzed it, printed it, distributed it, provided it to the company's auditors and/or asked Messrs. Kaiser or Kanakubo about it.

[1] Nothing suggests that AirTouch would not have cooperated with this request, subject to resolution of the same privilege and confidentiality concerns expressed herein.

For purposes of determining whether the individual respondents hid the fulfillment and logistics agreement, it is not relevant that Mr. Kunkel "does not offer any opinions as to whether the controller, the auditors or the board ever saw the contract or tried to access it." Mot. at 5. What Mr. Kunkel's report establishes is that the fulfillment and logistics agreement was not hidden in any way. It was not buried in a concealed subfolder. Its file name was not altered to obscure its content. If Messrs. Kanakubo and Kaiser truly wanted to "ma[k]e sure that the [*sic*] AirTouch's board, controller and auditors never found about [*sic*] the TM Cell warehouse contract" (*id.* at 3), why would they have permitted it to sit undisguised on the company's shared drive from August 20, 2012 through at least November 27, 2012?

Mr. Kunkel's testimony will provide highly probative exonerating evidence for Respondents, and should be allowed on that basis alone. *E.g.*, *Espeaignnette v. Gene Tierney Co.*, 43 F.3d 1, 8 (1st Cir. 1994) (holding that the trial court erred by excluding "evidence [that] was highly probative on an essential disputed element in the case" where "the danger of unfair prejudice was extremely remote").

B. AirTouch Has Agreed To Make The Drive Available To The Division Subject To Reasonable Terms.

The Hearing Officer should deny the Division's motion to exclude Mr. Kunkel's report for the separate reason that AirTouch has already agreed to make its hard drive available to the Division for analysis by the Division's own expert, subject to terms designed only to protect the confidential and privileged nature of documents that are wholly irrelevant to Mr. Kunkel's analysis. As explained below, to the extent the Division rejects these reasonable terms, its failure to obtain the hard drive is of its own making.

As an initial matter, AirTouch has agreed to provide the Division with access to the hard drive notwithstanding the fact that none of the Commission's rules or precedent require it to do

so. The Division accuses Respondents of violating the expert disclosure requirements found in Federal Rule of Civil Procedure 26, which, according to the Division, apply to this proceeding by virtue of the Hearing Officer's instruction that expert reports "should be as specific and detailed as those presented in federal district court pursuant to Federal Rule of Civil Procedure 26." *See* Order Setting Prehearing Schedule and General Prehearing Order, dated September 26, 2014, at 3. While Respondents understand that guidance to govern the level of detail included in an expert's written report, we respectfully do not believe that the Hearing Officer's instruction can or does impose expert discovery obligations that do not otherwise exist under the Commission's rules or precedent. However, in the interests of compromise, AirTouch agreed to make the hard drive available to the Division subject to reasonable terms. *See* Ex. B (draft protective order proposed to Division by AirTouch counsel).[2] Because the hard drive at issue contains large volumes of privileged and confidential data, AirTouch simply wants to ensure that Division staff is not given carte blanche to peruse the entire contents of the drive, including the substance of privileged communications, merely because Mr. Kunkel analyzed the forensic characteristics of a single, non-privileged document. *See* Ex. C, Declaration of Roger L. Scott (AirTouch counsel explaining that hard drive contains privileged material).

The Division, however, has so far refused to accept AirTouch's proposed terms. The Division argues that it is entitled to access the entire drive because "[w]hen an expert considers data that is privileged when rendering his opinion, then that privilege is waived." Mot. at 10. That is, the Division asserts that because Mr. Kunkel searched a hard drive containing numerous files protected by AirTouch's attorney-client privilege, AirTouch's attorney-client privilege has been waived. The Division misrepresents the facts. Mr. Kunkel did not consider the substance

[2] As of today, the Division has not responded to AirTouch's proposed protective order. AirTouch is willing to further negotiate the proposed terms upon the Division's request.

of any privileged information. Rather, he simply searched the hard drive, which houses both privileged and non-privileged files. As is clear from Mr. Kunkel's report, his forensic analysis centered on the eight instances of the file titled "TMCell – Letter of Agreement 073012.pdf." *See* Kunkel Report ¶ 6. To argue, as the Division does, that the company's privilege was waived when AirTouch turned over the drive to its retained consultant Mr. Kunkel is like arguing that if an expert reviews a single book out of a library, the entire library must be disclosed. This is nonsensical and would make it impossible to conduct an effective forensic analysis of the hard drive without waiving privilege.

