

## **EXHIBIT D**

**TRANSCRIPT OF STEVEN WYSONG  
PORTION OF 30(b)(6) DEPOSITION OF  
DEFENDANT, BRIGHT SOLAR  
MARKETING LLC**

STEVEN WYSONG  
BALES V. BRIGHT SOLAR MKTG

October 13, 2022

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UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

FLOYD STEVE BALES,  
individually, and on behalf  
of all other similarly  
situated,

Plaintiff,

CASE NO:  
5:21-cv-0496-JSM-PRL

vs.

BRIGHT SOLAR MARKETING, LLC,  
Defendant.

VIDEOCONFERENCE DEPOSITION OF

STEVEN WYSONG

BRIGHT SOLAR MARKETING, LLC

October 13, 2022

9:03 a.m.

Remote Proceeding  
Foothill Ranch, California

Amanda Colby  
Digital Reporter  
Commission No. 2408791

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(Exhibits attached to original transcript.)

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1 THE REPORTER: Good morning. My name is  
2 Amanda Colby. I am the officer assigned to take the  
3 Zoom record of this proceeding. I am a notary  
4 authorized to take acknowledgements and administer  
5 oaths in California. We are on the record at  
6 9:03 a.m. on Thursday, October 13th, 2022.

7 This is the deposition of Steven Wysong taken  
8 in the matter of Floyd Steve Bales versus Bright Solar  
9 Marketing, LLC, Case Number 5:21-cv-0496-JSM-PRL,  
10 virtual remote technology where the witness is in  
11 Foothill Ranch, California. Due to the COVID  
12 pandemic, parties are agreeing that I will swear in  
13 the witness remotely.

14 Additionally, absent an objection on the  
15 record before the witness is sworn, all parties and  
16 the witness agree that any certified transcript  
17 produced from the recording of this proceeding is  
18 intended for all uses under procedural and evidentiary  
19 regulations in the same manner as a deposition  
20 recorded by stenographic means and shall constitute  
21 written stipulation of such.

22 At this time, everyone, please identify  
23 yourself for the record, beginning with the noticing  
24 attorney.

25 MR. KAUFMAN: On behalf of the plaintiff, this

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1 is Avi Kaufman.

2 MR. GOHEEN: This is Barry Goheen,  
3 representing Bright Solar Marketing.

4 And before I go, this is not the deposition of  
5 Steven Wysong. This is the deposition of Bright Solar  
6 Marketing, LLC.

7 THE REPORTER: Got you. I will amend that. I  
8 apologize.

9 MR. GOHEEN: Thank you.

10 THE REPORTER: Thank you.

11 I will now go ahead and swear in the witness.

12 Will you please raise your right hand.

13 STEVEN WYSONG,  
14 having first been duly sworn, testified as follows:

15 THE REPORTER: Thank you.

16 You may proceed.

17 EXAMINATION

18 BY MR. KAUFMAN:

19 Q. Good morning, Mr. Wysong. Can you please  
20 state your name for the record?

21 MR. GOHEEN: Avi, you're going to have to  
22 speak up. We're having trouble hearing you.

23 MR. KAUFMAN: I'm having similar trouble  
24 hearing you. Let's go off the record for a second.  
25 Let's get the sound figured out because you guys sound

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1 like you're a little bit distant. I've got a  
2 microphone hooked up. Let me turn off the microphone.

3 MR. GOHEEN: I can hear the court reporter  
4 just fine.

5 THE REPORTER: This marks the end of Media  
6 Number One. The time is 9:05 a.m. We are off the  
7 record.

8 (A recess was taken.)

9 THE REPORTER: This marks the beginning of  
10 Media Number Two. The time is 9:05 a.m. We are on  
11 the record.

12 BY MR. KAUFMAN:

13 Q. Good morning, Mr. Wysong. Can you please  
14 state your name for the record?

15 A. My name is Steven Wysong.

16 Q. Can you please spell that?

17 A. S-T-E-V-E-N, last name Wysong, W-Y-S-O-N-G.

18 Q. Where do you live, Mr. Wysong?

19 A. I live in Oceanside, California.

20 Q. Where do you work?

21 A. I work at Freedom Forever.

22 Q. What's Freedom Forever?

23 A. Freedom Forever is a solar installation  
24 company.

25 Q. How long have you worked at Freedom Forever?

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1 A. I've worked here for a total of two years.

2 Q. What is your position at Freedom Forever?

3 A. I'm a compliance liaison at Freedom Forever.

4 Q. In your two years at Freedom Forever, have you  
5 had any positions other than compliance liaison?

6 A. Yes. In my first year, I worked as a  
7 marketing efficiency specialist.

8 Q. Is it fair to assume that you've been  
9 compliance liaison then for one year as well?

10 A. Yes.

11 Q. What is a compliance liaison?

12 A. I work in dealing with compliance along  
13 various items. I help draft demand letters for  
14 contracts that customers have not filled their end of  
15 the -- the deal. I do research on certain topics  
16 related to compliance in the legal department.

17 Q. Do you have responsibility for telemarketing  
18 compliance?

19 A. I work in researching telemarketing  
20 compliance, yes.

21 Q. Who has responsibility at Freedom Forever for  
22 telemarketing compliance?

23 A. I do.

24 Q. Aside from dealing with compliance issues and  
25 making demands of customers that don't hold up their

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1 end of the bargain, what other job responsibilities do  
2 you have as compliance liaison?

3 A. I -- I manage contract deadlines and inform  
4 internal parties whether or not -- or I inform them  
5 that the contract term is coming to an end, and I see  
6 whether they want to renew the contract or let that  
7 contract expire.

8 Q. What contracts are you referring to with  
9 respect to managing contract deadlines?

10 A. Service agreements for our company.

11 Q. Who are the service agreements? Who are the  
12 counterparties from Freedom Forever to the service  
13 agreements?

14 A. There are many service agreements, from air  
15 conditioning vendors to gardening vendors for our  
16 offices, all the way through panel suppliers.

17 Q. So those, when you refer to managing contract  
18 deadlines, that doesn't relate to contracts with  
19 consumers, correct?

