

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 90 | Page 92 |
|--|--|
| <p>09:55:18 1 BY MR. POYFAIR: 09:55:18 2 Q. Yeah, but my question is: What other documents 09:55:20 3 have you provided? Same question, I asked with the SEC 09:55:23 4 and the FBI. 09:55:23 5 A. The same documents consistent with what I 09:55:26 6 provided the FBI and the SEC only more focused towards 09:55:29 7 what we perceived to be going on in China. 09:55:32 8 Q. Okay. I appreciate that. 09:55:34 9 My question is a little more specific than that. 09:55:36 10 Please identify to me with as much specificity as you can, 09:55:39 11 any documents that you provided to the China regulatory 09:55:44 12 authorities? 09:55:44 13 MR. PORTER: I'll object and instruct him not to 09:55:46 14 answer because I think it's beyond the scope of this 09:55:48 15 deposition. 09:55:49 16 MR. POYFAIR: It's the same -- I don't want to 09:55:50 17 spend a whole lot of time on it, but it's exactly the same 09:55:53 18 question that I asked with respect to the SEC and the FBI, 09:55:56 19 and you did not instruct him not to answer on that -- on 09:55:59 20 that, and we needed -- we need the information for exactly 09:56:01 21 the same purposes. 09:56:03 22 MR. PORTER: I think, though, on the China angle 09:56:05 23 it's even more attenuated. 09:56:07 24 THE WITNESS: You think they're going to be 09:56:07 25 naked shorting in China the regulatory agencies?</p> | <p>09:57:24 1 A. Okay. Like audio recordings and videotape? 09:57:26 2 Q. Right. 09:57:27 3 A. Okay. That. 09:57:28 4 Q. Okay. What else? 09:57:31 5 A. Public record searches, evidence that we 09:57:36 6 perceived to be consistent with our allegations, 09:57:39 7 statements of employees, web sites of distributors that 09:57:43 8 would appear to be consistent with our theory. 09:57:49 9 Q. Okay. But -- go ahead. 09:57:53 10 A. Yeah, that's the kind of evidence we've been 09:57:55 11 providing. 09:57:55 12 Q. And through whom? 09:57:56 13 A. Well, we go -- you know, we just send it 09:57:59 14 straight to the -- I mean, we sent a package out yesterday 09:58:01 15 to -- 09:58:02 16 Q. And when you say "we," is it -- 09:58:04 17 A. Me. I sent a package out yesterday. The Fraud 09:58:06 18 Discovery Institute sent a package out yesterday. 09:58:08 19 Q. Okay. So it's not through any of the 09:58:09 20 investigators. It's through -- it goes from you direct -- 09:58:12 21 directly to the regulators? 09:58:12 22 A. Right now that's true, right. That's correct 09:58:14 23 right now. 09:58:16 24 Q. But that may change? 09:58:17 25 A. Not -- not with the investigators.</p> |
| Page 91 | Page 93 |
| <p>09:56:12 1 MR. POYFAIR: Okay. 09:56:12 2 THE WITNESS: I'm not being disrespectful, 09:56:12 3 really. 09:56:14 4 MR. POYFAIR: There's a lot of naked shorting 09:56:16 5 going on internationally. 09:56:17 6 THE WITNESS: Okay. 09:56:17 7 MR. POYFAIR: That's the reason why I ask. 09:56:20 8 THE WITNESS: I have, you know, the -- 09:56:23 9 MR. PORTER: Barry, I've instructed you not to 09:56:24 10 answer. If you want to, you can go ahead, but as far as 09:56:27 11 I'm concerned you don't have to. 09:56:42 12 THE WITNESS: We -- you know, it's an ongoing 09:56:48 13 process. We gather evidence during this time that we're 09:56:51 14 investigating in China, you know, let's say weekly. So we 09:56:56 15 continue to provide evidence that we have gathered to 09:57:00 16 government officials and the media in China. 09:57:05 17 BY MR. POYFAIR: 09:57:05 18 Q. Okay. I understand that. 09:57:08 19 Again, I'm not trying to be difficult here. I'm 09:57:10 20 just trying to get you to identify to me the information 09:57:15 21 that you've actually provided, not the type of information 09:57:18 22 or to whom you provided it -- 09:57:19 23 A. Okay. 09:57:20 24 Q. -- but the information itself. The identity of 09:57:21 25 that information is what I'm looking for.</p> | <p>09:58:29 1 Q. Okay. All right. We're moving on. 09:58:48 2 A. It's like when you say, I want your playbook 09:58:50 3 before a game. I mean, you know, it's just not 09:58:52 4 particularly fair. That's all I was just saying. 09:58:57 5 Q. Mr. Minkow, we're not interested in fairness 09:58:59 6 here. We're just interested in getting your answers. 09:59:01 7 That's a joke. 09:59:03 8 All right. 09:59:05 9 A. Fair enough. 09:59:05 10 Q. Let me move on to another topic, okay. 09:59:08 11 You provided answers in discovery about who 09:59:14 12 helped pay for the report -- 09:59:16 13 A. Uh-huh. 09:59:17 14 Q. -- for the investigation. Please identify -- 09:59:19 15 again, I'm not trying to trick you. 09:59:19 16 A. No, I know you're not. 09:59:21 17 Sam Antar. 09:59:23 18 Q. Right. 09:59:23 19 A. You know, myself. You know, Juan Lopez in the 09:59:28 20 sense that he, you know, really reduced fees to almost 09:59:29 21 nothing, that kind of thing, so that is compensation I 09:59:32 22 would say. 09:59:32 23 Whitney Tilson and 10,000 from Tony Braun. 09:59:42 24 Q. And how much from Tilson? 09:59:43 25 A. It was -- by the way, you get -- but you can see</p> |

24 (Pages 90 to 93)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 94 | Page 96 |
|---|--|
| <p>09:59:45 1 this. When he first answered me it was 20, and then I 09:59:49 2 guess later on there was another 20 sent, so -- but 09:59:50 3 approximately 40,000 in total from him. 10,000 from 09:59:54 4 Mr. Braun. That was the third-party payer kind of 09:59:59 5 disclosure, and then Mr. Antar and myself. 10:00:02 6 Q. Okay. In addition to that, identify for me 10:00:08 7 anybody else that has provided any financial support at 10:00:11 8 all directly or indirectly to you, Fraud -- FDI, Fraud 10:00:16 9 Discovery Institute? 10:00:18 10 A. Yeah, The "Frauds Gone Wild" DVD from My 10:00:19 11 Father's House LLP, yes, sir. 10:00:21 12 Q. Anybody else? 10:00:23 13 A. I don't recall offhand that there was anybody 10:00:26 14 else. 10:00:26 15 Q. Any payments from any hedge funds? 10:00:28 16 A. No, sir. 10:00:29 17 Q. Any payments from any institutional investors? 10:00:36 18 A. I wish. Nothing other than what is disclosed. 10:00:39 19 Q. Any payments from any lawyers? 10:00:40 20 A. No. 10:00:41 21 Q. Any payments from any investigators -- 10:00:44 22 A. They're worse than the hedge fund guys. 10:00:46 23 Q. Any payments -- 10:00:47 24 A. They wouldn't even call you with a parallel 10:00:49 25 interest, you want them to write a check. Good luck.</p> | <p>10:02:20 1 A. Yes. 10:02:20 2 Q. -- that I'm asking the questions about? 10:02:22 3 A. Yes. 10:02:23 4 Q. Okay. And I'm also asking for the identity -- 10:02:26 5 I'm going to be asking for identities even though the 10:02:29 6 folks that you -- that are trying to stay confidential, 10:02:34 7 and -- do you understand that? 10:02:37 8 MR. PORTER: People who said, "Please keep my 10:02:39 9 name anonymous." 10:02:40 10 THE WITNESS: Oh. 10:02:42 11 BY MR. POYFAIR: 10:02:42 12 Q. Okay. So I want to now focus your attention or 10:02:48 13 break it -- break it down into periods of time. 10:02:50 14 Before the report came out -- or sorry, strike 10:02:53 15 that. 10:02:53 16 Before March 15th, 2007, identify for me all, 10:03:02 17 I'm going to call these peoples USANA affiliates, is that 10:03:05 18 okay? 10:03:05 19 A. Sure. I understand what you mean by the term. 10:03:07 20 And our publish date was February not March. 10:03:09 21 Q. Right. I understand. 10:03:10 22 A. We published in February. 10:03:12 23 Q. I'm looking at the "Wall Street Journal" date. 10:03:14 24 A. Okay. But that's not our publish date. Our 10:03:15 25 publish date is before that.</p> |
| Page 95 | Page 97 |
| <p>10:00:51 1 Q. Any payments from any competitors of USANA? 10:01:00 2 A. No. But if you got any leads. I'm kidding. 10:01:05 3 Q. Any payments of any current or former 10:01:07 4 distributors of USANA? 10:01:07 5 A. No, sir. 10:01:08 6 Q. Any payments from any current or former officers 10:01:12 7 or directors from USANA? 10:01:15 8 A. No, no money at all from anyone. 10:01:26 9 Q. Okay. Now, I want to focus your attention on 10:01:27 10 your contact, the contact that you've had with USANA or 10:01:33 11 people affiliated with USANA. Okay? 10:01:36 12 Now, I want to define the universe so we don't 10:01:39 13 have to go through that every question. All right? 10:01:40 14 So what I'm about to ask applies to current and 10:01:45 15 former USANA employees, okay, current USANA former or 10:01:55 16 current -- strike that, current or former USANA 10:01:59 17 distributors, current and former USANA officers and 10:02:05 18 directors. Okay? So -- 10:02:11 19 A. Not financial contact because there has been 10:02:13 20 none. You're talking about just contact in general? 10:02:16 21 Q. Any contact whatsoever. 10:02:16 22 A. Okay. 10:02:17 23 Q. So I'm going to ask you some questions about 10:02:18 24 that group of people. Do you understand who the group of 10:02:20 25 people are --</p> | <p>10:03:17 1 Q. I understand that. 10:03:18 2 A. Okay. That's just for you. 10:03:19 3 Q. I get to answer -- ask the question. 10:03:21 4 A. I got it. Sorry. 10:03:22 5 Q. So from March 15th forward -- or back, please 10:03:27 6 identify the names of all USANA affiliates with whom you 10:03:33 7 had contact? 10:03:43 8 A. And that's from March 15th going forward? 10:03:46 9 MR. PORTER: Backward. 10:03:47 10 BY MR. POYFAIR: 10:03:47 11 Q. Backward. 10:03:48 12 A. Backward. 10:03:56 13 We tried to in the Isle of Man approach 10:04:02 14 directors of Gull Holdings through David Bell. We -- 10:04:11 15 during the rain our investigator stood at the door and 10:04:13 16 interviewed one of those directors. 10:04:17 17 Q. Who was that? 10:04:17 18 A. I don't know the guy's name of Gull Holdings, 10:04:19 19 though, not of USANA. But obviously that's what you 10:04:22 20 meant. 10:04:25 21 Q. Right. 10:04:25 22 A. I can get that information. If I haven't 10:04:27 23 already given it to you, I'll ask the investigator who the 10:04:30 24 guy was. 10:04:33 25 Q. Okay.</p> |