Yet, the Division dismisses AirTouch's valid privilege concerns as a "red herring" by citing a number of cases that do not apply to the present facts. Mot. at 10. Notably, not even one of the Division's cases deals with forensic examinations of computer hard drives, which, as the court explains in *Thielen v. Buongiorno USA, Inc.*, pose a unique problem for traditional rules of discovery and privilege:

> While the court is satisfied defendant has established a viable reason for discovery ... to allow defendant unrestricted access to plaintiff's computer would certainly constitute an undue burden. Under these circumstances, even where there has been a waiver of objections due to untimeliness, it seems incumbent upon the court to take steps to satisfy the discovery request without the result being a wholesale rummaging through plaintiff's filing cabinet.

No. 106-CV-16, 2007 WL 465680, at *2 (W.D. Mich. Feb. 8, 2007).

Under the terms proposed by AirTouch, the Division's expert will have the ability to conduct whatever forensic examination is necessary in order to look into the exact issue addressed by Mr. Kunkel—namely, the existence on the drive and the forensic characteristics of the file titled "TMCell – Letter of Agreement 073012.pdf." The expert will be free to discuss his or her analysis, and share his or her findings, with the Division. What the expert will not be able to do is provide Division staff, absent AirTouch's prior consent, with substantive files *other* than

the file titled "TMCell – Letter of Agreement 073012.pdf." The Division fails to explain why Division staff needs access to those other files in order to rebut Mr. Kunkel's analysis, and we can think of no legitimate reason justifying such access.

The Division further takes issue with AirTouch's request that the Division "locate and pay"[3] for an independent expert instead of utilizing its own staff, calling this request "[m]ost troubling." Mot. at 11. The Division misconstrues what AirTouch is requesting. AirTouch is not requesting the appointment of a truly neutral expert, but rather asks the Division only to retain an external expert not employed by the Division. Litigants agree to these types of requests every day in order to address concerns regarding privilege and confidentiality. *E.g.*, *Antioch Co. v. Scrapbook Borders, Inc.*, 210 F.R.D. 645, 645 (D. Minn. 2002) (ordering parties to utilize third-party forensics consultant); *Ferron v. Search Cactus, L.L.C.*, No. 2:06-CV-327, 2008 WL 1902499, at *4 (S.D. Ohio Apr. 28, 2008) (ordering forensic analysis by defendant's third-party consultant and prescribing protocol whereby the expert would review plaintiff's computer hard drive and report findings under confidence to plaintiff's counsel prior to forwarding it to defendant's counsel).

In sum, the Division can gain the access it purports to need in order to respond to Mr. Kunkel's report simply by hiring an external expert and agreeing that the expert may not provide Division staff with irrelevant and/or privileged material. The Hearing Officer should reject the Division's position that Respondents must either: (1) turn over a hard drive containing large volumes of privileged and irrelevant material for Division staff's unfettered review; or (2) forego the right to present key evidence refuting the Division's allegations of concealment.

[3] The Division's apparent unwillingness to "locate and pay" an independent consultant is not well-taken, considering the Division has already hired expert witnesses Arnold and Tabak for $712.50 per hour and $725 per hour, respectively. By comparison, Mr. Kunkel's maximum billing rate is $350 per hour.

