

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

CLRB HANSON INDUSTRIES, LLC
d/b/a/ INDUSTRIAL PRINTING, and
HOWARD STERN, on behalf
of themselves and all others similarly situated

No. 09-17380

Plaintiffs - Appellees,
v.

APPELLANT'S OPPOSITION
TO PLAINTIFFS-APPELLEES'
MOTION TO DISMISS APPEAL

WEISS & ASSOCIATES, P.C.,

Objector - Appellant

v.

GOOGLE, INC.,

Defendant - Appellee.

Appellant, WEISS & ASSOCIATES, P.C., hereinafter referred to as
“WEISS & ASSOCIATES, P.C., by counsel, respond to Plaintiffs-Appellees’
Motion to Dismiss Appeal, and says:

1. At all relevant times, Matthew Weiss, Esquire, practiced law as
WEISS & ASSOCIATES, P.C. and WEISS & ASSOCIATES, P.C. sequentially
had two Google AdWord account numbers/customer I.D. numbers.

2. On July 14, 2009, Objections to Proposed Settlement and Notice of
Intent to Appear at Fairness Hearing (“Weiss Objection”) were filed. In this

objection, Trial Counsel made two scrivener's errors, inadvertently misnaming the Objector as "Matthew Weiss" instead of "Weiss & Associates, P.C." as well as inadvertently omitting the second WEISS & ASSOCIATES, P.C. AdWords account number/customer ID number, 586-629-8649.

3. In preparing for his deposition by Plaintiffs-Appellees' counsel, Matthew Weiss, the principle of WEISS & ASSOCIATES, P.C. found these errors and instructed Trial Counsel to correct them. Thereafter, on August 6, 2009, WEISS & ASSOCIATES, P.C. filed a Notice of Scrivener's Errors, both correcting the name of the Objector and adding WEISS & ASSOCIATES, P.C. second ADWords account number/customer I.D. number.

4. On August 6, 2009, Plaintiffs-Appellees deposed Matthew Weiss and during that deposition,¹ Mr. Weiss again notified Plaintiffs-Appellees that the incorrect name was placed on the "Weiss Objection" and that it should have read "Weiss & Associates, P.C." Mr. Weiss also discussed the omission of a second account number 586-629-8649. See attached Deposition of Matthew Weiss, pages 3-4, 5-7, 15-16, 29-30, 36, and 37. Also at Mr. Weiss' deposition, he discussed the approximate dates, from December 1, 2003 through November 17, 2004, within

¹ Mr. Weiss voluntarily appeared at his deposition. Although discovery had closed and Plaintiffs-Appellees did not seek the permission of the Trial Court.

which WEISS & ASSOCIATES, P.C. advertised on AdWords account number 586-629-8649 and June 1, 2006 through 2/28/09, account number 338-806-2094.

See attached Deposition at page 5:24, 25 and page 6.

5. Subsequent to Matthew Weiss's deposition, Plaintiffs-Appellants did not move to strike WEISS & ASSOCIATES, P.C.'s objections; and, at the Fairness Hearing, WEISS & ASSOCIATES, P.C., by counsel, presented Objector/Appellant objections without objection or Motion to Strike by Plaintiffs-Appellees.

6. After the scheduled Fairness Hearing, on September 14, 2009, the District Court issued its Final Judgment, approving Settlement and Plaintiffs-Appellee's Motion for Award of Attorney's Fees and Expenses, and Class Representative Incentive Compensation Award.

7. On October 14, 2009, WEISS & ASSOCIATES, P.C. filed a Notice of Appeal of both the Final Judgment and the Order Approving Award of Attorney's Fees and Expenses, and Class Representative Incentive Compensation Award.

8. On October 28, 2009, Plaintiffs-Appellees served a Motion to Dismiss Appeal by U.S. Mail on Trial Counsel arguing that WEISS & ASSOCIATES, P.C. did not file a timely and proper objection, and thus has no standing to appeal because:

- a. Weiss & Associates, P.C. as an entity attempted to substitute itself as a new objector long after the July 14, 2009 deadline for submitting written objections; and
- b. Weiss & Associates, P.C. did not provide the requisite proof of the dates that it was an AdWords advertiser.