25 (Pages 94 to 97)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
 USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 98 | Page 100 |
|--|--|
| <p>10:04:35 1 A. We received some anonymous e-mails, and no 10:04:51 2 proper noun names were given at the time. Later, as it 10:04:58 3 relates to, you know, for example, a Sara Jones who was 10:05:02 4 included in our report. Don't know who the heck that is. 10:05:04 5 Q. Okay. 10:05:04 6 A. Still don't know who that is. IP address, tried 10:05:08 7 to trace it. Couldn't do it. So I don't know who that 10:05:10 8 is. 10:05:11 9 Q. We're focusing on March 15th back? 10:05:13 10 A. She was. 10:05:14 11 Q. Yeah. 10:05:16 12 A. She -- her e-mail is included in the report. 10:05:18 13 Q. Yeah. 10:05:18 14 A. That's why I mentioned it. 10:05:24 15 I'm just trying to think if we talked to any 10:05:30 16 distributors as former distributors, and I'm not recalling 10:05:34 17 offhand before March 15th. 10:05:35 18 Most of that communication with distributors and 10:05:38 19 so forth for YouTube videos and all that happened after 10:05:41 20 March 15th. So before, I can think of Sara Jones, I can 10:05:45 21 think of the director from Gull Holdings and the Isle of 10:05:48 22 Man. 10:05:48 23 Q. Okay. Any employees inside USANA during that 10:05:54 24 period of time? 10:05:54 25 A. That we know were employees, no. That we know</p> | <p>10:07:03 1 Q. Former? 10:07:04 2 A. -- or former and cooperated with us. 10:07:05 3 Q. So do you know the name Jeb McCandless? 10:07:09 4 MR. PORTER: Did you say Jeb? 10:07:10 5 BY MR. POYFAIR: 10:07:10 6 Q. Jeb. 10:07:11 7 A. Yeah, that may have been one we called as 10:07:13 8 probably what we would call as former employees during the 10:07:16 9 investigation that would be probably somebody we may have 10:07:18 10 talked. 10:07:19 11 Q. Did you talk to him? 10:07:20 12 A. I don't recall, but that's very likely. He was 10:07:22 13 an ex-employee. 10:07:23 14 Q. Who -- who made that phone call? 10:07:25 15 A. I don't recall, but he probably would have been 10:07:27 16 called, yes. 10:07:28 17 Q. Who -- who do you think would have made that 10:07:31 18 phone call? 10:07:32 19 A. That would be me or if I had an investigator. 10:07:36 20 MR. PORTER: Just tell him what you know. Don't 10:07:38 21 speculate. 10:07:38 22 THE WITNESS: Right. It would be me or whatever 10:07:42 23 investigator was looking into that that I've already 10:07:44 24 mentioned. 10:07:44 25 MR. POYFAIR: Yeah. I may be asking you for</p> |
| Page 99 | Page 101 |
| <p>10:05:56 1 their names of, no. 10:05:59 2 Q. Any that represented themselves to be inside -- 10:06:02 3 A. It -- it does appear that there's multiple, 10:06:06 4 quote, insiders that have tried to contact us without 10:06:13 5 providing identification and without, you know, without -- 10:06:18 6 to your point, they do appear to state that they're 10:06:21 7 employees. 10:06:22 8 Q. Okay. And how do they -- how do these folks 10:06:24 9 contact you? 10:06:26 10 A. It's been by phone and by e-mail. More by 10:06:29 11 phone. 10:06:30 12 Q. Okay. And have you kept any of those messages? 10:06:35 13 A. I think I may have. I'm happy to turn those 10:06:39 14 over to you. 10:06:39 15 Q. And with respect to e-mails, have you kept those 10:06:42 16 e-mails? 10:06:43 17 A. What you have is what I had, sir, yes. 10:06:45 18 Q. Okay. Now -- 10:06:49 19 A. Multiple, but I don't recall. 10:06:50 20 Q. What other contact did you have with USANA 10:06:52 21 affiliates other than what you have already described? 10:06:55 22 A. None. 10:06:57 23 Q. Did you have any contact with -- 10:06:59 24 A. So nobody before the report was written came to 10:07:02 25 me as an employee or director or --</p> | <p>10:07:46 1 speculation, and so -- 10:07:49 2 MR. PORTER: I'm telling him not to speculate. 10:07:51 3 MR. POYFAIR: I'm going to -- but still, I'm 10:07:55 4 entitled to his speculation. 10:07:56 5 MR. PORTER: Well, you're entitled to what he 10:07:58 6 knows. 10:07:58 7 MR. POYFAIR: I'm entitled to his speculation if 10:08:00 8 it's reasonably calculated. There's case law on that. 10:08:06 9 BY MR. POYFAIR: 10:08:06 10 Q. All right. So -- okay. So Jeb McCandless. How 10:08:09 11 about Dallin Larson? 10:08:10 12 A. I don't recall. 10:08:11 13 Q. Do you know that name? 10:08:12 14 A. Not offhand. 10:08:14 15 Q. Okay. So have you now identified to me all of 10:08:16 16 the folks that -- that -- 10:08:19 17 A. If I had access to my notes, maybe it would 10:08:21 18 refresh my memory as to who was talked to and who wasn't 10:08:24 19 before, but, yeah. 10:08:25 20 Q. Do you keep notes? 10:08:26 21 A. Other than what you have. You have my notes. 10:08:29 22 Q. No, no. Answer the question. 10:08:31 23 A. Yeah, the notes that you have. 10:08:32 24 Q. Okay. Do you keep notes generally? 10:08:34 25 A. No. I keep what -- depends on the case. We</p> |

26 (Pages 98 to 101)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 102 | Page 104 |
|--|--|
| <p>10:08:36 1 keep case files, yes. 10:08:38 2 Q. Case files? 10:08:38 3 A. Yeah. On all of our cases. 10:08:42 4 Q. And where are they kept? 10:08:43 5 A. The FDI office which is moved out of the church 10:08:46 6 as of a few months ago, yeah. So we have case files. 10:08:50 7 Q. And is there a case file on USANA? 10:08:51 8 A. Yes, which is what we all have. 10:08:53 9 Q. How large is it in volume? 10:08:56 10 A. Few thousand pages, I presume. 10:08:58 11 Q. How is it organized in Red Welds like this or 10:09:02 12 file folders? 10:09:02 13 A. File folders. 10:09:06 14 MR. PORTER: Just let me -- it's your 10:09:08 15 deposition, but is that what we produced? 10:09:09 16 THE WITNESS: Yeah. 10:09:10 17 MR. PORTER: The case file? 10:09:11 18 THE WITNESS: Yeah. 10:09:11 19 MR. PORTER: You have it? 10:09:11 20 THE WITNESS: Yeah. 10:09:13 21 BY MR. POYFAIR: 10:09:13 22 Q. You produced your entire case file? 10:09:15 23 A. Absolutely, yeah. That I had, yeah. 10:09:18 24 Q. Is there anybody else that would have possession 10:09:20 25 of any contents of that case file other than Fraud</p> | <p>10:10:46 1 former and/or current distributors like the pastor in 10:10:49 2 Texas who would either call and write and say, I'm a 10:10:53 3 distributor, and thank you for what you're doing. That 10:10:57 4 was probably, I would say, 80 percent. 20 percent you're 10:10:59 5 an idiot, you know, and you know, you don't know what 10:11:02 6 you're talking about and you're a pathetic loser or 10:11:04 7 something like that. Which is true, but not for those 10:11:06 8 reasons. But they would call and tell me that, yeah, for 10:11:10 9 about 20 percent of them. So that would be regularly how 10:11:12 10 it happened. 10:11:13 11 Q. Okay. So you received calls and e-mails -- 10:11:18 12 A. Yes, sir -- 10:11:18 13 Q. -- from USANA -- 10:11:19 14 A. -- various, numerous -- I'm sorry. 10:11:25 15 Q. That's okay. 10:11:26 16 A. Numerous. 10:11:26 17 Q. We have to rein each other in every once in a 10:11:27 18 while. 10:11:37 19 (Instruction from the reporter.) 10:11:38 20 BY MR. POYFAIR: 10:11:38 21 Q. So you received calls and e-mails from USANA 10:11:43 22 affiliates after March 15th until now? 10:11:44 23 A. Yes, sir. 10:11:45 24 Q. And did you retain any voice mails? 10:11:51 25 A. Yes, sir.</p> |
| Page 103 | Page 105 |
| <p>10:09:25 1 Discovery Institute? 10:09:26 2 A. Robert would have his -- Robert Fitzpatrick 10:09:28 3 would have his notes with his stuff, but it wouldn't be 10:09:31 4 the comprehensive. That would be us. So we just turned 10:09:34 5 over what we had. 10:09:35 6 What makes it into a case file is, you know, do 10:09:38 7 we put every announcement in there? No. You know, things 10:09:41 8 that are generally of public record, we didn't always put 10:09:45 9 in there. 10:09:46 10 Q. Okay. Now, I want to go back to the question. 10:09:49 11 Have you now identified for me all USANA affiliates that 10:09:53 12 you spoke with prior to March 15th? 10:09:58 13 A. I believe we have, sir. Yes, sir. 10:10:00 14 Q. Now, same question on the same topic, after 10:10:03 15 March 15th until now? 10:10:07 16 A. And there were a lot of distributors that we 10:10:11 17 spoke to both by e-mail and by in person and/or who ended 10:10:15 18 up on YouTube, let's say, or in the documentary, and I 10:10:22 19 don't know their names offhand. Jane -- you know, the 10:10:25 20 people that are of public record that everybody can see. 10:10:27 21 Q. Right. 10:10:27 22 Just tell me the names that you recall? 10:10:33 23 A. The guy in Las Vegas who is on the YouTube, 10:10:36 24 Jane Bishop who is on the YouTube. Mr. Estes in Georgia 10:10:40 25 who is on the YouTube. And then multiple e-mails from</p> | <p>10:11:53 1 Q. And so those will be in the universe of voice 10:11:55 2 mails that we're going to get? 10:11:57 3 A. Yeah. There's a total of 10 or 15 that I felt 10:11:58 4 were worthy of keeping. 10:12:01 5 Q. Okay. And you also received e-mails during this 10:12:05 6 period of time? 10:12:05 7 A. Yes, sir. 10:12:06 8 Q. From -- 10:12:07 9 A. From various e-mails and plenty of phone calls, 10:12:10 10 yes. 10:12:10 11 Q. And the e-mails you did retain? 10:12:12 12 A. To the extent that I thought that they were 10:12:14 13 valuable, yes. 10:12:16 14 Q. So when you don't retain something, what do you 10:12:17 15 do you with them? You hit the delete button? 10:12:22 16 A. Yeah, I would, yes, sir. Actually, I had a -- 10:12:24 17 it was automatically deleting after a certain amount of 10:12:27 18 time. I had to change my settings, so -- 10:12:29 19 Q. All right. 10:12:30 20 A. To know me is to know that that is absolutely 10:12:32 21 true and not something that I was trying to -- so our 10:12:36 22 counsel said early on, you know, preserve e-mails. I 10:12:40 23 said, I preserve everything. 10:12:41 24 Q. Okay. 10:12:42 25 A. And then, you know, you can have an automatic,</p> |

27 (Pages 102 to 105)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 106 | Page 108 |
|---|---|
| <p>10:12:45 1 you know, "empty your box" thing that could occur, but I 10:12:48 2 think I'm pretty good on the e-mails. 10:12:51 3 But to your point, there may be a distributor or 10:12:53 4 two who, you know, wrote both for and against my position. 10:12:58 5 but no, you know, inside "smoking gun" employee or 10:13:02 6 somebody like that. Any pertinent information I wouldn't 10:13:04 7 have deleted it. 10:13:06 8 Q. Okay. Any contact with any current or former 10:13:13 9 officers or directors? 10:13:15 10 A. No, sir. To my knowledge, none. 10:13:17 11 Q. Okay. Any contact with any current or former 10:13:23 12 USANA employees whose name you now know? 10:13:31 13 A. There was a lady that was the -- worked at the 10:13:36 14 time of Jeb McCartless -- McCartis, lady who is some 10:13:41 15 psycholo -- you know, does some kind of, you know, new age 10:13:46 16 kind of talks that she used to be with USANA. Juan Lopez 10:13:50 17 was going to reach out to her for the documentary we're 10:13:53 18 doing, as an interview. 10:13:54 19 Q. What is her name? 10:13:56 20 A. I don't know. She lives, I think, in New 10:13:59 21 Mexico, and that was -- you know. So I think he may have 10:14:05 22 reached out to her. 10:14:07 23 Q. Okay. Who else? 10:14:13 24 A. Pretty much we don't -- you know, we had the 10:14:15 25 insider e-mails, but we never were able to really pin down</p> | <p>10:15:44 1 BY MR. POYFAIR: 10:15:44 2 Q. You may answer. 10:15:45 3 A. I have errors and omissions coverage. 10:15:50 4 Q. Anybody else other than your E & O coverage 10:15:53 5 insurer? 10:15:54 6 A. No, sir. 10:15:55 7 Q. Directly or indirectly? 10:15:57 8 A. No. 10:15:57 9 Q. I want to go back and focus your attention on 10:16:15 10 the Value Investors conference that took place. How many 10:16:20 11 of them were there? 10:16:23 12 A. The total that I've ever done? 10:16:25 13 Q. Yeah. 10:16:26 14 A. Two. One in November and one in May or June in 10:16:30 15 L.A. 10:16:30 16 Q. All right. The first one in November, we've 10:16:35 17 talked about that one, right? 10:16:36 18 A. Yeah. 10:16:37 19 Q. Did any -- to your knowledge, has any of -- have 10:16:41 20 any of the attendees hired you to do anything? 10:16:47 21 A. No, sir. 10:16:47 22 Q. Have they paid you any money -- 10:16:49 23 A. Other than Mr. Tilson? 10:16:50 24 Q. Right. 10:16:50 25 A. Right. No.</p> |
| Page 107 | Page 109 |
| <p>10:14:18 1 if that truly was somebody who worked for the company or 10:14:20 2 not, and we never got a proper noun name. 10:14:22 3 Q. So you have no information that you're able to 10:14:26 4 use that allowed you to identify anybody with specificity 10:14:31 5 other than what you've already described to me? 10:14:33 6 A. Right. It was a dead end. 10:14:46 7 Q. In one of e-mails that we'll be going through a 10:14:48 8 little later, you say that you obtained USANA's general 10:14:51 9 ledger? 10:14:52 10 A. No. Mr. Lopez was -- we were sued. Juan was 10:14:57 11 afraid. I said, Don't worry. When they sue you, we get 10:14:59 12 the general ledger in discovery. Relax, we'll be fine. 10:15:02 13 We never got the general ledger. 10:15:04 14 Q. So you've never seen a USANA general ledger? 10:15:07 15 A. Ever seen a general -- I was promising him that 10:15:09 16 we'd get it in discovery because we have good lawyers. 10:15:13 17 And so the benefit of being sued is -- he was a little 10:15:15 18 concerned that we got sued. I said, Don't worry. 10:15:17 19 Reciprocal discovery would allow us to be able to defend 10:15:19 20 ourselves. And at that time the charges were for your 10:15:22 21 allegations are wrong. And therefore, the general ledger, 10:15:28 22 in my assumption, would have proven us correct. But we've 10:15:31 23 never had the USANA general ledger, ever once. 10:15:36 24 Q. Okay. Who's paying your attorney's fees? 10:15:40 25 MR. PORTER: Objection. Beyond the scope.</p> | <p>10:16:51 1 Q. Have they ever paid you any money? 10:16:53 2 A. No, sir. 10:16:53 3 Q. To your knowledge, have any of the attendees at 10:16:56 4 the November meeting shorted any stock? 10:17:02 5 A. Not to my knowledge, sir. I don't think they, 10:17:08 6 in the big meeting, they were particularly impressed with 10:17:10 7 my content based on any evaluations that they would go out 10:17:13 8 and rely upon. 10:17:16 9 Q. Was it your intent when you made the 10:17:19 10 presentation -- 10:17:19 11 A. To be good, yes, and I wasn't. 10:17:21 12 Q. Was it -- was it your intent during the 10:17:25 13 presentation to provide information that would allow 10:17:28 14 people to rely upon to make investment decisions? 10:17:31 15 MR. PORTER: Objection. You can answer. 10:17:33 16 THE WITNESS: Yeah. I was very honest about any 10:17:37 17 ulterior motive that I could derive from convincing people 10:17:43 18 that I was correct in my analysis of the multi-level 10:17:46 19 marketing industry as it related to Mannatech and USANA. 10:17:50 20 I'm shorting. I have put options in these two 10:17:55 21 companies. You need to know that up front. And, oh, by 10:17:57 22 the way, here's why. 10:18:00 23 I never said, Please, short tomorrow and, you 10:18:02 24 know, join me. Nothing like that. I said I have this 10:18:05 25 position. Here's why. Thanks.</p> |