20 A. Correct.

21 Q. Do you have any additional job duties as  
22 compliance liaison?

23 A. No.

24 Q. What were your responsibilities as marketing  
25 efficiency specialist?

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1 A. To review appointments and make sure that they  
2 were qualified to be sent out as appointments to our  
3 network of independent authorized dealers.

4 Q. When you say "review appointments," what do  
5 you mean by appointments?

6 A. Appointments made by the call center, making  
7 sure that they are qualified appointments.

8 Q. When you say "appointments set by the call  
9 center," what do you mean by the call center?

10 A. Bright Solar Marketing.

11 Q. Is Bright Solar Marketing the call center for  
12 Freedom Forever?

13 A. There are separate entities; however, at first  
14 when I started, we were qualifying appointments for  
15 Bright Solar Marketing the call center.

16 Q. You said "qualifying appointments from  
17 Bright Solar Marketing's call center"; is that  
18 correct?

19 A. Yes.

20 Q. Does Freedom Forever use any call centers  
21 other than ones associated with Bright Solar Marketing  
22 for setting appointments?

23 A. No.

24 Q. Have you ever worked at Bright Solar  
25 Marketing?

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1 A. I have.

2 Q. Was that immediately prior to working for  
3 Freedom Forever?

4 A. It was in between. So I worked at Freedom  
5 Forever (audio interference) and then I moved to  
6 Bright Solar for a period of one year.

7 Q. Then you came back for two years to  
8 Freedom Forever?

9 A. For one additional year, so two in total. So  
10 I went Freedom for one year, Bright Solar Marketing  
11 for one. And now I've been at Freedom for about a  
12 year.

13 Q. Okay. So in between being marketing  
14 efficiency specialist and compliance liaison at  
15 Freedom Forever, you worked at Bright Solar Marketing;  
16 is that correct?

17 A. Yes.

18 Q. What job title or titles did you have at  
19 Bright Solar Marketing?

20 A. I was a compliance manager.

21 Q. Anything else?

22 A. No.

23 Q. What were your responsibilities as a  
24 compliance manager at Bright Solar Marketing?

25 A. I managed a team of individuals that listened

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1 to calls made by the Bright Solar Marketing call  
2 center and made sure that our agents were asking the  
3 correct questions and being compliant on calls and  
4 setting appointments to the best of their ability and  
5 providing feedback to the call center manager.

6 Q. Do you understand that today you're being  
7 deposed on behalf of Bright Solar Marketing?

8 A. Yes.

9 Q. Aside from the one year as compliance manager,  
10 did you ever previously work for Bright Solar  
11 Marketing?

12 A. No.

13 Q. Does Bright Solar Marketing make appointments  
14 setting calls from their call centers for any company  
15 other than Freedom Forever?

16 A. No.

17 Q. In the past, since July 1st, 2021, has Bright  
18 Solar Marketing made calls for setting appointments on  
19 behalf of any company other than Freedom Forever?

20 A. They set appointments for a network of  
21 independent authorized dealers.

22 Q. Who are those independent authorized dealers  
23 affiliated with?

24 A. Freedom Forever.

25 Q. Can you give me an example of what an

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1 authorized dealer would be so I just can understand  
2 how the business structure works?

3 A. They are a sales rep that goes to the home  
4 after the appointment is set.

5 Q. What does the sales rep do when they go to the  
6 home after the appointment is set?

7 A. I wouldn't want to speculate on that. I've  
8 never --

9 MR. GOHEEN: Object to form.

10 BY MR. KAUFMAN:

11 Q. What's the purpose of the sales rep going to  
12 the home after an appointment is set?

13 A. To sell a solar system to the homeowner.

14 Q. Aside from appointment setting calls, what  
15 types of calls do Bright Solar Marketing's call  
16 centers make?

17 A. They only make appointment setting calls.

18 Q. Since July 2021, has that been true?

19 A. Yes.

20 Q. How many call centers does Bright Solar  
21 Marketing own?

22 A. I can't say for certain. I believe two.

23 Q. Do you know where they're located?

24 A. Las Vegas and Temecula, California.

25 Q. Do you know how many call center employees

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1 Bright Solar Marketing employs?

2 A. I do not.

3 Q. Do you know if it's more than ten?

4 A. Yes.

5 Q. Do you know if it's more than 20?

6 A. Yes.

7 Q. Do you know if it's more than 30?

8 A. I wouldn't want to speculate on that.

9 Q. Do you believe it's at least 20 call center  
10 employees that Bright Solar Marketing employs?

11 A. Yes.

12 Q. Do you know how many employees Bright -- what  
13 does Bright Solar Marketing do?

14 A. Bright Solar Marketing makes outbound calls to  
15 set appointments in qualified homeowners.

16 Q. As we discussed before, these are the  
17 appointments where the salesperson goes out to try to  
18 sell a solar system to the homeowner; is that correct?

19 A. Correct.

20 Q. Aside from making outbound calls to set  
21 appointments, is there anything else that Bright Solar  
22 does?

23 A. They may take inbound calls at times where  
24 homeowners call in and wish to set an appointment.

25 Q. Are you familiar with how Bright Solar

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1 Marketing gets leads?

2 A. Somewhat.

3 Q. Do you know how many different sources  
4 Bright Solar Marketing gets leads from?

5 A. One.

6 Q. What is that source?

7 A. That source is High Roller Marketing.

8 Q. Has High Roller Marketing been the only source  
9 of leads to Bright Solar Marketing since July 1st,  
10 2021?

11 A. To the best of my knowledge, yes.

12 Q. Do you know how long High Roller Marketing has  
13 been the sole source of leads to Bright Solar  
14 Marketing?

15 MR. GOHEEN: I object. We've got another  
16 witness that has confirmed on that particular topic.

17 MR. KAUFMAN: I understand, but if the witness  
18 has knowledge, he can respond with his personal  
19 knowledge, but he wasn't required to be prepared for  
20 the topic.

21 MR. GOHEEN: Then he can answer. You're  
22 right. He will not bind the company, but he can  
23 answer on his own personal knowledge, if you know.