9. The timely filing of objections is not a jurisdictional issue and the allowance or disallowance of an objection as timely is within the sound discretion of the Trial Court.

10. At all times prior to this appeal, WEISS & ASSOCIATES, P.C.'s timely and proper objection went unchallenged by Plaintiffs-Appellees. i.e., Plaintiffs-Appellees never raised the issue of standing, or the timely filing of the objections, with the Trial Court.

11. The Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing outlined the instructions for exclusion from the class settlement as follows:

“Each member of the class shall be bound by all determinations and judgments in this Action concerning the Settlement whether favorable or unfavorable, unless such person files a written request for exclusion by first-class mail so that it is actually received by the Claims

Administrator on or before July 14, 2009 . . . To be effective, any request for exclusion from the Class must be in writing and must include the name, email address, AdWords account number, and mailing address of the person seeking to opt out, the dates that the person was an AdWords Advertiser, and a statement that the person wishes to be excluded from the Class, and must be signed by or on behalf of the person so requesting exclusion . . .”

12. WEISS & ASSOCIATES, P.C.’s timely filed objection on July 14, 2009 did follow these instructions in the Objection, stating as proof of class membership “Objector Matthew Weiss, Adwords Account Number/Customer I.D. Number 338-806-2094, whose address is 419 Park Avenue South, 2nd Floor, New York, NY 10016, (Mjweiss@weissandassociatespc.com) is a person or entity residing in the United States, who has paid for Google for advertising pursuant to Google’s Adwords Program who, (A) became Adwords Advertisers between June 1, 2005 and and February 28, 2009, inclusive . . .”

13. An Appeal should not be dismissed based upon a scrivener’s error. A scrivener’s error is a clerical error resulting from “a minor mistake or inadvertence”. *United States v. Gibson*, 356 F.3d 761, 766 n. 3 (7th Cir. 2004) (quoting Black’s Law Dictionary 563 (7th ed. 1999)).

14. Federal Rule of Civil Procedure 15, governing amendment to pleadings, mandates liberal reading of the Rule's direction for the free allowance of amendments, and motions to amend are to be granted in absence of declared reason such as undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to opposing party, or futility of amendment. *Gambelli v. U.S.*, 904 F.Supp.494 (E.D. Va. 1995), *aff'd* 87 F.3d 1308 (Fed.Cir. 1996). The purpose of Rule15 is “to prevent defeat of justice through mere mistake as to parties or form of action. *Wagner v. New York, O. & W. Ry.*, 146 F.Supp. 926 (D.Pa. 1956). The scrivener’s error in this case was not significant enough to trigger the need to amend the objection and was cured by WEISS & ASSOCIATES, P.C.’s Notice of Scrivener’s Errors. By analogy to an error requiring an amendment to the pleadings, a scrivener’s error cannot support a Motion to Dismiss unless the rectification of the error causes some undue prejudice to the adverse party.

15. The U.S. Supreme Court considered Fed. R. Civ. P. 15(c) in the case of *Schiavone v. Fortune*, 477 U.S. 21 (1986). In *Schiavone*, the plaintiff had filed a pleading naming the wrong defendant, which was a subsidiary of the intended defendant, just before the statute of limitations had run. *Id.* at 22-23. The actual named defendant did not receive notice of the pleading until after the statute of