28 (Pages 106 to 109)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 110 | Page 112 |
|--|--|
| <p>10:18:09 1 BY MR. POYFAIR:</p> <p>10:18:09 2 Q. Did you make the statement you just set forth,</p> <p>10:18:13 3 did you ever make that statement to any other group after</p> <p>10:18:18 4 November?</p> <p>10:18:19 5 A. No.</p> <p>10:18:21 6 Q. And when I say "group," gathering of people more</p> <p>10:18:23 7 in number than two.</p> <p>10:18:25 8 A. Not to my knowledge, except in May in L.A. when</p> <p>10:18:28 9 I was invited back to speak at another investors -- Value</p> <p>10:18:31 10 Investors Congress thing I spoke, and I probably said a</p> <p>10:18:34 11 similar speech to what I did in November, but with better</p> <p>10:18:37 12 ratings at the end, yeah. But it was with a small group</p> <p>10:18:40 13 of about 15 people.</p> <p>10:18:45 14 Q. And what did you say?</p> <p>10:18:48 15 A. I believe USANA Health Sciences, Inc., is a</p> <p>10:18:56 16 financial crime in progress, and here's why.</p> <p>10:19:00 17 Q. What did you say -- what did you say about the</p> <p>10:19:03 18 financial position you'd taken in USANA's stock?</p> <p>10:19:05 19 A. I don't recall. I believe I disclosed it, yes.</p> <p>10:19:08 20 Q. Which was?</p> <p>10:19:08 21 A. At that time everybody knew because the "Wall</p> <p>10:19:11 22 Street Journal" said and every subsequent article said,</p> <p>10:19:12 23 "And he bought put options." So it was commonly known by</p> <p>10:19:16 24 me that I had taken an interest in put options of USANA.</p> <p>10:19:20 25 So whether I disclosed it or not, I don't recall. I</p> | <p>10:20:45 1 payers --</p> <p>10:20:45 2 Q. Okay.</p> <p>10:20:46 3 A. -- for the information relating to our, you</p> <p>10:20:48 4 know, work product. So it's kind of like investigative</p> <p>10:20:51 5 work.</p> <p>10:20:51 6 Q. Who else?</p> <p>10:20:52 7 A. Nobody.</p> <p>10:20:55 8 MR. POYFAIR: Okay. Take a break.</p> <p>10:21:13 9 THE VIDEOGRAPHER: This concludes Tape 1 of this</p> <p>10:21:14 10 deposition of Barry Minkow. Off the record at 10:21.</p> <p>10:29:32 11 (Recess taken.)</p> <p>10:29:32 12 THE VIDEOGRAPHER: This is Tape 2 of the</p> <p>10:31:23 13 deposition of Barry Minkow. Back on the record at</p> <p>10:31:25 14 10:31.</p> <p>10:31:28 15 BY MR. POYFAIR:</p> <p>10:31:28 16 Q. I'm going to go through a number of names.</p> <p>10:31:30 17 Oh, let's back up. I have a -- do you know of</p> <p>10:31:52 18 any financial institutions, hedge funds, institutional</p> <p>10:31:59 19 investors, broker/dealers any of that that have been --</p> <p>10:32:03 20 A. Microphone companies.</p> <p>10:32:05 21 Q. -- that have been involved in any of the foreign</p> <p>10:32:12 22 stock markets in any way?</p> <p>10:32:14 23 A. Not to my knowledge.</p> <p>10:32:16 24 Q. With respect to USANA?</p> <p>10:32:17 25 A. Yeah, not to my knowledge, sir.</p> |
| Page 111 | Page 113 |
| <p>10:19:22 1 probably did. But at that time it was commonly known,</p> <p>10:19:25 2 unlike November.</p> <p>10:19:29 3 Q. Anybody at the May Value Investors conference</p> <p>10:19:33 4 retain you to do anything?</p> <p>10:19:35 5 A. No, they have not.</p> <p>10:19:36 6 Q. And have they paid any money to you?</p> <p>10:19:38 7 A. No, which is probably indicative of my</p> <p>10:19:40 8 effectiveness in May as in November, yeah, no, they have</p> <p>10:19:44 9 not.</p> <p>10:19:44 10 Q. And are you familiar with any attendees at the</p> <p>10:19:51 11 May conference that have shorted USANA stock?</p> <p>10:19:54 12 A. No sir, I'm not.</p> <p>10:19:56 13 Q. Okay.</p> <p>10:19:56 14 A. Nor any financial relationship.</p> <p>10:19:59 15 Q. No financial --</p> <p>10:20:00 16 A. Other than Mr. Tilson, nobody there.</p> <p>10:20:03 17 Q. Okay.</p> <p>10:20:06 18 MR. PORTER: That's cold.</p> <p>10:20:10 19 THE WITNESS: Thanks.</p> <p>10:20:12 20 Thank you.</p> <p>10:20:25 21 BY MR. POYFAIR:</p> <p>10:20:25 22 Q. Does -- do you or does the Fraud Discovery</p> <p>10:20:30 23 Institute sell information to anyone?</p> <p>10:20:35 24 A. I mean, with USANA, we sold to the two parties,</p> <p>10:20:42 25 which we disclosed we were going to do, third-party</p> | <p>10:32:18 1 Q. Never had any conversations with anybody about</p> <p>10:32:20 2 that?</p> <p>10:32:20 3 A. No.</p> <p>10:32:25 4 Q. What media have you been involved with, with</p> <p>10:32:27 5 respect to USANA?</p> <p>10:32:30 6 You've got the "Wall Street Journal" --</p> <p>10:32:31 7 A. Yes.</p> <p>10:32:32 8 Q. -- Winstein?</p> <p>10:32:32 9 Who else?</p> <p>10:32:35 10 A. National Business Review, New Zealand.</p> <p>10:32:39 11 Q. Yeah.</p> <p>10:32:39 12 A. Forbes.</p> <p>10:32:39 13 Q. Right.</p> <p>10:32:44 14 A. Associated Press, Paul Foy.</p> <p>10:32:46 15 I think we tried to go to Adam Zagorin at</p> <p>10:32:53 16 "Times" who had done a story on me before. Not really</p> <p>10:32:56 17 something they would do. We took it from the YouTube</p> <p>10:32:59 18 angle, but, you know, we're friends. He wasn't, you</p> <p>10:33:01 19 know -- we didn't do enough of them.</p> <p>10:33:04 20 That's primarily the media people we've talked</p> <p>10:33:11 21 to.</p> <p>10:33:12 22 Q. Have you received any payments from the media?</p> <p>10:33:14 23 A. No. No.</p> <p>10:33:17 24 Q. Okay.</p> <p>10:33:18 25 A. No, not at all.</p> |

29 (Pages 110 to 113)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
 USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 114 | Page 116 |
|--|--|
| <p>10:33:19 1 Q. Okay. Now I'm going to go through some names 10:33:22 2 and ask you some questions, and then we're going to go 10:33:23 3 through the documents and, we're through. Okay? 10:33:25 4 A. Sure. 10:33:25 5 Q. Okay. Anthony Braun? 10:33:28 6 A. Uh-huh. 10:33:29 7 Q. Did I pronounce that correctly? 10:33:30 8 A. Yeah. Tony Braun. 10:33:32 9 Q. Okay. What was his role in the investigation? 10:33:42 10 A. Well, other than paying the \$10,000 that he paid 10:33:47 11 in September -- 10:33:48 12 Q. Right. 10:33:48 13 A. -- no financial role. It was discussed 10:33:53 14 preliminarily that he was going to be a client and help 10:33:55 15 cover some of the costs of the investigation, and he never 10:33:59 16 did. 10:33:59 17 Q. And under those types of circumstances, what 10:34:01 18 would a client get in return for the payment of money? 10:34:06 19 A. Proprietary research that we held from public 10:34:09 20 records. Obviously, we wouldn't work with the government 10:34:12 21 and then take that information and sell information to 10:34:15 22 some third party. Our proprietary research is what I was 10:34:19 23 referring to. So the preparation of the proprietary 10:34:22 24 research. 10:34:23 25 Q. Okay.</p> | <p>10:35:15 1 A. Rarely. 10:35:15 2 Q. Rarely? 10:35:16 3 A. Rarely. 10:35:17 4 Q. Okay. 10:35:21 5 A. But I don't know what he did or didn't. He 10:35:22 6 manages his own money. That I didn't know till like 10:35:26 7 September. I didn't want to take money from him. 10:35:28 8 Q. Okay. 10:35:29 9 A. Till I knew he had managed his own money. 10:35:32 10 Q. Did you exchange any written letters with 10:35:34 11 anybody regarding USANA on paper, written letters? 10:35:40 12 A. Just what, you know, with Mr. Tilson and 10:35:41 13 Mr. Braun just what you've already -- I've already 10:35:45 14 provided. 10:35:45 15 Q. Okay. 10:35:46 16 A. And mostly it's by phone. 10:35:51 17 Q. All right. Now I want to move on to Whitney 10:35:53 18 Tilson. How did you first meet Mr. Tilson? 10:35:55 19 A. He called me to speak at the Value Investors 10:35:58 20 conference. He called me to speak at the Value Investors 10:36:00 21 conference. He came to me. I didn't come to him. 10:36:03 22 Q. Okay. And, I'm sorry, what is the name of that 10:36:15 23 hedge fund again? 10:36:16 24 A. Whitney's? 10:36:17 25 Q. Yeah.</p> |
| Page 115 | Page 117 |
| <p>10:34:23 1 A. And he would be entitled to whatever he does 10:34:25 2 with proprietary research of that nature, but he backed 10:34:28 3 out. 10:34:29 4 Q. He backed out? 10:34:30 5 A. Yes, he backed out. 10:34:31 6 Q. When did he back out? 10:34:33 7 A. March -- some -- March or something like that. 10:34:36 8 Q. Did he tell you why he backed out? 10:34:37 9 A. Didn't -- I was too new, didn't have a track 10:34:39 10 record, you know, that kind of thing. 10:34:43 11 Q. Do you know if he shorted any USANA stock? 10:34:47 12 A. I -- 10:34:48 13 Q. Do you know -- strike that. Let me ask the 10:34:50 14 question again. 10:34:51 15 Do you have any reason to believe that he 10:34:53 16 shorted any USANA stock? 10:34:55 17 A. I -- only reason to believe I know is that he 10:34:58 18 sent me \$10,000, and that was that. I don't know what he 10:35:01 19 did or didn't do. 10:35:03 20 Q. He didn't tell you one way or the other? 10:35:05 21 A. It's -- yeah. It was, you know, you have to ask 10:35:08 22 him. 10:35:08 23 Q. How did you communicate with him, verbally? 10:35:10 24 A. Yes. Always on the phone, yeah. 10:35:11 25 Q. And how about with by electronic means, e-mails?</p> | <p>10:36:18 1 A. Tilson Funds or T2 Partners or something like 10:36:20 2 that. 10:36:21 3 Q. And does he have -- and is he located in New 10:36:22 4 York? 10:36:23 5 A. Yes, sir. 10:36:23 6 Q. And does he have employees? 10:36:26 7 A. I think he does, yes, sir. 10:36:27 8 Q. Okay. How big is that hedge fund? 10:36:29 9 A. Couple hundred million. He's a Warren Buffet 10:36:33 10 guy. 10:36:34 11 Q. What do you say -- what do you mean by that? 10:36:35 12 A. He likes Warren Buffet. 10:36:37 13 Q. Oh, okay. 10:36:37 14 A. Loves Buffet, yeah. 10:36:38 15 Q. But he's not financial connected with Buffet in 10:36:41 16 any way? 10:36:41 17 A. Not to my knowledge at all, no. 10:36:45 18 Q. Do you know whether Mr. Tilson or his fund has 10:36:49 19 shorted any USANA stock, have any reason to believe that? 10:36:52 20 A. I don't know if they did or didn't. They never 10:36:55 21 discussed any kind of specifics in that area to me. 10:36:58 22 Q. Okay. And when you communicated with 10:37:01 23 Mr. Tilson, how did you do that? 10:37:04 24 A. Phones. 10:37:04 25 Q. And any other way?</p> |

