

# **EXHIBIT “A”**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-21192-HUCK/O'SULLIVAN

NCMIC FINANCE CORPORATION d/b/a  
PROFESSIONAL SOLUTIONS FINANCIAL  
SERVICES, an Iowa Corporation,

Plaintiff,

vs.

BRICAN AMERICA, INC., a Florida  
Corporation,

Defendant.

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1688 Meridian Avenue  
Suite 902  
Miami Beach, Florida  
October 8th, 2009  
10:00 a.m. - 3:15 p.m.

DEPOSITION OF  
JEAN FRANCOIS (JACK) VINCENS

## APPEARANCES:

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 On Behalf of Plaintiff

BARBARA H. SCHREIBMAN, ESQ.  
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 On Behalf of Defendant

Also Present:  
 Jonathan Rucker,  
 Paralegal  
 Yvette Harrell

## EXHIBITS

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MS. SCHREIBMAN: We have these documents pursuant to the Brican LLC subpoena for documents. They are -- if you will allow me to get out my subpoena, unless you have a copy of the subpoena in front of you. Let me get out mine.

MR. GALLAGHER: I do have a copy.

MS. SCHREIBMAN: All documents memorialized in the creation of Brican LLC as a limited liability company are in here. I believe there's only one.

MS. HARRELL: One.

MS. SCHREIBMAN: All agreements between Brican Inc and Brican LLC. There are none. There is nothing in writing per our previous answers, et cetera.

All agreements between Brican LLC and Viso Lasik. There is only one. It is a credit agreement, and you've already been provided it in production.

No. 4. All communications between Brican LLC and Brican Inc. concerning or relating to Professional Solutions. The answer is none. There is nothing in writing.

No. 5 All documents concerning any leases of which Professional Solutions is the lessor or assignee related to goods or services sold by

<p>6</p> <p>1 Brican LLC. That was provided to you as part of</p> <p>2 the production. So you have all of those.</p> <p>3 No. 6. All documents reflecting the names,</p> <p>4 last known addresses, employment of sales and</p> <p>5 marketing people utilized by Brican LLC. They're</p> <p>6 contain in here.</p> <p>7 No. 7. All instructions, directions, plans</p> <p>8 training, sales scripts Brican LLC provided</p> <p>9 individuals who marketed ed and sold and/or leased</p> <p>10 its services and goods. You have the manual. It</p> <p>11 is this. That's it. This is the current manual.</p> <p>12 That's all there is.</p> <p>13 There were prior iterations of it, but this is</p> <p>14 it. This is the only one that exists at this</p> <p>15 time. This is simply revised over time. You have</p> <p>16 this. I'm giving it to you. It goes with this.</p> <p>17 So you're being given this now.</p> <p>18 Nos. 8 and 9. The production for both of</p> <p>19 those questions and requests were provided in the</p> <p>20 documents that were copied and sent to you</p> <p>21 previously. So that's it. That responds to that.</p> <p>22 There you are, and I will now hand this to you</p> <p>23 because this is now yours.</p> <p>24 In the meantime I just want the make an</p> <p>25 objection on the record to the provision of these</p>	<p>8</p> <p>1 I know we've met before, and I know you're</p> <p>2 represented by counsel. So I will dispense with a</p> <p>3 lengthy dissertation on the nature of a deposition.</p> <p>4 Just two items. One is if you don't</p> <p>5 understand the question, please ask me to rephrase it</p> <p>6 and I will. The second is for the sanity of the Court</p> <p>7 Reporter I ask that you let me finish my question</p> <p>8 before you begin your answer. Do you understand that?</p> <p>9 A. Absolutely.</p> <p>10 Q. A few background questions. Where were you</p> <p>11 born?</p> <p>12 A. In France.</p> <p>13 Q. What country or countries are you currently a</p> <p>14 citizen of?</p> <p>15 A. France and Canada.</p> <p>16 Q. Are you a U.S. citizen in any way?</p> <p>17 A. No.</p> <p>18 Q. What is your status here in the United States?</p> <p>19 A. Visa.</p> <p>20 Q. What is your education?</p> <p>21 A. In France and Africa.</p> <p>22 Q. What is the highest level of education you've</p> <p>23 achieved?</p> <p>24 A. I don't know the equivalent in the States, but</p> <p>25 in France bachelorette.</p>
<p>7</p> <p>1 documents to you as being immaterial to this</p> <p>2 litigation and inadmissible.</p> <p>3 Having said that, here's the documents.</p> <p>4 The only thing I'd like you to know prior to</p> <p>5 starting this deposition of Mr. Vincens is that I</p> <p>6 am here now in the capacity as counsel for Brican</p> <p>7 America, Inc. and any questions directed to</p> <p>8 Mr. Vincens have to be with respect to his role</p> <p>9 for Brican America, Inc. and no other party.</p> <p>10 MR. GALLAGHER: We don't accept that, but I</p> <p>11 suppose we'll get to that in due time.</p> <p>12 Thereupon,</p> <p>13 JEAN FRANCOIS (JACK) VINCENS</p> <p>14 having been first duly sworn, was examined</p> <p>15 and testified under oath as follows:</p> <p>16 DIRECT EXAMINATION</p> <p>17 BY MR. VERDE:</p> <p>18 Q. Could you please state your name for the</p> <p>19 record.</p> <p>20 A. Excuse me.</p> <p>21 Q. Could you please state your name for the</p> <p>22 record.</p> <p>23 A. Jack Vincens.</p> <p>24 Q. Mr. Vincens, my name is Michael Verde. I'm</p> <p>25 representing the Plaintiff in this action, NCMIC.</p>	<p>9</p> <p>1 Q. Where in Africa did you go to school?</p> <p>2 A. Ivory Coast.</p> <p>3 Q. When did you first arrive in the United</p> <p>4 States?</p> <p>5 A. The first time, 1990.</p> <p>6 Q. And you left the United States at some point</p> <p>7 before returning, is that correct?</p> <p>8 A. I left the United States back in 1993, and I</p> <p>9 came back for work in 2004.</p> <p>10 Q. So between 1993 and 2004 you were not in the</p> <p>11 United States?</p> <p>12 A. No.</p> <p>13 Q. Can you trace me briefly your work history.</p> <p>14 A. Sales and marketing.</p> <p>15 Q. We don't need to go back too far but, say,</p> <p>16 from 1985 to 1990, where were you working?</p> <p>17 A. 19 --</p> <p>18 Q. '85 to 1990 where were you working?</p> <p>19 A. 1985, I had my own company. In 1985 I was</p> <p>20 working for a French company, for a Canadian company by</p> <p>21 the name PIS Industry Systems.</p> <p>22 Then I had my own company from 1986 to 1993 in</p> <p>23 Canada by the name of JVF Sales.</p> <p>24 Also I worked in the States between 1990 and</p> <p>25 1993 for a company by the name of Recomm International</p>



<p>10</p> <p>1 Display, R-e-c-o-m-m.</p> <p>2 Q. What was you're titled with Recomm?</p> <p>3 A. President, vice president.</p> <p>4 Q. What was the nature of Recomm's business?</p> <p>5 A. Selling communication tools in pharmacies.</p> <p>6 Q. Where was that company based?</p> <p>7 A. In Tampa, Florida.</p> <p>8 Q. And you left the United States in 1993, is</p> <p>9 that correct?</p> <p>10 A. Yes, December, 1993.</p> <p>11 Q. Why did you leave?</p> <p>12 A. Because I sold the company.</p> <p>13 Q. Between 1993 and 2004, were you working?</p> <p>14 A. I worked -- not between 1993 and -- in 2001 I</p> <p>15 opened up a company in France by the name of Axaris,</p> <p>16 A-x-a-r-i-s, doing what we are doing here, selling to</p> <p>17 dentists, **fair favor portion.(healthcare portions</p> <p>18 Q. Is that company still in operation?</p> <p>19 A. No.</p> <p>20 Q. What happened to that company?</p> <p>21 A. I just shut it down because there was no</p> <p>22 business here in the States.</p> <p>23 Q. And you said you came back to the United</p> <p>24 States in 2004, is that correct?</p> <p>25 A. I opened up -- yes, 2004.</p>	<p>12</p> <p>1 Q. What is your current position at Brican</p> <p>2 America, Inc.</p> <p>3 A. President.</p> <p>4 Q. Are you also a shareholder?</p> <p>5 A. Yes.</p> <p>6 Q. What percentage of the company do you own?</p> <p>7 A. 50.</p> <p>8 Q. 50?</p> <p>9 A. 5-0.</p> <p>10 Q. What are the names of the other shareholders</p> <p>11 of Brican America, Inc.?</p> <p>12 A. Jack Lemacon.</p> <p>13 Q. It's just the two of you?</p> <p>14 A. Yes.</p> <p>15 Q. And he owns the other 50 percent?</p> <p>16 A. Yes.</p> <p>17 Q. How would you describe Brican's -- unless I</p> <p>18 say otherwise, you can assume when I refer to Brican</p> <p>19 I'm referring to Brican, Inc. as opposed to LLC.</p> <p>20 How would you describe Brican's business?</p> <p>21 A. Brican's business, Brican America, Inc.?</p> <p>22 Q. Yes.</p> <p>23 A. Brican America, Inc. as we speak today has no</p> <p>24 business.</p> <p>25 Q. What was the original purpose? What was the</p>
<p>11</p> <p>1 Q. Was the purpose of coming to the United States</p> <p>2 in 2004 to begin Brican?</p> <p>3 A. To begin Brican America.</p> <p>4 MS. SCHREIBMAN: Inc.</p> <p>5 A. Inc.</p> <p>6 Q. Are you aware of a company in Canada called</p> <p>7 Brican?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have any affiliation with that company?</p> <p>10 A. Not anymore.</p> <p>11 Q. Did you at one time?</p> <p>12 A. I was a 50 percent shareholder.</p> <p>13 Q. When was that?</p> <p>14 A. In 2004.</p> <p>15 Q. Do you have any current relationships with</p> <p>16 Brican Canada?</p> <p>17 A. I speak with the owner from time to time.</p> <p>18 Q. Has there been any dispute with Brican Canada</p> <p>19 over the use of the name Brican?</p> <p>20 A. No.</p> <p>21 Q. Have you ever been arrested?</p> <p>22 A. No.</p> <p>23 Q. What is your current title at Brican America,</p> <p>24 Inc.?</p> <p>25 A. What was my position?</p>	<p>13</p> <p>1 original nature of Brican's business?</p> <p>2 A. Selling patient communications through</p> <p>3 optometrists.</p> <p>4 Q. Was Brican ever incorporated in Nebraska?</p> <p>5 A. No.</p> <p>6 Q. Has Brican had any offices outside of Florida</p> <p>7 at any time?</p> <p>8 A. What do you call an office?</p> <p>9 Q. A permanent place that you either rent or</p> <p>10 lease, a physical location in which I use employees.</p> <p>11 MS. SCHREIBMAN: Are we referring to, just for</p> <p>12 clarification, a Brican America, Inc. office?</p> <p>13 Q. Yes.</p> <p>14 A. No.</p> <p>15 MR. VERDE: We'll mark this as Exhibit 1.</p> <p>16 (Thereupon, Plaintiff's Exhibit No. 1 was</p> <p>17 marked for Identification.)</p> <p>18 Q. Mr. Vincens, I'm showing you what's now been</p> <p>19 marked as Exhibit No. 1, and it's the Articles of</p> <p>20 Incorporation of Brican America, Inc., which I will</p> <p>21 represent to you were given to us in the course of this</p> <p>22 litigation and ask you to identify them.</p> <p>23 Are those in fact Brican America's Article of</p> <p>24 Incorporation?</p> <p>25 A. I'm sorry?</p>

1 Q. Are these in fact Brican America's Articles of  
2 Incorporation?  
3 I'm just asking you to confirm that they are  
4 what they appear to be.  
5 A. No. That was before. We opened up our  
6 business here in Miami. That was basically a toolbox  
7 just to open up the company. So we never had an  
8 office, no, nothing.  
9 MS. SCHREIBMAN: But are these the Articles of  
10 Incorporation?  
11 A. Yes.  
12 Q. Okay. Under the Article III, Purpose, it says  
13 to sell our software to American doctors.  
14 A. Uh-huh.  
15 Q. Did Brican actually sell software to doctors?  
16 A. Among other things, yes.  
17 Q. What kind of software did it sell to doctors?  
18 A. It's a software accessory for the doctor to  
19 organize the sequence of the loop of the animation they  
20 want to display on the screen.  
21 Q. Was it the original plan for Brican just to  
22 sell software and not to lease hard equipment with it?  
23 A. Not only software. I'm not the one who did  
24 the document.  
25 Q. If you go down the list, it says the

1 Q. Is there a reason by Mr. Crombleholme was used  
2 as its incorporator?  
3 A. He was working at Brican Corporation, and the  
4 purpose -- I mean, I'm guessing -- that the owner of  
5 Brican Corp. at the time asked him to open up Brican  
6 America, Inc.  
7 Q. There was a Brican Corp. before Brican  
8 America, Inc.?  
9 A. Yes. Brican Systems Corporation Vancouver.  
10 Q. So this company was originally opened at the  
11 request of Brican Canada, is that correct?  
12 A. At the request of someone at Brican Canada.  
13 Q. Did Brican Canada have any ownership interest  
14 in Brican America, Inc.?  
15 A. Presently?  
16 Q. Originally.  
17 A. Originally, yes. Not Brican Corp., but  
18 Laurent Goldstein, who was a shareholder of Brican  
19 Corp.  
20 Q. So Mr. Crombleholme was brought in at the  
21 request of Laurent Goldstein, is that correct?  
22 A. I have no idea.  
23 Q. Was Mr. Goldstein involved in the creation of  
24 Brican America, Inc.?  
25 A. What do you mean by involved?

1 registered agent is James Conlin, under Article VI.  
2 A. Yes.  
3 Q. Did Mr. Conlin continue to have a relationship  
4 with the company?  
5 A. No.  
6 Q. Is he still your registered agent?  
7 A. No, not to my knowledge.  
8 Q. Was Mr. Conlin ever an employee of Brican?  
9 A. He was with Brican, Inc., yes, as a salesman.  
10 Q. When did he leave?  
11 A. January 2007.  
12 Q. And he has no current relationship with the  
13 company?  
14 A. No.  
15 Q. Underneath Incorporator it says Brian  
16 Crombleholme, vice president.  
17 A. Uh-huh.  
18 Q. Did Mr. Crombleholme have a position of  
19 employment with Brican?  
20 A. Brican America, Inc.?  
21 Q. Yes.  
22 A. No.  
23 Q. Did he have any relationship or involvement  
24 with the company after acting as its incorporator?  
25 A. No.

1 Q. Well, who's idea was it to open Brican  
2 America, Inc.?  
3 A. Mine. It was my idea.  
4 Q. And Mr. Goldstein was also involved in  
5 creating the company, is that correct?  
6 A. What do you mean by involved?  
7 Q. Did you have a discussion with him about  
8 opening the company?  
9 A. Sure.  
10 Q. There are costs involved in creating a  
11 company, renting office space, and did Mr. Goldstein  
12 make any contributions to those costs?  
13 A. I was the one in charge of opening Brican  
14 America, Inc.  
15 Q. Did Mr. Goldstein ever have a percentage of  
16 the shares of Brican America, Inc.?  
17 A. Yes.  
18 Q. How much did he originally have?  
19 A. I do not remember for sure, because we had  
20 Jack Lemacon, we had Laurent Goldstein, myself. I  
21 don't remember. It should be something in the range of  
22 5 percent.  
23 Q. Did he make any capital contribution to the  
24 company?  
25 A. What do you mean by capital contribution, any

18

20

1 money?

2 **Q. Any money, sure.**

3 A. I don't remember.

4 **Q. He know longer has shares in the company,**

5 **correct?**

6 A. Laurent Goldstein, no.

7 I mean, he had shares in the company, and we

8 are buying -- technically, no, he has no shares with

9 the company, because we are buying back his shares over

10 time, and he does the same thing with me. I'm sorry.

11 I'm doing the same thing with him. I'm buying his

12 shares the shares he had in the company, I'm buying

13 them back.

14 **Q. So as of now, technically he still has some**

15 **shares in the company?**

16 A. No, no.

17 **Q. They've been completely repurchased?**

18 A. Yes.

19 **Q. If I can ask you to take a look on the very**

20 **last page. It's a filing with the Florida Department**

21 **of State dated July 2nd, 2007.**

22 A. Uh-huh.

23 **Q. And it shows a resignation of an officer or**

24 **director by the name of Raymond Briscoe.**

25 **Was Mr. Briscoe ever a shareholder in the**

1 **Q. Has he had any role with the company?**

2 A. Role, yes. He worked for us as an independent

3 contractor for awhile. I would say between

4 February 2008 to, I think, June 2008 as a salesman

5 basically.

6 **Q. So he was compensated solely on commissions?**

7 A. Yes.

8 **Q. Did he leave or was he fired from that**

9 **position as well?**

10 A. No. We stopped the program.

11 **Q. Do you know why this individual goes by the**

12 **names of both Briscoe and Manklow?**

13 A. The only thing I know is that he changed his

14 name because he wanted to take his -- Manklow was his

15 stepfather's name and he wanted to get back his real

16 name, his father's name. That's all I now.

17 **Q. Is he a U.S. citizen, to your knowledge?**

18 A. I think he has a green card.

19 **Q. Is he a citizen of France as well?**

20 A. Absolutely not. He's from Canada.

21 **Q. Canadian?**

22 A. Yes.

23 **Q. Did Jennifer Unrhu have any role with Brican**

24 **America, Inc.?**

25 A. Nothing other than the fact we would use

19

21

1 **company?**

2 A. Yes.

3 **Q. What percentage did he have at the time before**

4 **he resigned?**

5 A. 33 percent.

6 **Q. Does Mr. Brisco also go by the name of Raymond**

7 **Manklow?**

8 A. Yes.

9 **Q. Which is his legal name, do you know?**

10 A. I have no idea.

11 **Q. Why did Mr. Brisco/Manklow leave the company?**

12 A. Why he leave the company, because he was

13 fired.

14 **Q. Why was he fired?**

15 A. Because he wasn't performing.

16 **Q. Can you be a little more specific about the**

17 **lack of performance?**

18 A. He was in charge of sales and he couldn't hire

19 the right persons.

20 **Q. Does he currently have any relationship with**

21 **the company?**

22 A. No.

23 **Q. Has he had any relationship with the company**

24 **since his firing/resignation back in July 2007?**

25 A. What do you mean by --

1 her -- we used her name at one point because we needed

2 someone to be the secretary, the treasurer or whoever,

3 but she didn't have any active role, no.

4 **Q. Did she have shareholding interest in the**

5 **company?**

6 A. No.

7 **Q. Has she had any relationship with the company,**

8 **any active involvement as an employee, investor or**

9 **anything like that since --**

10 A. No.

11 **Q. The name appears alternately as Unrhu and**

12 **Unro.**

13 A. I think it's Unrhu.

14 **Q. How did she come to become part of the**

15 **original incorporators of the company?**

16 A. She's Mr. Goldstein's fiancée.

17 **Q. Was Brican America LLC created at the same**

18 **time as Brican America, Inc.?**

19 MS. SCHREIBMAN: I object to that question.

20 That's a question about Brican America LLC, and

21 that is not who Mr. Vincens is being deposed at

22 this point on behalf of or subject to your notice

23 for deposition.

24 MR. VERDE: Well, he's not here as a 30(b)(6).

25 He's here as a witness. I'm allowed to ask him

6 (Pages 18 to 21)

22

24

1 anything I want that's reasonably related to this  
2 litigation, and I think it would be hard pressed  
3 to say that Brican America LLC is not related to  
4 this litigation. He's not here as a 30(b)(6).

5 MS. SCHREIBMAN: They not related parties at  
6 all. They are separate companies.

7 MR. VERDE: It doesn't make a difference.  
8 I'm allowed to ask him anything I want that's  
9 reasonably related to the discovery of admissible  
10 evidence. He's not here solely as a  
11 representative of Brican America, Inc.

12 You can make your objection, but I suggest you  
13 let him answer the question.

14 MS. SCHREIBMAN: I object for the record.

15 And you may answer the question.

16 A. The answer is no.

17 **Q. When was Brican America LLC created?**

18 MS. SCHREIBMAN: I object.

19 You may answer the question.

20 A. I think 2005, mid-2005, to the best of my  
21 recollection.

22 MR. VERDE: Ms. Schreiber, if it's helpful --  
23 I do I understand your objection, and if you'd  
24 like, in the interest of time, I'm willing to let  
25 you have a standing objection to any questions

1 of businesses?

2 A. Well, Brican America Inc., as soon as, not  
3 necessarily immediately, the only intent was to work  
4 under an LLC and not under an Inc. So we stopped doing  
5 any business with Inc.

6 **Q. Is Brican America, Inc. still a functioning  
7 company?**

8 A. Yes.

9 **Q. Did Brican America LLC take over all the  
10 duties and responsibility of Brican America, Inc.?**

11 A. What do you mean by duties and  
12 responsibilities?

13 **Q. Brican America, Inc. entered into a number of  
14 contracts and agreements after it was created, correct?**

15 A. Yes.

16 **Q. Was Brican America, Inc. still the obligor  
17 under those agreements?**

18 **Is it still performing under those agreements  
19 or did it assign those agreements to Brican America  
20 LLC?**

21 A. To the best of my knowledge, Brican America,  
22 Inc. was still performing its obligations that they had  
23 prior to LLC to start.

24 **Q. At some point did Brican America, Inc. stop  
25 entering into agreements?**

23

25

1 about Brican America LLC.

2 If there's something that you object to the  
3 question beyond just the fact that it's Brian  
4 America LLC you are, of course, free to supplement  
5 it.

6 MS. SCHREIBMAN: Okay. I accept your kind  
7 invitation, except to the extent I instruct the  
8 witness not to answer a particular question.