III. DR. KLEIDON'S TESTIMONY SHOULD NOT BE EXCLUDED.

A. The Plain Focus Of Dr. Kleidon's Report Is Materiality, Not Loss Causation.

The Division contends that the Hearing Officer should exclude the entirety of Dr. Kleidon's anticipated testimony "because it bears *only* on the issue of loss causation, which is not an element to be proven in this case." Mot. at 12 (emphasis added). Although Respondents concede that loss causation is not a required element of the Division's claims, it is readily apparent from even a cursory review of Dr. Kleidon's report that his focus is not on loss causation at all, but rather on materiality—an undisputed element of the Division's claims. In its attempt to establish that the subject of Dr. Kleidon's report is loss causation, the Division cherry-picks quotations from only *four* of the 39 paragraphs in Dr. Kleidon's report, using those selective quotes as a purported basis to exclude the *entirety* of Dr. Kleidon's opinions. *See* Mot. at 3-5 (quoting paragraphs 4, 9, 13 and 38). In reality, Dr. Kleidon discusses a lack of evidence of shareholder loss merely as one indicator that the alleged misrepresentations in question were not material to shareholders. *See, e.g.*, Kleidon Report ¶ 19. As explained below, Dr. Kleidon's materiality analysis could not be more relevant to these proceedings.

There is no dispute that materiality is an element that the Division must prove to establish liability for the alleged violations of the federal securities laws. *See* Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q; Rule 10b-5, 17 C.F.R. §240.10b-5. Materiality is the primary focus of Dr. Kleidon's report. He analyzes the market reaction to various alleged misstatements and offers his expert opinion on whether the stock price movement is consistent with materiality. Kleidon Report at ¶¶ 2, 8. Specifically, he analyzes whether there is any statistically significant price movement following AirTouch announcements indicating that shareholders considered the alleged misstatements contained in those announcements to be material. *Id.* at ¶¶ 9-37.

The Division's motion ignores the vast majority of Dr. Kleidon's report, carefully avoiding the use of the word "material," while offering out-of-context quotations to create the implication that his opinion instead concerns whether there is evidence of loss causation. *See* Mot. at 3-4. Indeed, the Division's claim that Dr. Kleidon focuses "only" on loss causation is belied by the very block quote from Dr. Kleidon's report that the Division chose to highlight in its motion. *See* Mot. at 4 (block quote from Dr. Kleidon's report in which Dr. Kleidon states his conclusion "that there is no evidence of material misstatements").

As to Dr. Kleidon's supposed opinion on loss causation, Dr. Kleidon explains that one indicator of the materiality of any particular piece of information is the effect the release of that information had on the security's value. Kleidon Report ¶ 19 ("A price change consistent with theory and prior evidence bolsters the establishment of materiality; and the larger the price movement, the more likely the information is material.") (quoting Mark Mitchell & Jeffry Netter, *The Role of Financial Economics in Securities Fraud Cases: Applications at the Securities and Exchange Commission*, 49 Bus. Law. 545, 550 (Feb. 1994)). Dr. Kleidon thus analyzed the changes in AirTouch's stock price following the alleged misrepresentations to determine whether there was any statistically significant movement in the stock price following the release of the allegedly misleading information—a factor relevant to materiality. The Division's suggestion that Dr. Kleidon's testimony concerns "only" loss causation does not survive actual reading of Dr. Kleidon's report.

The Division's request to exclude Dr. Kleidon's testimony is particularly striking given that the Division itself intends to proffer testimony from its own expert, David Tabak, on precisely the same topics discussed in Dr. Kleidon's report. While Dr. Tabak and Dr. Kleidon reach different conclusions, Dr. Tabak concedes that an "event study"—an analysis of stock

price movements like that performed by Dr. Kleidon—is "[o]ne of the standard procedures" for assessing materiality. Tabak Report ¶ 9; *see also id.* ¶ 11 ("If done properly, such an event study could be used to assess whether the disclosure that the company intended to restate its revenue was material information to the market."). It is startling that the Division seeks to exclude, as purportedly irrelevant, a stock price movement analysis that its own expert concedes is highly relevant.