30 (Pages 114 to 117)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 118 | Page 120 |
|--|--|
| <p>10:37:07 1 A. Rarely e-mails. 10:37:08 2 Q. Okay. Any other way? Paper letters? 10:37:12 3 A. No. No, no, no. 10:37:14 4 Q. Did you -- 10:37:15 5 A. Personal meeting. 10:37:16 6 Q. Did either Mr. Braun or Mr. Tilson or any of 10:37:20 7 their companies receive an advanced copy of the report? 10:37:25 8 A. Before we published? 10:37:26 9 Q. Yeah. 10:37:27 10 A. Not to my knowledge. 10:37:29 11 Q. Did anybody? 10:37:30 12 A. Not to my knowledge. Other than the people who 10:37:32 13 helped prepare it to sign off. Meaning, we had lab work 10:37:35 14 done, for example. 10:37:36 15 Q. Okay. 10:37:37 16 A. I wanted the lab to know the context in which 10:37:40 17 their information was being used. I sent it to them 10:37:43 18 before we released, so they would know how their data was 10:37:47 19 being used that, that they had any objection to it. 10:37:50 20 Q. With respect to those folks, the analysts, the 10:37:53 21 researchers, that crew -- 10:37:54 22 A. Yeah. 10:37:55 23 Q. -- okay, that contributed to the content of the 10:37:59 24 report -- 10:37:59 25 A. Yeah.</p> | <p>10:39:01 1 Brooklyn. Wonderful guy, good guy. 10:39:03 2 Q. And describe your relationship with him from the 10:39:09 3 time you met him until now? 10:39:12 4 A. Spiritual advisor kind of thing almost, but very 10:39:16 5 friendly. He's about five, foot one, and, you know, 10:39:21 6 doesn't sleep at night, and he's just Sam Antar. He's 10:39:26 7 very brilliant, but he's not someone that you can say, I 10:39:30 8 need you to have this report by 8 a.m. tomorrow and have a 10:39:33 9 snowball's chance of having it. He doesn't work on those 10:39:36 10 time of time schedules -- 10:39:38 11 Q. Okay. 10:39:38 12 A. -- so -- 10:39:38 13 Q. Have you had any business transactions with 10:39:39 14 Mr. Antar? 10:39:41 15 A. Other than up until '06, no. Then in '06, as I 10:39:45 16 wrote about him in my book, "Down But Not Out," out of 10:39:48 17 nowhere he sent me a hundred grand, \$100,000, like in July 10:39:52 18 or June or somewhere. 10:39:54 19 I know it. I had to have my chairman of my 10:39:56 20 elder board call him to verify the gift, that it wasn't 10:40:00 21 for the church, that it was for me. And he sent \$100,000 10:40:02 22 to the Fraud Discovery Institute. And he said, Thank you 10:40:04 23 for the help. You know, you've kind of been an example 10:40:06 24 for me that you can come back from failure. You've helped 10:40:09 25 me out a lot, and I just wanted to help you out, what you</p> |
| Page 119 | Page 121 |
| <p>10:37:59 1 Q. -- do you know if any of those folks shorted 10:38:03 2 USANA stock? 10:38:04 3 A. And I know you're going to think this sounds 10:38:06 4 crazy. I mean, not even a possibility. Just you break 10:38:08 5 down the players and you'll know. Like Juan or Tracy 10:38:11 6 Conan who edited it. I don't even think she has a 10:38:14 7 brokerage account. Just not that world. Robert, 10:38:18 8 absolutely not. You know, Jon Taylor, just they -- just 10:38:23 9 not their world. 10:38:24 10 Q. Brooks? 10:38:25 11 A. Never. I mean, I invite you to call him. 10:38:28 12 Wouldn't even think of it. 10:38:30 13 Q. Okay. Move on to Sam Antar. 10:38:34 14 A. Yeah. 10:38:35 15 Q. When did you first meet him? 10:38:38 16 A. Few years back. 10:38:39 17 Q. How did you first meet him. 10:38:40 18 A. I think he called me or he saw me speaking 10:38:43 19 somewhere and he called me and wrote me. 10:38:45 20 Q. What sort of business is Mr. Antar in? 10:38:48 21 A. My understanding is a real estate business; 10:38:51 22 mortgage, property management and purchasing of 10:38:54 23 properties. 10:38:54 24 Q. Where does he live? 10:38:56 25 A. Brooklyn. Orthodox Syrian Jewish Community in</p> | <p>10:40:12 1 do uncovering fraud. 10:40:13 2 And we had been in the papers for various ponzi 10:40:15 3 schemes uncovered, and he would always read them, and just 10:40:19 4 felt that I had set an example for him. 10:40:21 5 I mean, gave me far more credit than I, you 10:40:24 6 know, deserved, of course. And it's not every day that 10:40:27 7 someone sends you a hundred grand. And so I wrote about 10:40:30 8 it, and it's in the book, "Down But Not Out." 10:40:32 9 Q. Okay. And when was this? 2006? 10:40:35 10 A. Yeah. 10:40:36 11 Q. When in 2006? 10:40:37 12 A. June, July in that area. 10:40:38 13 Q. About the time you decided to investigate USANA? 10:40:41 14 A. No. That was later. Later. 10:40:43 15 Q. Okay. 10:40:44 16 A. But I did use the proceeds. 10:40:46 17 Q. When was the first time you discussed USANA with 10:40:48 18 Mr. Antar? 10:40:49 19 A. It wasn't until October when I was asked to 10:40:51 20 speak for Whitney's gig, and I was preparing for it. So 10:40:57 21 not before that. 10:40:59 22 Q. Do you know if Mr. -- 10:41:00 23 A. He didn't give me the hundred grand said say, 10:41:01 24 Hey, let's start a short hedge fund, no, nothing like 10:41:04 25 that. I wrote about it, and I preached about it the very</p> |

31 (Pages 118 to 121)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 122 | Page 124 |
|---|---|
| <p>10:41:06 1 next day after I got the gift in a sermon, which came back 10:41:09 2 to haunt me, if I remember, but, yeah. But I was very 10:41:14 3 open about it. 10:41:16 4 When you're me and somebody sends you a hundred 10:41:17 5 grand, the chairman has to know, the church should know. 10:41:20 6 Doesn't happen every day, so I made sure everybody knew. 10:41:25 7 Q. All right. So do you have any reason to believe 10:41:29 8 that Mr. Antar has shorted USANA stock? 10:41:32 9 A. I wouldn't know what he's done or not done -- 10:41:35 10 Q. You -- 10:41:35 11 A. -- specifically. 10:41:36 12 Q. Okay. Do you have any reason to believe that he 10:41:39 13 has shorted the stock? 10:41:40 14 A. Yes, I do. 10:41:40 15 Q. What is that reason? 10:41:42 16 A. I just -- I don't have access to his trading 10:41:45 17 records, but I believe he not shorted the stock, but 10:41:48 18 bought put options much like I did. That's my 10:41:51 19 understanding. 10:41:52 20 Q. All right. So -- and you see a distinction 10:41:54 21 between shorting a stock and buying put options? 10:41:57 22 A. Well, I mean, they're two different transactions 10:41:58 23 is my understanding, yeah. 10:42:00 24 Q. Okay. All right. 10:42:00 25 A. But betting to lose is the same, I guess, you're</p> | <p>10:42:59 1 A. Yeah, I don't recall specifically what he did or 10:43:04 2 didn't do. 10:43:06 3 Q. Okay. Did he tell you how much money that he 10:43:08 4 has made off the shorting of USANA stock -- 10:43:13 5 A. No. 10:43:14 6 Q. -- or the purchasing of puts? 10:43:17 7 A. Not something I would, you know, know 10:43:19 8 specifically, no. But, again, you can ask him, not me. 10:43:23 9 He's -- 10:43:24 10 Q. But I'm asking you. 10:43:25 11 A. Yeah, but I just don't know what his account 10:43:27 12 balance is and -- 10:43:28 13 Q. I'm not asking about the account balance. 10:43:29 14 MR. PORTER: He asked you if he told you how 10:43:31 15 much he made from shorting USANA. 10:43:32 16 THE WITNESS: Yeah, I don't know. I don't 10:43:34 17 know. 10:43:35 18 BY MR. POYFAIR: 10:43:35 19 Q. That's not the answer to the question, though. 10:43:36 20 Did he tell you how much he made, yes or no? 10:43:38 21 A. I don't recall if he did or didn't, I'm sorry. 10:43:42 22 It wasn't a material amount of money or I probably would 10:43:45 23 have remembered it, but -- 10:43:47 24 Q. All right. And how did you communicate with 10:43:52 25 Mr. Antar?</p> |
| Page 123 | Page 125 |
| <p>10:42:02 1 right, I mean, the same thing. 10:42:03 2 Q. I just want to -- okay. So I've asked questions 10:42:07 3 up to now about shorting the stock, about do you have any 10:42:10 4 knowledge that this entity or this person shorted the 10:42:13 5 stock. Would your answer be any different if I had 10:42:17 6 phrased it -- 10:42:20 7 A. No. No. I know what you're going to say. 10:42:21 8 Q. Hold on. Hold on. I've got to finish the 10:42:23 9 question-- 10:42:23 10 A. Yeah, yeah. 10:42:23 11 Q. -- okay? 10:42:24 12 Would your answer have been any different if I 10:42:25 13 had phrased the question with respect to buying puts on 10:42:29 14 the stock? 10:42:30 15 A. No, sir. I know what you meant. 10:42:31 16 Q. Okay. Good. Because I hate to have to go back. 10:42:37 17 A. Yeah, yeah, yeah. No. 10:42:39 18 Q. All right. So did Mr. Antar tell you that he 10:42:43 19 had shorted the stock? 10:42:45 20 A. I don't recall. I just knew that he had. 10:42:49 21 Q. Do you know how much? How many puts? 10:42:52 22 A. You can ask him. I don't recall. 10:42:54 23 Q. No, no. 10:42:54 24 I'm asking what you, your recollection of what 10:42:57 25 you told -- what he told you.</p> | <p>10:43:54 1 A. Phones, e-mails, in person. In '05 he came to 10:43:58 2 my house in Poway with his wife and met my wife and -- 10:44:03 3 Q. Since June of 2006 when you got the hundred 10:44:08 4 grand from him? 10:44:09 5 A. June or thereabouts, yes. 10:44:11 6 Q. Yeah, okay. 10:44:12 7 Did you have e-mails back and forth with 10:44:14 8 Mr. Antar? 10:44:17 9 A. I believe we did. 10:44:17 10 Q. Okay. Did you keep those e-mails? 10:44:19 11 A. I -- you know, if they weren't, you know, on 10:44:23 12 auto delete, I would have no reason to delete them other 10:44:27 13 than the inbox got too full, so. 10:44:30 14 Q. So -- 10:44:31 15 A. I have no -- you know, I wasn't under any, you 10:44:34 16 know, compulsion to keep or not keep. I just, you know -- 10:44:38 17 Q. Okay. So you might have deleted some, you might 10:44:41 18 have kept some? 10:44:42 19 A. Yeah, but there -- yeah, but we had no financial 10:44:45 20 relationship in anything. Even after he gave me the 10:44:47 21 \$100,000 gift in on or about mid '06. 10:44:52 22 Q. Okay. 10:44:54 23 A. Our kind of conversations, you know, how do 10:44:58 24 you come -- he would always get frustrated with, When do 10:45:00 25 you outlive your past? That kind of thing.</p> |