9 MR. VERDE: Of course.

10 **Q. Is there a different ownership structure  
11 between Brican America, Inc. and Brican America LLC?**

12 A. Today?

13 **Q. Yes.**

14 MS. SCHREIBMAN: Would you clarify that  
15 question as to what you mean by different  
16 structure?

17 MR. VERDE: Sure. Fair comment.

18 **Q. As of today, do the same people own Brican  
19 America, Inc. and Brican America LLC?**

20 A. To the best of my recollection, yes.

21 **Q. Why was Brican America LLC set up as a  
22 different company from Brican America?**

23 A. Tax reasons.

24 **Q. Were they set up to perform the same sort of  
25 business or were they set up to perform different types**

1 A. Yes.

2 **Q. When was that?**

3 A. I think in October 2000 --

4 MS. SCHREIBMAN: 6.

5 A. 6. I'm not positive since I don't have the  
6 documents in front of me, but I think it's in  
7 October 2006.

8 **Q. Has Brican America, Inc. entered into any  
9 agreements in the year 2009?**

10 A. Brican, Inc.?

11 **Q. Right.**

12 MS. SCHREIBMAN: Can I just clarify for one  
13 moment? What kind of agreements?

14 MR. VERDE: Any kind of legally binding  
15 contract or --

16 MS. SCHREIBMAN: Are we talking with  
17 Professional Solutions or --

18 MR. VERDE: Anybody. I'm trying to get to  
19 whether Brican America, Inc., what exactly its  
20 status is now, is it functioning in any way as a  
21 operating company.

22 MS. SCHREIBMAN: It was the lessor.

23 THE WITNESS: Yes, yes.

24 MR. VERDE: It's great when he tells me the  
25 answer.

<p>26</p> <p>1 A. Yes.</p> <p>2 Q. What agreements has it entered into in 2009?</p> <p>3 A. Brican America, Inc. was the lessor -- yes,</p> <p>4 Brican America, Inc. was a lessor on these agreements.</p> <p>5 Q. So Brican America, Inc. continued to be the</p> <p>6 party that leased the TV screens and physical equipment</p> <p>7 to the doctors?</p> <p>8 A. Brican America, Inc. was only involved in the</p> <p>9 financial aspect of it. It wasn't delivering any</p> <p>10 equipment.</p> <p>11 Q. I understand, but up until now, to the extent</p> <p>12 that a Brican entered -- and I'll leave it open because</p> <p>13 we haven't clarified yet exactly who's doing what, but</p> <p>14 to the extent that Brican entered into an agreement</p> <p>15 with a customer to lease the --</p> <p>16 A. System.</p> <p>17 Q. The system. Thank you.</p> <p>18 -- lease the system, was the lessor Brican</p> <p>19 America, Inc. or Brican America LLC?</p> <p>20 A. When, today?</p> <p>21 Q. Up to today.</p> <p>22 A. Today, Brican America, Inc. is not a lessor</p> <p>23 anymore.</p> <p>24 Q. Let me come at this from a different</p> <p>25 direction.</p>	<p>28</p> <p>1 of equipment?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. Again maybe we can go about this a different</p> <p>4 way.</p> <p>5 There have been salesmen around the country</p> <p>6 trying to encourage doctors to lease equipment from a</p> <p>7 Brican entity, correct?</p> <p>8 A. No.</p> <p>9 Q. That's never happened?</p> <p>10 A. We never had salespeople going to encourage</p> <p>11 people to enter a lease.</p> <p>12 The salespeople go in the field, sell our</p> <p>13 equipment, and eventually if the clients want to go</p> <p>14 under a lease, he goes under a lease, but they are not</p> <p>15 promoting a lease.</p> <p>16 Q. Were those salespeople employees of Brican</p> <p>17 America, Inc. or Brican America LLC?</p> <p>18 A. Today?</p> <p>19 Q. At any time.</p> <p>20 A. Well, at the time we had business, we had</p> <p>21 Brican America, Inc. doing business as a vendor, we had</p> <p>22 two or three salespeople in the field; and as we speak</p> <p>23 today as far as Brican America LLC is concerned and as</p> <p>24 far as selling to healthcare professionals, we have</p> <p>25 maybe 40 salespeople in the field.</p>
<p>27</p> <p>1 Did Brican America LLC ever act as a lessor?</p> <p>2 Did Brican LLC ever lease any equipment to any doctors?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. So we'll get to this in more detail later, but</p> <p>5 for now you'll agree with me there is at least a few</p> <p>6 thousand leases of the Brican equipment to customers</p> <p>7 around the country to now?</p> <p>8 A. Close to a few thousands leases, what?</p> <p>9 Q. Of equipment to customers around the United</p> <p>10 States.</p> <p>11 A. From who?</p> <p>12 Q. That's my question.</p> <p>13 To the extent that a Brican entity has been</p> <p>14 leasing equipment to customers in the United States, is</p> <p>15 the name on all of those leases as the lessor Brican</p> <p>16 America, Inc. or Brican America LLC.</p> <p>17 MS. SCHREIBMAN: Let me clarify for one</p> <p>18 moment.</p> <p>19 MR. VERDE: I'm sorry. I can't let you</p> <p>20 interject. I appreciate that you're trying to</p> <p>21 help here.</p> <p>22 MS. SCHREIBMAN: He's referring to lessor.</p> <p>23 A. Brican, Inc. as a lessor, we are talking about</p> <p>24 a few hundred units, not a few thousand.</p> <p>25 Q. Has Brican America LLC ever acted as a lessor</p>	<p>29</p> <p>1 Q. At some point Brican America, Inc. stopped</p> <p>2 employing salespeople to try and lease equipment to</p> <p>3 doctors, is that correct? ....</p> <p>4 A. To do what?</p> <p>5 Q. At some point did Brican America, Inc. stop</p> <p>6 using salespeople to try and lease equipment to</p> <p>7 doctors?</p> <p>8 A. Again, I don't have the perception that our</p> <p>9 salespeople are selling lease equipment. They are</p> <p>10 selling equipment. There are not selling a lease.</p> <p>11 Q. Okay. We'll use your language for now.</p> <p>12 At some point did Brican America, Inc. stop</p> <p>13 using salespeople to sell equipment to doctors?</p> <p>14 A. Yes.</p> <p>15 Q. When was that?</p> <p>16 A. When we opened the LLC.</p> <p>17 Q. So sometime in 2006?</p> <p>18 A. To the best of my recollection, yes.</p> <p>19 Q. So since 2006, Brican America LLC has been the</p> <p>20 employer of the salespeople who are approaching the</p> <p>21 doctors to sell them equipment?</p> <p>22 A. Since the date we started Brican America LLC,</p> <p>23 which I think is in October 2006, yes.</p> <p>24 Q. And to the extent the salesman is successful</p> <p>25 and the doctor wants to buy the equipment, does the</p>



1 doctor actually purchase the title to the equipment,  
 2 does he purchase it outright?  
 3 A. I don't know what you're talking about.  
 4 Q. In other words, we started this by saying that  
 5 they were purchasing equipment.  
 6 Did the doctors actually purchase the  
 7 equipment or do they lease the equipment?  
 8 A. A few of them purchase it. The majority lease  
 9 the equipment.  
 10 Q. In that circumstances, who do the doctors  
 11 lease the equipment from?  
 12 A. When?  
 13 Q. Up to 2006?  
 14 A. Brican America, Inc. was a vendor and  
 15 Professional Solutions was the lessor.  
 16 Q. In 2007, what was the arrangement?  
 17 A. 2007, Brican America LLC was the vendor and  
 18 Professional Solutions was the lessor, again to the  
 19 best of my recollection.  
 20 Q. 2008, did that change?  
 21 A. Yes.  
 22 Q. What was the arrangement then?  
 23 A. Brican America LLC was the vendor and Brican  
 24 America, Inc. was the lessor, and the leases were  
 25 assigned to Professional Solutions.

1 doctors?  
 2 A. Brican America LLC.  
 3 Q. Yes.  
 4 A. Was a vendor, correct.  
 5 Q. And they were selling both the hardware and  
 6 the software to the doctors, is that correct?  
 7 A. Yes.  
 8 Q. What, then, was Brican America, Inc. leasing  
 9 to the doctors?  
 10 A. The same equipment.  
 11 Q. So the same equipment was being sold to the  
 12 doctors and leased to the doctors?  
 13 A. No. The doctor, when I'm using the term sold,  
 14 it means that we have a business transaction. The  
 15 doctor is willing to use our equipment.  
 16 Then he has two choices. It's a straight  
 17 purchase, he cuts a check, or it's a lease.  
 18 If it's a lease, then it was leased through  
 19 Brican America, Inc.  
 20 Q. So to the extent the salesman from Brican  
 21 America LLC convinces a doctor to use the equipment, if  
 22 the doctor wants to purchase the equipment outright,  
 23 then it's a contract with Brican America LLC. If the  
 24 doctor only want to --  
 25 A. No. There's a purchase order with Brican

31  
 1 Q. So starting in 2008 Brican America LLC is the  
 2 vendor and Brican America, Inc. is the lessor, correct?  
 3 A. Starting when?  
 4 Q. In 2008.  
 5 A. Any date?  
 6 Q. Well, I'm just confirming what you just told  
 7 me. I just want to make sure we're working on the same  
 8 time.  
 9 A. Which in my opinion was October 2008.  
 10 Q. When you described Brican America LLC as the  
 11 vendor, what was it selling?  
 12 A. Patient communication systems.  
 13 Q. Is that the software, the hardware or both?  
 14 A. Both.  
 15 Q. So who was it selling it to?  
 16 A. Healthcare professionals.  
 17 Q. Then what was Brican America, Inc. leasing?  
 18 A. What?  
 19 Q. If Brican America LLC was actually selling the  
 20 equipment to doctors, what was Brican America, Inc.  
 21 leasing to the doctors?  
 22 A. Can you repeat the question?  
 23 Q. Sure. You described Brican America LLC as the  
 24 vendor and you said they were selling the equipment,  
 25 including both the hardware and the software to the

33  
 1 America LLC, and there was a lease with Brican America,  
 2 Inc.  
 3 MS. SCHREIBMAN: Repeat the question.  
 4 MR. VERDE: Okay.  
 5 Q. I believe you had said that there are certain  
 6 circumstances in which a doctor wishes to purchase the  
 7 equipment outright rather than lease it, is that  
 8 correct?  
 9 A. Yes.  
 10 Q. In that circumstance, the doctor would be  
 11 purchasing the equipment directly from Brican America  
 12 LLC and Brican America, Inc. would have no involvement,  
 13 is that correct?  
 14 A. Correct.  
 15 Q. In the circumstances in which the doctor wants  
 16 to lease the equipment, what is the involvement of  
 17 Brican America LLC?  
 18 A. None.  
 19 Q. They simply notify Brican America, Inc. who  
 20 then proceeds to execute a lease with the doctor, is  
 21 that correct?  
 22 A. They do exactly what they are doing at the  
 23 time Brican America LLC was a vendor, and the lessor  
 24 was Professional Solutions.  
 25 They take the Professional Solutions paper or

1 the Brican America, Inc. paper. They ask the customer  
2 to sign it if they want to lease the equipment.  
3 Q. In the beginning of 2008, though, Professional  
4 Solutions was not the lessor, it was Brican America,  
5 Inc. that was the lessor, correct?  
6 A. Yes.  
7 Q. And then it was after that was signed, the  
8 leases were assigned to Professional Solutions,  
9 correct?  
10 A. Yes.  
11 Q. Talking about 2008 going forward when you had  
12 this arrangement in place, when a doctor wanted to  
13 lease the equipment, a salesman from Brican America LLC  
14 would meet with the doctor and have the doctor sign a  
15 lease agreement with Brican America, Inc., is that  
16 correct?  
17 A. Yes.  
18 Q. Did Brican America LLC receive anything as a  
19 result of this lease?  
20 Did they receive any compensation for making  
21 this deal happen on behalf of Brican America, Inc.?  
22 A. No.  
23 Q. How frequently -- and I will not hold you to a  
24 specific number, but roughly what percentage of doctors  
25 purchased equipment outright as opposed to leasing?

1 A. One percent, not even that.  
2 Q. So in 99 percent of the successful  
3 transactions between a Brican America LLC salesman and  
4 a customer, that ended up being a lease to Brican  
5 America, Inc. and no --  
6 A. In 2008?  
7 Q. From 2008 forward. I'm sorry. Yes.  
8 A. Part of 2008, from October 2008 forward, yes.  
9 Q. Using that defined timeframe, 99 percent of  
10 the transactions that Brican America LLC salesmen  
11 entered into benefited Brican America, Inc. because  
12 they ended up being leases and not purchases, correct?  
13 A. No.  
14 Q. In those circumstance -- and again the same  
15 timeframe, 2008, October 2008 forward.  
16 In the circumstance in which a Brican America  
17 LLC salesman was successful in convincing a doctor to  
18 lease equipment, what compensation, if any, did Brican  
19 America LLC receive?  
20 A. Brican America, Inc. doesn't receive any  
21 compensation. Brican America LLC was paid by  
22 Professional Solutions up front even before we assigned  
23 the lease.  
24 Q. What were they paid for?  
25 A. They paid for the system.

1 Q. So Brican America LLC received money from  
2 Professional Solutions?  
3 A. Yes.  
4 Q. They received the money for the equipment?  
5 A. Yes.  
6 Q. Why did Brican America LLC receive the money  
7 for the equipment if the equipment was actually being  
8 leased by Brican America, Inc.?  
9 A. You should ask that to Professional Solutions.  
10 I have no idea whatsoever why.  
11 Q. Did you request that the amounts that  
12 Professional Solutions was advancing for the equipment  
13 be paid to Brican America LLC?  
14 A. Me, Jack Vincens?  
15 Q. Yes.  
16 A. No.  
17 Q. To you knowledge, did anyone at Brican  
18 America, Inc. direct that payments for the leased  
19 equipment from Professional Solutions be paid to Brican  
20 America LLC?  
21 A. I have no idea.  
22 Q. What did Brican America LLC do with the money  
23 they received from Professional Solutions for this  
24 equipment?  
25 A. What do you mean by that?

1 Q. Well, Brican America, Inc. needed the money to  
2 purchase the equipment so they could lease it back to  
3 the doctors, correct?  
4 A. No.  
5 Q. To the extent the doctor had entered into a  
6 lease with Brican America, Inc., Brican America, Inc.  
7 was then obligated to provide that equipment to the  
8 doctor, correct?  
9 A. No. The vendor is.  
10 Q. The vendor being Brican America LLC?  
11 A. Correct.  
12 Q. So Brican America LLC was the one who was  
13 obligated to provide the equipment to the doctor?  
14 A. Yes.  
15 Q. Who owned the equipment once it was provided  
16 to the doctor?  
17 A. To the best of my knowledge, Professional  
18 Solutions.  
19 Q. Prior to the lease being assigned to  
20 Professional Solutions, who owned the equipment?  
21 A. Professional Solutions.  
22 Q. Even before a lease was assigned to  
23 Professional Solutions, it's your testimony that the  
24 equipment was always owned by Professional Solutions?  
25 A. Of course. The leasing company did. The

1 leasing company owns the equipment delivered to the  
2 customer.  
3 MS. SCHREIBMAN: Can you rephrase the  
4 question?  
5 MR. VERDE: Sure.  
6 **Q. Let's make sure we understand how these**  
7 **transaction work.**  
8 **If a Brican America LLC salesman was**  
9 **successful in convincing a doctor to lease equipment**  
10 **from Brican America, Inc., in the first instance the**  
11 **doctor signed a lease agreement with Brican America,**  
12 **Inc., correct?**  
13 A. He signs a lease with Brican America, Inc.,  
14 yes.  
15 **Q. At that point Brican America, Inc. is**  
16 **responsible for providing that equipment to the doctor,**  
17 **correct?**  
18 A. No. Brican America, Inc. is only a lessor.  
19 The lessor is not responsible for the  
20 delivering the equipment. The vendor is.  
21 **Q. It's your testimony that as the lessor Brican**  
22 **America, Inc. was not responsible for actually**  
23 **providing equipment to the doctor?**  
24 A. To the best of knowledge, yes. That's my  
25 answer.

1 **Q. When the equipment was ultimately delivered to**  
2 **the doctor, who owned the equipment, the lessor or the**  
3 **vendor?**  
4 A. To the best of my technical knowledge for the  
5 little I know about the leasing business, the leasing  
6 company, Professional Solutions.  
7 **Q. Did Professional Solutions buy the equipment**  
8 **directly?**  
9 A. What do you mean?  
10 **Q. Well, Brican actually had to purchase the**  
11 **hardware, the television set and the associated**  
12 **equipment from the a third-party vendor, correct?**  
13 A. Uh-huh.  
14 MS. SCHREIBMAN: You mean Brican America LLC.  
15 MR. VERDE: Well, either one at this point.  
16 **Q. I just want to you understand that neither**  
17 **Brican America LLC or Brican America, Inc. had the**  
18 **ability to manufacture, produce, these television sets,**  
19 **you had to buy them from a third party, correct?**  
20 A. Yes.  
21 **Q. You needed money to do that, correct?**  
22 A. Who?  
23 **Q. Well, that's an interesting question.**  
24 **Brican America, Inc. or Brican America LLC**  
25 **actually purchased the hardware and --**

1 A. Brican America LLC.  
2 **Q. Brican LLC purchased the equipment from a**  
3 **third-party vendor?**  
4 A. Yes. In 2008, 2009.  
5 **Q. Well, for now --**  
6 A. As a vendor.  
7 **Q. Right. Unless we hear otherwise, assume we're**  
8 **talking --**  
9 A. The vendor buys the equipment.  
10 **Q. And does the vendor then sell the equipment**  
11 **to?**  
12 A. To the lessor.  
13 **Q. So the transaction was that when this occurred**  
14 **Brican America LLC would ask Profession Solutions for**  
15 **money. Professional Solutions would give the money to**  
16 **Brican America, Inc. Brican America LLC would purchase**  
17 **the equipment from a third party.**  
18 A. No, no.  
19 **Q. What was wrong with what I just said?**  
20 A. We were buying the equipment prior to getting  
21 the purchase order from Professional Solutions.  
22 **Q. When you say we --**  
23 A. Brican America LLC.  
24 **Q. So Brican America LLC maintained a stock of**  
25 **hardware?**

1 A. No, no.  
2 **Q. I thought you just said you purchased the**  
3 **equipment in advance?**  
4 A. Yes, one by one.  
5 **Q. So when a doctor signed a lease with Brican**  
6 **America, Inc. for the equipment -- and again, we're**  
7 **only talking from 2008 onward -- what would Brican**  
8 **America LLC do?**  
9 A. Brican America LLC would wait until  
10 Professional Solutions would give an approval, a credit  
11 approval, and if we had the credit approval, if we knew  
12 that we were receiving a purchase order, we had get  
13 credit approval, then we had a purchase order from  
14 Profession Solutions, and after they agree on the  
15 equipment, we were getting the following day a wire  
16 from Profession Solutions.  
17 **Q. So Brican America LLC would use the money it**  
18 **got from Professional Solutions to pay for the**  
19 **equipment?**  
20 A. Among other things, yes.  
21 **Q. Did Brican America receive any compensation**  
22 **for procuring the equipment in this way?**  
23 A. No.  
24 **Q. Once it procured the equipment, it procured**  
25 **the equipment in the name of Brican America, Inc?**



1 A. Excuse me?  
2 Q. When Brican America LLC purchased the  
3 equipment, did they purchase it in its own name, in the  
4 name of Brican America, Inc. or in the name of  
5 Profession Solutions?  
6 A. Brican America LLC.  
7 When we purchased the equipment from the  
8 manufacturer, in the vendor's name, Brican America LLC  
9 in this case.  
10 Q. So Brican LLC now owns the equipment?  
11 A. No.  
12 Q. Well, if you purchased it in Brican America  
13 LLC's name, at some point doesn't Brican America LLC  
14 own the equipment?  
15 A. Are you talking about the stock, the  
16 inventory, or are you talking about the whole  
17 transaction?  
18 Q. When I asked you earlier if that meant you had  
19 a stock, you told me no.  
20 A. Yes. So if we're talking about the whole  
21 transaction, the final transaction, no, we don't own  
22 the equipment. Profession Solutions does.  
23 Q. Mr. Vincens, I'm trying to break this down  
24 into a timeline so I understand it.  
25 A. I'm trying to answer you as clearly as I can.