limitations had already run. *Id.* at 23. The plaintiff amended the complaint to include the intended defendant, but after the statute of limitations had run, and the intended defendant moved to dismiss the amended complaints, which motion the district court granted. *Id.* The Court, citing *Conley v. Gibson*, 355 U.S. 41 (1957), affirmed that “the spirit and inclination of the rules favored decisions on the merits, and rejected an approach that pleading is a game of skill in which one misstep may be decisive.” *Schiavone*, 477 U.S. at 27. The Court also noted that “decisions on the merits are not to be avoided on the basis of “mere technicalities.”” *Id.*, citing *Foman v. Davis*, 371 U.S. 178, 181 (1962). Despite these citations which would seem to have suggested a different result, the Court upheld the appellate court’s determination to dismiss the case. However, the Court did so based on the fact that the defendants did not have notice sufficient to comply with Fed. R. Civ. P. 15(c), an element significantly absent from the instant case. *See id.* at 30. The Court articulated the requirements for “relation back” to apply under Fed. R. Civ. P. 15(c), which would allow a change in the name or identity of a defendant to relate back to the time before the running of the statute of limitations: “(1) the basic claim must have arisen out of the conduct set forth in the original pleading; (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense; (3) that party must or should have known that, but for a

mistake concerning identity, the action would have been brought against it; and (4) the second and third requirements must have been fulfilled within the prescribed limitations period.” *Id.* at 29. The holding in *Schiavone* has been partially superseded by a liberalizing amendment to Fed. R. Civ. P. 15(c), allowing relation back in pleadings during the federal service period of 120 days rather than to the governing limitations period. *See Douglas v. County of Tompkins*, 1995 WL 105993 (N.D.N.Y. 1995). Thus, if WEISS & ASSOCIATES, P.C.’s objections meet the more stringent requirements of *Schiavone*, the objections, the timely filing of which is not jurisdictional, surely meets the more lenient requirements of the current Fed. R. Civ. Proc. 15(c). The objections filed by WEISS & ASSOCIATES, P.C. meet all of the requirements of the rule, and the Plaintiffs-Appellees were not in any way prejudiced by the scrivener’s error. A fact which Plaintiffs-Appellees implicitly acknowledged when they allowed WEISS & ASSOCIATES, P.C.’s counsel to speak at the settlement hearing without objection or even a *ore tenus* Motion to Strike. First, the objections as filed before the expiration of the objections period, with the scrivener’s error, included the information outlining WEISS & ASSOCIATES, P.C.’s basic claims. Second, Plaintiffs-Appellees received sufficient notice of the objections that Plaintiffs-Appellees were not prejudiced in maintaining its defense to the objections. WEISS

& ASSOCIATES, P.C.'s counsel were permitted by the lower court to argue the objections at the settlement hearing, which objections the lower court then overruled after Plaintiffs-Appellees mounted defenses against those objections. The third requirement does not directly apply to the instant case, since the issue was not the identification of the defendant, but of the objector, so Plaintiffs-Appellees have no basis for arguing that they did not know such Plaintiffs-Appellees objections were being brought against it, since the objections properly named the Plaintiffs-Appellees. As for the fourth requirement, the Plaintiffs-Appellees had sufficient notice of the objections such that its defense of the settlement was not prejudiced.

16. In this case, there was no prejudice to Plaintiffs-Appellees at the Trial Court and there is no prejudice by this Court allowing WEISS & ASSOCIATES, P.C.'s appeal. Plaintiffs-Appellees were on notice of and did not take issue in the District Court with WEISS & ASSOCIATES, P.C.'s Notice of Scrivener's Errors. Issues, such as timeliness, not raised before the Trial Court are waived on appeal.

17. Appellee's entire argument rests on the proposition that WEISS & ASSOCIATES, P.C. failed to file a timely objection with the district court, and has therefore waived its right to appeal the Final Judgment. However, the cases Appellee cited in support of that argument can be distinguished from the instant

case because in each cited case, the party attempting to object or intervene had entirely failed to file a timely objection. Whereas in this case, Objectors-Appellants filed a timely objection with two, non-prejudicial errors, and then corrected those errors without objection by Plaintiffs-Appellees.