32 (Pages 122 to 125)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 126 | Page 128 |
|--|--|
| <p>10:45:02 1 Q. Do you have any belief that Mr. Antar was 10:45:05 2 involved or was in touch with any hedge funds or 10:45:10 3 institutional investors or broker/dealers with respect to 10:45:16 4 USANA? 10:45:17 5 A. I don't know. 10:45:18 6 Q. One way or the other? 10:45:20 7 A. I don't know. 10:45:21 8 Q. Okay. And is that hundred grand the only amount 10:45:24 9 of money Mr. Antar has paid you -- 10:45:26 10 A. No. 10:45:26 11 Q. -- or FDI? 10:45:27 12 A. No. There's others. 10:45:27 13 Q. How much and when? Since June -- actually 10:45:33 14 not -- 10:45:34 15 A. No, since USANA. 10:45:35 16 Q. Right. Let's start again. Let me ask another 10:45:40 17 question. 10:45:40 18 Has Mr. Antar paid you or the Fraud Discovery 10:45:45 19 Institute any moneys since June of 2006? 10:45:49 20 A. Yes. 10:45:50 21 Q. Can you -- we have the hundred grand? 10:45:51 22 A. Yeah, but that was separate. Then USANA came 10:45:54 23 up. 10:45:55 24 Q. Okay. 10:45:55 25 A. And then he gave money to help fund the</p> | <p>10:46:58 1 A. Yes. 10:46:58 2 Q. Has he -- do you know, have you ever heard him 10:47:01 3 refer to you as his partner? 10:47:02 4 A. That's a phrase he uses all the time commonly, 10:47:06 5 yes. 10:47:06 6 Q. What type of partnership are you referring to 10:47:08 7 when you use those words? 10:47:11 8 A. As it relates to? 10:47:13 9 Q. Anything. 10:47:13 10 A. Well, in prison, Hey, partner, how are you? I 10:47:17 11 mean, that's a different context than, you know, a legal, 10:47:19 12 business relationship. 10:47:20 13 Q. Right. 10:47:20 14 I'm -- and I'm referring to -- 10:47:22 15 A. Somewhere in between prison and legal business 10:47:26 16 relationship. 10:47:27 17 Q. Were you in prison with him? 10:47:28 18 A. No. 10:47:29 19 Q. Okay. 10:47:29 20 A. No. 10:47:30 21 Q. Was he ever in prison? 10:47:31 22 A. He did six months. He cooperated and helped the 10:47:34 23 government get the 40 million bucks back from Israel for 10:47:36 24 the victims. So he took a different road. 10:47:39 25 Q. When was this?</p> |
| Page 127 | Page 129 |
| <p>10:45:57 1 investigation. 10:45:57 2 Q. How much? 10:45:59 3 A. Neighborhood of a hundred to a hundred fifty 10:46:01 4 thousand, in that area. 10:46:02 5 Q. Okay. 10:46:03 6 A. But could be more, could be less, but somewhere 10:46:04 7 around there. 10:46:06 8 Q. And does he continue to fund the investigation? 10:46:10 9 A. One would only hope. 10:46:12 10 Q. Okay. Does he -- have you had a conversation 10:46:15 11 with him that suggests that he will continue to fund the 10:46:18 12 investigation? 10:46:19 13 A. As, you know, the best he can, he will, but -- 10:46:24 14 Q. That's what he told you? 10:46:25 15 A. Yeah. I mean, to the best that he can, he will. 10:46:27 16 But I'm not relying upon it to continue the investigation. 10:46:33 17 Q. Okay. Do you have any former legal relationship 10:46:38 18 with him? 10:46:39 19 A. No. 10:46:39 20 Q. For example, partnership, or LLC or corporation? 10:46:48 21 A. We talked about one. I don't know that it was 10:46:49 22 ever done at all, no checking account opened, no documents 10:46:53 23 signed to my knowledge. 10:46:55 24 Q. Okay. Have you ever referred to him as your 10:46:58 25 partner?</p> | <p>10:47:40 1 A. '88, '89. I was in jail. 10:47:42 2 Q. Okay. All right. And -- so I want to go back 10:47:44 3 to this partner issue, and I'm -- and I think what you 10:47:47 4 told me was that you refer to him as a partner and he 10:47:50 5 refers to you as partner? 10:47:52 6 A. Yes. 10:47:52 7 Q. And my question is: Is that referring to a 10:47:58 8 friendship? 10:47:59 9 A. It's referred to a friendship and also when the 10:48:02 10 USANA thing broke -- 10:48:03 11 Q. Right. 10:48:04 12 A. -- he said, you know, I'm going to help you 10:48:05 13 here. I'm going to stand by you here. I believe in what 10:48:08 14 you do. 10:48:09 15 So that's how that kind of partnership, verbal 10:48:13 16 thing kind of happened. 10:48:14 17 Q. Okay. Was there any agreement, formal or 10:48:18 18 informal, between you two to split profits and losses in 10:48:22 19 there? 10:48:24 20 A. Profits and losses in like the cost of the case? 10:48:27 21 Q. Yes. 10:48:29 22 A. You know, back and forth, nothing real -- 10:48:34 23 nothing ever got finalized. But, yeah, would you help me 10:48:36 24 with the cost? Those conversations happened. Could you 10:48:39 25 send money to help pay expenses? That kind of thing.</p> |

33 (Pages 126 to 129)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 130 | Page 132 |
|--|--|
| <p>10:48:41 1 That happened.</p> <p>10:48:42 2 Q. Okay.</p> <p>10:48:42 3 A. So, you know, he was very generous and very</p> <p>10:48:45 4 helpful, but we never -- he was never obligated legally --</p> <p>10:48:48 5 Q. Right.</p> <p>10:48:48 6 A. -- on our end.</p> <p>10:48:50 7 And he never contributed, you would think he</p> <p>10:48:52 8 would, as a CPA to the research for the report. Everybody</p> <p>10:48:56 9 thinks that. It was comical.</p> <p>10:48:57 10 He's totally preoccupied with Overstock, which</p> <p>10:49:01 11 he makes known that he does not short. So that's his</p> <p>10:49:04 12 deal. He has no time for anything. He's not been a</p> <p>10:49:06 13 help -- any help in researching the USANA case at all,</p> <p>10:49:12 14 which is sad because he's a smart guy, but he's with the</p> <p>10:49:16 15 Overstock thing, you know.</p> <p>10:49:17 16 Q. Right.</p> <p>10:49:17 17 A. And he doesn't. To his credit, he doesn't short</p> <p>10:49:20 18 that stock.</p> <p>10:49:21 19 Q. You think that's creditworthy?</p> <p>10:49:24 20 A. Which?</p> <p>10:49:26 21 Q. Would -- that Mr. Antar does not short the</p> <p>10:49:29 22 Overstock's stock?</p> <p>10:49:32 23 MR. PORTER: Objection.</p> <p>10:49:37 24 BY MR. POYFAIR:</p> <p>10:49:37 25 Q. You may answer.</p> | <p>10:50:49 1 Q. Okay. So --</p> <p>10:50:54 2 A. Somebody he knew that had nothing to do with me.</p> <p>10:50:57 3 Q. And have you spoke to Amanda Krayniak?</p> <p>10:51:00 4 A. Who is that.</p> <p>10:51:01 5 Q. An A.G. Edwards analyst?</p> <p>10:51:05 6 A. Not to my knowledge.</p> <p>10:51:07 7 Q. That name doesn't ring any bells?</p> <p>10:51:09 8 A. No. I mean, she may have called me in, you</p> <p>10:51:12 9 know, at the time a bunch of analysts were, but I don't</p> <p>10:51:16 10 recall.</p> <p>10:51:16 11 Q. Okay. There were some e-mails that came from</p> <p>10:51:20 12 something called USANA Inside at Yahoo.com?</p> <p>10:51:25 13 A. Uh-huh.</p> <p>10:51:26 14 Q. Do you know what I'm familiar -- what I'm</p> <p>10:51:27 15 speaking about?</p> <p>10:51:28 16 A. One of the many so-called insider groups.</p> <p>10:51:31 17 Q. Are you familiar with that one specifically?</p> <p>10:51:32 18 A. I'm -- they're all kind of a disappointing blur.</p> <p>10:51:35 19 Q. Why do you say "disappointing"?</p> <p>10:51:36 20 A. Because I thought they would lead to something</p> <p>10:51:38 21 that they didn't lead to.</p> <p>10:51:40 22 Q. Okay. And, again, you don't know the names of</p> <p>10:51:44 23 any of those folks who originally contacted you</p> <p>10:51:46 24 anonymously?</p> <p>10:51:47 25 A. Yeah.</p> |
| Page 131 | Page 133 |
| <p>10:49:38 1 A. I don't think he has any motive at all, but to</p> <p>10:49:41 2 uncover the fraud. I respect that, yeah.</p> <p>10:49:44 3 Q. Okay.</p> <p>10:49:44 4 A. If there's an analogy you want to draw to USANA,</p> <p>10:49:47 5 I'll make that point, but for me that is.</p> <p>10:49:49 6 Q. Are there any business ventures other than USANA</p> <p>10:49:53 7 with which you're affiliated with Mr. Antar?</p> <p>10:49:58 8 A. There's no formal business ventures that I'm</p> <p>10:50:02 9 aware of that I'm familiar that I'm involved with him at</p> <p>10:50:04 10 all.</p> <p>10:50:06 11 Q. Except the one with USANA that you've described?</p> <p>10:50:08 12 A. Well, and that was, you know, Hook me up, bro,</p> <p>10:50:11 13 don't let me hang in. You told me when they sued me back</p> <p>10:50:13 14 in March you got my back, you know, that kind of thing.</p> <p>10:50:16 15 It's all friendship verbal kind of stuff.</p> <p>10:50:19 16 Q. Okay. Now, we're going to go through the</p> <p>10:50:30 17 documents in a second. There's a guy by the name of</p> <p>10:50:30 18 Robert Rimberg?</p> <p>10:50:32 19 A. Who?</p> <p>10:50:33 20 Q. Robert Rimberg, Mr. Antar's lawyer. Do you know</p> <p>10:50:37 21 that name?</p> <p>10:50:38 22 A. Never talked to him.</p> <p>10:50:40 23 Q. Okay. But do you know the name?</p> <p>10:50:42 24 A. Okay. He may have -- yeah, that was his</p> <p>10:50:46 25 relationship. I never talked to him to my knowledge.</p> | <p>10:51:48 1 Q. These USANA affiliates?</p> <p>10:51:49 2 A. No. I'm frustrated with that, too.</p> <p>10:52:09 3 Q. Have any hedge funds, investment advisors,</p> <p>10:52:15 4 institutional shareholders, broker/dealers, advised you on</p> <p>10:52:19 5 your short position in USANA stock?</p> <p>10:52:23 6 A. What do you mean by that?</p> <p>10:52:26 7 Q. What about that question don't you understand?</p> <p>10:52:28 8 A. It's not a substantial enough position to be</p> <p>10:52:32 9 advised upon.</p> <p>10:52:33 10 Q. Well, what is the answer to the question? Have</p> <p>10:52:34 11 they or haven't they?</p> <p>10:52:35 12 A. Not that I recall. It's not --</p> <p>10:52:38 13 Q. If they had, who would have?</p> <p>10:52:39 14 A. I don't know. I -- you know, I -- you know, I</p> <p>10:52:43 15 don't know. Probably someone who wouldn't have let 50</p> <p>10:52:46 16 percent of the options expire worthless in October. I</p> <p>10:52:50 17 mean, I don't know.</p> <p>10:52:51 18 Q. Is that what happened?</p> <p>10:52:52 19 A. Yeah. Of options that I owned, yeah.</p> <p>10:52:59 20 Q. So is it your testimony that you did not get any</p> <p>10:53:03 21 advice from any hedge funds, investment advisors,</p> <p>10:53:07 22 institutional shareholders, or broker/dealers about your</p> <p>10:53:11 23 short position on the USANA stock?</p> <p>10:53:14 24 A. You know, as far as I can recall, that's an</p> <p>10:53:15 25 accurate statement.</p> |