24 THE WITNESS: Can you repeat the question?

25 BY MR. KAUFMAN:

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1 Q. The question was: Do you know how long High  
2 Roller has been the sole source of leads for  
3 Bright Solar Marketing?

4 A. I do not.

5 Q. Were they the sole source of leads for Bright  
6 Solar Marketing while you were there?

7 A. Yes.

8 Q. When did you start at Bright Solar Marketing?

9 A. In 2020, I believe. I don't have the specific  
10 date on my start.

11 Q. Are you familiar with what happens after a  
12 lead comes into Bright Solar Marketing from High  
13 Roller?

14 A. Somewhat, yes.

15 Q. What happens?

16 MR. GOHEEN: Same objection. Outside the  
17 scope of our designation of this witness.

18 I just don't want us to be asking duplicative  
19 questions all day.

20 MR. KAUFMAN: I understand. But, you know,  
21 there's a small number of topics, and there's a bit of  
22 overlap in what was designated here as Mr. Wysong has  
23 been designated to discuss outbound telemarketing  
24 calls, and the outbound telemarketing calls are to  
25 people whose leads were obtained from High Roller. So

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1 yeah, I appreciate that there are more direct topics,  
2 but there's not a lack of overlap with all topics  
3 here.

4 MR. GOHEEN: You can answer without -- on your  
5 personal knowledge without binding the company.

6 THE WITNESS: What's your question?

7 BY MR. KAUFMAN:

8 Q. What happens when a lead comes in from High  
9 Roller to Bright Solar Marketing?

10 A. An outbound phone call is made to set an  
11 appointment to the homeowner.

12 Q. Is it made by one of the call center agents?

13 A. Yes.

14 Q. Do you know what telephone system is used to  
15 make the outbound calls?

16 A. That would be Xencall and Bright Pattern.

17 Q. Have those been the only -- are Xencall and  
18 Bright Pattern two different systems?

19 A. Yes.

20 Q. Have those been the only two systems  
21 Bright Solar has used to make outbound calls since  
22 July 1st, 2021?

23 A. To my knowledge, yes.

24 Q. Is there something that determines what calls  
25 are made using Xencall versus what calls are made

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1 using Bright Pattern?

2 A. We no longer use Bright Pattern. Everything  
3 currently is in Xencall. They're just two different  
4 services.

5 Q. When was Bright Pattern used?

6 A. Bright Pattern, I don't have knowledge of the  
7 actual dates that Bright Pattern was used, exact  
8 dates.

9 Q. Were Bright Pattern and Xencall ever being  
10 used at the same time?

11 A. Yes.

12 Q. Do you know when the overlap was?

13 A. I wouldn't want to speculate on the exact  
14 time.

15 Q. So what happens -- how quickly after a lead  
16 comes in is an outbound telemarketing call made by a  
17 call center agent at Bright Solar Marketing?

18 A. I wouldn't have knowledge of that.

19 Q. How many leads provided by High Roller  
20 Marketing has Bright Solar called since July 1st,  
21 2021?

22 MR. GOHEEN: Object to the form.

23 If you know.

24 THE WITNESS: I wouldn't want to speculate  
25 that number either.

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1 BY MR. KAUFMAN:

2 Q. Who would know?

3 MR. GOHEEN: Object to the form, calls for  
4 speculation.

5 BY MR. KAUFMAN:

6 Q. Who would know?

7 MR. GOHEEN: Go ahead, if you know.

8 THE WITNESS: I -- I don't know who would have  
9 that knowledge.

10 BY MR. KAUFMAN:

11 Q. Do you understand that you've been designated  
12 by Bright Solar to testify about all outbound  
13 telemarketing calls made by or on behalf of  
14 Bright Solar to Florida numbers from July 1st, 2021,  
15 to the present?

16 MR. GOHEEN: I object to the form, as that  
17 topic has nothing to do with the question you asked.

18 MR. KAUFMAN: So how, Barry?

19 MR. GOHEEN: I don't have to defend it. I'm  
20 objecting.

21 MR. KAUFMAN: Okay. Well, he can respond. I  
22 mean, we can obviously disagree then if you're not  
23 going to explain why you believe that.

24 MR. GOHEEN: Nothing in there talks about  
25 leads in topic one, Avi.

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1 MR. KAUFMAN: Well, he said that -- okay.

2 BY MR. KAUFMAN:

3 Q. So how many outbound telemarketing calls has  
4 Bright Solar made to Florida telephone number since  
5 July 1st, 2021?

6 A. You'll have to go to the -- to the dialers to  
7 obtain that information, that accurate information.

8 Q. So if I went to the dialer to obtain that  
9 information, how would I get that information from the  
10 dialer?

11 A. You would have to request it from their  
12 support team, I assume.

13 Q. What does that entail? Is that a phone call?  
14 An email?

15 A. I'm not sure.

16 MR. GOHEEN: Object to the form.

17 BY MR. KAUFMAN:

18 Q. So to obtain information about how many calls  
19 were placed by Bright Solar Marketing from July 1st,  
20 2021, that were telemarketing using either the Xencall  
21 or Bright Pattern dialers, one would have to go ask  
22 Xencall or Bright Pattern; is that correct?

23 A. That's correct.

24 Q. Bright Solar is not capable of determining how  
25 many calls it's made using either of the platforms?

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1 MR. GOHEEN: Object to the form.

2 You can answer if you know.

3 THE WITNESS: No. There's no way to  
4 accurately know how many we've made. The numbers  
5 are -- they would be with Bright Pattern and Xencall.

6 BY MR. KAUFMAN:

7 Q. When you say "it would have to be requested  
8 from a support team," is that -- that's something that  
9 Bright Solar would have to do? They would have to  
10 request it from a Xencall or a Bright Pattern support  
11 team?

12 A. Someone over there would have to go get that  
13 information.

14 Q. Well, that wasn't my question you. Who -- you  
15 said it had to be requested from the support team. So  
16 who would be the one making that request?

17 A. Bright Pattern -- or sorry. Bright Solar.

18 Q. So in order to get information about Bright  
19 Solar's use of the dialer, including how many outbound  
20 calls were made from July 1st, 2021, for telemarketing  
21 purposes to Florida numbers to the present, one,  
22 Bright Solar Marketing would have to make a request to  
23 Xencall and Bright Pattern; is that correct?