18. Here, a timely and proper objection was filed setting out WEISS & ASSOCIATES, P.C. proper AdWords account number on July 14, 2009, the date given as deadline by the district court in its Order Certifying Settlement Class and Granting Preliminary Approval of Class Action Settlement. On or about August 6, 2009, Plaintiffs-Appellees were put on notice as to the aforesaid scrivener's errors; and, Mr. Weiss also so testified at a deposition taken by counsel for Plaintiffs-Appellees. Furthermore, without objection, counsel for WEISS & ASSOCIATES, P.C. (not Matthew Weiss) then spoke at the settlement hearing. (Docket No. 346)

19. In *In re Plastics Additives Antitrust Litig.*, No. 08-3358, 2009 WL 405522 (3d Cir. Feb. 19, 2009), a pro se litigant ("objector-appellant") appealed the district court decision certifying a settlement class, approving a class settlement, and awarding attorney's fees and expenses to plaintiffs-appellee's counsel. While the court dismissed the appeal as legally frivolous, the court did not agree with plaintiff-appellee's argument that objector lacked standing because he amended his timely objection. *Id.* at 1. ("Here, the District Court viewed

Silvius' amended objection as an attempted withdrawal of his initial objection . . . We do not agree that Silvius lacks standing, because it is not clear that he withdrew his objection. Rather, his amended objection appears to have been an attempt to clarify his opposition . . . As such, Silvius has standing to file the instant appeal.”)

20. WEISS & ASSOCIATES, P.C. filed a timely and proper objection and then filed a Notice of Scrivener's error. Although, the correction of the errors was not prejudice to Plaintiffs-Appellees, and although Plaintiffs-Appellees never sought redress by the Trial Judge, they never-the-less seek to dismiss WEISS & ASSOCIATES, P.C.'s appeal based on the inadvertent errors, which were promptly noticed and corrected. *In re Integra Realty Resources, Inc.*, 354 F.3d 1246 (10th Cir. 2004) follows the Supreme Court rule of law announced in *Devlin v. Scardelletti*, that filing an objection prior to the Fairness Hearing in the District Court is a requirement of class members who seek to appeal. *Id.* at 1256, quoting *Devlin v. Scardelletti*, 536 U.S. 1, 11, (2005). The Tenth Circuit Court of Appeals explained that the dispositive facts were that (1) of the individuals involved in the appeals, “all but three” neither filed written objections, nor moved to intervene, nor appeared at the Fairness Hearing, (2) “one of the remaining three” filed a written objection but did not file notice of his intent to appear and object and did not

appear at the Fairness Hearing, and (3) two others did file notices of intention to appear and object and did appear at the Fairness Hearing through counsel, and (4) none of the appellants opted out of the settlement. *Id.* The court did not agree with appellant's argument that because they were all named as defendants in the action prior to certification, they had the right to appeal. *Id.* at 1257. Rather, the court held that "a class member who does not opt out of a settlement but objects at the Fairness Hearing and against whom a final judgment is entered has the right to appeal the district court's approval of the settlement." *Id.* It held accordingly that some parties had the right to appeal because they filed the required notice of intent and appeared at the Fairness Hearing. *Id.* at 1258.

21. Likewise, in this case, WEISS & ASSOCIATES, P.C. who did object, filed a notice of intent to appear and who did argue at the Fairness Hearing by counsel, has standing to appeal.

22. At no time after August 6, 2009, when Plaintiffs-Appellees were put on notice that WEISS & ASSOCIATES, P.C. and not Matthew Weiss was the proper party in interest did the Plaintiffs-Appellees seek: an Order striking the objection of WEISS & ASSOCIATES, P.C.; or an Order finding the objection untimely.

23. WEISS & ASSOCIATES, P.C. was a significant customer of Google's AdWords program, and Appellee's Motion to Dismiss Appeal is merely an attempt to keep this Court from hearing the merits of WEISS & ASSOCIATES, P.C.'s objections on appeal. This appeal is meritorious, notwithstanding Plaintiffs-Appellee's *Ad Hominem* remarks characterizing WEISS & ASSOCIATES, P.C. and its counsel as "seasoned class action objectors". Plaintiffs-Appellees'; *Ad Hominem* comments merely evidence Plaintiffs-Appellees desire that this Court not rule on the merits of this appeal.