34 (Pages 130 to 133)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
 USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 134 | Page 136 |
|--|---|
| <p>10:53:15 1 Q. If you had gotten advice, in what form would it 10:53:18 2 have been? Would it have been -- 10:53:21 3 MR. POYFAIR: It -- 10:53:21 4 MR. POYFAIR: Let me finish the question. Then 10:53:22 5 you can object. 10:53:23 6 MR. PORTER: Okay. 10:53:24 7 BY MR. POYFAIR: 10:53:24 8 Q. Would it have been verbally or by e-mail? 10:53:26 9 MR. PORTER: Objection. 10:53:28 10 BY MR. POYFAIR: 10:53:28 11 Q. You may answer. 10:53:30 12 A. I guess a phone call, but I don't recall 10:53:33 13 getting -- 10:53:33 14 Q. But no e-mails? 10:53:38 15 A. I don't even recall it happening, so I can't -- 10:53:41 16 Q. Understand. 10:53:41 17 A. -- you know. 10:53:42 18 Q. Okay. Fair enough. 10:53:46 19 Some of the documents that we've looked at show 10:53:48 20 that you switched from a put to a call option -- I'm 10:53:51 21 sorry, yeah, from put options to call options. Did any of 10:53:57 22 the hedge funds, investment advisors, institutional 10:54:01 23 shareholders advise you regarding why you should make that 10:54:04 24 change? 10:54:04 25 A. No. I thought of that on my own. Just to as a</p> | <p>10:55:38 1 A. All around? 10:55:41 2 Q. Yeah. But I appreciate you guys trying to help 10:55:44 3 me out on that. 10:55:55 4 Don't worry, we're not going through all of 10:55:58 5 these. Someone wants to keep track of that. 10:56:07 6 In the interest of time, I'm not going to mark 10:56:10 7 all of these, and I'm may not even show them to you. I've 10:56:13 8 just got questions, and if we need to go into it any 10:56:16 9 further, I'll mark them. 10:56:18 10 A. You want me to come over there or what? 10:56:20 11 MR. PORTER: No. 10:56:21 12 MR. POYFAIR: No, that's okay. 10:56:26 13 BY MR. POYFAIR: 10:56:26 14 Q. So we talked about this Texas minister friend, 10:56:31 15 and I'm looking at an e-mail that is from Amanda at A.G. 10:56:42 16 Edwards that refers to a contact with -- 10:56:53 17 A. I know what you're -- 10:56:54 18 Q. -- a friend of yours. What is this all about? 10:56:56 19 A. My understanding is that the Texas minister 10:56:58 20 friend being a distributor of USANA -- 10:57:00 21 Q. Right. 10:57:00 22 A. -- approached one of the long analysts for the 10:57:03 23 company and said, what about those allegations to gain 10:57:05 24 information, and then would give me -- typically, a lot of 10:57:08 25 people would do that. They say, I called up the, you</p> |
| Page 135 | Page 137 |
| <p>10:54:08 1 pattern of behavior that whenever the stock would go down, 10:54:11 2 the company would repurchase it, and it will go up. It 10:54:14 3 was to my theory of the case, that the scoreboard is the 10:54:19 4 stock for them. And if it goes down, they will do 10:54:22 5 whatever it takes to prop it back up, and I'd watched it 10:54:28 6 happen numerous time. 10:54:30 7 Q. Okay. Has anyone else other than hedge funds, 10:54:33 8 investment advisors, institutional shareholders, or be it 10:54:36 9 broker/dealers advised you on your short or long position 10:54:40 10 in USANA stock? 10:54:42 11 A. You know, not that I recall. They may have, 10:54:49 12 they may not have. I just don't recall. 10:54:51 13 Q. If I wanted to find out if that were in fact 10:54:54 14 true, where I would look? 10:54:55 15 A. I mean, I would tell you because -- 10:54:58 16 Q. But you don't recall. Where would I look? 10:55:01 17 A. You would look at the trading records to say, if 10:55:02 18 he was given advice, the guy is a moron because 50 percent 10:55:06 19 of his holdings just expired worthless. So whoever gave 10:55:10 20 him advice, if in fact he did get advice, didn't work. 10:55:16 21 Think Lacrosse. 10:55:31 22 Q. Who? 10:55:32 23 A. Think Lacrosse. Think about the kids. 10:55:34 24 Q. We're already -- we're already dead. Not going 10:55:37 25 to make it.</p> | <p>10:57:10 1 know, analyst who is for, and I asked him these questions, 10:57:13 2 and he told me -- whatever. 10:57:14 3 Q. Okay. 10:57:15 4 A. That was -- 10:57:15 5 Q. So did you have a conversation with Amanda, what 10:57:21 6 is her name, Krainiak? 10:57:25 7 A. I don't recall. Isn't that him saying he talked 10:57:28 8 to her? 10:57:29 9 Q. Right. 10:57:29 10 A. Yeah, I don't think I did. He was reporting to 10:57:30 11 me what the analysts are saying about the company. 10:57:32 12 Q. Okay. 10:57:33 13 MR. PORTER: Maybe if you're not going to mark 10:57:35 14 them, at least just say what Bates number it is, so that 10:57:37 15 when I get back, I can figure out which ones. 10:57:38 16 MR. POYFAIR: Yeah, I'm happy to do that. 10:57:39 17 That's Bates FDI 02121 that I'm referring to. 10:57:44 18 Okay. That's all the questions I have on that 10:57:46 19 one. 10:57:47 20 THE WITNESS: Yeah, yeah, yeah. 10:58:24 21 BY MR. POYFAIR: 10:58:24 22 Q. Has -- have you paid any money to 10:58:26 23 Mr. Fitzpatrick? 10:58:27 24 A. Yes, sir. 10:58:29 25 Q. How much?</p> |

35 (Pages 134 to 137)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 138 | Page 140 |
|--|--|
| <p>10:58:29 1 A. You know, I paid him for his services. 10:58:32 2 Q. How much? 10:58:33 3 A. Continue to pay him. 10:58:34 4 Q. How much? 10:58:35 5 A. I don't know. In the neighborhood of 15, 20 10:58:36 6 grand, something in that area. 10:58:37 7 Q. Okay. Have you paid Mr. Brooks any money? 10:58:40 8 A. No, but not because I don't owe him. He never 10:58:44 9 sent me a bill. He keeps telling me the perpetual I'm 10:58:47 10 sending the bill in the mail. I just saw him in Boston a 10:58:51 11 few weeks ago. I said, Where's the bill? I'm not 10:58:57 12 complaining. 10:58:57 13 Q. So you intend to pay Mr. Brooks? 10:58:59 14 A. Yeah. Maybe we can barter for services. I hear 10:59:04 15 he's got a case against Herbalife. Maybe there is 10:59:08 16 something we can work out there. 10:59:09 17 MR. PORTER: It's cold. 10:59:24 18 THE WITNESS: It's fine at this point. 10:59:32 19 BY MR. POYFAIR: 10:59:32 20 Q. I'm looking at a document which is FDI 00998, 10:59:38 21 which is a Fraud Discovery Institute invoice. It shows 10:59:45 22 that you're invoicing Mr. Braun on September 12th, 2007, 10:59:54 23 for \$10,000. 10:59:55 24 A. Told you it was September. 10:59:56 25 Q. You were right.</p> | <p>11:01:00 1 Q. By phone? 11:01:00 2 THE WITNESS: Let him talk and he wouldn't have 11:01:02 3 to -- 11:01:02 4 MR. POYFAIR: Yeah. 11:01:05 5 MR. PORTER: Doesn't work that way. 11:01:07 6 MR. POYFAIR: With cooperative lawyers it does. 11:01:12 7 That was a joke. 11:01:21 8 THE WITNESS: Okay. 11:01:21 9 MR. POYFAIR: Oh. Never mind. Okay. 11:01:29 10 BY MR. POYFAIR: 11:01:29 11 Q. Do you know of anyone else used the services 11:01:32 12 provided to Mr. Braun? 11:01:33 13 A. I do not. 11:01:38 14 Q. Do you ever have a -- do you ever enter into a 11:01:41 15 contract with clients if they use your services? 11:01:47 16 A. No. Everybody is free who is a victim of fraud, 11:01:54 17 so no contract necessary. We don't charge those people. 11:01:57 18 Speaking gigs, we get a speaking contract through William 11:02:01 19 Morris Agency in New York. 11:02:02 20 Q. Right. 11:02:03 21 Oh, you're represented by William Morris? 11:02:04 22 A. Yeah. 11:02:04 23 Q. Who is the agent? 11:02:05 24 A. I have four; book, TV, movie. Kenny DeCamillo. 11:02:13 25 He represents Bill Cosby, Regis and me, to tell you how</p> |
| Page 139 | Page 141 |
| <p>10:59:58 1 A. Even the broken clock is right twice a day, so, 11:00:01 2 yeah. 11:00:01 3 Q. But you also said it was 10,000. It's actually 11:00:04 4 10,500. 11:00:05 5 A. Okay. All right. You got me. 11:00:06 6 Q. Okay. Now, when were these services rendered 11:00:10 7 that -- that you paid -- that you charged him for? 11:00:13 8 A. During the period of the relationship with him 11:00:16 9 as my understanding was from the beginning of '07 till 11:00:21 10 then. 11:00:22 11 Q. And how did you determine it to be \$10,500? 11:00:24 12 A. I don't know how he did it. He just sent me 11:00:26 13 that and said -- you know, you can ask him how he 11:00:29 14 determined it. 11:00:30 15 Q. Okay. 11:00:31 16 A. But he's with Cactus Capital, and it's his own 11:00:34 17 money. So until I knew that, I didn't want to take any 11:00:36 18 money from him. 11:00:38 19 Q. Why not? 11:00:39 20 A. It would have been a conflict of interest as I 11:00:41 21 saw it. 11:00:42 22 Q. I might have ask these questions, so forgive me 11:00:49 23 if I did. I'll make it fast. How do you communicate -- 11:00:52 24 how did you communicate with Mr. Braun? 11:00:55 25 A. His office in New York by phone.</p> | <p>11:02:17 1 desperate he was for clients to take me on. You can tease 11:02:21 2 him about that. 11:02:21 3 And then primarily Ken DeCamillo, and then it 11:02:26 4 used to be Betsy -- Betsy Burk for speaking. For book it 11:02:32 5 was -- it's Mel something or other that used to be Joni 11:02:35 6 Evans, but she left him, and it's Mel something or other, 11:02:39 7 her book. 11:03:13 8 Q. So what did Braun get for the 10.5, \$10,500? 11:03:21 9 A. An analysis of the USANA Health Sciences and why 11:03:23 10 I believed it was an unsustainable business model. 11:03:26 11 Q. Any analysis other than what was set forth 11:03:28 12 within the report? 11:03:31 13 A. You know, my opinion on subsequent 11:03:32 14 investigations that we released and so forth. 11:03:34 15 Q. Was it in writing? 11:03:35 16 A. No. Primarily just phone calls, and then I'd 11:03:37 17 refer him to documents that we had released on the web 11:03:40 18 site or whatever. 11:03:54 19 Q. Here you go. 11:04:24 20 A. Did Mr. Braun's -- didn't it say, "For 11:04:27 21 investigative services rendered" on the thing or was it 11:04:29 22 just too vague? 11:04:31 23 Q. I don't think it had any -- 11:04:31 24 A. Okay. 11:04:31 25 Q. -- any description at all.</p> |

36 (Pages 138 to 141)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
 USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 142 | Page 144 |
|--|---|
| <p>11:04:33 1 A. Our bad. I thought it said investigative 11:04:37 2 services rendered, or no? May I see it? 11:04:43 3 Q. Certainly, but I'm not going to mark it. 11:04:45 4 A. Okay. 11:04:46 5 Q. Oh, yeah, it says, "Research services rendered." 11:04:48 6 A. Now, we're even on the 500. 11:04:53 7 Q. You are a difficult man to deal with. 11:04:56 8 You've exchanged e-mails with Matt Galio from 11:05:10 9 time to time? 11:05:1110 A. I do, sir. 11:05:1111 Q. Do you consider him to be a friend? 11:05:1412 A. I do. Very much so. 11:05:2013 Q. Are you familiar with any announcements made by 11:05:2314 the FBI that they were investigating USANA? 11:05:2715 A. I don't know what the FBI made or didn't make. 11:05:3016 I don't know. 11:05:3117 Q. Listen to my question. Are you familiar with 11:05:3318 any announcements that the FBI made that they were 11:05:3619 investigating USANA? 11:05:3720 A. I don't know. I'm not familiar with it. 11:05:4021 Q. Okay. What is Trafelet Delta Funds? 11:05:5022 A. May I see? 11:05:5123 Q. Sure. Certainly. Referring to document 11:05:5424 produced by FDI Bates No. 01933. 11:06:0125 I'm not going to mark this.</p> | <p>11:18:32 1 THE WITNESS: Oh, are we still on? 11:18:32 2 Okay, we're on. Fine. 11:18:32 3 MR. POYFAIR: Okay. That's okay. 11:18:32 4 BY MR. POYFAIR: 11:18:43 5 Q. I'm looking at a Document FDI 0272, and it is 11:18:49 6 a -- it's an e-mail string to somebody named Mangopie 11:18:56 7 at -- 11:18:58 8 A. It's Juan Lopez. 11:18:59 9 Q. Okay. And in one of these e-mails you write to 11:19:0310 him on March 15th, 2007, and said, "We will be fine and 11:19:0711 now have access to their general ledger." 11:19:1012 A. Yeah, I was -- that was -- as I explained 11:19:1213 earlier. He was concerned that we had been sued. I 11:19:1614 reminded him that we had, you know, now that you know 11:19:1815 that. 11:19:1816 Q. Okay. 11:19:2017 A. And that we in reciprocal discovery we'd be able 11:19:2418 to get evidence that would corroborate the claims that we 11:19:2619 were being sued for. 11:19:2820 Q. Okay. 11:19:3521 A. However, I can see why you would think that that 11:19:3722 would be a perfectly appropriate question. 11:19:4023 Q. I appreciate that. 11:19:4124 A. No. I didn't realize how -- I wrote -- I 11:19:4325 can't -- yeah, but you can ask him, too. He'd never seen</p> |
| Page 143 | Page 145 |
| <p>11:06:11 1 A. Well, that's embarrassing. It's the parallel -- 11:06:17 2 yeah, it's -- that's -- 11:06:23 3 MR. PORTER: Do you want to talk about that 11:06:25 4 separately? 11:06:26 5 THE WITNESS: Can we talk to you outside? 11:06:28 6 MR. POYFAIR: Sure. 11:06:29 7 MR. PORTER: Off the record. 11:06:31 8 THE VIDEOGRAPHER: Off the record at 11:06. 11:17:04 9 (Recess taken.) 11:17:0410 THE VIDEOGRAPHER: Back on the record at 11:17:1011 11:17. 11:17:3612 THE WITNESS: Anybody want a Supreme protein 11:17:3913 bar? Aren't you people hungry? 11:17:4914 That's going to sound good in here. Sorry, 11:17:5515 Dude. 11:18:0216 Do you even let him eat or is he way too junior 11:18:0417 for that? Are you going to eat? Do they get to eat? 11:18:0918 MR. POYFAIR: He tried that with me. 11:18:2019 MR. PORTER: Actually, the way it works is he 11:18:2020 says when we eat, where we eat, what you eat. 11:18:2721 THE WITNESS: So do you live in Littleton or 11:18:2722 where? 11:18:3023 MS. WESTBROOK: Denver. 11:18:3224 MR. POYFAIR: We're on. Let's go off the 11:18:3225 record --</p> | <p>11:19:46 1 nothing. I never had that. 11:20:02 2 Q. Who is Andrew Owen? 11:20:05 3 A. May I? May I? 11:20:07 4 Q. Yeah. 11:20:08 5 A. He sounds like somebody who had written that was 11:20:10 6 a former -- was he -- 11:20:11 7 Q. I'm going to show you what has been marked as 11:20:13 8 FDI 01585. 11:20:23 9 A. Okay, yeah. This is weird. He called the 11:20:2610 Journal, too. 11:20:2711 Q. Andrew Owen did? 11:20:2812 A. Yeah. 11:20:2813 Q. Who is he? 11:20:2914 A. Some -- somebody who provided information and 11:20:3215 said, Go find, I sent -- put me on a rabbit trail is what 11:20:3516 he did. 11:20:3717 Q. Did you have any contact with him other than in 11:20:3918 this -- 11:20:4219 A. Phone. 11:20:4320 Q. Okay. How many times did you talk to him? 11:20:4521 A. There's no sugar in here. My wife. I'm sorry, 11:20:4922 go ahead. 11:20:4923 Q. How many times did you have a phone conversation 11:20:5124 with Mr. Owen? 11:20:5225 A. A few calls, and --</p> |