B. The Division's Request That The Hearing Officer Exclude "All" Of Dr. Kleidon's Testimony Fails Because The Division Does Not Contest The Entirety Of His Report.

In any event, even if the Hearing Officer were to find that portions of Dr. Kleidon's report mentioning shareholder losses are irrelevant (which they are not), the Hearing Officer should nonetheless reject the Division's request to exclude "*all* of Kleidon's opinions" on the supposed basis that they are *all* "irrelevant to the respondents' liability." Mot. at 8 (emphasis added). As noted above, the Division acts as if Dr. Kleidon's extensive opinions concerning materiality simply do not appear on the pages of his report. To the contrary, three of the four opinions summarized by Dr. Kleidon in his Summary of Opinions concern a lack of evidence of material misstatements. Kleidon Report ¶ 4. Indeed, of the thirty-nine paragraphs in Dr. Kleidon's report, only two involve the calculation of shareholder loss. *See id.* at ¶¶ 1-7 (background); ¶¶ 8-37 (materiality analysis); ¶¶ 38-39 (shareholder loss).

C. Dr. Kleidon's Quantification Of Shareholder Losses Is Relevant To The Determination Of Remedies.

Finally, as the Division concedes, Dr. Kleidon's quantification of shareholder losses (*see* Kleidon Report ¶¶ 38-39) is relevant to, at a minimum, the determination of any remedies that may ultimately be awarded in this matter. *See* Mot. at 9; *see also SEC v Patel*, 61 F.3d 137, 141 (2d Cir. 1995) (enumerating factors to be considered when deciding if a party "demonstrates

substantial unfitness to serve as an officer or director" including the "egregiousness" of the underlying violation "in view of the size of the loss"). Although Mr. Kaiser does not believe that the Hearing Officer will find him liable for violations of the federal securities laws, Dr. Kleidon's finding that shareholder losses totaled at most just over $13,000 would, in the event the Hearing Officer determines liability against Mr. Kaiser, be highly relevant to a determination of remedies.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Hearing Officer deny the Division's motion to exclude the expert testimony of Michael Kunkel and Allan Kleidon.

///

Dated: January 5, 2015

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: Kevin Askew/ dw
Kevin M. Askew

[redacted]

Attorneys for Respondents
Hideyuki Kanakubo and Jerome Kaiser

GREENBERG TRAURIG LLP

By: Roger Scott/ dw (with permission)
Roger Scott

[redacted]

Attorneys for Respondent
AirTouch Communications, Inc.

EXHIBIT A

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. LA-04275-A
AIRTOUCH COMMUNICATIONS, INC.)

WITNESS: Jerome Kaiser
PAGES: 1 through 243
PLACE: Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
DATE: Thursday, November 21, 2013

The above-entitled matter came on for hearing, pursuant to notice, at 9:49 a.m.

APPEARANCES:

On behalf of the Securities and Exchange Commission:
PETER I. ALTMAN, ESQ.
RHODA CHANG, Accountant
Securities and Exchange Commission
Division of Enforcement
5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
(323) 965-3871

On behalf of the Witness:
MARC A. INDEGLIA, ESQ.
Indeglia & Carney
1299 Ocean Avenue, Suite 450
Santa Monica, California 90401
(310) 982-2720

ALSO PRESENT:
Michael Vann, SEC Intern

CONTENTS

CONTENTS (CONT.)

Q If Ms. Chan wanted to obtain a copy of the logistics agreement -- the fulfillment and logistics agreement with TM Cell, who did she have to go to in order to obtain a copy?
A Typically, an agreement like this, once it is executed, once it's fully executed, would have been scanned and saved on line, and the original would have been put in the filing cabinet.
Q Who should have done that?
A As I said, it could have been Mr. Kanakubo scanning the document or Ms. Chan or myself, all three of us. It was a small office. All three of us on multiple occasions were responsible for scanning and saving documents.
Q When you say "saving documents on line," what do you mean? Do you mean like a shared drive?
A Yes, we had a shared drive. I don't recall the exact letter. It was a drive that contained documents.
Q Everybody had access to that shared drive? Everyone at AirTouch?
A I seem to recall access being limited to executives and Ms. Chan to that particular shared drive.
Q After you received a copy of the fulfillment and logistics agreement back in November or December of 2012, did you go back to the shared drive and verify or