WHEREFORE, WEISS & ASSOCIATES, P.C. respectfully requests that this Court deny Plaintiffs-Appellee's Motion to Dismiss Appeal.

/s/ N. Albert Bacharach, Jr.
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CERTIFICATE OF SERVICE

The Objector-Appellant, WEISS & ASSOCIATES, P.C., by undersigned counsel, hereby certifies that on November 12, 2009, I electronically filed the Opposition to Plaintiffs-Appellees' Motion to Dismiss Appeal with the Clerk of the Court for the U. S. Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that the following participants, who are not registered CM/ECF users, were mailed via first-class U.S. Mail, postage prepaid, to include:

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M A T T H E W W E I S S, having first
been duly sworn by a Notary Public of the
State of New York, was examined and
testified as follows:

EXAMINATION BY

MR. LEVY:

Q. Would you state your name and
address.

A. Matthew Weiss, 419 Park Avenue
South, New York, New York 10016.

MR. ABEND: Just by counsel, in
the course of preparing for today's
deposition, Mr. Weiss noticed upon review
of the original objections that the name
was incorrectly placed. It should have
read "Weiss & Associates, P.C.," not
"Matthew Weiss" individually.

Additionally, there is a second
account that Weiss & Associates, P.C. had
with Google that was omitted from the
initial objections. And that should be
placed there as well.

Q. If I understand, I'll direct
this to Mr. Weiss or Matthew, you

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MATTHEW WEISS

personally, Matthew Weiss, you were not an AdWords advertiser. Am I correct on that?

A. Correct.

Q. The entity that advertised on AdWords was your law firm?

A. Correct.

Q. Which is a P.C.?

A. Correct.

Q. Matthew, what is your home address?

A. 105 Heather Drive, Roslyn, New York.

Q. And your occupation?

A. I'm an attorney.

Q. Do you have a specialty?

A. I have a general practice. We do a lot of vehicle and traffic law.

Q. And you have a website NY Traffic Ticket.com?

A. Among others. But that is my primary website.

Q. And you have one Traffic Ticket Lawyer? Is that one?

A. I might. But I honestly own

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MATTHEW WEISS

about 75 URLs. So I couldn't tell you.
It could be one. But they are mostly
related to vehicle traffic law.

Q. 888 Red Light, is that another
one?

A. I own that one, yes.

Q. By own that one, is that the
P.C.?

A. Correct.

Q. P.C. means what, as far as you
know?

A. Professional corporation.

Q. Now, did any other entity that
you are affiliated with other than Matthew
Weiss P.C. advertise on AdWords?

A. You mean any other entity other
than Weiss & Associates, P.C.?

Q. Yes, Weiss & Associates, P.C.

A. I have other entities and I
advertise other places. But I think my
only AdWords account is with Weiss &
Associates, P.C.

Q. When did Weiss & Associates,
P.C. first advertise on AdWords?

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MATTHEW WEISS

A. Can I see the records?

Q. Sure.

(Documents handed to witness.)

A. Thank you.

(Witness reviews document.)

A. I believe it was December 1, 2003.

Q. Has it advertised on AdWords continuously since that date?

A. No. Initially, we set up or my firm set up AdWords account number 5866298649. And this is the account that was omitted from the initial objections that the scrivener's error notice is included now as part of the objection.

And so this account ran until on or about November 17, 2004 in terms of activity. But I think there was a December bill. So that was the first account.

And then there was a second account, 3388062094. And that account was first had activity on or about June 1, 2006 through the end of the class period, which I understand to be 2/28/09. Along

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MATTHEW WEISS

the way, this account had been paused from time to time.

Q. The first account you mentioned, was there any pausing that took place in that account?

(Witness reviews documents.)