24 A. It would need to be requested from them.

25 Q. Are you aware whether any request has been

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1 made by Bright Solar of Bright Pattern as to how many  
2 outbound telemarketing calls were made from July 1st,  
3 2021, to the present to Florida telephone numbers?

4 A. I wouldn't want to speculate on that.

5 Q. Well, I'm asking you if you're aware whether  
6 any effort has been made. So is the answer no, that  
7 you're not aware that any effort has been made?

8 A. No, I'm not aware.

9 Q. What did you do to prepare for today's  
10 deposition?

11 A. What do you mean?

12 Q. Well, have you ever been deposed before?

13 A. No.

14 Q. Okay. So when did you first learn you were  
15 going to be deposed?

16 A. I don't even -- I don't recall even when I  
17 first learned I was going to be deposed.

18 Q. Okay. Since learning you were going to be  
19 deposed, did you speak to anyone about Bright -- at  
20 Bright Solar about the topics you were designated for?

21 A. Yes.

22 Q. Who did you speak to?

23 A. I spoke -- I've spoken with Wil Fortenberry.

24 Q. Anyone else?

25 A. And the president of HRM, Tyler Eggleston.

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1 Q. Can you spell the last name of Tyler, please?

2 A. E -- E-G-G-L-E-S-T-O-N, I believe. I don't  
3 have it in front of me.

4 Q. What did you say was Tyler's position?

5 A. The president of High Roller Marketing.

6 Q. What is Wil Fortenberry's position?

7 A. I -- I don't know his official title.

8 Q. What did you discuss with Mr. Fortenberry?

9 MR. GOHEEN: If you discussed anything with  
10 Mr. Fortenberry in the presence of counsel, I instruct  
11 you not to respond. That's attorney-client privilege.

12 BY MR. KAUFMAN:

13 Q. Okay. Did you have any discussions with  
14 Mr. Fortenberry since learning you were being deposed  
15 in this case where counsel wasn't present?

16 A. No.

17 Q. How many discussions did you have with  
18 Mr. Fortenberry where counsel was present?

19 A. One.

20 Q. When was that?

21 A. Yesterday.

22 Q. Who notified you that you'd be -- you'd been  
23 designated on behalf of Bright Solar for a deposition?

24 A. Barry, Barry did, Barry Goheen.

25 Q. Had you ever spoken to Mr. Goheen before that?

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1 A. Yes.

2 Q. Had you ever spoken to Mr. Goheen prior to  
3 this case being filed by Mr. Bales?

4 A. No.

5 Q. Did you have any conversations with  
6 Mr. Eggleston outside the presence of Mr. Goheen?

7 A. Yes.

8 Q. How many?

9 A. Numerous. I used to work over with him over  
10 there.

11 Q. When did you work at High Roller Marketing?

12 A. I worked at Bright Solar Marketing.

13 Q. But I thought I understood that you said  
14 Mr. Eggleston was president of High Roller.

15 A. But I've met him through my work at  
16 Bright Solar Marketing.

17 Q. Since being notified that you were being  
18 deposed on behalf of Bright Solar Marketing, how many  
19 conversations have you had with Mr. Eggleston?

20 A. One, maybe.

21 Q. Okay. What did you guys discuss?

22 MR. GOHEEN: Same as -- same instruction.

23 THE WITNESS: Not answer?

24 BY MR. KAUFMAN:

25 Q. What was it? I'm sorry.

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1 A. We discussed -- I mean, we discussed --

2 MR. GOHEEN: If you can discuss -- if you were  
3 in the presence of counsel, I instruct you not to  
4 answer.

5 BY MR. KAUFMAN:

6 Q. Were you in the presence of counsel during  
7 your one conversation with Mr. Eggleston since being  
8 notified you were being deposed?

9 A. Yes.

10 Q. What counsel was there?

11 A. Barry.

12 Q. When?

13 A. Yesterday.

14 Q. Okay. Aside from meeting with Barry,  
15 Wil Fortenberry, and Tyler Eggleston yesterday, did  
16 you do anything else to prepare for your deposition?

17 A. I mean, I've looked at research of -- I've  
18 tried to dig into research of call records; however,  
19 that's stored with Bright Pattern and Xencall.

20 Q. When you say "tried to dig into research of  
21 call records," what do you mean specifically?

22 A. Tried to download call logs for -- for this  
23 and it --

24 Q. And it what?

25 A. It -- the numbers output are not accurate.

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1 Q. What numbers were output?

2 A. The number of call attempts made to Florida  
3 residents.

4 Q. What was the result that you're saying was  
5 inaccurate?

6 A. The result is call attempts versus calls made  
7 outbound. So the system can attempt to make a call;  
8 however, the system can also stop itself from making a  
9 call where an end user would never receive a phone  
10 call.

11 Q. How many call attempts did you determine had  
12 been made?

13 A. 848,401 attempts.

14 Q. Is that for both Bright Pattern and Xencall?

15 A. Yes.

16 Q. That's a combined number?

17 A. Yes.

18 Q. Do you know the breakdown?

19 A. I do not know the breakdown. I don't have it  
20 in front of me.

21 Q. But in order to determine that 848,401 number,  
22 at some point you knew the breakdown; is that correct?

23 A. That's correct.

24 Q. Do you know if there were more calls made  
25 using Bright Pattern than Xencall or the other way

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1 around?

2 A. More calls using Bright Pattern.

3 Q. Do you have a recollection of whether there  
4 was more than four times as many calls using Bright  
5 Pattern than Xencall?

6 A. There was.

7 Q. Do you have a recollection of whether there  
8 was more than ten times as many calls using Bright  
9 Pattern than Xencall?

10 A. There was.

11 Q. Would those attempted calls have been calls  
12 made to leads from High Roller?

13 A. Yes.

14 Q. Do you know if Bright Solar Marketing uses any  
15 type of prerecorded voice message in connection with  
16 its outbound telemarketing calls?