37 (Pages 142 to 145)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
 USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 146 | Page 148 |
|--|---|
| <p>11:20:54 1 Q. What was had -- and what was the purpose for 11:20:56 2 that, those phone calls? 11:20:57 3 A. My impression was he was providing information 11:20:59 4 that was relative to proving an ongoing, you know, problem 11:21:04 5 at USANA. 11:21:04 6 Q. What did he tell you about his affiliation with 11:21:07 7 USANA? 11:21:09 8 A. I don't recall. 11:21:10 9 Q. Did he say he was affiliated in some way? 11:21:12 10 A. I believe he did. 11:21:14 11 Q. As an employee, ex-employee? 11:21:15 12 A. He may have told the "Wall Street Journal" Keith 11:21:19 13 Winstein that. 11:21:20 14 Q. That he was an employee or ex-employee? 11:21:21 15 A. Perhaps, yes, sir. Those are all after the 11:21:24 16 15th. That's how he found out about me. But, I mean, if 11:21:27 17 I don't have it there, he may have said somehow he was 11:21:31 18 affiliated with the company either as an ex-employee or 11:21:32 19 ex-distributor. 11:21:34 20 MR. POYFAIR: We'll mark this one. 11:22:24 21 I'm going to hand you what has been marked -- or 11:22:27 22 as Exhibit No. 1 to this deposition. Ask you if you have 11:22:31 23 seen those e-mails before? 11:22:34 24 You can put those back. 11:22:37 25 MR. PORTER: Do you have an extra?</p> | <p>11:23:46 1 So Keith writes in and says, "Do you know 11:23:52 2 anybody who posted this?" Why would Keith think that? 11:23:56 3 Q. I'm just asking for your knowledge. 11:23:58 4 A. No, I don't -- I don't know who posted that. 11:24:00 5 Interesting, though. 11:24:05 6 Mark that, if we have that. 11:24:10 7 MR. POYFAIR: Okay. Just keep that there. 11:24:30 8 BY MR. POYFAIR: 11:24:30 9 Q. I'm going to mark this, too. 11:24:36 10 I'm going to hand you what has been marked as 11:24:38 11 Deposition Exhibit No. 2 and ask you if you have seen that 11:24:42 12 document before? 11:24:53 13 A. I don't know who it is, though. 11:24:55 14 (Exhibit No. 2 marked for identification.) 11:24:55 15 BY MR. POYFAIR: 11:24:55 16 Q. Okay. So you've seen this document before. 11:24:58 17 It's an e-mail that was from -- 11:25:01 18 A. From the insider quote. 11:25:03 19 Q. -- USANA Inside to you, Barry Minkow, dated 11:25:06 20 April 12th, 2007, correct? 11:25:08 21 A. Uh-huh. 11:25:09 22 Q. Yes? 11:25:10 23 A. Yes, sir. Sorry. 11:25:13 24 Q. And do you remember getting this e-mail? 11:25:16 25 A. Yes, sir.</p> |
| Page 147 | Page 149 |
| <p>11:22:38 1 MR. POYFAIR: Sorry, I do. 11:22:42 2 (Exhibit No. 1 marked for identification.) 11:22:42 3 THE WITNESS: Yeah. 11:23:02 4 BY MR. POYFAIR: 11:23:02 5 Q. Do you see that it refers to a posting, right -- 11:23:06 6 A. Uh-huh. 11:23:06 7 Q. -- on the Yahoo board? 11:23:08 8 You have to say yes or no. 11:23:09 9 A. Yes. 11:23:10 10 Q. And did you read that posting? 11:23:12 11 A. Uh-huh. 11:23:13 12 Q. You have to say yes or no. 11:23:15 13 A. Yes, sir. 11:23:17 14 Q. We're starting to get disciplined now. 11:23:24 15 When you saw the posting, did you know the 11:23:28 16 identity of the person who posted it? 11:23:30 17 A. No. 11:23:32 18 Q. Have you ever learned the identity of the person 11:23:34 19 who posted it? 11:23:35 20 A. No. 11:23:35 21 Q. Do you have any reason to believe who that 11:23:37 22 person is? 11:23:38 23 A. You think it's Andrew Owen? 11:23:39 24 Q. What do you think? 11:23:41 25 A. I never thought about it like that.</p> | <p>11:25:16 1 Q. Have you made any attempt to identify the person 11:25:20 2 who is USANA Inside, the author of this e-mail? 11:25:24 3 A. I've made every effort, and to show my 11:25:27 4 incompetency, I have no clue. 11:25:30 5 Q. Do you have any -- do you know anybody who might 11:25:33 6 know that you've spoken to who has suggested they know who 11:25:38 7 this is? 11:25:39 8 A. Everybody has had a theory. 11:25:41 9 Q. Okay. What are those theories? 11:25:45 10 A. Mine, and I'll give you that one in a minute. I 11:25:48 11 originally thought it was Brad Richardson, you know. I 11:25:51 12 believe, you know, I'm probably wrong, although with China 11:25:55 13 now, I may not be so sure, but probably was wrong. 11:26:02 14 I -- I thought it was Dennis Waitley maybe, but 11:26:08 15 I think that was probably wrong. I thought it was the 11:26:17 16 greatest of all irony is the Leslie Lav position in Hong 11:26:22 17 Kong, a supervisor of phone room. 11:26:25 18 I've always thought, lately I thought it's 11:26:29 19 probably some phone room supervisor gets a lot of 11:26:33 20 cancellations who wants to play hero who does calls from 11:26:36 21 an 801 number and does some I.D. theft or whatever to get 11:26:40 22 information, doesn't steal no money and -- 11:26:41 23 Q. Do you have any reason to believe that this 11:26:44 24 person was calling in from an 801 number? 11:26:46 25 A. No. But just from what I understand about, you</p> |

38 (Pages 146 to 149)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
 USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 150 | Page 152 |
|--|---|
| <p>11:26:48 1 know, when I call my American Express to get my bill, they</p> <p>11:26:52 2 say, we recognize the number you're calling from, so they</p> <p>11:26:54 3 give you the information.</p> <p>11:26:56 4 If you look in the back of your American Express</p> <p>11:26:58 5 call, you call it.</p> <p>11:26:59 6 Q. Right.</p> <p>11:26:59 7 A. They say your I.D. has been verified by the</p> <p>11:27:01 8 back -- by the phone you're calling from. So I'm just</p> <p>11:27:04 9 assuming. Maybe he took advantage of that. That's a</p> <p>11:27:06 10 speculation.</p> <p>11:27:06 11 Q. Okay.</p> <p>11:27:07 12 A. So I always thought it was probably somebody</p> <p>11:27:09 13 that hears a lot of people cancelling, sees some turnover,</p> <p>11:27:12 14 sees some attrition and says, I'm going to be a hero in</p> <p>11:27:15 15 this opportunity. And I could be wrong. I have no proof</p> <p>11:27:17 16 of that.</p> <p>11:27:17 17 Q. Yeah.</p> <p>11:27:18 18 A. My theory.</p> <p>11:27:19 19 Q. All right. What efforts did you undertake to</p> <p>11:27:24 20 try to determine the identity of USANA Inside, the person</p> <p>11:27:28 21 who authored this Exhibit No. 27</p> <p>11:27:32 22 A. Every possible that I could think of. I just</p> <p>11:27:36 23 couldn't figure it out. I tried. I just could not figure</p> <p>11:27:41 24 it out. I had every incentive to figure it out.</p> <p>11:27:50 25 Q. Did you ever send any e-mails back to this</p> | <p>11:28:54 1 Q. Did they identify themselves on the voice mail?</p> <p>11:28:56 2 A. No, not with a name.</p> <p>11:28:58 3 Q. What did they say?</p> <p>11:29:00 4 A. I'm so -- look here, look there, you know, I</p> <p>11:29:04 5 think there may be a reference to being an insider, very</p> <p>11:29:11 6 ambiguous.</p> <p>11:29:44 7 BY MR. POYFAIR:</p> <p>11:29:44 8 Q. Okay. I'm going to hand you what has been</p> <p>11:29:46 9 marked as Exhibit No. 3, and ask you if you have seen that</p> <p>11:29:49 10 document before?</p> <p>11:29:56 11 A. Yeah. For 29.95, the date that he wrote that,</p> <p>11:30:00 12 it was free. It's on our web site free.</p> <p>11:30:04 13 Q. Did you --</p> <p>11:30:04 14 A. I wrote it back and said free.</p> <p>11:30:06 15 (Exhibit No. 3 marked for identification.)</p> <p>11:30:06 16 BY MR. POYFAIR:</p> <p>11:30:06 17 Q. So this is an e-mail from Mark Thomas, Chief</p> <p>11:30:11 18 Investment Strategist at ValueStockPicks@AOL.com, and it</p> <p>11:30:20 19 is dated March 19th. Do you remember receiving this on</p> <p>11:30:22 20 March 19th?</p> <p>11:30:23 21 A. I think -- yeah.</p> <p>11:30:25 22 Q. And did you respond in any way?</p> <p>11:30:27 23 A. Either me -- yeah, I think I said either by</p> <p>11:30:30 24 phone or by e-mail it's free online. You don't have to</p> <p>11:30:33 25 purchase it.</p> |
| Page 151 | Page 153 |
| <p>11:27:56 1 person?</p> <p>11:27:56 2 A. Uh-huh. If I could.</p> <p>11:28:00 3 Q. How many about?</p> <p>11:28:02 4 A. It was useless. I tried it one time, press</p> <p>11:28:05 5 reply, contact me, call me. Got a couple phone calls.</p> <p>11:28:09 6 Q. Right.</p> <p>11:28:09 7 A. Got a couple messages. I think I saved one or</p> <p>11:28:12 8 two that I got that was savable. I tried one or two</p> <p>11:28:15 9 replies and no answer, nothing. It was like terms and</p> <p>11:28:19 10 conditions were, they -- whoever they were or one person</p> <p>11:28:22 11 or multiple insiders, whatever, the communication I could</p> <p>11:28:28 12 never initiate or time.</p> <p>11:28:31 13 Q. But they called you?</p> <p>11:28:33 14 A. Yes.</p> <p>11:28:33 15 Q. And did you -- did you retain any of the voice</p> <p>11:28:37 16 mails?</p> <p>11:28:38 17 A. Yes.</p> <p>11:28:38 18 Q. So is that in the group that we're going to be</p> <p>11:28:41 19 getting?</p> <p>11:28:42 20 A. I believe so, sir, yes.</p> <p>11:28:43 21 Q. How did they identify --</p> <p>11:28:45 22 A. I let the SEC listen to them. I let the FBI</p> <p>11:28:48 23 listen to them.</p> <p>11:28:48 24 Q. So did -- did they identify themselves?</p> <p>11:28:52 25 A. I let Keith Winstein listen to them.</p> | <p>11:30:34 1 Q. Did you have any further contact with Value</p> <p>11:30:38 2 Stock picks?</p> <p>11:30:39 3 A. None whatsoever.</p> <p>11:30:40 4 Q. Or Mr. Thomas individually?</p> <p>11:30:42 5 A. None whatsoever to my knowledge at all.</p> <p>11:31:40 6 MR. POYFAIR: I'm going to hand you what has</p> <p>11:31:43 7 been marked as deposition Exhibit No. 4. It's Bates No.</p> <p>11:31:45 8 FDI 1 -- I'm sorry, FDI 01726. Sorry for not putting that</p> <p>11:31:53 9 on the record earlier.</p> <p>11:31:55 10 THE WITNESS: Uh-huh.</p> <p>11:32:02 11 (Exhibit No. 4 marked for identification.)</p> <p>11:32:02 12 BY MR. POYFAIR:</p> <p>11:32:03 13 Q. This is a string of e-mails between yourself and</p> <p>11:32:06 14 Mr. Antar?</p> <p>11:32:06 15 A. Yes.</p> <p>11:32:07 16 Q. Do you recall getting and sending these e-mails?</p> <p>11:32:10 17 A. I do.</p> <p>11:32:25 18 Q. We spoke earlier about Mr. Robert Rimberg?</p> <p>11:32:28 19 A. Yes, his lawyer.</p> <p>11:32:29 20 Q. Do you -- does this jog your memory with respect</p> <p>11:32:32 21 to any contact you may have had with Mr. Rimberg?</p> <p>11:32:36 22 A. We may have talked once. He -- Sam was trying</p> <p>11:32:40 23 to replace Mr. Braun as a, quote, client, let's say, and</p> <p>11:32:44 24 that he had expressed some interest as I recall. Nothing</p> <p>11:32:47 25 came of it. We called him. We had a brief conversation.</p> |