A. There may have been, but I don't think so. The reason I say there may have been is because there are a few dates where there is no activity. And it's possible that no activity is due to a pausing. But they are isolated, single dates. So my best testimony would be that most likely there were no pauses on this account, being the first one.

Q. Who signed up Weiss & Associates, P.C. to the AdWords?

A. I did.

Q. How did you go about doing it?

A. I went online and I registered and filled out a form.

Q. Did you understand when you registered, you had to click to accept various terms and conditions that were on

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MATTHEW WEISS

A. Yes.

MR. LEVY: Off the record.

(Discussion off the record.)

MR. LEVY: Let me mark this as
Weiss Exhibit 1.

(Weiss Exhibit 1 marked for
identification.)

Q. You have before you what has
been marked as Weiss Exhibit 1. Have you
seen this document before?

A. Yes, I saw this document -- I've
seen it before.

Q. When was the first time you saw
it?

A. This week.

Q. It was filed July 14?

A. Correct.

Q. You didn't read it before it was
filed?

A. No. I had discussions with my
attorneys about the objection. But I did
not see the final product or any written
product until this week. And that's where
I noticed the name was wrong and the

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MATTHEW WEISS

account number had been omitted.

Q. You decided not to opt out of this class.

A. Correct.

Q. Why did you make that decision?

A. It's expensive to litigate. And I didn't think my damages would be worth the time to pursue a separate litigation.

Q. Now, reading this, it looks like your major objection is that the notice was defective. Am I reading that correctly?

A. I don't think so. My primary objection -- well, I can tell you when I originally got e-mailed the paperwork, I looked at it and saw that the settlement was \$20 million. And I felt that that was exceedingly low for a company that generates somewhere in the neighborhood of \$10 billion or more every year. And given the thousands and thousands of advertisers, adding it up, it just didn't sit well that this total number was the gross settlement.

And in terms of the contents of

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MATTHEW WEISS

someone else as an attorney, the objection was denied, and you were paid a fee not to pursue the objection any further?

A. No.

Q. Did you sign a retainer agreement with any of these attorneys?

A. No.

Q. Do you know if any of the state bar require a retainer agreement?

A. No. When you say "you," you mean Weiss & Associates, P.C., correct?

Q. In this case it's either you or Weiss & Associates. The objector name keeps changing.

A. It's changed once. And the objector is Weiss & Associates, P.C. On behalf of Weiss & Associates P.C., that's my answer.

Q. You didn't sign a written retainer agreement?

A. Correct.

Q. You personally, Matthew Weiss, did not sign a written retainer agreement?

A. No. I wouldn't because that's

MATTHEW WEISS

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not the right entity.

Q. Do you know a Steve Miller?

A. I don't think so.

Q. He is an attorney from Colorado.

A. No.

Q. Do you have any understanding what would be a fair and reasonable fee in this case?

A. No. And that's why we objected. You mean legal fee?

Q. Yes.

A. So the answer is no. That's why we objected, in part.

Q. Do you have an understanding what Google's defenses are in this case?

A. Well, I know they successfully defended and stripped out part of the allegations, the causes of action. And I know remaining are California deceptive-practice type of laws, that's my understanding, and that they are quite favorable for the plaintiff. I don't know what their defenses are to the California statutory violations. But that's the

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MATTHEW WEISS

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MATTHEW WEISS

scope of what I understand the terms of defenses for the remaining case is.

Q. Are you aware whether that California statute requires individual reliance, so that every class member has to read the alleged misrepresentation?

A. No.

Q. Do you know whether the class was certified in this case before there was a settlement?

A. I don't know. I may have read it in the settlement, notice of pendency of settlement, but I don't recall.

Q. If Google had disclosed in the AdWords agreement that's online when you sign up that they had the authority to charge more than a daily budget, up to 120 percent, what in your view would be the strength of plaintiff's case at that point?

A. I couldn't comment on the strength of plaintiff's case. I could tell you me personally, I felt that you are dealing with Google and you don't

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MATTHEW WEISS

really have much leverage. So whatever they say is how it's going to be. So I guess that hopefully helps you.