1 Q. My question to you is at some point -- I'm not  
2 talking about what ultimately happened. I'm talking  
3 about shortly after the lease is signed with the  
4 doctor.  
5 A. Uh-huh.  
6 Q. There is a point in which Brican America LLC  
7 has already entered a purchase order for the equipment  
8 or entered a purchase order with a third party,  
9 correct?  
10 A. We purchase the equipment from the third  
11 party, but we never receive the equipment in Brican's  
12 location. It goes directly from the manufacturer, the  
13 supplier, to the client.  
14 Q. But at the time that the purchase order is  
15 made, who owns the equipment? I'm not talking about  
16 who physically has it. Who owns it?  
17 A. What purchase order are you talking about?  
18 Q. The Brican American LLC purchase order to a  
19 third party.  
20 When that purchase order goes in, Brican  
21 America LLC is purchasing the equipment in its own  
22 name, correct?  
23 A. Yes.  
24 Q. And that's why the money is transferred to  
25 Brican America LLC, to allow it to pay for the

1 equipment?  
2 A. No, no. Among other things. I mean, we just  
3 have a business transaction between Brican America LLC  
4 and Profession Solutions.  
5 Profession Solutions accept to finance our  
6 customers, and we get paid for the price that we would  
7 get normally if the client was to buy the equipment as  
8 just a regular buyer.  
9 Q. But at some point since Brican America LLC is  
10 buying the equipment, it has to actually transfer  
11 ownership of the equipment to the lessor, right?  
12 A. Yes.  
13 Q. How is that done?  
14 A. I have no idea. I guess we receive a purchase  
15 order from Profession Solutions.  
16 Q. Is the equipment transferred from Brican LLC  
17 directly to Profession Solutions or is it first  
18 transferred to Brican America, Inc.?  
19 A. Can you repeat the question?  
20 Q. Brican America LLC buys the equipment. At  
21 some the point they are the owner of the equipment.  
22 A. Uh-huh.  
23 Q. They need to ultimately transfer it to the  
24 lessor, correct?  
25 A. I have no idea. Technically I don't know

1 exactly how it works.  
2 Q. We also at the same time this is going on,  
3 Brican America, Inc. is assigning its lease to  
4 Profession Solutions, correct?  
5 A. Brican America, Inc --  
6 Q. Is assigning its leases to Profession  
7 Solutions.  
8 A. Technically, yes.  
9 Q. So my question to you is since the  
10 responsibility of the lease is being assigned, does the  
11 physical equipment get transferred first from Brian  
12 America LLC to Brican America, Inc. and then to  
13 Profession Solutions?  
14 A. No.  
15 Q. No?  
16 A. No.  
17 Q. It goes directly to Brican America LLC to  
18 Profession Solutions?  
19 A. Correct.  
20 Q. Does Brican America LLC get paid any money for  
21 acting in this role as purchasing agent?  
22 A. You mean being paid by Profession Solutions?  
23 Q. Or by anybody.  
24 A. But for what?  
25 Q. For acting as the purchasing agent.

<p>1 A. This is the third time you're asking me the 2 same question, and the same answer is no. 3 <b>Q. Does Brican American LLC receive any money 4 from Brican America, Inc. to the extent Brican American 5 LLC is successful in convincing a doctor to enter into 6 a lease agreement?</b> 7 A. No. 8 <b>Q. How does Brican America LLC generate any 9 income?</b> 10 MR. VERDE: I'm sorry. You can't coach him. 11 A. How did Brican America LLC -- 12 <b>Q. How does it make its money?</b> 13 A. From Professional Solutions. 14 <b>Q. As I understand it, though, from your prior 15 testimony, Professional Solutions gives Brican America 16 LLC money which Brican America LLC turns around to 17 purchase the equipment, right?</b> 18 A. Not only that. No. 19 The equipment costs, let's say, \$2,400. We're 20 not receiving \$2,400 from Professional Solutions. You 21 know it. We received \$24,000. 22 <b>Q. Does Brican America LLC have any agreements 23 with Professional Solutions?</b> 24 A. Brican America LLC? 25 <b>Q. LLC.</b></p>	<p>1 grounds of privilege. 2 MR. GALLAGHER: Excuse me. Excuse me. 3 You're not even admitted, please. So let's 4 not -- 5 MS. SCHREIBMAN: To the extent they are not a 6 party, you are asking Brican America LLC for 7 information about what it does with its money, who 8 it pays, how it spends its money, et cetera, and 9 that is a privilege issue. 10 MR. VERDE: Privilege? This is the president 11 of the company. There is no privilege issue. 12 I also instruct you that under local Rule 13 30.1, sanctions for abuse of deposition conduct, 14 No. 3, instructing a deponent not to answer a 15 question except when to preserve a privilege, to 16 enforce a limitation and evidence directed by the 17 Court or to present a motion under FRCP 30(b)(4). 18 It doesn't fall into any of the categories. 19 I'm a questioning about a company that he's the 20 president of. There is no privilege issue here. 21 MS. SCHREIBMAN: I have to object to your 22 questions. Brican America LLC is not a party to 23 this litigation under any circumstances. 24 Brican America LLC is not a party to whom you 25 sent the subpoena with a notice for deposition of</p>
<p>1 A. Currently? 2 <b>Q. Ever.</b> 3 A. Can you repeat the question? 4 <b>Q. Has there ever been a contract between Brican 5 America LLC and Professional Solutions?</b> 6 A. Written? 7 <b>Q. Well, let's start with written.</b> 8 A. No. 9 <b>Q. Has there been any other kind of an agreement 10 between Brican America LLC and Professional Solutions?</b> 11 A. I don't know. 12 <b>Q. To the best of your knowledge, there was never 13 any written or other agreements between Brican America 14 LLC and Professional Solutions?</b> 15 A. I don't know. I didn't negotiate anything 16 with Professional Solutions. 17 <b>Q. What does Brican America LLC do with the 18 difference between what it receives between 19 Professional Solutions for the equipment and what it 20 actually pays for the equipment?</b> 21 MS. SCHREIBMAN: I object and instruct my 22 client not to answer that question. 23 MR. VERDE: You do that at your own peril, 24 because if we have to come down again -- you're 25 only allowed to instruct him not to answer on the</p>	<p>1 Mr. Vincens. 2 This is a notice of deposition for Mr. Vincens 3 as part of Brian America, Inc. That is the named 4 party here. 5 MR. VERDE: Well, Ms. Schreiber, he's here as 6 a witness, period. He is not here as a designee 7 of any particular entity. 8 MS. SCHREIBMAN: The notice was sent to Brican 9 America, Inc. 10 MR. VERDE: It doesn't make a difference. If 11 you have an objection, you can enter the 12 objection. 13 Directing him not to answer in the absence of 14 anything other than privilege it going to subject 15 you to sanctions, which we intend pursue. 16 MS. SCHREIBMAN: It's a notice -- 17 MR. VERDE: I'm not going to debate the issue. 18 MS. SCHREIBMAN: We're not going to debate it 19 either. 20 MR. VERDE: Are you directing him not to 21 answer the question? 22 MS. SCHREIBMAN: Yes. 23 MR. VERDE: Call the Magistrate. 24 MR. GALLAGHER: Sure. 25 MR. VERDE: Let's get a couple more of these</p>

1 on the record before we call.  
2 **Q. Mr. Vincens, the money that is advanced by**  
3 **Professional Solutions, your testimony is that it goes**  
4 **in the first instance to Bryan America LLC, correct?**  
5 A. The money which is what, advanced?  
6 **Q. Yes.**  
7 A. What do you mean advanced?  
8 **Q. Brican America LLC since 2008 routinely is the**  
9 **recipient of the money for the equipment from**  
10 **Professional Solutions, correct?**  
11 A. Yes. Professional Solutions by the lease,  
12 yes.  
13 **Q. And my question to you was you had testified**  
14 **earlier that there is a difference between the amount**  
15 **that Brican America LLC receives from Professional**  
16 **Solutions and the amount it actually has to pay for the**  
17 **equipment, correct?**  
18 A. Yes.  
19 **Q. And my questions to you is what does Brican**  
20 **America LLC with the difference, and are you accepting**  
21 **your attorney's instruction not to answer that**  
22 **question?**  
23 A. Yes.  
24 **Q. Does Brican America LLC give any of that money**  
25 **to Brican America, Inc.?**

1 A. We did in the past under an agreement. It was  
2 for some kind of royalties in the past, but most of the  
3 time it's advances.  
4 So what I'm referring to is back in 2004, 2005  
5 we had a royalty agreement because of the software at  
6 the time, and Brican, Inc. was the one who bought the  
7 technology and we paid some kind of royalties at the  
8 time, but if money is exchanged now between LLC and  
9 Inc., it's just on the loan basis.  
10 **Q. Is there a written loan agreement between**  
11 **Brican America, Inc. and Brican America LLC?**  
12 A. Possibly. I'm not sure. I'm not taking care  
13 of that. It Mr. Lemacon is.  
14 **Q. Mr. Lemacon could presumably then be the**  
15 **appropriate person to answer that question?**  
16 A. Correct.  
17 **Q. As president of both companies, are you aware**  
18 **of loans between Brican America LLC and Brican America,**  
19 **Inc.?**  
20 A. Yes.  
21 **Q. Do you know how much money Brican America LLC**  
22 **has loaned to Brican America, Inc.?**  
23 A. Not off the top of my head. I have to consult  
24 documents to tell you.  
25 **Q. Without holding you to a specific number, do**

1 you have an estimate, a range of the outstanding loan?  
2 A. It could be \$7 million, but it could be 10, it  
3 could be 2. I'm not sure.  
4 **Q. But it's in the millions?**  
5 A. Yes.  
6 **Q. And you don't recall ever signing any kind of**  
7 **formal loan documents?**  
8 A. Between Inc. and LLC?  
9 **Q. Yes.**  
10 A. I think there is a promissory note, but I'm  
11 not sure if it's signed by me or Jack Lemacon. I'm not  
12 sure.  
13 **Q. Do you know what the terms of the loan are,**  
14 **for example, the length of time or the amount of**  
15 **interest begin charged on the loan?**  
16 A. No.  
17 **Q. Do you know whether the loan is in default in**  
18 **any way?**  
19 A. No.  
20 **Q. I'm sorry. Does that mean the loan is not in**  
21 **default or you don't know?**  
22 A. I don't know, but I don't think it's in  
23 default.  
24 **Q. Does Brican America LLC have any business**  
25 **aside from employing a sales force to persuade doctors**

1 to enter into leases for this type equipment?  
2 A. No.  
3 **Q. Does Brian LLC have any source of income other**  
4 **than what it derives from its involvement in these**  
5 **lease transactions with the doctors?**  
6 A. No.  
7 **Q. And again talking post-October 2008, when a**  
8 **doctor enters into a lease and we go through the**  
9 **process we've just discussed where Brican LLC obtains**  
10 **the equipment, Professional Solutions transfers money**  
11 **to Brican America LLC and Brican, Inc. assigns the**  
12 **lease to Professional Solutions, in the course of that**  
13 **transaction does Brican America, Inc. generate any**  
14 **income for itself?**  
15 A. I'm not sure to understand the question.  
16 **Q. In that type of transaction, does Brican**  
17 **America get paid by anyone?**  
18 A. Brican LLC?  
19 **Q. Inc.**  
20 A. No.  
21 **Q. So Brican America, Inc. receives no money?**  
22 A. No.  
23 **Q. They are not compensated for assigning the**  
24 **lease to Professional Solutions?**  
25 A. You asked me already. I said no.

MR. VERDE: Can we mark this as Exhibit 2.  
(Thereupon, Plaintiff's Exhibit No. 2 was marked for Identification.)

**Q. Mr. Vincens, I'm going to show you what's been marked as Exhibit 2 which is a series of stock certificates of Brican America, Inc., which I'll represent to you was given to us by your counsel in the course of discovery in this case.**

Actually drawing your attention back to Exhibit 1, which is the Articles of Incorporation, you'll note under Article IV that there was 100 shares of stock.

A. I'm sorry?

**Q. There was 100 shares of stock that was issued at the beginning, and if you total up these shares between you and Mr. Lemacon, there is only 50 shares of stock.**

MS. SCHREIBMAN: 100 shares of authorized, not issued.

**Q. In fact were 100 shares issued when the company was formed?**

A. This is what it says.

**Q. Did Mr. Goldstein own the other 50 shares of this company?**

A. No.

**Q. When it was first issued.**

A. When it was first issued, yes.

**Q. And have you been receiving back stock certificates from Mr. Goldstein as you buy back his shares?**

A. I don't know. That's Mr. Lemacon's business.  
(Thereupon, Plaintiff's Exhibit No. 3 was marked for Identification.)

**Q. Mr. Vincens, I'm going to show you what's now been marked Exhibit No. 3. It is a credit agreement between Brican America, Inc. and Viso Lasik Medspas LLC dated January 1, 2008.**

Again I represent to you it was given to us by your counsel in the course of discovery.

Why did Brican America, Inc. agree to lend money to Viso Lasik Medspas?

A. Based on we're doing business together.

**Q. And you are the president of both companies?**

A. I think so, yes. Of Viso, no, no, absolutely not.

**Q. Who was the president of Viso?**

A. Oh, Viso Lasik Medspas, yes. I am president.

**Q. So Viso Lasik Medspas is an LLC. So it has members rather than shareholders.**

Who are the member of Viso Lasik Medspas?

MS. SCHREIBMAN: Go ahead and answer.

A. JJR Investments and another company by the name of -- Dr. DeCanio's company.

**Q. And JJR Investments is itself an LLC?**

A. Yes.

**Q. What is the division of ownership between JJR Investments LLC and the unnamed LLC that's owned by Dr. DeCanio?**

A. JJR, Viso -- should be 25 percent for the Dr. DeCanio and 75 percent for JJR.

**Q. Who are the members of JJR Investments LLC?**

A. Jack Lemacon and myself.

**Q. How is that divided?**

A. 50/50.

**Q. Is there anyone else besides you, Mr. Lemacon and Dr. DeCanio that has any ownership interest in Viso Lasik Medspas?**

A. LLC?

**Q. Yes.**

A. No.

**Q. Is there another entity called Viso Lasik Medspas that's in a form different than an LLC?**

A. There are three different ones for the three centers opened, Viso Medspa Wellington, Viso Medspa San Antonio, Viso Medspa Charlotte.

**Q. Are those companies or those entities owned by Viso Lasik Medspas LLC?**

A. I'm not sure. I'm not sure if it's Viso Lasik Medspas or JJR, but it not the same partners.

**Q. Does Viso Lasik Medspas LLC have a direct ownership in any Medspas?**

A. Viso Lasik --

**Q. LLC.**

A. I'm not sure.

**Q. You don't know?**

A. I'm not sure if it's Viso Medspas or JJR. I'm not going to give you the wrong answer.

**Q. To the extent that Viso Lasik Medspas or JJR have an interest in the three existing Medspas, in Texas, Florida and North Carolina, does it own it outright or does it have just a percentage interest in those entities?**

A. I'm not sure I understand the difference.

**Q. Well, does either Viso Lasik Medspas or JJR own the entirety, 100 percent of any of the Medspas that are in operation?**

A. No.

**Q. For the each those Medspas, is the ownership of the Medspa in Charlotte, in Texas and Florida, is that in the form of an LLC, a partnership or some other**

1 vehicle?  
2 A. LLC.  
3 Q. Who are the other members of the LLC in  
4 addition to either Viso Lasik or JJR?  
5 A. The local optometrist who helped us in the  
6 first place to select the location.  
7 Q. So for example, the Medspa that's in  
8 Wellington, Florida, what is the percentage ownership  
9 of that Medspa?  
10 A. I think it's 80 percent Dr. DeCanio and  
11 20 percent JJR.  
12 Q. And for the one in North Carolina?  
13 A. 75 percent us and 25 percent Dr. DeCanio.  
14 Q. Did the local doctors who are actually working  
15 at the spa have any ownership interest?  
16 A. No.  
17 Q. And for the spa in Texas, what is the  
18 ownership?  
19 A. In Texas, Viso has or JJR has something in the  
20 range of 60 percent. I think we have 15 percent with a  
21 local partner, and DeCanio is the difference.  
22 Q. How much money has Brican America, Inc. lent  
23 to Viso Lasik Medspas?  
24 A. You asked me that question.  
25 Q. No. I asked you the question between LLC and

1 Inc.  
2 A. How much money has Brican America, Inc. loaned  
3 to Viso Lasik Medspas?  
4 Q. Yes.  
5 A. I don't know. Off the top of my head,  
6 \$7 million.  
7 Q. Is that the same \$7 million that Brican  
8 America LLC lent to Brican America, Inc.?  
9 A. I don't understand the question.  
10 Q. Earlier I had asked you -- you had said that  
11 there had been a loan between Brican America LLC and  
12 Brican America, Inc. and you had estimated it and you  
13 had said the first number off the top of your head was  
14 \$7 million. Do you recall that?  
15 A. Yes.  
16 Q. And when I asked you how much Brican America,  
17 Inc. lent to Viso Lasik, you said also, your thought,  
18 somewhere around \$7 million.  
19 My question is is that the same \$7 million?  
20 A. I don't know if it's the same \$7 million, but  
21 it's the same amount.  
22 Q. How much in cash does Brican America, Inc.  
23 have right now?  
24 A. \$36,000.  
25 Q. If you take a look at the agreement which is

1 marked in front of you as Exhibit 3 and you take a look  
2 at Section 1 (a), it talks about sub-credit agreements  
3 that are attached, and if you look, there are no  
4 sub-credit agreements that are attached.  
5 To your knowledge, do you know whether there  
6 were in fact any sub-credit agreements with this?  
7 A. No, I don't.  
8 Q. Is this loan in default in any way?  
9 A. I don't know, but I don't think so.  
10 Q. Is Viso Lasik making repayments to Brican  
11 America?  
12 A. I'm sorry?  
13 Q. Is Viso Lasik making repayments to Brican  
14 American?  
15 A. Not to my knowledge.  
16 Q. What is the term of the loan?  
17 A. I don't know.  
18 Q. Is it open-ended?  
19 A. I think so.  
20 Q. So there's never a date by which this loan  
21 actually becomes due?  
22 A. I don't know. I'm not the one who did it. I  
23 didn't write it. I didn't design it. I just signed  
24 it.  
25 Q. Who has knowledge about it?

1 A. Jack Lemacon.  
2 Q. Under Section 1 (a) I'd actually like you to  
3 read that with me, and it says "Loan amount."  
4 It says "Subject to availability, lender" --  
5 who's Brican America, Inc. -- "hereby agrees to make to  
6 the borrower" -- which is Viso Lasik -- "from time to  
7 time credit loans for an undetermined amount at  
8 borrower's request and as payments of expenses on  
9 borrower's behalf in the amounts requested, inclusive  
10 of any prior unpaid loan amounts made by lender to  
11 borrower."  
12 Do you see that?  
13 A. Yes. Okay.  
14 Q. Is it your understanding, then, that any  
15 amount of money could be lent under this agreement  
16 subject to Brican's approval?  
17 A. Again, I'm not the one who designed it, so.  
18 Q. It goes on to say "Loans may be prepaid at any  
19 time without penalty, but will become due and payable  
20 immediately upon borrower's receipt of the first  
21 payment made by any affiliated Lasik eye center  
22 pursuant to the sub-credit agreements attached hereto."  
23 Do you see that?  
24 A. Yes.  
25 Q. To you what does that mean? When do the loans



1 become immediately due and payable?  
2 A. I think this period of it was that once the  
3 Viso Medspas, the local ones, were starting to get to  
4 the breakeven point, they are going to pay Viso Medspas  
5 and Viso Medspas was going to pay back Brican America.  
6 Q. Did that actually occur?  
7 A. No.  
8 Q. So as of now these loans are not due and  
9 payable?  
10 A. I don't know technically what the answer is.  
11 Q. If you take a look at Section 2,  
12 Securitization of Loans, it says that the lender,  
13 Brican America, Inc., may file a UCC-1 to perfect its  
14 security interest.  
15 Do you know whether that was done?  
16 A. No.  
17 Q. Do you know what Viso Lasik did with the money  
18 that was lent to it by Brican America, Inc.?  
19 A. They loaned the money to the various entities,  
20 legal entities. They lent the money.  
21 Q. Is there a credit agreement, a written credit  
22 agreement between Viso Lasik Medspas and the various  
23 local entities?  
24 A. I would think so, yes.  
25 Q. Do you know for a fact or is that

1 clinic in San Jose?  
2 A. We have the lease ready to be signed but it's  
3 on hold.  
4 Q. Why is it on hold?  
5 A. Because of the lawsuit.  
6 Q. When was this lease negotiated?  
7 A. The lease was negotiated over the course of  
8 the last last five months.  
9 Q. When you say it's a lease, does that mean  
10 Viso Lasik Medspas is actually leasing a physical  
11 location for a spa it will own?  
12 A. Yes.  
13 Q. Is this going to be a partnership with an  
14 existing spa like the other locations?  
15 A. The two new ones?  
16 Q. Yes.  
17 A. Not to my knowledge. I don't think so, no.  
18 Q. Are you leasing space that needs to be built  
19 out to make a Viso Lasik spa or are you leasing space  
20 that's already equipped? In San Jose. I'm sorry.  
21 A. I'm sorry?  
22 Q. For the San Jose project were you planning to  
23 lease --  
24 A. Empty space, lease.  
25 Q. So in order to make it a functioning Medspa it

1 Mr. Lemacon's department?  
2 A. It's from Mr. Lemacon's department.  
3 Q. As I understand it, Viso Lasik Medspas is  
4 planning or was planning to open a series of clinics  
5 around the country, is that correct?  
6 A. Exactly.  
7 Q. Was any of the money that was being loaned by  
8 Viso Lasik by Brican America going to be used to open  
9 up new clinics?  
10 A. Can you repeat the question?  
11 Q. Was any of the money that Brican America was  
12 lending to Viso Lasik Medspas, was it lent to allow  
13 Viso Lasik Medspas to open up new clinics around the  
14 country?  
15 A. Sure.  
16 Q. Has any of that money actually been used to  
17 open up new clinics?  
18 A. Yes.  
19 Q. Where?  
20 A. San Antonio, Wellington and Charlotte.  
21 Q. Is Viso Lasik in any discussions to open up  
22 any other clinics?  
23 A. Two of them, San Jose in California and  
24 Reston, Virginia.  
25 Q. What is the status of the negotiations for the

1 would have to be still equipped?  
2 A. We have to buy equipment and we have to do  
3 some construction work, yes.  
4 Q. What is the location in San Jose that you have  
5 this unsigned lease agreement for?  
6 A. Santa Maru.  
7 Q. And what kind of space is it? Is it in an  
8 office park, is it a stand-alone building?  
9 A. Upscale location.  
10 Q. Is it a stand-alone building, is it in an  
11 office park? Is it lease space within --  
12 A. Something similar to the City Place in West  
13 Palm Beach.  
14 Q. I'm sorry. Say that again.  
15 A. Something similar to the City Place in West  
16 Palm Beach.  
17 Q. Viso Lasik Medspas, is it going to be the same  
18 lessor of this space or was it designed that other  
19 partners were going to be involved in the lease of the  
20 space?  
21 A. No.  
22 Q. Solely Viso Lasik Medspas LLC?  
23 A. The various entities, yes.  
24 Q. And I believe you said the other location is  
25 in Reston, Virginia?