17 A. I do not know of any -- any outbound messages  
18 they're currently using, no.

19 Q. You said currently. What about previously?

20 A. I wouldn't want to speculate. I don't have  
21 100 percent certainty.

22 Q. Is it your understanding that at some point,  
23 Bright Solar Marketing was dropping voice -- dropping  
24 prerecorded messages into voice mails if consumers  
25 didn't answer, calls that were being made to them

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1 using Bright Pattern?

2 A. I have no knowledge of that process occurring  
3 at Bright Pattern.

4 Q. Is that a process that's occurred in Xencall?

5 A. Yes.

6 Q. Do you know when that process was being used  
7 in Xencall?

8 A. I do not.

9 Q. Do you know how many prerecorded calls were  
10 attempted to Florida telephone numbers by Bright Solar  
11 Marketing's call center from July 1st, 2021, to the  
12 present?

13 A. I do not.

14 MR. KAUFMAN: Barry, I just want to  
15 understand. In terms of the functionality of the  
16 calling platforms, is that a Wil topic or is that a  
17 Steven topic?

18 MR. GOHEEN: I'm sorry. Can you say that one  
19 more time, please?

20 MR. KAUFMAN: Yeah. Functionality. So if I  
21 want to get into how it was being used and what the  
22 process of using it looked like and setting up  
23 campaigns and the like, who would you suggest is the  
24 appropriate designee?

25 MR. GOHEEN: What was that topic?

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1 MR. KAUFMAN: Well, it's either all outbound  
2 telemarketing calls or it's the software used. I  
3 mean, that's why I'm asking because it seems to relate  
4 to both.

5 MR. GOHEEN: I don't see anything about a  
6 campaign in either one of those, but if we want to --  
7 I don't think it's funny. I mean, it's up to you to  
8 have specificity in your topics, you yourself.

9 MR. KAUFMAN: Okay. So you're saying neither  
10 of them are going to testify about how the software  
11 was used?

12 MR. GOHEEN: No. Well, no. I think  
13 Mr. Fortenberry has been disclosed on Number 3, the  
14 software used to make outbound telemarketing calls and  
15 that's absolutely correct. So yes, Mr. Fortenberry is  
16 the person for the software.

17 BY MR. KAUFMAN:

18 Q. Are you familiar with the process by which  
19 campaigns are set up for calling by Bright Solar  
20 Marketing?

21 A. I'm not.

22 Q. Are you familiar with any of the  
23 configurations of the calling platforms used by  
24 Bright Solar Marketing?

25 A. Can you define configurations?

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1 Q. Do you know what different modes of dialing  
2 the two different platforms provide?

3 A. I do not.

4 MR. KAUFMAN: I'm going to share my screen  
5 now, and I'm going to mark as Exhibit 1 the second  
6 amended notice of deposition.

7 (Plaintiff's Exhibit 1 was marked for  
8 identification.)

9 MR. KAUFMAN: Can see that there, Mr. Wysong?

10 MR. GOHEEN: Barely.

11 THE WITNESS: It's small, but barely.

12 BY MR. KAUFMAN:

13 Q. Have you previously seen this document, second  
14 amended notice of deposition before?

15 A. I believe so.

16 Q. I'm going to scroll down. You see here  
17 there's a list of topics?

18 A. Yes.

19 Q. You've been designated to testify on  
20 Bright Solar Marketing's behalf regarding Topics 1, 9,  
21 and 11 on this first page?

22 A. Yes.

23 Q. You've been designated by Bright Solar  
24 Marketing to testify regarding Topics 12, 17, and 18?

25 A. Yes.

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1 Q. Are you able to see this email?

2 A. Yes.

3 MR. KAUFMAN: I'm going to mark as Exhibit 2  
4 the email Bates stamped BSM 1710.

5 (Plaintiff's Exhibit 2 was marked for  
6 identification.)

7 BY MR. KAUFMAN:

8 Q. Is this an email from you to someone named  
9 KC Reben?

10 A. It is.

11 Q. Who is KC Reben?

12 A. He works at Bright Pattern.

13 Q. Do you know what he does at Bright Pattern?

14 A. I don't know his title.

15 Q. Why were you reaching out to KC Reben on  
16 January 27?

17 A. I wanted to get a declaration from  
18 Bright Pattern that under the Facebook case, they were  
19 not qualified as an autodialer.

20 Q. Why did you want such a declaration from  
21 Bright Pattern?

22 A. I think it's always good to cover yourself and  
23 have declarations from the software service that we're  
24 using.

25 Q. Did you do anything at the time to determine

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1 whether Florida had a different definition of what  
2 constitutes an autodialer than under the TCPA?

3 MR. GOHEEN: Object to the extent it calls for  
4 a legal conclusion.

5 If you know.

6 BY MR. KAUFMAN:

7 Q. You can respond if --

8 A. No, I'm not -- no, I'm not sure.

9 Q. When did you first learn about the Florida  
10 Telephone Solicitation Act?

11 A. In July of 2021.

12 Q. How did you first learn about the Florida  
13 Telephone Solicitation Act?

14 A. My supervisor messaged me and, you know, told  
15 me about what had -- what had been passed.

16 Q. Was this at -- were you at Bright Solar  
17 Marketing at the time?

18 A. I was at Freedom Forever.

19 Q. Why would you as an employee of Freedom  
20 Forever be concerned with whether or not the dialer  
21 being used by a separate entity, as you refer to it,  
22 Bright Solar Marketing complies with the TCPA?

23 MR. GOHEEN: Object to the form, beyond the  
24 scope.

25 You can answer if you know.

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1 THE WITNESS: Because I consult with them on  
2 compliance matters. I consult with Bright Solar  
3 Marketing.

4 BY MR. KAUFMAN:

5 Q. What do you mean by you consult with them on  
6 compliance matters?

7 A. I inform them of things such as the Florida  
8 TCPA and how they can avoid, you know, violations of  
9 that statute.

10 Q. Is there someone at Bright Solar Marketing  
11 since you've been at Freedom Forever that has  
12 responsibility for Bright Solar Marketing's compliance  
13 with telemarketing laws?