try to see if the TM Cell agreement was actually on the shared drive?
A I'm sorry. Can you ask that question again?
Q Yeah. You testified as far as you can recall, you had seen the TM Cell fulfillment and logistics agreement for the first time in November or December 2012; is that correct?
A That I read for the first time; yes.
Q After you read it, or during that time frame when you were looking for such an agreement, did you go to that shared drive you just mentioned earlier and try to look for this agreement?
A I don't recall how I obtained a copy, whether Mr. Kanakubo gave me a copy or Sylvia gave me a copy or I found it on the shared drive. I do recall getting a copy of it.
BY MR. ALTMAN:
Q Can we turn back to Exhibit 33 for a moment? I'm going to direct you to the last page of Exhibit 33, which is the e-mail from Mr. Ego Aguirre to Carlos Isaza with a cc to Frank Cheng. The subject line is "Conditional Purchase Order," and it reads in its entirety, "Carlos, attached please find the conditional purchase order for the 20K units of AirTouch Smartlinx U250.

This purchase order is conditional to executing the fulfillment and logistics agreement (attached copy). If the agreement is not executed within 24 hours, this purchase order is invalid. Best regards." It is signed with Mario Ego Aguirre's e-mail signature.
If the purchase order was conditional to executing the fulfillment and logistics agreement, why did you think Ms. Chan didn't need to see the fulfillment and logistics agreement?
A Once I became aware that the agreement was executed, I didn't see a reason why she would need to have an executed copy, other than the one in the file.
Q How would one get into the file that she would have access to?
MR. INDEGLIA: I don't understand the question.
THE WITNESS: Me neither.
MR. INDEGLIA: Can you repeat it?
BY MR. ALTMAN:
Q How did you understand Sylvia Chan would be able to access the executed fulfillment and logistics agreement in the file?
A She would have two methods. One is typically the agreement would be scanned and saved on a shared drive.
Q Who would do that?

A Either Mr. Kanakubo, myself, or Ms. Chan. I don't know who did this particular agreement.
Q Did you do that?
A That responsibility was shared amongst the three of us.
Q Did you do that?
A Sure, I did that as well.
MR. INDEGLIA: No, he's asking did you do it for this agreement.
THE WITNESS: Oh, I just said I don't recall whether I scanned this particular document or not or saved this particular document or not.
BY MR. ALTMAN:
Q Do you know whether Mr. Kanakubo in fact did so?
A No, I don't. I don't know who did it.
Q If one of you two didn't do it, do you have any reason to believe Ms. Chan would have had access to the agreement?
A Well, typically, she would be responsible for filing an original that we had in the office in the Accounting files. Any original document that came to us would go to Ms. Chan. If it wasn't already scanned, she'd scan it, save it, and file the original.
Q Let's turn back to Exhibit 126. Did Ms. Chan

with a forensic company to create a mirror image and preserve it, should it become necessary.

MR. ALTMAN: Has that been done?

MR. INDEGLIA: At this point, we're still working on getting that completed. There was a -- what I'll call a non-forensic image of the Outlook portion of Mr. Kaiser's computer that has already been provided to you on a USB drive. Beyond that, we are still working on getting that matter addressed. It was only very recently that we were able to finally get the logistics behind that clarified.

MR. ALTMAN: We're off the record at 6:34 p.m. on November 21, 2013. Mr. Kaiser, thank you for your time today.

(Whereupon, at 6:34 p.m., the examination was concluded.)