66

1 A. Yes.

2 Q. What is the status of that project?

3 A. The same.

4 Q. So you have a lease for raw space that has not

5 been signed?

6 A. For San Jose and for Reston.

7 Q. And why are you not moving forward with the

8 Reston location?

9 A. Because of the lawsuit.

10 Q. Were there plans to open a Medspa in Boston?

11 A. Yes.

12 Q. Where in Boston?

13 A. I don't remember exactly the location, but was

14 outside of Boston. I don't remember the name of the

15 place, outside of Boston.

16 Q. Has that project been abandoned?

17 A. No. We just didn't find the proper location.

18 The landlord didn't agree. We never negotiated the

19 lease.

20 Q. Did you have a spot that you had selected that

21 you were activity negotiating for?

22 A. Yes.

23 Q. And you couldn't come to terms with the

24 landlord?

25 A. Exactly.

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1 Q. And in that circumstance, was it raw space or

2 was it an existing Lasik clinic?

3 A. It was raw space, as usual.

4 Q. When you opened up the Charlotte location of

5 Viso Lasik, was that raw space that Viso Lasik

6 equipped?

7 A. All our clinics, all the Viso Lasik Medspas

8 are in raw locations. We do construction work. We do

9 an upscale design, and we invest in equipment, all of

10 them, existing, past and future, all.

11 MS. SCHREIBMAN: I would like to take a break

12 for one moment.

13 MR. VERDE: Sure.

14 MS. SCHREIBMAN: I would just like to

15 reiterate my continuing objection to asking

16 questions of Mr. Vincens in any capacity other

17 than his representing Brican America, Inc. at this

18 deposition.

19 Now we can take a break.

20 (At this time a recess was taken from 11:25

21 until 11:35 a.m.)

22 Q. Mr. Vincens, were any of the operations, any

23 of the spas that were opened in California, Texas or

24 North Carolina, did any of them use the same doctors or

25 equipment of existing Lasik clinics?

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1 A. No.

2 Q. The equipment was purchased or leased by

3 Viso Lasik for those three locations?

4 A. Both.

5 Q. And the doctors that actually preformed the

6 surgery, how were they compensated?

7 A. On a per diem basis.

8 Q. Do they have any ownership interest in the

9 clinics?

10 A. No.

11 Q. Beside Reston and San Jose, is Viso Lasik in

12 active negotiations or conducting any activity to open

13 up spas in any other locations?

14 A. Philadelphia.

15 Q. What is the current status with regard to

16 Philadelphia?

17 A. The same.

18 Q. Has Viso Lasik taken any concrete steps to

19 open a clinic in Philadelphia?

20 A. Looking for a location.

21 Q. When was Viso Lasik begun? When was it

22 started?

23 A. Viso Lasik Medspas, the company or the

24 venture?

25 Q. The company.

69

1 A. I don't know.

2 Q. Was it begun at the same time that the Brican

3 companies were begun?

4 A. No.

5 Q. Was it your concept that when you began

6 operations as Brican, both the Inc. and the LLC, that

7 this was always going to be in support of Viso Lasik or

8 was Viso Lasik a later idea?

9 A. Later.

10 Q. So originally Brican was just going to lease

11 equipment to doctors?

12 A. No.

13 Q. What was Brican originally going to do?

14 A. Sell equipment to doctors.

15 Q. And then it became leasing equipment to

16 doctors, correct?

17 A. I don't know. Yes.

18 Q. And at the time that Brican began doing this

19 in 2004, was it your plan at that time that Brican

20 would do this in support of a company that would do

21 Lasik spas around the United States?

22 A. No.

23 Q. When did you first have the idea to use the

24 Brican platform to advertise Lasik spas?

25 A. March 2006.

<p>1 Q. Did you have any experience in the Lasik 2 business at that time? 3 A. No. 4 Q. How did you get the idea to do that? 5 A. A client of us. 6 Q. A client of Brican? 7 A. Yes. 8 Q. Up until that point, was Brican offering any 9 advertising agreements to doctors to whom it was 10 leasing or selling equipment? 11 A. No. 12 Q. At what point did Brican begin to offer 13 marketing or advertising agreements to the doctors it 14 was selling or leasing equipment to? 15 A. May 2006. 16 Q. So was the idea of offering this 17 marketing/advertising agreement as a direct result of 18 starting Viso Lasik? 19 A. Yes. 20 Q. Did you think that there was anybody else, any 21 other entity, any other companies that would be 22 interested in advertising on the Brican system? 23 A. At the time we didn't even think about it. 24 Q. When did you first start offering advertising 25 agreements to doctors?</p>	<p>70 1 Q. So sometime in 2006 before the first Lasik spa 2 was opened, Viso Lasik was paying for advertising at 3 doctors' offices in California, correct? 4 A. Yes. 5 Q. What was the rationale for paying for 6 advertising in doctors' offices in California before 7 the first Viso Lasik spa was opened? 8 A. Because we were using the money to build the 9 build the first center. 10 Q. My question is different. 11 What was the purpose of Viso Lasik paying for 12 advertising in California before it had even opened its 13 first clinic? 14 A. None. 15 Q. But you were paying for advertising at that 16 time? 17 A. Yes. 18 Q. Was there any discussion as to what benefit 19 Viso Lasik would get by advertising in California for a 20 clinic that hadn't even been built in Florida? 21 A. Yes. 22 Q. What was the rationale? 23 A. Getting the money to open the first center. 24 Q. We're talking cross purposes. 25 My question is at the time Viso Lasik was</p>
<p>71 1 A. May 2006. 2 Q. At that time did Viso Lasik have any Medspas 3 in existence? 4 A. No. 5 Q. What was the purpose of advertising a service 6 that did not yet exist in 2006? 7 A. To prepare the ground. 8 Q. I'm sorry? 9 A. Prepare the foundation. 10 Q. When did the first Lasik spa first open? 11 A. May/April 2007. 12 Q. So Viso Lasik paid for advertising for almost 13 a year before it had its first Lasik spa, is that 14 correct? 15 A. Yes, a few optometrists. 16 Q. Was that Lasik spa in Florida, that first one? 17 A. Wellington. 18 Q. Did you sell advertising agreements just to 19 doctors in Florida or to all the doctor to whom Brican 20 was leasing equipment? 21 A. All of them. Mainly in Florida but all of 22 them. 23 Q. So at the time, for example, Brican had 24 customers in California, correct? 25 A. Yes.</p>	<p>72 1 paying for advertising. 2 A. Yes. 3 Q. So that's money out, not money in. 4 A. Yes, but that's money in because we got the 5 money from the transaction. 6 Q. You got the money from leasing the equipment, 7 you mean? 8 A. Yes. Not leasing the equipment, selling the 9 equipment to a leasing company. 10 Q. So it was your understanding that you were 11 generating money to open the clinics by leasing the 12 Brican system to the doctors? 13 A. No. We're not leasing anything. 14 Q. Let's break this down, because "we" has a 15 number of definitions when it comes to you. 16 MS. SCHREIBMAN: When you say we -- 17 A. We, Viso. 18 Q. In 2006 Viso Lasik is paying some amount every 19 quarter to doctors all over the country -- I don't want 20 to just keep it in California, but far away from 21 Florida to advertise for a clinic in Florida that 22 hasn't been opened? 23 A. Yes. 24 Q. Why did Viso do that? 25 A. To get the money.</p>



1 **Q. But my question is at that point they're**  
2 **paying money?**  
3 A. No. I'm answering the question as clearly as  
4 I can, and what I'm saying is the money we were using,  
5 Brican LLC was getting, Brican LLC was lending the  
6 money to Viso Lasik Medspas.  
7 Wherever the money was coming from, it was put  
8 into a pot in order to open a Lasik center in Florida,  
9 a Lasik center in North Carolina, a Lasik center in  
10 Texas, and eventually the down the road one in  
11 California.  
12 **Q. So the advertising was done to entice doctors**  
13 **into entering into these lease agreements so Brican**  
14 **could generate income that it would then lend back to**  
15 **Viso Lasik?**  
16 A. That's a way to explain it.  
17 MS. SCHREIBMAN: When you refer to Brican, is  
18 it Brican LLC or Brican, Inc.?  
19 MR. VERDE: In regard to what question?  
20 MS. SCHREIBMAN: To any of the questions.  
21 You need to define whether it's Inc. or LLC,  
22 please.  
23 MR. VERDE: Okay.  
24 MS. SCHREIBMAN: Thank you.  
25 **Q. Was there a concern in your role as president**

1 **of Viso Lasik that Viso Lasik would run out of money**  
2 **paying for advertising all over the country before it**  
3 **could even begin to open spas all over the country?**  
4 A. No.  
5 **Q. Viso Lasik was paying \$5,000 a year to**  
6 **advertise at doctors' offices around the country,**  
7 **correct?**  
8 A. Correct.  
9 **Q. And so again, just to take an example, Viso**  
10 **was paying to advertise in doctors' offices, say, in**  
11 **Illinois, even though it did not have any spas in**  
12 **Illinois or frankly anywhere close to Illinois even in**  
13 **the planning stages, correct?**  
14 A. Correct.  
15 **Q. Why did Viso do that?**  
16 A. To get the money.  
17 **Q. So Viso was advertising so that it would have**  
18 **a marketing agreement to offer doctors so doctors would**  
19 **lease equipment to give to Brican America, Inc., which**  
20 **Brican America, Inc. would then lend back to Viso**  
21 **Lasik?**  
22 A. Yes.  
23 **Q. There was no legitimate advertising goal**  
24 **there?**  
25 A. Branding, yes, because we never knew where we

1 were going to open down the road.  
2 **Q. In your mind, was there any legitimate**  
3 **advertising purpose in advertising in Illinois when you**  
4 **didn't have any clinics anywhere near Illinois, other**  
5 **than generating money for Brican America, Inc.?**  
6 A. Both.  
7 **Q. What was the advertising rationale?**  
8 A. Branding.  
9 **Q. Branding?**  
10 A. Branding in advance.  
11 **Q. Can you explain what you mean by branding?**  
12 A. Letting the customer know that Viso Lasik spas  
13 exist, letting the customer know who Viso Lasik is,  
14 what Viso Lasik was about.  
15 **Q. So the idea was that you were going to be**  
16 **paying, Viso Lasik was going to be paying for**  
17 **advertising in doctors' offices in 2006/2007 for**  
18 **clinics that would not be opened locally for years, if**  
19 **ever?**  
20 A. Yes.  
21 That's quite possible.  
22 **Q. But the main reason was to develop a stream**  
23 **of income for Brican America, Inc. that they could lend**  
24 **back to Viso Lasik, correct?**  
25 A. Both.

1 (Thereupon, Plaintiff's Exhibit No. 4 was  
2 marked for Identification.)  
3 **Q. Mr. Vencens, I'm going to show you an exchange**  
4 **of e-mails between you and Jean Thompson.**  
5 A. No.  
6 **Q. I'm sorry. Between Mr. Lemacon. You're**  
7 **absolutely correct. Between Mr. Lemacon and Jean**  
8 **Thompson of Professional Solutions dated February 9,**  
9 **2009.**  
10 Have you ever been seen these e-mails before?  
11 A. Yes.  
12 **Q. In that Mr. Lemacon says to Ms. Thompson "Here**  
13 **we have a national advertising budget to be divided**  
14 **between centers, only three at this point," and it says**  
15 **"Two more in the process, Boston and San Francisco."**  
16 Was there ever any efforts by Viso Lasik to  
17 open a clinic in San Francisco?  
18 A. I think he meant -- I'm not in this mind, but  
19 I think he made a mistake between San Francisco and San  
20 Jose. San Jose is 14 miles from San Francisco.  
21 **Q. Did Mr. Lemacon discuss with you**  
22 **Ms. Thompson's question before sending her back this**  
23 **e-mail?**  
24 A. No.  
25 **Q. Now, Ms. Thompson asked Mr. Lemacon, if you**

1 look at the second page, "How does that work? How can  
2 Brican offer advertising/marketing dollars in an area  
3 with no current laser center?"  
4 Do you see that?  
5 A. Yes.  
6 Q. In response Mr. Lemacon talks about branding.  
7 A. Yes.  
8 Q. Talks about international network, McDonald or  
9 Starbucks.  
10 A. Uh-huh.  
11 Q. Mr. Lemacon does not mention anything about  
12 this being a way of Brican America generating income  
13 for Viso Lasik, is that correct?  
14 A. Yes.  
15 Q. So this would be an incomplete answer,  
16 wouldn't it?  
17 A. I'm not in his mind. I'm not a mind reader.  
18 Q. I understand, but to the extent I asked you  
19 what --  
20 MR. VERDE: Excuse me. I'm going to be  
21 tolerant with you up to a point, but you're being  
22 disruptive at this point.  
23 MR. ROCKER: I'm sorry you can hear me.  
24 However, I need to discuss with --  
25 MR. VERDE: Then step outside, because you're

1 being disruptive at this point.  
2 MR. GALLAGHER: Let's stop the deposition.  
3 MS. SCHREIBMAN: For one moment.  
4 MR. VERDE: Please mark for the record that  
5 counsel and her paralegal are stepping outside.  
6 (At this time a recess was taken.)  
7 MS. SCHREIBMAN: I'm sorry. We can resume.  
8 I apologize.  
9 MR. VERDE: I think I had a question pending.  
10 (Thereupon, the pending question and answer  
11 were read by the reporter as above recorded.)  
12 Q. Ms. Thompson asked why is it that Viso Lasik  
13 was advertising in locations where it had no centers,  
14 and Mr. Lemacon's answer was only that they were  
15 attempting to provide a branding.  
16 Mr. Lemacon did not mention at all that it was  
17 a way of generating money for Viso Lasik.  
18 That's different than your answer, isn't it?  
19 A. Yes.  
20 Q. So would you agree with me that Mr. Lemacon's  
21 answer to Ms. Thompson was only partially correct?  
22 A. I'm not going to make any comments on  
23 Mr. Lemacon's perception of whatever.  
24 Q. But at least from your point of view -- I'm  
25 not asking you to speak for Mr. Lemacon.

1 From your point of view, the answer to the  
2 question of why you would be advertising in areas where  
3 you had no spas, a response that only indicated  
4 branding and did not indicate that it was also a way of  
5 generating money for Brican, Inc. so they could lend it  
6 to Viso so Viso could develop other spas, would be an  
7 incomplete answer?  
8 A. Yes.  
9 Q. Did any other company ever advertise on the  
10 Brican -- it's been called a number of things. If we  
11 call it the Brican system -- because I know it's  
12 technically called Excidio.  
13 MS. SCHREIBMAN: Here it is.  
14 MR. VERDE: Right. I don't like the word  
15 Excidio. Can we just call it Brican system?  
16 MS. SCHREIBMAN: Yes.  
17 Q. Did any other advertisers ever purchase  
18 advertising time on the Brican system other than Viso?  
19 A. Not to my knowledge.  
20 Q. Did Brican ever make any attempt to get other  
21 advertisers to advertise on its systems other than  
22 Viso?  
23 A. When?  
24 Q. At any time.  
25 A. Even today?

1 Q. Even today.  
2 A. Yes.  
3 Q. Who have you approached?  
4 A. Dental companies.  
5 Q. Has anybody agreed to advertise?  
6 A. Yes.  
7 Q. Who is that?  
8 A. A company by the name of Six Month Smile.  
9 Q. What is it?  
10 A. A partnership, a cooperative -- I don't know  
11 how to describe it, a supplier who works with the  
12 dentist, and the dentist accepts to buy equipment or  
13 goods or services from this particular supplier.  
14 We get a commission but it doesn't necessary  
15 mean we're going to advertise on the screen. That's a  
16 new program that we are developing.  
17 Q. Maybe I understand or we have a  
18 miscommunication.  
19 My question was have you had any discussions  
20 or agreements with any parties other than Viso Lasik to  
21 pay for advertising on the Brican system?  
22 A. Advertising, no.  
23 Q. Because I understand Six Month Smile is just  
24 somewhat a different arrangement.  
25 Has Brican made any efforts to find any third

1 parties who are willing to advertise on its systems?  
 2 A. No.  
 3 Q. Any reason why Brican, Inc. made that decision  
 4 not pursue this?  
 5 A. Because I don't feel like the advertising  
 6 with Viso is going to bring enough revenues.  
 7 Q. But on the assumption that the Brican system  
 8 is a good enough platform that you would want it be  
 9 used to advertise a company that you have an ownership  
 10 interest in, why would you not try and find other  
 11 parties who might also view it as a good advertising  
 12 platform?  
 13 A. Because I'm not going to get enough money. I  
 14 know it.  
 15 Q. Have you tried it?  
 16 A. No, but I know the business, and I know we are  
 17 not going to get enough money.  
 18 Q. So nobody else would pay for advertising on  
 19 these systems in the same amount that Viso would, is  
 20 that correct?  
 21 A. There's maybe someone somewhere on planet  
 22 earth that I didn't meet with him yet.  
 23 Q. So is another way of saying it that Viso Lasik  
 24 is paying more for this advertising than anybody else  
 25 would?

1 A. No.  
 2 Q. Was there somebody out there — do you know of  
 3 anybody who would pay for this advertising more than  
 4 Viso?  
 5 A. No, but it's not only advertising. It's  
 6 partnership.  
 7 Q. When you say it's not advertising, it's  
 8 partnership, I'm not sure what you mean.  
 9 A. The Viso interests and Brican, Inc. interests  
 10 are somehow linked together.  
 11 Q. In what way are they linked together?  
 12 A. Because Viso was getting money from Brican,  
 13 Inc.  
 14 Q. But that's just a loan, right?  
 15 A. Yes.  
 16 Q. So why would a loan from two companies link  
 17 their businesses?  
 18 A. Because we expect to get an interest in it.  
 19 Q. But to the extent that Brican has an interest  
 20 in generating more money and to the extent Brican has  
 21 its systems in the offices of hundreds and hundreds of  
 22 doctors around the country, why wouldn't Brican try to  
 23 get additional money by offering advertising in those  
 24 systems to service other than Viso Lasik?  
 25 A. Because we were thinking that to us it's not

1 going to bring enough money, and this is a business  
 2 decision.  
 3 Q. But to the extent those systems are already in  
 4 the doctors' offices, wouldn't any money that anyone  
 5 would be willing to pay --  
 6 A. I told you it was a business division, and  
 7 that's it.  
 8 Q. Does Viso do any advertising through any other  
 9 channels other than through the Brican system?  
 10 A. Internet.  
 11 Q. It has a website?  
 12 A. Yes.  
 13 Q. Does it pay for advertising, pop-up ads, that  
 14 sort of thing?  
 15 A. Yes.  
 16 Q. It pays for advertising on other websites?  
 17 A. Yes.  
 18 Q. What websites does it advertise on?  
 19 A. I don't know. I'm not taking care of that.  
 20 We have a specialist for it.  
 21 Q. Who is taking care of that?  
 22 A. Ashok Ganesan, the internet specialist working  
 23 for us.  
 24 Q. Did Viso Lasik pay the doctors directly who  
 25 were buying the advertising on the system?

1 A. Yes, sometimes. We didn't at the beginning,  
 2 but now they do.  
 3 Q. Does the money for it go directly to Viso  
 4 Lasik to the doctors or does it pass through anybody  
 5 else?  
 6 A. At the beginning it was through Brican  
 7 America, Inc., I think, and now Viso direct.  
 8 (Thereupon, Plaintiff's Exhibit No. 5 was  
 9 marked for Identification.)  
 10 Q. Mr. Vincens, I show you what is marked  
 11 Exhibit 5.  
 12 It's an advertising agreement that appears to  
 13 be dated May 24, 2006 between Brican America, Inc. and  
 14 an outfit called Inland Eye Specialists?  
 15 A. Uh-huh.  
 16 Q. I ask you to take a look at it. I'm using  
 17 this to refresh your recollection that in 2006 who  
 18 actually had the advertising agreements with the  
 19 doctors.  
 20 A. Brican America, Inc.  
 21 Q. So this is before Brican America LLC came into  
 22 existence, correct?  
 23 A. Yes.  
 24 Q. And in this circumstance, Brican America, Inc.  
 25 had the direct obligation to pay the doctors on the

1 advertising, right?  
2 A. Yes.  
3 Q. Was money transferred from Viso Lasik to  
4 Brican, Inc. and then paid to the doctors at that  
5 point?  
6 A. At that point, no. It doesn't seem so.  
7 Q. How was payment made to the doctors back in  
8 2006?  
9 A. How?  
10 Q. Yes.  
11 A. By check.  
12 Q. I'm sorry. Bad question.  
13 Did the checks come directly from Viso Lasik  
14 or would Viso Lasik pay a Brican entity who would then  
15 in turn pay the doctor?  
16 A. Brican, Inc. did.  
17 Q. So Brican paid for the advertising?  
18 A. Yes.  
19 Q. Was Brican reimbursed for the advertising?  
20 A. It was a loan.  
21 Q. It was a loan?  
22 A. It was a loan to Viso.  
23 Q. So in other words, whatever Brican paid for  
24 advertising was considered part of the line of credit  
25 with Viso, is that correct?