14 A. That would be -- I would -- I would think  
15 Wil Fortenberry.

16 Q. When did you first advise Bright Solar  
17 Marketing about Florida's Telephone Solicitation Act?

18 A. I don't recall that date.

19 Q. Do you think it was around the time that you  
20 learned about the Florida Telephone Solicitation Act?

21 MR. GOHEEN: Object to form, calls for  
22 speculation.

23 You can answer.

24 THE WITNESS: I wouldn't -- wouldn't know off  
25 the top of my head.

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1 BY MR. KAUFMAN:

2 Q. Did you requesting for KC Reben to provide  
3 this declaration have anything to do with the case  
4 brought by Mr. Bales in Florida?

5 A. I don't recall specifically if it was tied to  
6 this.

7 Q. As compliance liaison at Freedom Forever, have  
8 you ever done anything to determine whether the  
9 Bright Pattern dialer is an autodialer under the  
10 Florida Telephone Solicitation Act?

11 MR. GOHEEN: Object to the form, misstates the  
12 statute.

13 You can answer if you know.

14 THE WITNESS: I -- I don't recall  
15 specifically.

16 BY MR. KAUFMAN:

17 Q. You said before that your responsibilities  
18 include researching telemarketing compliance. Have  
19 you ever done any research on the Florida Telephone  
20 Solicitation Act?

21 A. I have.

22 Q. What research have you done?

23 A. Looking up online the statute.

24 Q. Anything else?

25 A. That's it.

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1 Q. When?

2 A. Don't -- I mean, don't recall. Within the --  
3 you know, within the last two years, year, year and a  
4 half.

5 Q. Do you know how many times you've looked up  
6 the statute as part of your responsibilities as  
7 compliance liaison at Freedom Forever?

8 A. I don't.

9 Q. Have you ever had any conversations with  
10 Mr. Fortenberry that you recall regarding the Florida  
11 Telephone Solicitation Act?

12 A. Not that I recall. Other than this case, in  
13 this case, yes.

14 Q. Other than the conversation you had with  
15 Mr. Fortenberry yesterday, have you had any other  
16 conversations with Mr. Fortenberry about the Florida  
17 Telephone Solicitation Act relating to this case?

18 A. I don't recall.

19 Q. Is there anything that -- are you taking any  
20 medications that would affect your ability to  
21 accurately recollect past events?

22 A. No.

23 Q. Are you under the influence of any drugs that  
24 would impair your ability to accurately recall past  
25 events?

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1 A. No.

2 Q. Do you have any medical conditions that would  
3 impair your ability to accurately remember past  
4 events?

5 A. No.

6 MR. KAUFMAN: I'm going to mark as Exhibit 3  
7 document Bates stamped BSM 1695.

8 (Plaintiff's Exhibit 3 was marked for  
9 identification.)

10 BY MR. KAUFMAN:

11 Q. Have you ever seen this document before?

12 A. Yes.

13 Q. What is it?

14 A. This is a screenshot of the call logs  
15 for Bales' phone number in Bright Pattern.

16 Q. Who generated this record?

17 A. I did.

18 Q. How?

19 A. I logged in to Bright Pattern.

20 Q. Then what?

21 A. And took the screenshot.

22 Q. So you logged in to Bright Pattern and this  
23 information was just there? Or take me through the  
24 steps between logging in to Bright Pattern and taking  
25 the screenshot, please.

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1 A. You log in to Bright Pattern, and then you  
2 search Bales' phone number, and then this is the  
3 result that comes up.

4 Q. Where did you search Bales' phone number?

5 A. In Bright Pattern.

6 Q. There's a search feature?

7 A. There's a search feature, yes.

8 Q. What different fields are you able to search  
9 by?

10 A. I don't recall.

11 Q. Are you able to search by telephone number?

12 A. Yes.

13 Q. Are you able to search by disposition?

14 MR. GOHEEN: Object to form.

15 THE WITNESS: I would be speculating.

16 BY MR. KAUFMAN:

17 Q. So looking at these Bright Pattern screenshot  
18 of call logs, what does the date and time field  
19 signify?

20 A. The date in which the call was made.

21 Q. Presumably after that dot, dot, dot, there's a  
22 time that was cutoff in the screenshot; is that  
23 correct?

24 MR. GOHEEN: Object to the form.

25 THE WITNESS: I'm not sure. That'd be

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1 speculation.

2 BY MR. KAUFMAN:

3 Q. You took the screenshot, right?

4 A. I did.

5 Q. Okay. You see it says date and time in the  
6 field, right?

7 A. Right.

8 Q. Is it your understanding that the  
9 Bright Pattern platform records the date and time  
10 outbound calls are made by Bright Solar Marketing?

11 A. I think that's a fair assumption.

12 Q. Well, I'm not asking for an assumption. I'm  
13 asking if that's your understanding.

14 A. It's not -- it's not shown in the picture. So  
15 I would just be assuming if I were to answer.

16 Q. So because it's not shown in this picture, you  
17 have absolutely no idea whether the Bright Pattern  
18 platform records the date and time that outbound calls  
19 are made by Bright Solar Marketing call center agents?  
20 Is that what your testimony is?

21 MR. GOHEEN: Object to the form, asked and  
22 answered.

23 BY MR. KAUFMAN:

24 Q. You can answer.

25 A. Yeah, they record the time.

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1 Q. You understand you're under oath, correct?

2 A. I do.

3 Q. What does the from field signify?

4 A. The from field is the number that originated  
5 the phone call.

6 Q. What does it mean if there's a four digit  
7 number in the from field?

8 A. I'm not sure on that.

9 Q. Do you know what the outbound telephone number  
10 3021 is?

11 A. I do not.

12 Q. What does the to field signify?

13 A. The to field is the number that received the  
14 phone call.

15 Q. Do you know what the next field that's cutoff  
16 that starts CONNE, dot, dot, dot is?

17 A. I do not.

18 Q. What does the duration field signify?

19 A. The time that took place in the call, how long  
20 the call lasted.

21 Q. Is that from the time someone answered until  
22 the time they hang up?

23 A. I believe so, yes.

24 Q. What does the flag field signify?

25 A. I do not know.

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1 Q. What does the scenario field signify?