* * * * *

PROOFREADER'S CERTIFICATE

In The Matter of: AIRTOUCH COMMUNICATIONS
Witness: Jerome Kaiser
File Number: LA-04275-A
Date: November 21, 2013
Location: Los Angeles, CA

This is to certify that I, Nicholas J. Wagner, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

_____ _____

(Proofreader's Name) (Date)

EXHIBIT B

From: scottro@gtlaw.com
Sent: Tuesday, December 30, 2014 11:02 AM
To: [redacted]
Cc: [redacted] Kramer, James N.; Wang, Stacey; Askew, Kevin M.
Subject: RE: SEC v. AirTouch et al--production of AirTouch drive
Attachments: 287344739_v 1_Protective Order re hard drive.DOC

Peter-

Following on our correspondence last week, attached please find a draft protective order for your review. Please advise whether you approve of the language, and the name and company of your consultant.

Sincerely,
Roger

Roger Scott
Associate
Greenberg Traurig, LLP | 3161 Michelson Drive | Suite 1000 | Irvine, CA 92612
Tel 949.732.6524
scottro@gtlaw.com | www.gtlaw.com

From: Scott, Roger (Assoc-OC-LT-Labor-EmpLaw)
Sent: Tuesday, December 23, 2014 12:07 PM
To: 'Altman, Peter' [redacted]
Subject: RE: SEC v. AirTouch et al--production of AirTouch drive

Peter-

In response to your letter yesterday, and your and Amy's voicemail this morning, please see the attached correspondence.

Sincerely,
Roger

Roger Scott
Associate
Greenberg Traurig, LLP | 3161 Michelson Drive | Suite 1000 | Irvine, CA 92612
Tel 949.732.6524
scottro@gtlaw.com | www.gtlaw.com

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING File No. 3-16033

In the Matter of AIRTOUCH COMMUNICATIONS, INC., HIDEYUKI KANAKUBO, AND JEROME KAISER, CPA, Respondents.	**STIPULATION AND PROTECTIVE ORDER**

STIPULATION AND PROTECTIVE ORDER

Respondent AirTouch Communications, Inc. ("AirTouch"), and the Securities and Exchange Commission Division of Enforcement ("Division"), by and through their counsel, have agreed to the entry of a Protective Order governing the search for and production of certain information from an external hard drive ("the Drive") that had been used as a backup for AirTouch's network shared drive. The purpose of this Protective Order is to ensure the privacy and confidentiality of all information on or concerning the Drive until that information is reviewed by AirTouch and unless and until AirTouch releases that information to the Division and Division's consultants and agents. Appearing to the Court that good cause has been shown for the entry of such a protective order, it is hereby ORDERED that the search for and production of information from the Drive shall be subject to the following provisions:

1. **Independent Expert Consultant**

AirTouch has agreed to make the Drive available to [INSERT EXPERT], an independent expert consultant retained by the Division ("Division's consultant"). AirTouch has agreed to

allow the Division's consultant to perform whatever forensic work is necessary to search the Drive for instances of a file titled "TMCell – Letter of Agreement 073012.pdf".

2. **Use of the Drive and Information Generated Therefrom**

The Division's consultant may perform whatever forensic work is necessary to search the Drive for instances of a file titled "TMCell – Letter of Agreement 073012.pdf".

The Drive shall not be copied, reproduced, stored, and/or saved except for the purpose of data retrieval and then all data resulting from this copy procedure shall be deleted and wiped from any equipment.

The Division's consultant may print out copies of information retrieved from the Drive Drive using search terms designed to locate a file titled "TMCell – Letter of Agreement 073012.pdf". No other information shall be printed or otherwise retrieved from the Drive by the Division's consultant or any agency of the Division or the Division's consultant.

The information from the Drive shall not be copied, reproduced, stored, saved, or subject to any use other than the one described in this Order, except by AirTouch.

3. **Review of Information Generated from the Drive**

The set of information printed or otherwise generated from the Drive shall be delivered to AirTouch's counsel, Greenberg Traurig, at 3161 Michelson Drive, Suite 1000, Irvine, California 92612. AirTouch's counsel will review the information for any applicable privilege, provide non-privileged materials to the Division, and provide the Division with a log of any privileged information. AirTouch will retain all privileged materials.