MR. LEVY: Let me just take a break. I'm almost done.

(Pause in the proceedings.)

Q. Were you involved in the TransUnion privacy litigation?

A. I may have. But I don't remember.

Q. There was an objection to a settlement filed about a year ago, Northern District of Illinois. Does that ring a bell?

A. Vaguely.

Q. So --

A. That may have been one of the ones I couldn't recall when you asked me to describe those earlier.

Q. It's one of the ones you did with Mr. Bacharach or Mr. Rothstein?

A. Probably.

Q. Do you recall any others?

A. I recall one without Mr. Rothstein involving Verizon and the Yellow Pages.

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MATTHEW WEISS

Q. What do you recall about that?

A. I could tell you a lot about that case. Verizon had a book, Yellow Page book, that had a beginning date and an end date. Could have been July to June, for example, but I don't know the exact months. And they continued to charge advertisers beyond the expiration date on the book, because their new book either wasn't ready or they wanted to delay its release. And the theory was that this contract was for a year and that you are not allowed to charge the consumers beyond the expiration date of the book.

The lower court in New York said that the contract allows them to do that. I appealed and lost. And that was the end of that case. And that was not done. I was the only attorney officially on that case.

Q. Were you an objector?

A. No. In that case I had clients who I represented. But I was within the

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class as well. But I was not an objector.
I was representing other objectors.

Q. And you lost that objection?

A. Correct.

Q. Did you appeal that?

A. Yes. I said that earlier. I
appealed and lost.

Q. And that was the end of it?

A. Pretty much.

Q. What is your fee arrangement
with your attorneys in this case?

A. Weiss & Associates has no fee
arrangement. Matthew Weiss is to get 25
percent of any legal fee that is given as
a result of our objection and any
enhancements.

Q. So if there is any legal fee
given to this consortium of attorneys
based on your objection, you personally
get 25 percent?

A. Correct.

Q. I take it Mr. Bacharach gets 25
percent?

A. I don't know. I assume that's

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what they worked out. But I only know that that's my share.

Q. Is that in writing?

A. No.

Q. The subpoena that was served upon you asked you to produce certain documents. I'll put a copy in front of you.

(Weiss Exhibit 3 marked for identification.)

Q. Document number 1, request number 1 is "Documents showing you ran your campaigns." Have you produced everything that you had on that?

A. Well, not every single document which shows that I ran a campaign. There are literally thousands of pages that would need to be printed out. But I did in fact give you at least 100 plus pages showing that I did run a campaign, and giving you primarily the budgetary cost numbers and bills and invoices, because that's the gist of the case.

Q. Number 6. Have you produced any

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documents called for in document request number 6, which requests all documents relating to objections you made to other class action settlements?

A. Because Weiss & Associates hasn't objected, as far as I know, to any other class, there are no responsive documents to that.

Q. The subpoena was addressed to who?

A. To myself.

Q. Matthew Weiss?

A. Right. But that was a mistake. And I am not the objector. Weiss & Associates had the account with Google. So Weiss & Associates would be the person who would need to produce documents responsive, because they are the correct party.

Q. I think you are just jumping ahead. At the time the subpoena was served, the objection was filed by Matthew Weiss. The subpoena was served on Matthew Weiss.

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A. Correct.

Q. The check was written to Matthew Weiss that was given to you?

A. Correct.

Q. Under the subpoena, Matthew Weiss was required to produce documents relating to objections Matthew Weiss made to other class action settlements.

A. Correct.

Q. Did you?

A. Matthew Weiss has not.

Q. Has not?

A. No.

Q. Are you going to do that?

A. I would have to speak to my attorney to see if that's a proper request, given the fact that the proper objector is Weiss & Associates, P.C., and they should be the ones that would have to produce, or not, responsive documents, not myself individually. But I will consult with my attorney.

Q. I would like a compliance with document request number 6.