2 A. The scenario field is the source of the call,  
3 I would assume. I'm not 100 percent sure on that, but  
4 inbound return calls means that they called in.

5 Q. What does portal outbound scenario mean?

6 A. That means it was an outbound phone call.

7 Q. Does that mean it was an outbound phone call  
8 made using the Bright Pattern dialer?

9 A. Yes.

10 Q. What does answering machine message drop mean?

11 A. I do not know.

12 Q. Who would know at Bright Solar Marketing?

13 MR. GOHEEN: Object to the form, calls for  
14 speculation.

15 THE WITNESS: I wouldn't -- I don't know. I'd  
16 be speculating on that.

17 BY MR. KAUFMAN:

18 Q. Do you understand that you've been designated  
19 by Bright Solar Marketing to testify on its behalf  
20 regarding all call reports, call logs, or documents  
21 concerning call details for the outbound telemarketing  
22 calls; is that correct?

23 MR. GOHEEN: I think you need to understand,  
24 Avi, that this is not a Bright Solar Marketing  
25 document. We are under an obligation to present

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1 people with knowledge within Bright Solar Marketing.  
2 This is not a Bright Solar Marketing document. We've  
3 produced people with knowledge of Bright Solar  
4 Marketing, so you need to understand that. Okay?

5 BY MR. KAUFMAN:

6 Q. What did you do to prepare yourself to testify  
7 regarding all call reports, call logs, or documents  
8 concerning call details for the outbound telemarketing  
9 calls made by Bright Solar Marketing?

10 A. I looked through documents such as these.

11 Q. What other documents?

12 A. The emails that I have and then the -- the  
13 Excel reports of the call log, the call attempts that  
14 were inaccurate, as we talked about earlier, the  
15 848,000 records.

16 Q. That was generated as an Excel report?

17 A. Yes.

18 Q. As a single Excel report? One spreadsheet?

19 A. Two, two different spreadsheets, one for each  
20 dialer.

21 Q. When did you generate those?

22 A. I don't recall that date. Within the last  
23 year and a half.

24 Q. Was it more than six months ago?

25 A. I'd be speculating.

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1 Q. Just so I understand. Is that between the two  
2 spreadsheets, the one for each dialer, if you were to  
3 combine them, there would be approximately 840,000  
4 lines, each line representing a call?

5 A. A --

6 MR. GOHEEN: Object to the form.

7 THE WITNESS: A record of a --

8 MR. KAUFMAN: (Indiscernible).

9 THE WITNESS: A record of a lead.

10 BY MR. KAUFMAN:

11 Q. A record of a lead?

12 A. Yes. And then the total number of attempts  
13 made to that phone number included for that lead.

14 Q. Okay. So how many total number of leads were  
15 there to which calls were attempted within the subset  
16 that we've been discussing?

17 MR. GOHEEN: Object to the form. It's outside  
18 the scope of his designation.

19 (Crosstalk)

20 THE WITNESS: I would be speculating on that  
21 number of leads.

22 BY MR. KAUFMAN:

23 Q. So the -- I'm trying to understand because now  
24 you're saying something inconsistent with what you  
25 said before. The 840,000 number, is that attempted

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1 calls or is that number of leads to which calls were  
2 made?

3 A. That is attempted phone call -- phone calls.

4 Q. So if we were to combine the two spreadsheets,  
5 it would give us the number of -- the number of lines  
6 would represent the number of unique leads to which  
7 those 840,000 calls were made in the aggregate;  
8 is that correct?

9 A. That is not correct, no.

10 Q. Okay. How is that incorrect?

11 A. There is a sum of call -- call attempts per  
12 line of leads, and I don't recall the total number of  
13 leads in that sheet.

14 Q. But if I understand you correctly, each lead  
15 has the number of call attempts in the spreadsheet  
16 associated with it, correct?

17 A. Yes.

18 Q. So somewhere in that spreadsheet, one can  
19 determine the total number of leads to which the total  
20 number of calls were made, correct?

21 A. Yes.

22 Q. Do you know if there were more than 40 leads?

23 A. There are more than 40, 40.

24 Q. Do you know if there were more than 50 leads?

25 A. Yes.

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1 Q. Do you know if there were more than 100 leads?

2 A. Yes.

3 Q. Do you know if there were more than 1,000  
4 leads?

5 A. Yes.

6 Q. Do you know if there were more than 10,000  
7 leads?

8 A. Yes.

9 Q. Do you know if there were more than 100,000  
10 leads?

11 A. I'm not sure if it's that --

12 Q. Do you know if there were more than 50,000  
13 leads?

14 A. I believe so. I'm not 100 percent sure.

15 Q. So it's your understanding that there are more  
16 than 10,000 leads obtained by Bright Solar Marketing  
17 from High Roller with Florida telephone numbers to  
18 which calls were attempted using Bright Pattern and/or  
19 Xencall from July 1st, 2021, to the present; is that  
20 correct?

21 A. To the date that the complaint was filed.

22 Q. So between July 1st, 2021, and the date that  
23 the complaint was filed, there were more than 10,000  
24 leads to which more than 800,000 calls were attempted  
25 with Florida numbers that were obtained by

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1 Bright Solar Marketing from High Roller; is that  
2 correct?

3 A. Correct.

4 Q. So that number doesn't take into account the  
5 number of calls that have been made since the filing  
6 of the complaint until the present?

7 MR. GOHEEN: Object to the form, misstates  
8 testimony.

9 You can answer.

10 THE WITNESS: That's correct.

11 BY MR. KAUFMAN:

12 Q. So if I understand you correctly, the dates  
13 during which 840,000 calls were attempted was  
14 July 1st --

15 A. To August 26th.

16 Q. -- 2021 to August 26th, 2021; is that correct?

17 A. (No audible response).

18 Q. So in a less than two-month period, more than  
19 800 -- more than 800,000 call attempts were made to  
20 more than 10,000 leads with Florida numbers obtained  
21 by Bright Solar Marketing from High Roller; is that  
22 correct?