1 A. Yes.  
2 Q. Aside from the one credit agreement we looked  
3 at, was there anything else in writing that  
4 memorialized that?  
5 A. I think there is a marketing -- an advertising  
6 agreement.  
7 Q. Well, this is the advertising agreement.  
8 A. No, no. There was an advertising agreement  
9 between --  
10 MR. VERDE: Excuse me. I know you're trying  
11 to help, but you really can't coach him.  
12 A. There's an advertising agreement between  
13 Brican and Viso. Yes, we have an advertising  
14 agreement.  
15 MR. VERDE: So there's an advertising  
16 agreement between Brican and Viso. We haven't  
17 received it. So we will make a request to get  
18 that.  
19 MS. SCHREIBMAN: I didn't know.  
20 THE WITNESS: I'm not sure if this -- yes,  
21 there was an advertising agreement. There is not  
22 maybe one now because it's only a loan, but at the  
23 time there was one.  
24 MS. SCHREIBMAN: I'm making a note.  
25 Q. If you take a look at Paragraph 6 under

1 Cancellation.  
2 It says "If Brican fails to honor its  
3 financial commitment pursuant to this agreement, then  
4 all related agreements can be canceled by the client."  
5 Do you see that?  
6 A. Yes.  
7 Q. So at the time the understanding was that if  
8 the client didn't receive the marketing money it could  
9 stop payment for the equipment, correct?  
10 A. Yes.  
11 Q. Has that always been the case?  
12 A. What do you mean?  
13 Q. In other words, that was the arrangement in  
14 2006?  
15 A. Uh-huh.  
16 Q. Between 2006 and currently, have the  
17 agreements with the doctors always given the doctors  
18 the ability to cancel the lease?  
19 A. No.  
20 Q. When was that change?  
21 A. The change was in the wording.  
22 For example, as we speak today, it  
23 specifically says that the agreement is absolutely not  
24 related to any financial commitment from the customer,  
25 but we had something in between where the customer

1 could ask Brican to buy back the lease.  
2 Q. Why was the language changed?  
3 A. Just to make sure that it wasn't going to be  
4 perceived like they could cancel the lease.  
5 Q. The effect was if you were the doctor, if the  
6 advertising money stopped coming you still had to make  
7 the lease payments, correct?  
8 A. The change, yes. That's was done for just a  
9 few customers.  
10 Q. But why was that change made?  
11 Why was the change made so the doctors would  
12 have to continue to pay even if they lost the marketing  
13 money?  
14 A. Because we don't want the leasing company to  
15 sit for any damages if something was to happen.  
16 (Thereupon, Plaintiff's Exhibit No. 6 was  
17 marked for Identification.)  
18 Q. Before we get to that, was there a time that  
19 Brican was trying to enter into these leases or  
20 purchases for its equipment without offering a  
21 marketing or advertising agreement?  
22 A. In some instances, yes.  
23 Q. But was there a period of time during which  
24 Brican was out selling this equipment, either for lease  
25 or purchase, where it wasn't offering a marketing

1 agreement?  
 2 A. Before May 2006.  
 3 **Q. How successful was Brican in selling the**  
 4 **equipment without a marketing agreement?**  
 5 A. Well, the sales volume was less.  
 6 **Q. Do you have an idea of what the sales volume**  
 7 **was?**  
 8 A. It depends. Some months it was 15 sales a  
 9 month, some months five sales, some months 20 sales,  
 10 some months one sale. Some months were good.  
 11 Sometimes even when we had the marketing  
 12 agreement we only had three sales in a month.  
 13 **Q. Did your sales improve once you put in the**  
 14 **marketing agreement?**  
 15 A. Probably, yes.  
 16 **Q. And since the time that you began offering the**  
 17 **marketing/advertising agreement -- I know the name**  
 18 **changed over time, and again, just an estimate.**  
 19 **How many leases of equipment did you have that**  
 20 **didn't also come with the marketing agreement?**  
 21 A. Less than 1 percent.  
 22 **Q. Let's take a look now at the marketing**  
 23 **agreement.**  
 24 **This marketing agreement is between Brican**  
 25 **America LLC, Viso Lasik and the client?**

1 A. Yes.  
 2 **Q. And the date of this -- well, it doesn't**  
 3 **actually have a date on it, does it?**  
 4 **Are you able to determine from looking at it**  
 5 **roughly what year this would come from?**  
 6 A. That is one of the latest ones.  
 7 **Q. So this would have been something used, say,**  
 8 **in 2009?**  
 9 A. Yes.  
 10 **Q. In this agreement Brican is paying the**  
 11 **client -- if you look at Paragraph G, Brican America**  
 12 **LLC is actually making the advertising payments.**  
 13 **Do you see that?**  
 14 A. Yes, on behalf of Viso Lasik.  
 15 **Q. Right. Now, is there any loan agreement**  
 16 **between Brican LLC and Viso Lasik?**  
 17 A. Between Brican LLC?  
 18 **Q. And Viso Lasik.**  
 19 A. I don't know.  
 20 **Q. My question is why is Brican LLC paying Viso**  
 21 **Lasik advertising fees?**  
 22 A. I don't know. It was a business decision at  
 23 one point.  
 24 You mean instead of Inc. or instead of Viso?  
 25 **Q. Instead of Viso.**

1 A. That's easy. It's because we didn't want at  
 2 the time their advertising payments to be perceived  
 3 like a kickback.  
 4 In other words, we didn't want to take a  
 5 chance that the Lasik center could be sued because it  
 6 was getting money from practitioners because it was  
 7 getting patients referred by practitioners.  
 8 **Q. So the thought was that if Brican was making**  
 9 **the payments it would shield Viso from any kind of**  
 10 **claims that it was paying kickbacks?**  
 11 A. Yes.  
 12 **Q. Did Viso Lasik reimburse Brican LLC for the**  
 13 **money it paid for advertising?**  
 14 A. No.  
 15 **Q. Why was Brican LLC paying for Viso Lasik's**  
 16 **advertising? They're different companies, aren't they?**  
 17 A. I don't know. It was a business decision at  
 18 one point. Why LLC, I don't know. I don't remember.  
 19 **Q. Where did Brican LLC get the money to pay for**  
 20 **all this advertising?**  
 21 A. That's the money we are getting from the  
 22 regular business.  
 23 **Q. So Brican LLC was using the difference in the**  
 24 **money it was receiving from Professional Solutions to**  
 25 **pay for the advertising as well?**

1 A. Yes, as a loan to Viso.  
 2 **Q. Then we go back to my earlier question.**  
 3 **Was there in fact a loan agreement between**  
 4 **Brican LLC and Viso?**  
 5 A. And I told you I don't know. I'm not sure.  
 6 **Q. You're the president of all three companies.**  
 7 **I don't know who would be in a better position to know.**  
 8 A. Jack Lemacon is in charge of administration.  
 9 I'm in charge of sales and marketing.  
 10 **Q. So Mr. Lemacon will know if there's a loan**  
 11 **outstanding?**  
 12 A. Yes.  
 13 **Q. Even though Mr. Lemacon may know this better**  
 14 **than you, I'm still going to ask you.**  
 15 **To the best of your knowledge, is there an**  
 16 **outstanding loan amount that's due to Brican LLC from**  
 17 **Viso Lasik?**  
 18 A. It's possible.  
 19 **Q. You don't know?**  
 20 A. I don't.  
 21 **Q. Did the companies keep a common bank account?**  
 22 A. Which companies?  
 23 **Q. Viso Lasik, Brican LLC and Brican, Inc.**  
 24 A. No.  
 25 **Q. They all have separate bank accounts?**



1 A. Yes.  
2 Q. Did the companies have the same accounting  
3 firm?  
4 A. Yes.  
5 Q. Do they do a combined balance sheet, a  
6 combined profit and loss statement?  
7 A. Yes. We did it lately for a business plan,  
8 not before.  
9 Q. But there are separate company --  
10 A. Just lately.  
11 Q. So there's actually a joint financial  
12 statement that was prepared on behalf of the three  
13 companies?  
14 A. No. For the purpose of the business plan now,  
15 today, a month ago.  
16 Q. Well, we're going to request that as well.  
17 A. The business plan?  
18 Q. Yes, the joint statement.  
19 A. There is not a joint statement.  
20 There is a business plan with Viso statements,  
21 Brican statements and Brican Financial statements.  
22 Q. Brican Financial?  
23 A. Yes.  
24 Q. Is Brican Financial a different name from any  
25 of the entities that we discussed up until now or is

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1 Q. So it's taken over the business of Brican  
2 America LLC?  
3 A. Yes.  
4 Q. Why was Brican Financial created?  
5 A. To lease equipment.  
6 Q. If you already had a company that did just  
7 that, why did you create another company?  
8 A. We're in a lawsuit with them.  
9 Q. You're in lawsuit with who?  
10 A. With Professional Solutions.  
11 Q. So you created a new entity so you would have  
12 a company to operate that wasn't already in the  
13 litigation?  
14 A. Exactly. No, no. We created a company in  
15 order to lease equipment not to be aware of the  
16 litigation.  
17 Q. I thought you just said that you created a new  
18 company even though you had a company that did exactly  
19 that business because you wanted a company that was not  
20 involved in the litigation with Professional Solutions.  
21 A. No, no. I said we stopped doing business --  
22 maybe you're not aware of it. We stopped doing  
23 business with Professional Solutions when we got sued.  
24 So then we opened a leasing company in order  
25 to lease the equipment to the customers.

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1 that a new entity?  
2 A. Yes.  
3 Q. When was Brican Financial formed?  
4 A. Mid-2009.  
5 Q. Is Brican Financial a corporation, an LLC?  
6 A. LLC.  
7 Q. Who are the members of Brican Financial?  
8 A. The same.  
9 Q. The same as what?  
10 A. As the Inc. and the LLC, Brican America.  
11 Q. Are the members of Brican Financial LLC JJR?  
12 A. No.  
13 Q. Are you one of the members personally?  
14 A. Yes.  
15 Q. Mr. Lemacon is one of the members personally?  
16 A. Yes.  
17 Q. Are there any other members?  
18 A. No.  
19 Q. What does Brican Financial LLC do?  
20 A. Lease equipment.  
21 Q. Has it taken over the business of Brican  
22 America, Inc.?  
23 A. No.  
24 Q. No?  
25 A. LLC.

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1 That's called a captive leasing company.  
2 Q. Where are you getting the money for the  
3 equipment?  
4 A. Our friends.  
5 Q. When say our, you wear many hats. Who is our?  
6 A. Brican America LLC.  
7 Q. So Brican Financial is taking money from  
8 Brican America LLC to pay for the equipment?  
9 A. I'm sorry?  
10 Q. Brican Financial is taking money from Brican  
11 America LLC --  
12 A. No, no. Brican America LLC gets business from  
13 getting the lease signed by the customer, the customer  
14 being approached by the salespeople of Brican America  
15 LLC, and Brican Financial perceives the monthly  
16 payments from the customers.  
17 Q. You said Brican Financial --  
18 A. Perceives the monthly payments from the  
19 customer.  
20 Q. You said perceives. Do you mean receives?  
21 A. Receives. I'm sorry.  
22 Q. Who paid for the equipment?  
23 A. Brian LLC.  
24 Q. Brican LLC, are they the lessor of the  
25 equipment or is Brican Financial the lessor of the

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1 equipment?  
2 A. Brican Financial is the lessor.  
3 Q. So at some point does Brican Financial repay  
4 Brican LLC?  
5 A. Absolutely, yes.  
6 Q. Where does Brican Financial get the money  
7 from?  
8 A. Future investors, hedge funds.  
9 Q. How many sales has Brican financial made?  
10 A. Sales, none.  
11 Q. How many leases has it entered into?  
12 A. 350, in this range.  
13 Q. And that's since May of 2009.  
14 A. Yes.  
15 Q. Has Brican America, Inc., LLC or Viso Lasik  
16 lent any money to Brican Financial?  
17 A. No. Maybe to buy the initial software. It  
18 needed software, accounting software for the lease.  
19 Q. You said that Brican Financial is getting the  
20 money to purchase the equipment --  
21 A. No, to purchase --  
22 Q. I'm sorry.  
23 A. -- the software.  
24 Q. Let me finish the question first.  
25 Brican Financial is getting the money to

1 reimburse Brican LLC for the equipment as a result of  
2 other investors, hedge funds and the like?  
3 A. No. This is not what I said.  
4 What I said was that Brican Financial LLC is  
5 seeking investors, hedge funds, prior investors to buy  
6 the equipment.  
7 Q. Then maybe we had a miscommunication.  
8 My question was for those 350 customers,  
9 somebody had to buy the equipment for them?  
10 A. Brican America LLC.  
11 Q. But the lessor on the equipment is now  
12 Brican Financial?  
13 A. Correct.  
14 Q. So Brican Financial had to reimburse Brican  
15 LLC for the cost of the equipment?  
16 A. Has to.  
17 Q. But it has not yet?  
18 A. Not yet.  
19 Q. Is there a loan agreement between Brican LLC  
20 and Brican Financial?  
21 A. Not to my knowledge.  
22 Q. How is that debt from Brican Financial to  
23 Brican LLC being carried on your financial statement?  
24 A. I don't know. Ask my -- I don't know.  
25 Q. You have no idea?

1 A. No.  
2 Q. Is there a term of that loan?  
3 A. No. I don't think there is a loan agreement.  
4 Q. Are there any written agreements between  
5 Brican Financial LLC and Brican America LLC?  
6 A. I don't think so.  
7 Q. So this has all been done on a handshake?  
8 A. Something like that, yes, between myself and  
9 myself.  
10 MS. SCHREIBMAN: I'd like to enter a  
11 continuing objection to questions of the party  
12 other than Brican America Inc.  
13 Q. From 2007 up until May 2009 when this lawsuit  
14 was begun, I want to focus your attention for that time  
15 period on the instructions that Brican LLC salesmen  
16 were given when approaching the doctors to discuss  
17 leasing the equipment. Okay?  
18 A. Uh-huh.  
19 Q. I just want to focus you on what I'm talking  
20 about for the next set of questions.  
21 A. Yes.  
22 Q. Were your salesmen instructed to try and lease  
23 the equipment without having to sign a marketing  
24 agreement as well?  
25 A. Absolutely, yes.

1 Q. Was there any benefit to the salespeople, did  
2 they get more commission if they were able to actually  
3 sell the equipment as opposed to leasing.  
4 A. At this time, no.  
5 Q. Remember that all my questions are --  
6 A. 2007 to 2009.  
7 Q. Yes. And did the salesmen get any additional  
8 remuneration if they were able to get the equipment  
9 leased without an advertising and marketing agreement?  
10 A. No.  
11 Q. To your knowledge -- and I realize you're not  
12 there at every sales pitch and every sale, but to your  
13 knowledge as president of the company, was it generally  
14 accepted that the salesmen were offering the marketing  
15 agreement as a key ingredient of the sales promotion?  
16 A. Yes.  
17 Q. And is it true they that they were doing that  
18 because it was a very effective sales pitch for the  
19 doctors, it meant they were getting the equipment  
20 essentially free?  
21 A. Not necessarily free. This was still \$80 -- I  
22 forget -- on a monthly basis and between the tax and --  
23 Q. But it made a \$5,000 a year proposition  
24 significantly cheaper?  
25 A. Yes.

1 Q. Was it your understanding from talking to your  
2 sales managers that the marketing agreement was  
3 essential to being able to lease the equipment to a  
4 large number of doctors?

5 A. Not to lease, to sell.

6 Q. We keep changing terms here.

7 A. The purchase in my terminology, the doctor  
8 buys the equipment, purchases the equipment either cash  
9 or under a lease. If it's under a lease, he's  
10 financing his purchase but it's always a sale.

11 Q. But the doctor doesn't get to keep the  
12 equipment at the end of the lease term, does he?

13 A. Yes.

14 Q. Isn't there a additional charge to the doctor  
15 if he wants to keep the equipment?

16 A. One dollar.

17 Q. So your understanding is it was like a  
18 sale/lease back?

19 A. I'm sorry?

20 Q. I'm trying to understand how you're explaining  
21 the nature of the transaction.

22 A. The transaction is the customer buys something  
23 from us cash or through a lease.

24 Q. I'm struggling with understanding how you can  
25 both purchase and lease something.

1 agreement -- I won't even characterize it -- sometime  
2 in 2008 and still has the TV set and the hardware  
3 sitting in his office, in your mind who actually owns  
4 that equipment?

5 A. Professional Solutions.

6 Q. The doctor does not own it?

7 A. No, not yet.

8 Q. But he can purchase it for a dollar at the  
9 conclusion of the lease?

10 A. Correct.

11 Q. Were the advertising and marketing agreements  
12 signed at the same time as the lease agreements?

13 A. Yes, I think so.

14 Q. Were the advertising agreements filed along  
15 with the leasing agreements or were they filed  
16 separately?

17 A. In our files?

18 Q. Yes?

19 A. All together.

20 Q. When a leasing agreement was signed, the  
21 Brican LLC salesman or someone at Brican LLC would  
22 contact Professional Solutions --

23 A. No.

24 Q. No? Okay.

25 When a lease agreement was signed with a

1 A. I'm talking about the purchase in general  
2 terms.

3 Q. Okay. The confusion I'm having here, I know  
4 it's only 1 percent of the time that some doctors do  
5 outright purchase the equipment.

6 A. Yes.

7 Q. So I'm referring to this transaction for the  
8 most part as leasing the equipment to distinguish it  
9 from one where the doctor just purchases it outright.

10 A. Just to give you the way I'm thinking, to  
11 explain the way I'm thinking, as we speak today Brican  
12 America LLC sells the equipment to the doctor through a  
13 leasing company, and the licensing company, Brican  
14 Financial LLC, leases the equipment to the doctor, but  
15 not Brican America LLC.

16 Q. I don't know if we're going to be able to --  
17 I'll give it one try.

18 At the end of the transaction, now you've got  
19 hundreds of doctors with Brican equipment, Brican  
20 procured equipment sitting in their offices.

21 Who actually owns that equipment?

22 A. Brican Financial Services LLC.

23 Q. No. Okay. I apologize.

24 For the transactions that were done in, say,  
25 2008, to the extent that there's a doctor who signed an

1 doctor, who would contact Professional Solutions?

2 A. Headquarters, not the salesman.

3 Q. You wear many hats. So we have to be careful  
4 about --

5 A. Your question was does the salesman contact  
6 Professional Solutions, and I said no.

7 Q. No. That wasn't my question actually.

8 My question was once an LLC salesman concludes  
9 a deal with a doctor, gets him to sign a lease and a  
10 marketing agreement, somebody has to contact  
11 Professional Solutions.

12 A. The headquarters.

13 Q. Of who, which company?

14 A. Brican -- in 2009?

15 Q. No, not currently.

16 In the period between 2007 and May 2009, who  
17 would contact Professional Solutions?

18 A. Brican America LLC.

19 Q. So Brican LLC contacts Professional Solutions  
20 and they sent them a package of material about the  
21 doctor --

22 A. Yes.

23 Q. -- and allowed Professional Solutions to do a  
24 credit check and determine whether they wanted to in  
25 fact underwrite this lease or not?



1 A. Exactly.  
2 Q. When Brican LLC did this, did they also send  
3 the advertising agreement to Professional Solutions?  
4 A. No.  
5 Q. Why not?  
6 A. Because they never asked for it.  
7 Q. Was it an essential part of the agreement with  
8 the doctor, that they get a marketing agreement to pay  
9 for most of the lease payments?  
10 A. Yes.  
11 Q. I think I got cut off from my earlier  
12 question.  
13 The advertising agreements at the office of  
14 Brican LLC, they were filed separately, in a separate  
15 location from the lease agreements, is that correct?  
16 A. I told you no.  
17 Q. They were all filed together?  
18 A. Yes.  
19 Q. If I can, while we're on this topic -- and I  
20 don't think we need to mark this as an exhibit because  
21 it's a pleading. Just before we move away from this  
22 topic --  
23 MS. SCHREIBMAN: Is this ??  
24 MR. VERDE: No. We don't need to mark it.  
25 It's a pleading.

1 are and were no agreements between it and Plaintiff's  
2 lessees. That's what you said in --  
3 A. What was the allegation?  
4 Q. If you want, I'll show it to you, but it  
5 doesn't make a difference. This is an affirmative  
6 statement that Brican, Inc. is making.  
7 A. Yes. So your --  
8 Q. And my question is, if I show you what was  
9 marked as Exhibit 5, isn't that in fact a direct  
10 agreement between Brican America, Inc. and a lessee?  
11 MS. SCHREIBMAN: Could I just halt for one  
12 moment. Let me check the complaint and let's look  
13 at this.  
14 MR. VERDE: Sure.  
15 MS. SCHREIBMAN: This was the original  
16 complaint?  
17 MR. VERDE: Yes. It's in response to 15.  
18 MS. SCHREIBMAN: Okay.  
19 MR. VERDE: My point, Ms. Schreiber, was that  
20 while it certainly responds -- there's an  
21 affirmative averal in here. What's what I'm  
22 getting at.  
23 Excuse me. You can't really coach him. You  
24 can show it to him.  
25 MS. SCHREIBMAN: I need to discuss the

1 Q. I'm going to ask you to take a look at  
2 Paragraph 14.  
3 A. Paragraph --  
4 Q. Paragraph 14 of your answer. I apologize.  
5 This is a little cumbersome to get to this point. So  
6 please bear with me.  
7 Paragraph 14 denies the allegations of  
8 Paragraph 15 of our complaint, and what it says is  
9 Defendant avers affirmatively that there were no  
10 agreements between it, which is Brican America Inc.,  
11 and Plaintiff's lessees.  
12 Do you see that?  
13 A. Yes.  
14 Q. If I can go back and ask you to take a look at  
15 the sample advertising agreement which has been marked  
16 as Exhibit 5.  
17 A. Uh-huh.  
18 Q. Isn't that in fact an agreement directly  
19 between Brican America, Inc. and a lessee?  
20 A. I don't know what you're talking about. I  
21 don't understand the question, since I don't have  
22 the --  
23 Q. Could you just take that and because it's an  
24 affirmative statement. As a matter of fact it says  
25 Defendant, Brican, Inc., avers affirmatively that there

1 question.  
2 MR. VERDE: You can't discuss the question.  
3 That's not the rules.  
4 My question it not really focused on the  
5 response to the complaint because in your  
6 answer --  
7 THE WITNESS: Are you talking about -- excuse  
8 me. I was reading 15.  
9 MS. SCHREIBMAN: Right.  
10 THE WITNESS: Okay.  
11 MS. SCHREIBMAN: This is our answer.  
12 Q. If you read your answer in Paragraph 14, it  
13 responds to our allegation but then goes on to say  
14 Defendant, Brican America, Inc. LLC, avers  
15 affirmatively.  
16 So it's a statement you're making beyond that.  
17 Brican America, Inc. avers affirmatively that  
18 there are and were no agreements between it and  
19 Plaintiff's lessees. Do you see that?  
20 A. I see it.  
21 Q. My question to you is if you look at  
22 Exhibit 5, isn't that in fact a direct agreement  
23 between Brican America, Inc. and a lessee?  
24 A. I'm not the one who wrote the answer here. So  
25 I cannot really comment on it.