39 (Pages 150 to 153)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 154 | Page 156 |
|---|--|
| <p>11:32:51 1 Q. Okay.</p> <p>11:32:52 2 A. And what -- you know, that was pretty much it.</p> <p>11:32:57 3 Q. And this was before the other contact?</p> <p>11:33:00 4 A. Which one?</p> <p>11:33:01 5 Q. Never mind. Withdraw the question.</p> <p>11:33:04 6 Okay. So Mr. Braun --</p> <p>11:33:07 7 A. We exchanged calls, and I think we talked for</p> <p>11:33:09 8 two minutes, and that was it.</p> <p>11:33:11 9 Q. Okay. So Mr. Braun was a client of Mr. Antar's,</p> <p>11:33:13 10 also?</p> <p>11:33:13 11 A. No. He was Mr. Sirota's client. Mr. Braun had</p> <p>11:33:19 12 said, I'm not going to be a client as we understood him in</p> <p>11:33:22 13 terms of paying the cost of the case.</p> <p>11:33:25 14 Q. Right.</p> <p>11:33:25 15 A. He had made that decision, however. So we had</p> <p>11:33:29 16 this void for a client. One of the people that we thought</p> <p>11:33:32 17 could get us a client for this kind of information was a</p> <p>11:33:35 18 lawyer that Sam knew. It never amounted to anything.</p> <p>11:34:45 19 MR. POYFAIR: Let's take a break.</p> <p>11:34:48 20 THE VIDEOGRAPHER: Off the record at 11:34.</p> <p>11:43:11 21 (Recess taken.)</p> <p>11:43:12 22 THE VIDEOGRAPHER: Back on the record at</p> <p>11:43:30 23 11:43.</p> <p>11:43:38 24 BY MR. POYFAIR:</p> <p>11:43:38 25 Q. Just, Mr. Minkow, from time to time after</p> | <p>11:45:06 1 until April. It was accurate, or so we thought, and it</p> <p>11:45:08 2 has not yet been proven wrong to our knowledge, but they</p> <p>11:45:12 3 stopped that when they hired a P.R. company.</p> <p>11:45:15 4 Q. So the answer to the question about providing</p> <p>11:45:18 5 advanced notice no anyone prior to release --</p> <p>11:45:20 6 A. Right.</p> <p>11:45:20 7 Q. -- is you didn't?</p> <p>11:45:21 8 A. I don't recall. But I've just tried to say, I</p> <p>11:45:24 9 just don't believe it carries any punch even if I did.</p> <p>11:45:27 10 Q. Okay. I appreciate that, but what I'm trying to</p> <p>11:45:28 11 do is get an answer to that question.</p> <p>11:45:29 12 A. Yeah, the answer is I don't recall. And the</p> <p>11:45:31 13 reason is because it wouldn't have mattered anyway</p> <p>11:45:33 14 because --</p> <p>11:45:34 15 Q. Yeah, got it.</p> <p>11:45:36 16 Okay. You're pretty active in providing</p> <p>11:45:37 17 information to folks in China about USANA, correct?</p> <p>11:45:44 18 A. Come on, man? We've already been through that.</p> <p>11:45:47 19 Q. I can -- I'm -- I can ask follow-up questions</p> <p>11:45:50 20 and that's what I'm doing.</p> <p>11:45:54 21 A. Okay. So what is the question?</p> <p>11:45:56 22 Q. So as of right now identify for me the people or</p> <p>11:46:05 23 entities that know that you're actively working with the</p> <p>11:46:13 24 Chinese regulators with respect to USANA?</p> <p>11:46:21 25 MR. PORTER: Do you mean people outside of the</p> |
| Page 155 | Page 157 |
| <p>11:43:42 1 March 15th, 2007, when the "Wall Street Journal" story</p> <p>11:43:47 2 ran, you were responsible for a number of news releases</p> <p>11:43:53 3 and YouTube videos?</p> <p>11:43:55 4 A. Yes, sir.</p> <p>11:43:56 5 Q. Now, during this period of time, did you provide</p> <p>11:44:04 6 advance notice to anyone that these releases and YouTube</p> <p>11:44:08 7 videos were coming out?</p> <p>11:44:10 8 A. When you mean advance notice, what do you mean?</p> <p>11:44:11 9 Q. Call somebody and say, Incidentally, I've got a</p> <p>11:44:14 10 YouTube video that is going to say X, Y, Z?</p> <p>11:44:18 11 A. Yeah, you're giving my research much more credit</p> <p>11:44:20 12 than it deserves. I don't recall doing it, but I</p> <p>11:44:22 13 certainly don't recall it ever impacting the company in an</p> <p>11:44:27 14 adversarial way with a YouTube video.</p> <p>11:44:28 15 Q. Okay. Well, there were also different releases</p> <p>11:44:32 16 of information, and my question is: Do you recall</p> <p>11:44:36 17 contacting anybody prior to any release prior to any</p> <p>11:44:40 18 YouTube video to let them know what was happening?</p> <p>11:44:44 19 A. Right. To my knowledge, I don't recall.</p> <p>11:44:46 20 However, that was over in April when Edelman was hired and</p> <p>11:44:51 21 got us thrown out of Market Wire and P.R. Newswire, so no</p> <p>11:44:55 22 ticker symbol, no announcement, nobody cares.</p> <p>11:44:57 23 Announcements that are made now are not</p> <p>11:44:59 24 connected to the ticker of USANA and therefore have zero</p> <p>11:45:03 25 impact. Before we would be able to release information up</p> | <p>11:46:23 1 investigation, not the participants in the investigation?</p> <p>11:46:28 2 BY MR. POYFAIR:</p> <p>11:46:28 3 Q. I want to know anybody.</p> <p>11:46:30 4 I'm particularly interested in hedge funds,</p> <p>11:46:33 5 institutional investors --</p> <p>11:46:34 6 A. None.</p> <p>11:46:35 7 Q. -- broker/dealers, those type of things?</p> <p>11:46:36 8 A. No, sir. I promise. None. It's not our</p> <p>11:46:38 9 interest there.</p> <p>11:46:39 10 Q. All right.</p> <p>11:46:39 11 A. It's law enforcement --</p> <p>11:46:41 12 Q. So --</p> <p>11:46:41 13 A. -- and media.</p> <p>11:46:42 14 Q. So media -- so the people or entities that are</p> <p>11:46:46 15 getting information about that effort are?</p> <p>11:46:49 16 A. Primarily law enforcement.</p> <p>11:46:50 17 Q. Secondly?</p> <p>11:46:51 18 A. Yeah, and secondarily media.</p> <p>11:46:54 19 MR. POYFAIR: Okay.</p> <p>11:46:57 20 Anything else?</p> <p>11:46:58 21 MR. PAGE: No.</p> <p>11:46:59 22 MR. POYFAIR: Thank you very much. No further</p> <p>11:47:00 23 questions.</p> <p>11:47:02 24 MR. PORTER: We'll read.</p> <p>11:47:04 25 THE VIDEOGRAPHER: This concludes the deposition</p> |

40 (Pages 154 to 157)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080

Barry Minkow, November 2, 2007
USANA HEALTH SCIENCES, INC. v. BARRY MINKOW, et al.

| Page 158 | Page 160 |
|---|---|
| <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">11:47:07</div> <div style="width: 10%;">1</div> <div style="width: 80%;">of Barry Minkow. Off the record at 11:47.</div> </div> <div style="margin-top: 5px;"> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">2</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">3</div> <div style="width: 10%;">---</div> <div style="width: 80%;">(TIME NOTED: 11:47 A.M.)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">4</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">5</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">6</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">7</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">8</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">9</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">10</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">11</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">12</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">13</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">14</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">15</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">16</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">17</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">18</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">19</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">20</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">21</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">22</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">23</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">24</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">25</div> <div style="width: 10%;">---</div> <div style="width: 80%;">---</div> </div> </div> | <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">1</div> <div style="width: 80%;">STATE OF CALIFORNIA)</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">2</div> <div style="width: 80%;">) ss</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">3</div> <div style="width: 80%;">COUNTY OF SAN DIEGO)</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">4</div> <div style="width: 80%;">I, ANTONIA SUEOKA, CSR No. 9007, do hereby certify:</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">5</div> <div style="width: 80%;">That the foregoing deposition of BARRY MINKOW was</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">6</div> <div style="width: 80%;">taken before me at the time and place therein set forth,</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">7</div> <div style="width: 80%;">at which time the witness was put under oath by me;</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">8</div> <div style="width: 80%;">That the testimony of the witness and all objections</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">9</div> <div style="width: 80%;">made at the time of the examination were recorded</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">10</div> <div style="width: 80%;">stenographically by me, were thereafter transcribed under</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">11</div> <div style="width: 80%;">my direction and supervision and that the foregoing is a</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">12</div> <div style="width: 80%;">true record of same.</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">13</div> <div style="width: 80%;">I further certify that I am neither counsel for nor</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">14</div> <div style="width: 80%;">related to any party to said action, nor in anywise</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">15</div> <div style="width: 80%;">interested in the outcome thereof.</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">16</div> <div style="width: 80%;">IN WITNESS THEREOF, I have subscribed my name this</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">17</div> <div style="width: 80%;">12th day of November, 2007.</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">18</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">19</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">20</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">21</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">22</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">23</div> <div style="width: 80%;">Antonia Sueoka, RPR, CSR NO. 9007</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">24</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">25</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> |
| <div style="text-align: right; padding-right: 10px;">Page 159</div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">1</div> <div style="width: 80%;">DECLARATION UNDER PENALTY OF PERJURY</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">2</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">3</div> <div style="width: 80%;">I, BARRY MINKOW, the witness herein, declare</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">4</div> <div style="width: 80%;">under penalty of perjury that I have read the foregoing in</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">5</div> <div style="width: 80%;">its entirety; and that the testimony contained herein is a</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">6</div> <div style="width: 80%;">true and accurate transcription of my testimony elicited</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">7</div> <div style="width: 80%;">at said time and place.</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">8</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">9</div> <div style="width: 80%;">Executed this ____ day of _____,</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">10</div> <div style="width: 80%;">(Month) (Year)</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">11</div> <div style="width: 80%;">at _____,</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">12</div> <div style="width: 80%;">(City) (State)</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">13</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">14</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">15</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">16</div> <div style="width: 80%;">BARRY MINKOW</div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">17</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">18</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">19</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">20</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">21</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">22</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">23</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">24</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">25</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> | <div style="text-align: right; padding-right: 10px;">Page 160</div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">1</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">2</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">3</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">4</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">5</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">6</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">7</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">8</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">9</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">10</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">11</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">12</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">13</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">14</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">15</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">16</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">17</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">18</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">19</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">20</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">21</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">22</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">23</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">24</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 10%;">25</div> <div style="width: 80%;"> </div> <div style="width: 10%;">)</div> </div> |

41 (Pages 158 to 160)

(800) 939-0080

WWW.KRAMM.COM

(619) 239-0080