4. **Responsibilities of the Division's Consultant**

The Division's consultant may provide the Division with copies of the file titled "TMCell – Letter of Agreement 073012.pdf" and data about the copies' forensic characteristics. However, any other information printed or otherwise generated from the Drive shall not be disclosed to any individual or entity other than AirTouch and the Division's consultant unless authorized in writing by AirTouch. The Division's consultant shall not disclose any such information to any

entity or individual and shall destroy all copies of any information printed or retrieved that fall outside of the search parameters described above. The Drive shall be returned to AirTouch no later than [INSERT DATE].

5. AirTouch's Cooperation with the Division's Consultant

For the sole purpose of facilitating the recovery of data stored on the Drive and to the extent reasonable, AirTouch agrees to cooperate with the Division's consultant, provide information necessary for the speedy and complete recovery of the Drive (unless such information is confidential or otherwise not subject to disclosure), and permit direct communication between the Division's consultant and AirTouch's information systems staff.

6. **Notice of Order**

The Division's consultant may not take possession of the Drive without first agreeing to abide by this Protective Order by executing the affidavit attached as Exhibit A to this Order. The original of this affidavit will be provided to AirTouch before the Division's consultant takes possession of the Drive.

7. **Statement of Non-Waiver**

By providing the Drive to the Division's consultant, AirTouch has not waived any privileges applicable to Drive or the information contained thereon.

SO STIPULATED:

Dated:

Respectfully submitted,

GREENBERG TRAURIG LLP

By:_____
Michael Piazza

Michael Piazza
Roger Scott
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Attorneys for Respondent
AirTouch Communications, Inc.

DIVISION OF ENFORCEMENT

By:_____
John W. Berry

John W. Berry
Amy Jane Longo
Peter I. Altman
Securities and Exchange Commission
Los Angeles Regional Office
444 S. Flower Street, Suite 900
Los Angeles, CA 90071

Counsel for Division of Enforcement

Exhibit A

I, _____, declare as follows:

1. I have read the Protective Order filed in *In the Matter of Airtouch Communications, Inc., Hideyuki Kanakubo, and Jerome Kaiser, CPA*, Admin. Proc. File No. 3-16033, concerning the external hard drive ("the Drive") that had been used as a backup for AirTouch's network shared drive.

2. I further agree to treat all information subject to the Protective Order in accordance with the terms of the Protective Order.

3. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated:_____

Place signed:_____

Signed:_____

_____

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE
PROCEEDING File No. 3-16033

In the Matter of AIRTOUCH COMMUNICATIONS, INC., HIDEYUKI KANAKUBO, AND JEROME KAISER, CPA, Respondents.	DECLARATION OF ROGER L. SCOTT

DECLARATION OF ROGER L. SCOTT

I, Roger L. Scott, hereby declare as follows:

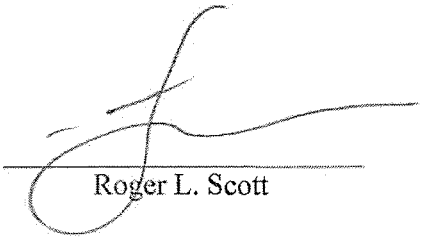
1. I am an attorney licensed to practice law in the State of California and am an associate at Greenberg Traurig, LLP, counsel for Respondent AirTouch Communications, LLC ("AirTouch") in this matter. If called upon, I could and would testify to the facts contained herein from my personal knowledge.

2. I have reviewed the contents of the external computer drive that was provided to Respondents Hide Kanakubo and Jerome Kaiser's expert Michael Kunkel (the "Drive").

3. The Drive contains AirTouch documents and information including backups of AirTouch's server and shared drive, as well as ".pst" files containing e-mails of Messrs. Kanakubo and Kaiser. As a result, I understand the Drive to contain privileged communications with AirTouch's outside counsel.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: January 5, 2015



Roger L. Scott