1 Q. My question is more narrow.  
2 Isn't Exhibit 5 a direct agreement between  
3 Brican America, Inc. and a lessee?  
4 A. Yes.  
5 Q. Thank you.  
6 MR. VERDE: Let's go off the record a second.  
7 (At this time a recess was taken from 12:30  
8 until 1:35 p.m.)  
9 (Thereupon, Plaintiff's Exhibit No. 7 was  
10 marked for Identification.)  
11 Q. Mr. Vencens, I'm going to show you what's been  
12 marked as Exhibit 7.  
13 What I'm showing you are two pages of W-2 and  
14 1099 filings that were produced to us by your counsel  
15 in response as to document requests.  
16 I'd like you to take a look at the second  
17 entry which is for James H. Conlin.  
18 A. Uh-huh.  
19 Q. What was Mr. Conlin's role at Brican America,  
20 Inc.?  
21 A. Salesman.  
22 Q. Did he have any title beyond that?  
23 A. For awhile he was kind of similar to a general  
24 manager, sales manager, but that was in 2005 and he  
25 wasn't anymore in 2006. In 2006, up to the time he

1 left, he was a salesman.  
2 Q. When did he leave?  
3 A. January 2007.  
4 Q. Why did he leave?  
5 A. Personal reasons.  
6 Q. He wasn't fired?  
7 A. No, he wasn't fired.  
8 Q. As I look at the two pages, it appears that in  
9 2005 he was a W-2 employee but in 2006 he was a 1099  
10 employee.  
11 A. Uh-huh.  
12 Q. Do you know why his status changed from W-2 to  
13 1099?  
14 A. No.  
15 Q. How was he paid? Was he paid on commission,  
16 was he paid a salary, a combination?  
17 A. Prior 2006 he was paid on salary plus  
18 commission, and in 2006 basically on commissions only.  
19 Q. Were all the salesmen paid solely on  
20 commissions?  
21 A. They had a choice.  
22 Q. What was the choice that they had?  
23 A. Salary plus commissions or commissions.  
24 Q. Numberswise, how did that choice break out?  
25 What was the option? How much would they get

1 paid in salary?  
2 A. In salary they would get paid something like  
3 \$4,000 in salary plus commissions.  
4 Q. \$4,000 per --  
5 A. Per month, salary and commissions.  
6 Q. What percentage commission did they get?  
7 A. The percentage was a flat amount.  
8 Q. What was that amount?  
9 A. If they get \$4,000 in salary, they get a flat  
10 amount in commissions, something like \$1,000 per unit.  
11 If they choose to go under the commission  
12 only, they get \$2,000 per unit plus a bonus if they hit  
13 a certain amount.  
14 Q. What was the bonus?  
15 A. \$3,500.  
16 Q. How was your sales force structured?  
17 Did you have regional sales managers,  
18 everybody reporting to one sales manager?  
19 A. General managers and regional managers.  
20 Regional managers for regions, and general managers for  
21 the zones.  
22 Q. What is the difference between a region and a  
23 zone?  
24 A. A region is Florida, for example, or it could  
25 be in North Carolina, Reston, Virginia plus South

1 Carolina, and the zone is Southeast, Northeast,  
2 Pacific.  
3 Q. So the zone is bigger than the region?  
4 A. Yes.  
5 Q. Were there zone managers?  
6 A. Yes.  
7 Q. And there are regional managers?  
8 A. Yes.  
9 Q. Is there any other level of management than  
10 that?  
11 A. No.  
12 Q. Were the zone and regional managers themselves  
13 salespeople?  
14 A. The regional managers, yes, but just what we  
15 called glorified salespeople, but zone manager is zone  
16 manager only.  
17 Q. How do they get compensated?  
18 A. Commission overrides.  
19 Q. So they get a piece of the commission their  
20 salespeople bring in?  
21 A. Yes.  
22 Q. Do you know where Mr. Conlin is currently  
23 employed?  
24 A. I think he's with Brican Corp.  
25 Q. Brican Corp.?

1 A. Yes.  
2 Q. What is Brican Corp.?  
3 A. Brican Corp. is Brican Corp. Vancouver.  
4 Q. I'm sorry. In Canada.  
5 On the W-2 it lists his address as Edmond,  
6 Oklahoma.  
7 A. Yes.  
8 Q. Is that where he was based?  
9 A. Yes. He's still there, to my knowledge.  
10 Q. Just one question before I move on to this.  
11 Were the regional managers employed by Brican  
12 America, Inc. or Brian American LLC?  
13 A. LLC.  
14 Q. The same question for the zone managers, LLC?  
15 A. Yes.  
16 (Thereupon, Plaintiff's Exhibit No. 8 was  
17 marked for Identification.)  
18 Q. Looking at what now has been marked Exhibit 8,  
19 this is a file for a lease of equipment to Troy and  
20 Angela Blanchard, and it is part of the production that  
21 was made to us by your counsel in response to discovery  
22 requests in this case.  
23 I just have a few questions about this  
24 document, and I realize this is just somewhat at  
25 random.

1 A. Yes.  
2 Q. Is this what Brican LLC would send to  
3 Professional Solutions in order to get paid for the  
4 equipment?  
5 A. Yes.  
6 Q. And at this point, when this invoice is sent,  
7 has Brican America LLC already purchased the equipment  
8 or it's about to purchase the equipment or it depends?  
9 A. It depends.  
10 Q. It could be either way?  
11 A. Yes.  
12 Q. If you look at the very bottom it says "Make  
13 your wire payable to Brican America LLC."  
14 A. Uh-huh.  
15 Q. That information, that's a Brican LLC only  
16 account, right?  
17 A. Yes.  
18 Q. It's not an account that's owned by a  
19 different Brican entity or shared by --  
20 A. No, no. It's Brican LLC, to the best of my  
21 knowledge. I don't have the checkbook in front of me.  
22 Q. I understand that, but to the best of your  
23 knowledge, the money would go to the LLC?  
24 A. Yes.  
25 Q. Okay. We go to the next page and it's a

1 If you took a look at the bottom right-hand  
2 corner of the document, you'll see a Bates stamp with  
3 the page numbers down here. If I can ask you to turn  
4 to the one marked BRI 4.  
5 A. 4?  
6 Q. Yes.  
7 A. Yes.  
8 Q. Who is Sandra Ellzey, at the top of the page?  
9 A. She is my assistant.  
10 Q. Is she still with the company?  
11 A. Yes.  
12 Q. Who is she an employee of?  
13 A. Brican America LLC.  
14 Q. What was her job at the company?  
15 A. At the beginning she was doing accounting and  
16 PO tracking, which means the relationship between us  
17 and the leasing company or the leasing companies, and  
18 now she's only an accountant.  
19 Q. If I can go to the next page, and I just want  
20 to use this as an example so we can put some documents  
21 together with the structure of the deal as you  
22 explained earlier.  
23 The next page marked BRI 5 is an invoice from  
24 Brican America to Professional Solutions.  
25 Do you see that?

1 purchase order?  
2 A. Uh-huh.  
3 Q. And it looks like it's from LLC to Eficom  
4 International. Do you see that?  
5 A. Eficom.  
6 Q. What is Eficom?  
7 A. A company in Montreal.  
8 Q. Do you have any involvement with Eficom?  
9 A. No.  
10 Q. Do you have any ownership interest?  
11 A. No.  
12 Q. Do you personally have any agreements with  
13 Eficom?  
14 A. No.  
15 Q. How was his Eficom chosen to be the supplier  
16 of the equipment?  
17 A. Because it was owned by Jack at the time.  
18 That was his company in Montreal.  
19 Q. Jack who?  
20 A. Jack Lemacon.  
21 Q. Okay.  
22 A. And he had credit agreements with suppliers.  
23 Q. So Eficom itself was a middle man in the deal?  
24 A. Buying the equipment, yes, but not anymore,  
25 since -- I think he's not using -- we're not using

1 Eficom anymore since 2008. I don't know an exact date.  
 2 **Q. Do you know who Eficom actually bought the**  
 3 **equipment from?**  
 4 A. Again, to the best of my knowledge, PC  
 5 Connection, Electrograph, and maybe a third company.  
 6 **Q. And Eficom made a profit on being the**  
 7 **middleman in this transaction?**  
 8 A. They are making -- I don't remember -- maybe 3  
 9 or 5 percent on the purchase.  
 10 **Q. Does Mr. Lemacon own 100 percent of Eficom?**  
 11 A. Yes.  
 12 **Q. Did you ever check to determine whether you**  
 13 **could have gotten the physical equipment at a better**  
 14 **price had you purchased from a U.S. dealer?**  
 15 A. No.  
 16 **Q. Why not?**  
 17 A. Because Monsieur Lemacon is my nephew.  
 18 **Q. Go to the next page marked BRI 7.**  
 19 **This is a something from Professional**  
 20 **Solutions to Brican America LLC called a Transaction**  
 21 **Notification.**  
 22 A. Yes.  
 23 **Q. To your knowledge, what purpose did this**  
 24 **document serve?**  
 25 A. To the best of my knowledge, it serves to

1 A. Describing the equipment.  
 2 **Q. And is this given to the doctor who's leasing**  
 3 **the equipment?**  
 4 A. Yes.  
 5 **Q. Is a copy of this given to Professional**  
 6 **Solutions?**  
 7 A. No.  
 8 **Q. Can you determine -- if you take a look at**  
 9 **that page, it says Representative Signature at the**  
 10 **bottom. Do you know whose signature that is?**  
 11 A. No.  
 12 **Q. Is this signed by the salesman on behalf of**  
 13 **LLC?**  
 14 A. Yes.  
 15 **Q. So if the salesman is successful, this is what**  
 16 **he actually gets the doctor to sign right in front of**  
 17 **him, correct?**  
 18 A. Plus the lease agreement.  
 19 **Q. Plus the lease agreement?**  
 20 A. Yes.  
 21 **Q. Now, the next page marked BRI 10, is that the**  
 22 **back of BRI 9?**  
 23 A. Some of them we did it -- at one point in time  
 24 we had -- as you know, we had several marketing  
 25 agreements or advertising agreements, and this was one

1 notify us the money has been wired.  
 2 **Q. Did you get any independent notice from**  
 3 **Professional Solutions if a line of credit had been**  
 4 **approved or not or was this effectively their**  
 5 **acceptance of the loan?**  
 6 A. No. That was to say okay, we have been  
 7 delivered the goods and now we are going to pay you.  
 8 The next document was the one initiating in  
 9 principle the shipment. Sometimes it was shipped  
 10 before.  
 11 **Q. So we're moving on now to BRI 8, and it's on**  
 12 **Professional Solutions' masthead, letterhead, and it's**  
 13 **a Ship To Eye Pro LLC and it says equipment supplier is**  
 14 **Brican America but it doesn't designate whether it's**  
 15 **Inc. or LLC.**  
 16 **It's supposed to be LLC, is that right?**  
 17 A. Yes. I hope for them, because they paid LLC.  
 18 **Q. And this was sent back to the LLC by**  
 19 **Professional Solutions, right?**  
 20 A. Yes, to the best of my knowledge. I'm not  
 21 involved in the process.  
 22 **Q. On the next page marked BRI 9, this is on the**  
 23 **letterhead of Brican American LLC.**  
 24 A. This is a purchase order.  
 25 **Q. What purpose is the purchase order?**

1 of them.  
 2 So at the time we had the advertising  
 3 -- agreement incorporated into the leasing agreement.  
 4 **Q. So the purpose of this was -- let me go back**  
 5 **because I don't know if you quite answered my question.**  
 6 **My question is is what's shown on BRI 10, was**  
 7 **that the back of BRI 9?**  
 8 A. Yes, yes.  
 9 **Q. Now, to go to your point, it was done because**  
 10 **it combined both the leasing agreement and the**  
 11 **advertising agreement?**  
 12 A. Not necessarily. I mean, it's just the terms  
 13 and conditions, and at one point we felt it was better  
 14 to have the advertising agreement plus the terms and  
 15 conditions.  
 16 **Q. But at least at the time this was executed,**  
 17 **the advertising agreement was actually incorporated**  
 18 **into the lease agreement that you had the customer**  
 19 **sign?**  
 20 A. No. Into the purchase order, not the lease  
 21 agreement.  
 22 **Q. At the very bottom of the page there is a**  
 23 **credit card number, on the bottom right.**  
 24 **What was the purpose of taking the credit card**  
 25 **number?**

1 A. Shipping.  
 2 **Q. Although I know it's called a purchase order**  
 3 **and you're saying it's a purchase, it does say at the**  
 4 **bottom what the lease terms are, doesn't it?**  
 5 A. That's an option. That's why you have a  
 6 square, a little box.  
 7 **Q. By looking at this, can you determine whether**  
 8 **this particular customer purchased or leased the**  
 9 **equipment?**  
 10 A. Leased, for two reasons.  
 11 **Q. Go ahead.**  
 12 A. First of all, it's not 508 and 60 months, and  
 13 you don't have a price here.  
 14 **Q. So this is effectively a lease agreement to**  
 15 **the doctor but on the back --**  
 16 A. No, no. It's a purchase order.  
 17 **Q. The doctor is leasing the equipment, though?**  
 18 A. No. He's buying the equipment from us and  
 19 he's leasing the equipment from Professional Solutions.  
 20 We're not leasing the equipment.  
 21 **Q. Wait a second. Are you talking about**  
 22 **different pieces of equipment possibly?**  
 23 A. No.  
 24 **Q. When we refer to the equipment, we're**  
 25 **referring to the television and all of the hardware --**

1 not willing to give away 10 percent of the time on my  
 2 screen, I will give you only 5 percent, and it could be  
 3 a 59 number instead of the 58 number.  
 4 **Q. Now, just so we're focusing, the time period**  
 5 **here is July of '07.**  
 6 A. Uh-huh.  
 7 **Q. I'm just looking at the previous page.**  
 8 It says under the advertising agreement that  
 9 Brican America, Inc. will purchase the advertising.  
 10 A. Yes.  
 11 **Q. Wasn't it always Brican LLC that was**  
 12 **purchasing the advertising?**  
 13 A. Not at the beginning.  
 14 **Q. This is not really the beginning. This is in**  
 15 **'07.**  
 16 A. Yes, but I felt that we started to -- I mean,  
 17 I don't know why it's in here.  
 18 **Q. Is there any way of telling -- well, as we go**  
 19 **through it maybe something else will register as to**  
 20 **what the client actually got paid for marketing.**  
 21 Let's go to the next page, BRI 11. It's on  
 22 the letterhead of Brican America LLC.  
 23 What is this?  
 24 A. If you can let me read. It says that this  
 25 doesn't cover the first 24 hours following delivery.

1 A. And the software and the library, yes.  
 2 **Q. So the doctor is both purchasing it and**  
 3 **leasing it?**  
 4 A. No. He's purchasing the equipment through the  
 5 financing program.  
 6 **Q. So when we talk about a lease, in your mind is**  
 7 **it a lease payment or repayment payment?**  
 8 A. In my mind -- I mean, I don't know what  
 9 technical difference you make between the two of them.  
 10 As far as I'm concerned, he's buying this  
 11 equipment from us but he goes through a financing  
 12 institution in order to be able to pay on a monthly  
 13 basis instead of paying cash.  
 14 **Q. On the back of this particular one -- and I'm**  
 15 **focusing on the document marked BRI 10 -- there is the**  
 16 **advertising agreement but the Purchase of Advertising**  
 17 **number is not filled in. Is that common?**  
 18 A. The what?  
 19 **Q. The amount of money in Section 3 is left**  
 20 **blank. Is that common?**  
 21 A. Yes.  
 22 **Q. Why was it left blank?**  
 23 A. Because it could be 58. It could be 59. It  
 24 could be a different amount.  
 25 So a customer could say, well, you know, I'm

1 **Q. It's a standard warranty for the equipment**  
 2 **itself, correct?**  
 3 A. It's just a warranty -- it's just a warning to  
 4 tell them that they have to make sure that within the  
 5 first 24 hours the equipment is received in good shape.  
 6 **Q. Okay. The next page, BRI 12, is some sort of**  
 7 **receipt to a credit card for \$325.**  
 8 Do you know that's for?  
 9 A. Shipping.  
 10 **Q. And that goes to the credit card number we saw**  
 11 **on the purchase order?**  
 12 A. Yes.  
 13 **Q. The next page, BRI 12, is also a purchase**  
 14 **order -- it looks like maybe you just had two of the**  
 15 **same here.**  
 16 If you look at the handwriting and you compare  
 17 the two, compare BRI 13 with BRI 9, it is different?  
 18 Do you have any understanding of why these two  
 19 would be different?  
 20 A. No.  
 21 **Q. And then if you go to BRI 15, there's a**  
 22 **transmission verification sheet. Do you see that?**  
 23 It's the number at the bottom. I'm sorry.  
 24 BRI 15.  
 25 A. 15?



1 Q. Yes.  
 2 A. Yes.  
 3 Q. And this shows that some of these documents  
 4 were actually transmitted to Professional Solutions,  
 5 right?  
 6 A. Yes.  
 7 Q. If you look at the number of pages, it says  
 8 only three pages of this was transmitted to them.  
 9 A. Yes.  
 10 Q. Do you know what the normal practice was for  
 11 each of the three pages that was transmitted?  
 12 A. I don't have a clue.  
 13 Q. The next page is BRI 16. This is again on the  
 14 letterhead of Brican America LLC.  
 15 A. No. It's our logo provided on Professional  
 16 Solutions' paperwork.  
 17 Q. I'm sorry. You're correct.  
 18 Who filled this document out?  
 19 A. Salespeople or the client.  
 20 Q. So although it's got Brican at the top, it's  
 21 Professional Solutions' paper, but it was actually  
 22 completed by a Brican LLC's salesman?  
 23 A. This is what they call a private label.  
 24 Q. Okay. The answer to my question was yes, this  
 25 is actually something filled out by the salesman,

1 discussing the marketing agreement or advertising  
 2 agreement?  
 3 A. Did I what?  
 4 Q. At the time that you sent this to Professional  
 5 Solutions for approval, you didn't include anything  
 6 about a marketing or advertising agreement?  
 7 A. No.  
 8 Q. Now, the equipment and lease agreement that's  
 9 marked BRI 17, that's on the letterhead of Brican  
 10 America LLC, but it lists the lessor --  
 11 A. No, no. This is a lease document from  
 12 Professional Solutions with our logo.  
 13 Q. So again, it's Professional Solutions'  
 14 document with a Brican logo and filled out by the  
 15 Brican LLC salesman and customer at the shop?  
 16 A. Correct.  
 17 Q. I take it that Brican was the one responsible  
 18 for drafting the language in the two pages of the  
 19 equipment lease application?  
 20 A. Say that again.  
 21 Q. I'm sorry.  
 22 Am I correct that Professional Solutions was  
 23 the party responsible for drafting the language in the  
 24 equipment lease?  
 25 A. Yes, yes.

1 right?  
 2 A. Or the customer.  
 3 Q. Okay, but again, somebody making a sales call  
 4 in a doctor's office, this is one of the things they  
 5 actually sit across the table and write it out and sign  
 6 it?  
 7 A. Yes. It's part of the documentation.  
 8 Q. If you take a look at the top you see a little  
 9 stamp on it. It says "Faxed."  
 10 Does that help you figure out whether this is  
 11 one of the three pages that was faxed?  
 12 A. The three pages, in my opinion, now that you  
 13 point this out, I think it's a credit application and  
 14 the lease.  
 15 Q. So what we're looking at with BRI 16 is what  
 16 you're calling a credit application, right?  
 17 A. Yes.  
 18 Q. And then 17 and 18 is the lease?  
 19 A. Is the lease.  
 20 Q. So when Professional Solutions was being asked  
 21 to provide the financing for this particular  
 22 transaction, what they received were the pages marked  
 23 BRI 16, 17 and 18, correct?  
 24 A. Yes, normally.  
 25 Q. Did you send them anything at that time

1 Q. If you go to the next page, BRI 18, you'll see  
 2 that there is a number of signature blocks, one of  
 3 which says "Lessor: Professional Solutions," and it  
 4 says "This lease is not binding until we sign below."  
 5 Do you see that?  
 6 A. Yes.  
 7 Q. So to be clear, the Brican salesman did not  
 8 have the power to bind Professional Solutions, correct?  
 9 A. I guess so, yes.  
 10 Q. Professional Solutions had to do a credit  
 11 check and approve the lease before they would be  
 12 obligated to make any payments, correct?  
 13 A. Yes.  
 14 Q. And once they signed it, were they obligated  
 15 to pay the money?  
 16 A. When they send the check.  
 17 Q. Well, if they sent the check they're not  
 18 obligated to pay the money because they paid the money,  
 19 but okay.  
 20 A. Yes.  
 21 Q. The next page, which is BRI 19, it's another  
 22 fax coversheet but to a fax number with a 512 area  
 23 code.  
 24 Do you see that?  
 25 A. Yes.

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1 Q. Do you know where that is?

2 A. Could be one of the suppliers. 512 is what,

3 New York?

4 Q. No. That's 212?

5 A. Is what?

6 Q. 212 is New York. Is it Canada possibly?

7 A. Canada is 514. I'm assuming it should be to

8 one of the suppliers.

9 Q. Where was Eficom based?

10 A. Montreal.

11 MS. SCHREIBMAN: 514.

12 Q. So going to the next page, BRI 20, that's a

13 purchase order from LLC to Eficom.

14 Does it make sense that these pages were what

15 was sent up to Eficom to order the actual --

16 A. This page, purchase order?

17 Q. Yes. This is to order the actual equipment,

18 correct?

19 A. This is to order -- no. This is only to order

20 the computer, the catalog and the DVD and the -- what

21 you call the DVD license.

22 Q. Then if you keep going to BRI 22, there is an

23 invoice for Eficom for the actual TV itself, right?

24 A. TV, wall mounts and the shipping costs.

25 Q. And there is a phone number for Eficom but it

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1 does have a 514 area code.

2 MS. SCHREIBMAN: 512 is Austin, Texas.

3 MR. VERDE: Okay. Good.

4 Q. To your knowledge, is this fairly typical of

5 what you would expect to see in a package of material

6 evidencing a sale of equipment?

7 A. Yes.

8 Q. There is nothing in here that strikes you as

9 unusual because it's here or unusual because it's not

10 there?

11 A. No.

12 Q. Okay.

13 (Thereupon, Plaintiff's Exhibit No. 9 was

14 marked for Identification.)

15 Q. I'm showing you what's now been marked as

16 Exhibit 9. It's an invoice from Eficom that's dated

17 September 8, 2005.

18 If you take a look at that, it says it's sold

19 to Brican America, but there's no indication whether

20 it's Inc. or LLC.

21 As I understood from your previous testimony,

22 this should be sold to LLC, correct?

23 A. In 2005, not necessarily. 2005, it could have

24 been Brican America Inc.

25 Q. It could have been either one?

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1 A. 2005, August 2005. It could have been Brican

2 America Inc.

3 (Thereupon, Plaintiff's Exhibit No. 10 was

4 marked for Identification.)

5 Q. Mr. Vincens, I'm now showing you what's been

6 marked as Exhibit No. 10. It's either a brochure or

7 possibly a Power Point presentation from Brican America

8 LLC, A Strategic Alliance.

9 Were you involved in the creation of this?

10 A. Yes.

11 Q. Is this a printout of a Power Point

12 presentation?

13 A. Yes.

14 Q. What was this used for?

15 A. The sales force.

16 Q. Targeting who?

17 A. Targeting the dentists.

18 Q. What was the message that you were trying to

19 get to the dentists, talking about the strategic

20 alliance between --

21 A. That we were having five more chances to

22 sell -- that Viso would have five more chances to sell,

23 to get patients referred by a dentist compared to an

24 optometrist. That's the bottom line.

25 Q. Why was this important to communicate to the

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1 dentists that your salespeople with approaching?

2 A. It wasn't for the dentist. It was for the

3 salespeople.

4 Q. Okay. So in other words, what was the

5 message, what were you trying to get the salespeople to

6 do?

7 A. Just to understand what they were doing.

8 Q. That was a bit of a challenge.

9 MS. SCHREIBMAN: Good answer.

10 Q. Were the salespeople supposed to communicate

11 any of this to the dentists themselves?

12 A. Supposed, not supposed.

13 The document was written, but it wasn't part

14 necessarily of the sales pitch, but they could use some

15 of the facts, some of the figures we are giving here if

16 needed.

17 Q. Is it fair to say that the purpose of this

18 presentation was to tell the dentists that because

19 their position in a patient's care --

20 A. No.

21 Q. -- they were in a good position to make a

22 recommendation for Lasik surgery?

23 A. No. The purpose of this was training the

24 salespeople.

25 Q. Train them to do what?

1 A. Train to know what they were talking about if  
2 they had to talk about Lasik.  
3 **Q. This presentation was specifically about**  
4 **dentists?**  
5 A. Yes.  
6 **Q. What about dentists made the sales pitch**  
7 **unique? What about making a sales pitch to dentists**  
8 **were you trying to convey to your salespeople by giving**  
9 **them this information?**  
10 A. Because we had five more chances to have a  
11 dentist refer the patient down the road than to have  
12 the same optometrist.  
13 **Q. So you viewed dentists as a good source of**  
14 **business for the spas themselves?**  
15 A. Exactly.  
16 **Q. And you made a determination that they were**  
17 **five times more likely to make a referral?**  
18 A. Yes.  
19 **Q. On what basis did you make that estimation?**  
20 A. Because there are five times more dentists  
21 than optometrists.  
22 **Q. So it's not the profession, just the sheer**  
23 **number?**  
24 A. Oh, it's not the profession. Like an  
25 optometrist is not necessarily going to refer because

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1 **Q. However you want to explain it.**  
2 A. The more you explain to the salespeople, the  
3 better it is.  
4 **Q. But what about the fact that selling to a**  
5 **dentist and getting a Viso advertisement in a doctor's**  
6 **office was good for Viso Lasik, was helpful to your**  
7 **salesmen in getting the doctor to sign up for the**  
8 **equipment to begin with?**  
9 A. Because they are talking about Viso getting  
10 money for advertising Viso, getting what we call the  
11 appointment cards. So they had to know what was the  
12 Lasik business about.  
13 **Q. Was part of the sales pitch your salesmen**  
14 **would make to a dentist that if you get the equipment**  
15 **you'll get advertising dollars but if you make**  
16 **referrals you'll get more advertising dollars, so this**  
17 **is an even better deal?**  
18 A. No, no. They were supposed to say, but I'm  
19 not convinced everybody was doing it.  
20 **Q. But it was one of the things, a tool, if you**  
21 **will, that you were going to give your salespeople to**  
22 **try and persuade?**  
23 A. Yes.  
24 **Q. Was that presentation used for any other**  
25 **purpose other than for your own sales force?**

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1 he feels like he's going to lose business if he refers,  
2 not all of them but some of them.  
3 A dentist doesn't have this fear.  
4 **Q. Were doctors paid for referrals that they were**  
5 **going to make?**  
6 A. Dentists?  
7 **Q. Yes.**  
8 A. A dentist to a patient, no.  
9 **Q. So to the extent a dentist was going to make a**  
10 **referral to Viso Lasik, they would be doing that just**  
11 **out of, for lack of a better term, the goodness of**  
12 **their heart, there was no money involved?**  
13 A. Not necessarily.  
14 We could, Viso could down the road increase  
15 the advertising fees, but not related to one patient,  
16 to a specific number of patients.  
17 **Q. So if you had a dentist that was a good source**  
18 **of business, you'd pay him more for the advertising?**  
19 A. Yes.  
20 **Q. Why would this help the salesmen conclude a**  
21 **sale with a dentist?**  
22 A. Do you want to spend the next four hours  
23 talking about that?  
24 **Q. Sure.**  
25 **MS. SCHREIBMAN: No.**

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1 A. No.  
2 **Q. Was it used, for example, to show outside**  
3 **investors?**  
4 A. No.  
5 **Q. Who actually did the presentation to the**  
6 **salesmen based on this presentation?**  
7 A. I think I did it.  
8 **Q. Did you get them all in a room? Was it by**  
9 **video conference, for instance?**  
10 A. No, no. That's when they are trained.  
11 **Q. When you got a new salesperson coming in to**  
12 **work for Brican LLC, how long did you train them for?**  
13 A. Three days.  
14 **Q. From where did you train them?**  
15 A. At the office in a conference room, for  
16 instance, at Blue Lagoon Drive if we have a big class.  
17 **Q. So even if you got a new salesperson up in**  
18 **Seattle, you'd fly them down to Florida for three days**  
19 **of training?**  
20 A. Yes.  
21 **Q. And this was part of the standard training?**  
22 A. Yes. I think it was part of the training  
23 manual.  
24 **Q. Well, we haven't had a chance to see it yet.**  
25 **Unfortunately these aren't Bates stamped, but**

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1 if I can ask you to take a look -- let's see -- about  
 2 five page from the back. There's a big number one.  
 3 It says "A free marketing tool," and what  
 4 looks like a little hedgehog in the corner, some sort  
 5 of mascot.  
 6 A. Uh-huh.  
 7 Q. In bold letters in here it says "Will pay you  
 8 enough per year to offset the cost of your lease."  
 9 A. Yes.  
 10 Q. Was that the lead sales pitch for your  
 11 salesmen with the marketing, the lease would be offset?  
 12 A. No. The real sales pitch was if you accept a  
 13 little bit of freedom on your screen, like 10 percent  
 14 of your time on the screen, Viso Lasik is willing to  
 15 pay you something like \$5,800 a year in order to  
 16 advertise.  
 17 That was the sales pitch. As a matter of  
 18 fact, I don't think I did this page.  
 19 Q. If you look at the very last page under  
 20 Additional Revenues, it says "Finally your Viso Lasik  
 21 Medspas location will closely monitor -- it's a little  
 22 obscured by all the money -- all patients coming from  
 23 your office and substantially -- what looks like, I  
 24 image -- increase your -- something -- advertising  
 25 revenue."

1 A. Uh-huh. It's just to say, I think, that not  
 2 only this is a very, very affordable marketing tool but  
 3 they can make tons of money with this marketing tool.  
 4 Q. Well, this is clearly not directed at the  
 5 salesperson, it's directed at the doctor, isn't it?  
 6 A. No, for the salespeople.  
 7 Q. Well, for the salespeople to tell the doctor?  
 8 A. Yes.  
 9 Q. So the salespeople are supposed to tell the  
 10 doctor that if you make a lot of referrals you'll get  
 11 more advertising money?  
 12 A. That wasn't the main talk of the sales pitch,  
 13 but yes, they could say it.  
 14 Q. Did Dr. DeCanio buy a system?  
 15 A. Yes.  
 16 Q. Do you know if he's in default in his payments  
 17 on that system?  
 18 A. I have no idea.  
 19 Q. Is Dr. DeCanio still actively involved in  
 20 Viso Lasik?  
 21 A. Yes.  
 22 Q. When you first began to sell the system, what  
 23 was the sale price?  
 24 A. It depends where and when. Are you talking  
 25 about France, Germany, Italy, here?

1 Q. When you first started selling in 2005/2006,  
 2 isn't it true that the sale price of the system was  
 3 about \$13,000?  
 4 A. 13, 14, yes.  
 5 Q. And that in 2006 the sales price had reached  
 6 about \$23,000?  
 7 A. No, 2005.  
 8 Q. Why did it increase from \$13,000 to \$23,000?  
 9 A. Because I wanted it to.  
 10 Q. Did the cost of getting the equipment increase  
 11 at all?  
 12 A. No. I just wanted to make more money.  
 13 Q. I'm not going to argue with more money.  
 14 MS. SCHREIBMAN: Similar to Starbucks and  
 15 those cappuccinos. Add a little milk and they  
 16 charge quadruple.  
 17 Q. Your contracts for purchasing of the  
 18 equipment, were they normally made for the medical  
 19 practice of the doctor personally or some combination  
 20 of the two?  
 21 A. A combination.  
 22 Q. Who did you target for sales? You had  
 23 ophthalmologists and dentists and optometrists.  
 24 A. Optometrists and then dentists.  
 25 Q. Were any other medical providers targeted for

1 sales?  
 2 A. When?  
 3 Q. Fair question. Let's start from the initial  
 4 period, say, from 2005 to 2008.  
 5 A. 2005 to 2007, I would say optometrists only,  
 6 then dentists.  
 7 Q. Have there been any other medical  
 8 practitioners ever targeted?  
 9 A. Since when?  
 10 Q. Besides those two, ever.  
 11 A. Prior to the lawsuit or after the lawsuit?  
 12 Q. Up to the lawsuit.  
 13 A. General practitioners, family doctors.  
 14 Q. Are the systems, the equipment being offered  
 15 to the general practitioner doctors on the same general  
 16 terms and conditions as they were offered to dentists  
 17 and optometrists?  
 18 A. We didn't start yet to sell. We sold a few  
 19 but we don't have a sales force.  
 20 Q. So you only sold a few, but is the plan to  
 21 sell them under the same general terms and conditions?  
 22 A. Kind of, yes.  
 23 Q. What's the difference?  
 24 A. It will be done a different way. One being  
 25 the seller of the pricing -- Viso being just one of the

1 components.  
2 Q. Is it the same idea, that you're going to sell  
3 the doctor and he's going to effectively get a lease  
4 finance on it?  
5 A. Yes.  
6 Q. Is it going to be same price, \$23,000?  
7 A. No, unless we get less from the leasing  
8 company.  
9 Q. Is there going to be any advertising agreement  
10 at all with the doctors?  
11 A. Possibly.  
12 Q. The few that you have been able to sell, were  
13 they sold in connection with an advertising agreement?  
14 A. Yes.  
15 Q. And the advertising is still just from  
16 Viso Lasik?  
17 A. Yes.  
18 Q. And it's the same amount they're paying?  
19 A. No.  
20 Q. How much are they paying now?  
21 A. Half.  
22 Q. Has the amount or method of payment or  
23 frequency of payment to the doctors who signed up these  
24 lease purchases in '07 and '08 and early '09 changed at  
25 all?

1 warranties given to lessees relating to the goods or  
2 leases written or verbal that are not included in the  
3 documents given to PSFS."  
4 Were the marketing agreements given to SPFS?  
5 A. There was no marking agreement at the  
6 beginning.  
7 Q. This agreement covered the future leasing and  
8 financing by Professional Solutions of the equipment  
9 that you were selling, correct?  
10 A. Brican, Inc., yes.  
11 Q. When Professional Solutions was asked to  
12 finance the equipment and they were sent information  
13 about the potential lessee, were marketing or  
14 advertising agreements sent to SPFS?  
15 A. No.  
16 Q. To your knowledge, was this agreement ever  
17 officially rescinded or terminated?  
18 A. To my understanding, it was lost.  
19 Q. It was lost?  
20 A. Yes.  
21 Q. What do you mean it was lost?  
22 A. It was lost by Professional Solutions. We get  
23 them a copy of it.  
24 Q. Was it ever terminated?  
25 A. No, not to my knowledge.

1 A. For some of them.  
2 Q. What has changed?  
3 A. Some of them have elected to pay on a yearly  
4 basis instead of a quarterly basis.  
5 Q. Were they offered some incentive to accept  
6 that?  
7 A. No.  
8 Q. They just agreed to do it?  
9 A. Yes.  
10 Q. Has there been any default in making any  
11 marketing or advertising payments to any of the  
12 doctors?  
13 A. No, not to my knowledge.  
14 (Thereupon, Plaintiff's Exhibit No. 11 was  
15 marked for Identification.)  
16 Q. I'm going to show you what is now marked  
17 Exhibit 11, a General Vendor Agreement between  
18 Professional Solutions and Brican America, Inc.  
19 Did you sign on behalf of Brican America,  
20 Inc.?  
21 A. Yes.  
22 Q. If you take a look at Paragraph 6,  
23 Representations and Warranties, it says "With respect  
24 to goods sold hereunder, Brican warrants that:"  
25 Number 6-C, "There are no other agreements or

1 Q. The physical agreement was lost?  
2 A. Yes.  
3 Q. And to your knowledge, the two pages that are  
4 in front of you now, is that the entire agreement?  
5 A. To my knowledge, yes.  
6 Q. If you take a look at Paragraph 5-A, there's a  
7 warranty that Brican is in good standing and a valid  
8 corporation under the laws of Nebraska.  
9 A. Yes.  
10 Q. Are you?  
11 A. Not legally.  
12 Q. Do you have any explanation of why you  
13 warranted that you were?  
14 A. Because I'm like 95 percent of the human  
15 beings. I don't read all the lines on my insurance  
16 policy.  
17 Q. So it is your testimony it got in there and  
18 you just didn't notice it?  
19 A. I didn't notice it.  
20 Q. Do you consider the advertising and marketing  
21 agreements to be the type of other agreements that are  
22 referred to in 6-C of the General Vendor Agreement?  
23 A. No.  
24 Q. Why not?  
25 A. Because the guarantee, in my view, the

1 marketing agreement, is not related to the goods.  
 2 **Q. Is it related to the leases?**  
 3 A. No.  
 4 **Q. Is there any other reason why you don't think**  
 5 **that the advertising or marketing agreements fell**  
 6 **within that description in 6-C?**  
 7 A. No.  
 8 **Q. At some point, I think we discussed it**  
 9 **earlier, instead of Professional Solutions becoming the**  
 10 **lessor in the first instance, Brican, Inc. became the**  
 11 **lessor or then assigned the leases to Professional**  
 12 **Solutions, is that correct?**  
 13 A. Yes.  
 14 **Q. Why was that done?**  
 15 A. Why? Because it happens more and more often  
 16 that customers are going to be declined by Professional  
 17 Solutions.  
 18 So if you have two or three leasing companies  
 19 you are dealing with, instead of having to have the  
 20 salesman to go directly back to the customer and having  
 21 everything resigned because this leasing company  
 22 accepted the deal, if we have a blind lease, which is a  
 23 general lease we can use with every company, then it  
 24 makes it a lot easier for us.  
 25 **Q. Were you concerned about what would happen in**

1 A. No. The customer is either approved or  
 2 declined by the financing institution.  
 3 **Q. Who is Brock Rundo?**  
 4 A. A dentist.  
 5 **Q. What is his relationship with Brican LLC?**  
 6 A. We participate in the seminars.  
 7 **Q. Is he a customer?**  
 8 A. No. He's in Canada.  
 9 (Thereupon, Plaintiff's Exhibit No. 12 was  
 10 marked for Identification.)  
 11 **Q. I'm showing you what has now been marked as**  
 12 **Exhibit 12, and it's a couple of assignments and ask**  
 13 **you to look at them and tell me, is that your signature**  
 14 **on behalf of Brican America?**  
 15 A. No.  
 16 **Q. Whose signature is that?**  
 17 A. Jack's.  
 18 **Q. Were you involved at all in the mechanics of**  
 19 **making the assignments?**  
 20 A. Not at all.  
 21 **Q. Do you know why the assignments were done in**  
 22 **bulk like this?**  
 23 A. I heard about it but --  
 24 **Q. Just to your knowledge, what is your**  
 25 **understanding?**

1 **a circumstance like that where you couldn't get one of**  
 2 **the financing companies to underwrite the lease?**  
 3 A. Then the deal is dead, canceled.  
 4 **Q. So there was a condition in the lease**  
 5 **agreement that Brican LLC had to be able to get**  
 6 **financing, otherwise the lease would be ineffective?**  
 7 A. Brican has to -- just like with Professional  
 8 Solutions before -- you have to accept the lease before  
 9 it's a binding document.  
 10 **Q. I want to go back and understand.**  
 11 **One of the reasons you did that, as I**  
 12 **understand your testimony, is you wanted your salesmen**  
 13 **to be able to sign the leases on the spot and not have**  
 14 **to go back and tell the customer we have to re-execute**  
 15 **all the documents because --**  
 16 A. That we have to look for another leasing  
 17 company.  
 18 **Q. Right, but the downside of doing that, as I**  
 19 **understand it, is that if you can't find financing,**  
 20 **Brican LLC is still obligated to honor the terms of the**  
 21 **lease?**  
 22 A. No, no.  
 23 **Q. And there was something in the leasing**  
 24 **agreement that made it contingent upon Brican LLC**  
 25 **getting financing?**

1 A. That instead of assigning leases one by one,  
 2 they were assigning a group of leases.  
 3 **Q. I don't think we have to mark this as an**  
 4 **exhibit. It's your interrogatories.**  
 5 I'm going to show you, Mr. Vincens, what has  
 6 been submitted on behalf of Brican America as responses  
 7 to interrogatories. This is what your attorney has  
 8 given to us.  
 9 If you will notice, it identifies you as the  
 10 person having supplied the information for these  
 11 interrogatories responses, on the first page.  
 12 Do you see that?  
 13 A. Yes.  
 14 **Q. I want to direct your attention to**  
 15 **Interrogatory No. 2.**  
 16 It says identify the total number of leases  
 17 sold accompanied by marketing agreements, and it says  
 18 915.  
 19 A. Yes.  
 20 **Q. Isn't it true that there are over 1,600**  
 21 **leases?**  
 22 A. I think we're talking about Brican America,  
 23 Inc.  
 24 MR. VERDE: Excuse me. You can't coach him.  
 25 MS. SCHREIBMAN: Not a word.

1 Q. Isn't there over 1,600 leases that have been  
2 underwritten by Professional Solutions?  
3 A. Yes, but I think this answer is about Brican  
4 America, Inc.  
5 Q. What makes you think that that only refers to  
6 Brican America, Inc.?  
7 A. Because the complaint was against Brican  
8 America, Inc.  
9 Q. Well, let me understand how you're reading  
10 this question.  
11 This talks about the number of leases sold  
12 accompanied by marketing agreements. These are leases  
13 sold to doctors accompanied by marketing agreements.  
14 What difference would it make if they were  
15 sold by Inc. or LLC?  
16 A. I have no idea.  
17 I'm just going by my lawyer to answer as far  
18 as Brican America, Inc. was concerned.  
19 Q. To the best of your knowledge, were any of the  
20 leases that were underwritten by Professional Solutions  
21 not accompanied by a marketing agreement with the  
22 doctor?  
23 A. A few of them, yes.  
24 Q. To your mind, does Brican America, Inc. have  
25 any customers?

1 going to pay us and didn't.  
2 Q. Was this for leases that they had already  
3 approved or were pending approval?  
4 A. Everything was approved already.  
5 Q. What efforts have you made to get somebody  
6 else to underwrite those leases?  
7 A. We created now a captive leasing company.  
8 Q. Is the captive leasing company able to  
9 underwrite these leases?  
10 A. Not yet. Brican Financial.  
11 Q. I understand that, but for the leases that  
12 Professional Solutions did not advance the money, the  
13 \$2.6 million here, were you able to go forward and  
14 actually sign those leases anyway?  
15 A. Yes. Part of it is Brican Financial.  
16 Q. And you were able to obtain the money,  
17 sufficient money to actually provide the equipment,  
18 correct?  
19 A. Oh, provide the equipment, yes.  
20 Q. So the leases are in full force and effect and  
21 the doctors have the equipment, correct?  
22 A. Some of them, yes.  
23 Q. Do the doctors pay the \$25,000 up front or are  
24 they paying on a time basis?  
25 A. They pay \$508 plus tax a month to Brican

1 A. What is your definition of a customer?  
2 Q. A customer is a customer. I can't define it  
3 better than that.  
4 Does Brican America, Inc. have any customers?  
5 A. Well, the ones who have been signed under a  
6 Brican, Inc. purchase order, yes.  
7 Q. And that stopped in late 2006, I believe you  
8 said?  
9 A. Yes.  
10 Q. So since then, has Brican America, Inc. had  
11 any customers?  
12 A. Not to my knowledge.  
13 Q. Again we don't need to mark this as an  
14 exhibit. This is your counter-claim. I'm sorry. Your  
15 answer and counter-claim.  
16 If you take a look at Paragraph 41 of your  
17 counter-claim, it says the amount that you're claiming  
18 for is \$2,625,593.  
19 A. Uh-huh.  
20 Q. Where did you get that number from?  
21 A. Myself, from nowhere. My lawyer did.  
22 Q. Do you not have any understanding what that  
23 number is based on?  
24 A. I think it was with regard to the purchase  
25 orders to the equipment that Professional Solutions was

1 Financial Services.  
2 Q. So effectively you weren't forced to cancel  
3 these agreements because Professional Solutions refused  
4 to provide you the money, right?  
5 A. Say that again.  
6 Q. You were not forced to cancel your agreement  
7 with the doctors because --  
8 A. In some instances we had to.  
9 Q. How many did you have to cancel?  
10 A. I don't know. I can't tell you. I have to  
11 look at the books.  
12 Q. A handful, two, three?  
13 A. More than that.  
14 Q. More than 20?  
15 A. Around that. I would say that.  
16 Q. But the balance of the agreements are in full  
17 force and effect, the equipment was provided and you  
18 are obtaining payments from the doctors, correct?  
19 A. Brican Financial, not Brican LLC.  
20 Q. So Brican, LLC was able to get Brican  
21 Financial to effectively underwrite these leases?  
22 A. No. Brican Financial gets monthly payments  
23 from the customers, but we are not getting our \$24,000  
24 or so that we were expecting from Professional  
25 Solutions.

1 Q. You're getting it paid off directly by the  
2 doctors, correct?  
3 A. No.  
4 Q. The doctors are sending you payments of \$508 a  
5 month, right?  
6 A. Yes, but it's going to take 60 months before  
7 we get the money we are supposed to get.  
8 Q. What efforts have you made to find somebody  
9 else to fulfill the role that Professional Solutions  
10 was?  
11 A. We tried maybe ten different leasing  
12 companies.  
13 Q. What response have you gotten?  
14 A. Negative.  
15 Q. Did they give you a reason?  
16 A. Yes.  
17 Q. What was the reason?  
18 A. The lawsuit.  
19 Q. Did any of them say that in writing?  
20 A. No, but we could get it.  
21 Q. What about the lawsuit did they tell you  
22 caused them not to underwrite this?  
23 A. That's not -- I mean, I have not discussed it  
24 personally with them. The person in charge of Brican  
25 Financial does.

1 Q. When you talked to those leasing companies,  
2 did you tell them that the primary way you were selling  
3 these was to offer a marketing agreement with them?  
4 A. Yes.  
5 Q. Did any of them tell you that that was a  
6 problem in this business model?  
7 A. Yes, but that's wasn't the main reason.  
8 MR. VERDE: I'm getting close to the end here.  
9 If you can give me ten minutes to kind of go  
10 through it and do a cleanup. Okay?  
11 (At this time a recess was taken.)  
12 Q. Brican America, Inc.'s counter-claim is for  
13 \$2.6 million in this case, right?  
14 A. Yes.  
15 Q. And it's your position that Brican America,  
16 Inc. has been directly harmed as a result of  
17 Professional Solutions' refusal --  
18 A. It's not my position. It's the position of my  
19 lawyers.  
20 Q. Well, they do speak for you. So I do get to  
21 you ask you as president of the company is that your  
22 position?  
23 A. My position is I'm going to do whatever my  
24 lawyer is telling me to do. So I mean, whatever is  
25 written here --

1 Q. You don't even have to look at the complaint.  
2 I'm asking you directly.  
3 It is your belief Brican America, Inc. has  
4 been directly damaged by Professional Solutions'  
5 refusal to provide any further financing?  
6 A. Yes.  
7 Q. And it's because Brican America, Inc. was  
8 involved in all these leases and refuses to finance  
9 Brican America, Inc. money, correct?  
10 A. Because it causes Brican LLC not to receive  
11 the money.  
12 Q. But how would Brican America LLC not receiving  
13 the money harm Brican America, Inc.?  
14 A. I don't know.  
15 Q. Is Brican America, Inc. still involved in  
16 these leases?  
17 A. No.  
18 Q. So how would they be damaged by refusing to  
19 fund?  
20 A. I don't know.  
21 Q. Earlier you said that you had back in the  
22 early '90s worked for a company called Recomm?  
23 A. Correct.  
24 Q. Can you describe what the business of Recomm  
25 was?

1 A. Selling communications through optometrists.  
2 Q. Was Recomm leasing equipment to pharmacies in  
3 the way that Brican is now leasing equipment to  
4 ophthalmologists and dentists?  
5 A. Something similar to it, yes.  
6 Q. Was there also marketing and advertising  
7 agreements?  
8 A. Advertising and --  
9 Q. Was the business model essentially the same,  
10 that there was a leasing --  
11 A. Not really the same. It was advertising with  
12 pharmaceutical companies.  
13 Q. Were there two companies involved? Was there  
14 also a company called Optical Technologies?  
15 A. I don't know anything about that.  
16 Q. You worked solely for Recomm? -  
17 A. Yes.  
18 Q. Did you have an ownership interest in Recomm?  
19 A. Recomm, yes.  
20 Q. And what was Recomm's role in these  
21 transactions? Was Recomm the lessor of the equipment?  
22 A. I don't remember.  
23 Q. Were you sued by the debtors' of Recomm in a  
24 bankruptcy action?  
25 A. By the debtors, possibly, yes.



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1 Q. Do you know what the theory of the claim  
2 against you was?  
3 A. It was because I got supposedly a preference.  
4 Q. And is that that you were taking money from  
5 the advertising company into the leasing company?  
6 A. No.  
7 Q. What was the nature of the claim on the  
8 preference?  
9 A. I have no idea. We won under a summary  
10 judgment.  
11 Q. To your knowledge, was there any criminal  
12 investigation of the activities of Recomm?  
13 A. I have no idea.  
14 Q. Were you ever contacted by any law enforcement  
15 or regulatory agency regarding your activities in  
16 Recomm?  
17 A. What was that?  
18 Q. Were you ever contacted, you personally ever  
19 contacted by any law enforcement or regulatory  
20 authorities concerning your activities at Recomm?  
21 A. No. I'm not sure. I had a lawyer to defend  
22 that case.  
23 Q. Anybody from the government ever reach out to  
24 you to want to talk to you about this?  
25 A. No, no.

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1 Q. Was Mr. Lemacon in any way involved with  
2 Recomm?  
3 A. No. Well, excuse me. He was after my  
4 departure, because I sold him my company in Canada and  
5 my company in Canada was selling equipment to Recomm.  
6 Q. As some point Recomm ran out of money, right?  
7 A. Yes.  
8 Q. Which is why it went into bankruptcy, right?  
9 A. Possibly.  
10 Q. Well, who made the decision to put Recomm in  
11 bankruptcy?  
12 A. I have no idea.  
13 Q. Were you a director or officer of the company?  
14 A. No.  
15 Q. You just were a shareholder?  
16 A. Yes.  
17 (Discussion off the record.)  
18 Q. At some point did you have an ownership  
19 interest?  
20 A. Yes, between 1992 and 1993.  
21 Q. And at some point you were an officer or  
22 director of the company?  
23 A. Yes.  
24 Q. What was your title?  
25 A. Vice president.

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1 Q. Were you vice president at the time the  
2 company filed for bankruptcy?  
3 A. No.  
4 Q. Were you still an owner at the time the  
5 company filed for bankruptcy?  
6 A. No.  
7 Q. Was Mr. Manklow an owner of Recomm as well?  
8 A. Prior to the bankruptcy, yes.  
9 Q. Did he leave the company at same time you did?  
10 A. Yes. He left. He sold his interest, I would  
11 assume, in December 1993. He stayed within the company  
12 for awhile as an adviser, but he wasn't a shareholder  
13 anymore.  
14 Q. At some point, as I understand it, the  
15 business model was the selling of these LCDs or LEDs --  
16 A. LEDs.  
17 Q. The sale of LEDs to optometrists, correct?  
18 A. No, not at the time.  
19 Q. I'm sorry?  
20 A. Not at that time. I was selling them to  
21 pharmacies.  
22 Q. I apologize. You're right.  
23 Who was responsible for making the marketing  
24 payments, the advertising payments to the pharmacist,  
25 which entity?

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1 A. I think it was Recomm at the time.  
2 Q. And at some point Recomm ran out of money and  
3 couldn't make those payments, correct?  
4 A. I think so. I wasn't involved anymore.  
5 Q. And as a result, is it true that the  
6 pharmacists were still responsible for making payments  
7 under the lease even though they were no longer  
8 receiving --  
9 A. I wasn't involved in the bankruptcy.  
10 Q. I know you weren't involved in the bankruptcy.  
11 But just based upon your personal knowledge,  
12 is that what happened?  
13 A. The pharmacists had to pay still the leases.  
14 I think so.  
15 Q. Was the business model, the sales model for  
16 Recomm similar to the sales model for Brican in that  
17 the payment under a marketing agreement would offset  
18 most if not all the lease payments for the equipment?  
19 A. Similar to it.  
20 Q. And the company was actually supplying the  
21 equipment, was that Optical Technologies?  
22 A. No. It was JVF Sales.  
23 Q. And you don't know what role Optical  
24 Technologies played in these transaction?  
25 A. I have no idea. That was created after my

1 departure.  
2 **Q. And there were three Recomm entities. There**  
3 **was a Recomm Operations, a Recomm Enterprises and**  
4 **Recomm International Display, correct?**  
5 A. That's the only one I know of.  
6 **Q. Which one?**  
7 A. Recomm International.  
8 **Q. And the other two Recomm companies, you had no**  
9 **involvement with?**  
10 A. No.  
11 **Q. Who was paid for the advertising on the LCD**  
12 **systems?**  
13 A. Companies like Johnson & Johnson, Glaxo Smith.  
14 We had dozens of companies, big players.  
15 **Q. Did they stop making those payments?**  
16 A. What?  
17 **Q. Did the advertisers stop making payments for**  
18 **their advertising?**  
19 A. Yes.  
20 **Q. Why?**  
21 A. Did they stop?  
22 **Q. Yes.**  
23 A. I don't know. I wasn't involved anymore.  
24 **Q. But my question is when you left the company,**  
25 **was Recomm in financial difficulty?**

1 A. Absolutely not.  
2 **Q. Who did you sell your shares to?**  
3 A. That's a good question.  
4 I sold my shares to the person who was in  
5 charge of accounting, to the person who was in charge  
6 of collecting the money from advertising revenues and  
7 to the person who was in charge of sales. So VP of  
8 sales, VP of advertising and VP of administration.  
9 **Q. At the time of the sale, were they your**  
10 **subordinates within the company?**  
11 A. What's your definition of subordinate?  
12 **Q. Did you outrank them within Recomm?**  
13 A. Did I what?  
14 **Q. Did you outrank them within Recomm? Were you**  
15 **more senior to them?**  
16 A. Senior? Yes, I was more senior.  
17 **Q. Where did they get the money to buy your**  
18 **shares?**  
19 A. Installments.  
20 **Q. But was it personal funds?**  
21 A. They paid \$40,000 down payment each.  
22 **Q. How much did you get paid for the sale of your**  
23 **shares?**  
24 A. How much did I get paid or how much was the  
25 sale?

1 **Q. Both.**  
2 A. The sale was supposed to be for something  
3 like \$10 million, and I got out of it something like  
4 \$3 million.  
5 MR. VERDE: No further questions.  
6 Thank you.  
7 MS. SCHREIBMAN: I would like to renew my  
8 objection to any questions asked about anything  
9 other than Brican America, Inc.  
10 Now that we have that out of the way, I would  
11 ask some questions of Mr. Vincens.  
12 CROSS EXAMINATION  
13 BY MR. SCHREIBMAN:  
14 **Q. One of the questions that you were asked by**  
15 **Mr. Verde had to do with whether there was a joint**  
16 **business plan or joint accounting between and among**  
17 **Brican LLC, Brican, Inc. and Viso Lasik.**  
18 **You answered at first that there was some sort**  
19 **of joint accounting and then you changed that.**  
20 **Could you explain what you meant?**  
21 A. I was referring to the business plan that we  
22 have put together in order to attract hedge funds to  
23 buy the financial portfolio, and it's just a business  
24 plan. We have three separate entities, Brican  
25 Financial, Brican America LLC and Viso.

1 It describes the financial statement of the  
2 three entities but not as a combination.  
3 **Q. And it was Brican Financial, Brican LLC and**  
4 **Viso?**  
5 A. Yes.  
6 **Q. Was there ever any sort of joint tax return,**  
7 **joint P&L, joint balance sheet?**  
8 A. No, never.  
9 **Q. All right. Thank you for that.**  
10 **Question number two I have is with respect to**  
11 **the advertising agreement which then later on became**  
12 **known as marketing agreement.**  
13 **From your personal knowledge, did Professional**  
14 **Solutions know about the marketing agreements?**  
15 A. Yes.  
16 **Q. How far back from the beginning of the time**  
17 **that you began to do business with Professional**  
18 **Solutions to the present time, how far back would you**  
19 **say that Professional Solutions knew about your**  
20 **marketing agreements and your involvement, plans with**  
21 **Viso Lasik Medspas?**  
22 A. Prior to starting the marketing agreement.  
23 **Q. When would you say that was?**  
24 A. The first days of May, May 2006.  
25 **Q. Did you discuss the marketing agreement and**

1 your plan and involvement projected with Viso?  
 2 Did you discuss that with anyone at  
 3 Professional Solutions?  
 4 A. Fred Scott.  
 5 Q. Did you, not necessarily personally, but did  
 6 you or Brican America, Inc., to your knowledge, ever  
 7 offer to provide copies of these advertising and/or  
 8 marketing agreements to Professional Solutions at any  
 9 time?  
 10 A. Well, not at the beginning, because it wasn't  
 11 asked for, nobody asked me for it; but I was sent a  
 12 document specifically stating that there are alleged  
 13 facts that we have a return policy, and they accepted  
 14 the fact that we had a return policy, and they somehow  
 15 explained in this e-mail or letter the modalities of  
 16 the return policy, what it was.  
 17 Down the road, down the road back in 2008, I  
 18 specifically gave a copy to Todd Cook of the marketing  
 19 agreement, to Todd Cook.  
 20 Then Todd Cook came over here in Miami to meet  
 21 with us in November 2008, and he was referred to -- I  
 22 mean, he had a copy already. They were aware of it.  
 23 They knew each of the time we sell the minutes  
 24 or acknowledging the time and that we were doing it  
 25 with the marketing agreement.

1 Q. Who was the first person once again that knew  
 2 about the marketing agreements at Professional  
 3 Solutions?  
 4 A. Fred Scott.  
 5 Q. Okay. That's enough of that.  
 6 There was a question from Mr. Verde with  
 7 respect to Paragraph No. 15 of Professional Solutions'  
 8 complaint; and our response, in our answer, affirmative  
 9 defenses and counter-claim, which was in Paragraph 14,  
 10 that was to the effect -- I will let you look at it.  
 11 No. 15 of the complaint states "In fact there  
 12 was at least one additional agreement, a marketing  
 13 agreement, which related to the goods or leases  
 14 provided to the lessees that Brican gave to each of the  
 15 lessees which was not included in the documents that  
 16 were provided to PSFS for each the leases."  
 17 And the response that we provided to that  
 18 allegation was "Defendant denies the allegations  
 19 contained in Paragraph 15 of Plaintiff's complaint and  
 20 demand strict proof thereof.  
 21 "Defendant avers affirmatively that there are  
 22 or were no agreements between it and Plaintiff lessees;  
 23 and further, that Plaintiff was aware at all times of  
 24 any agreements between third parties and its lessees  
 25 concerning the goods purchased from Defendant and

1 leased to Plaintiff's lessees."  
 2 I would ask you if you think that the  
 3 marketing agreements relate to the goods or the leases  
 4 that are referred to in the General Vendor Agreement?  
 5 A. No. I already answered the question.  
 6 Q. And what were the marking agreements  
 7 specifically regarding?  
 8 A. Advertising, marketing, referring.  
 9 Q. And were they provided to each of the lessees?  
 10 A. No.  
 11 Q. Thank you.  
 12 I would move on to -- just briefly describe  
 13 the business of Viso Lasik Medspas, LLC. Describe the  
 14 business. What do they do?  
 15 A. Lasik surgeries and Medspa facilities,  
 16 Restylane, liposuction.  
 17 Q. So it is not simply Lasik eye surgery?  
 18 A. No.  
 19 Q. And what percentage, if you have to estimate  
 20 roughly, is Lasik surgery versus Medspa services?  
 21 A. 50/50.  
 22 Q. In response to the question from Mr. Verde  
 23 regarding our counter-claim, in Paragraph 41 of our  
 24 answer, affirmative defenses and counter-claim, where  
 25 the approximate number is \$2.6 million, that number was

1 provided to us by Brican America, Inc.?  
 2 A. Uh-huh.  
 3 Q. Whether you did or someone else did, somebody  
 4 provided that in the person of your in-house counsel at  
 5 that time?  
 6 A. Yes.  
 7 Q. And that breakdown consists of approximately  
 8 how many leases -- at this point we're talking  
 9 leases -- that were approved by Professional Solutions  
 10 but not ultimately funded?  
 11 A. Well, \$2.6 million divided by \$24,000.  
 12 Q. And ultimately you funded those in some manner  
 13 through Brican Financial?  
 14 A. Yes.  
 15 Q. And that funding, did Brican Financial obtain  
 16 money from an outside source or was Brican Financial  
 17 specifically --  
 18 A. Collecting the monthly payment.  
 19 Q. -- founded as an entity for the purpose of  
 20 self-funding?  
 21 A. Oh, no, no. In order to do what they call a  
 22 captive company. So you have to refinance by a third  
 23 party.  
 24 Q. I understand, but the measure of your  
 25 \$2.6 million in counter-claim damages was however many

1 leases -- I guess it was 100-something -- that were not  
2 funded at the rate that PSFS had approved but not  
3 funded, it was approximately \$24,000 for each least  
4 approved but not funded?

5 A. Uh-huh.

6 MS. SCHREIBMAN: That's ends my questions.

7 Thank you.

8 (Whereupon, the taking of the deposition was  
9 concluded at 3:15 p.m.)  
10  
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CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF DADE)

I, LINDA FITZGERALD, Notary Public in and  
for the State of Florida at Large, certify that,  
JEAN FRANCOIS (JACK) VINCENS, personally appeared  
before me and was duly sworn.

WITNESS my hand and official seal this  
12th day of October 2009.

\_\_\_\_\_  
LINDA FITZGERALD

Notary Public

State of Florida

Commission No. DD691874

Expires July 13th, 2011

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ACKNOWLEDGMENT OF DEPONENT  
STATE OF FLORIDA)  
COUNTY OF DADE)

I, JEAN FRANCOIS (JACK) VINCENS, under  
penalty of perjury, declare that I have read my  
deposition and that it is true and correct subject to  
any changes in form or substance reflected on the  
attached errata sheet.

Done and signed this day of October  
2009.

\_\_\_\_\_  
JEAN FRANCOIS (JACK) VINCENS

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REPORTER'S DEPOSITION CERTIFICATE  
STATE OF FLORIDA)  
COUNTY OF DADE)

I, LINDA FITZGERALD, Shorthand Reporter,  
certify that I was authorized to and did  
stenographically report the deposition of  
JEAN FRANCOIS (JACK) VINCENS; that a review of the  
transcript was requested; and that the transcript is  
a true and complete record of my shorthand notes.

I further certify that I am not a relative,  
employee, attorney, or counsel of any of the parties,  
nor am I a relative or employee of any of the  
parties' attorney or counsel connected with the  
action, nor am I financially interested in the  
action.

Dated this 12th day of October 2009.

TO: Mr. Jean Francois Vincens  
c/o Barbara H. Schreiber, Esq.  
2645 Executive Park Drive  
Suite 102  
Weston, Florida 33331

RE: NCMIC Finance vs. Brican  
Dear Mr. Vincens:

At the conclusion of your deposition in the above-styled cause you indicated you wished to read and sign your deposition transcript.

This letter is to advise you your deposition transcript is ready, and we ask that you call our office at (305)373-8404 at your earliest convenience for an appointment to come in.

If you are a party to this action and your attorney has ordered a copy of this transcript, you may wish to read his copy and forward to us a photostatic copy of your signed correction sheet.

It is necessary that you do this as soon as possible, since the transcript cannot be held beyond two weeks from the date of this letter.

If we do not hear from you, we will consider your deposition automatically waived.

Thank you for your prompt attention.

Very truly yours,  
U.S. Legal Support  
One Southeast Third Avenue  
Suite 1250  
Miami, Florida 33131

BY: LINDA FITZGERALD  
Shorthand Reporter  
Dated: 10/12/09



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