23 A. Yeah, that's correct.

24 Q. Do you know if Bright Solar Marketing makes a  
25 consistent number of outbound telemarketing calls on a

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1 monthly basis?

2 MR. GOHEEN: Object to the form.

3 THE WITNESS: I would be speculating. I don't  
4 know.

5 BY MR. KAUFMAN:

6 Q. Does Bright Solar Marketing set a consistent  
7 number of appointments that are sent to Forever  
8 Freedom affiliates on a month-to-month basis?

9 MR. GOHEEN: Object to the form.

10 THE WITNESS: It would be speculation.

11 BY MR. KAUFMAN:

12 Q. Do you know how many total calls were made by  
13 Bright Solar Marketing to the plaintiff between  
14 July 1st, 2021, and the date the complaint was filed?

15 A. I don't know the number of calls total he  
16 received on his end.

17 Q. Well, what's the -- so what do you know about  
18 the number of calls to the plaintiff?

19 A. So there were 92 attempts made by the  
20 computer; however, those attempts may not have gone  
21 through to his -- on his end.

22 Q. When you say "92 attempts made by the  
23 computer," what do you mean by made by the computer?

24 A. By -- made by Bright Pattern by the dialer.

25 Q. What do you mean made by the dialer?

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1           A. The dialer attempted to initiate a call  
2 that -- to his phone number; however, it may have  
3 stopped itself prior to ever making that call to his  
4 phone.

5           Q. Earlier when we talked about the records that  
6 Bright Pattern and Xencall would have that are not  
7 available to Bright Solar, it was that distinction?  
8 It's which of the attempted calls were actually made;  
9 is that correct?

10           MR. GOHEEN: Object to the form, misstates  
11 prior testimony.

12           THE WITNESS: Can you repeat that, please?

13           MR. KAUFMAN: Amanda, can you please read that  
14 back?

15           THE REPORTER: Let me prepare playback. One  
16 moment, please.

17           (The requested testimony was played back.)

18           THE WITNESS: So that we would not be able to  
19 distinguish between a call made and an attempt made.

20 BY MR. KAUFMAN:

21           Q. But Bright Pattern and Xencall would, correct?

22           A. They would have those records, I would assume.  
23 They're the source of the data.

24           Q. Going back to the Bright Pattern call records,  
25 does this reflect only calls that were answered by the

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1 plaintiff?

2 MR. GOHEEN: Object to the form.

3 THE WITNESS: I would be speculating whether  
4 they were answered or not connected calls.

5 BY MR. KAUFMAN:

6 Q. What does the field service signify?

7 A. I do not know.

8 Q. What does the zoo mean?

9 A. I do not have knowledge on that.

10 Q. Is Bright Solar Marketing's call center  
11 referred to as the zoo?

12 A. I wouldn't have an answer to that. I don't  
13 know.

14 Q. What does the next field disposition signify?

15 A. Disposition is which button the agent pressed  
16 after the call.

17 Q. What are the different options the agent can  
18 press after the call?

19 A. I don't have all of them off memory. DNC  
20 means do not call. Not interested is one of them  
21 there.

22 Q. What other ones do you remember?

23 A. Disqualified in cancelation.

24 Q. Any others?

25 A. Not -- not coming to memory.

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1 Q. What's the disposition of someone who's  
2 interested?

3 A. If they are interested and want an  
4 appointment, the disposition would be appointment.

5 Q. Is there any other disposition that would be  
6 used to signify that the call recipient was  
7 interested?

8 MR. GOHEEN: Object to the form.

9 THE WITNESS: In Bright Pattern, I'm not sure  
10 if there's any other buttons other than appointment.

11 BY MR. KAUFMAN:

12 Q. What about in Xencall?

13 MR. GOHEEN: Object to the form.

14 THE WITNESS: You could go appointment or  
15 second appointment if they were rescheduling an  
16 appointment.

17 BY MR. KAUFMAN:

18 Q. Other than appointment and second appointment  
19 between Xencall and Bright Pattern, you're not aware  
20 of any other disposition that would be used by a call  
21 center agent to signify that the person that was  
22 called is interested in the solar product;  
23 is that correct?

24 A. There may be a callback in 30 days option.  
25 Yeah, in Xencall, there's a callback in 30 days option

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1 as well where (indiscernible).

2 Q. Anything else?

3 A. Nothing else I can remember.

4 Q. The next field notes, what does that signify?

5 A. I think that's just where the call center  
6 agent may leave notes for anything the homeowner said  
7 during the call that they thought noteworthy.

8 Q. Do you see that there's two entries for which  
9 there are check marks in the notes field?

10 A. I do.

11 Q. Do you know what it means for there to be a  
12 check mark in the notes field?

13 A. I do not.

14 Q. Do you know what the next field, ACCOU, dot,  
15 dot, dot is?

16 A. I do not.

17 Q. Do you know what the next field case n, dot,  
18 dot, dot is?

19 A. I do not.

20 Q. Do you know what the next field agent  
21 signifies?

22 A. Agent is the agent that was logged in at the  
23 time the call was made that made --

24 Q. And --

25 A. -- made that phone call.

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1 Q. Sorry.

2 The agent would be the Bright Solar Marketing  
3 call center agent making calls to High Roller leads;  
4 is that correct?

5 A. Correct.

6 Q. What does the next field recording signify?

7 A. I would be speculating, but I -- I believe  
8 that is the recording of the phone call.

9 Q. Do you know how long recordings are stored  
10 for?

11 A. I do not.

12 Q. Do you know if any warnings are given that  
13 recordings are being made of calls?

14 A. Yes. The agents are informing homeowners on  
15 the phone.

16 Q. You see the next two fields are SCNTIM, dot,  
17 dot, dot. Do you know what either of those are?

18 A. I do not.

19 Q. Do you see the one after that appears to be  
20 segment?

21 A. I -- I do not know what that is either.

22 Q. What about the field subject? Do you know  
23 what that is?

24 A. I do not.

25 MR. KAUFMAN: Okay. I'm going to mark as

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1 Exhibit 4 the document starting at Bates number  
2 BSM 1682.

3 (Plaintiff's Exhibit 4 was marked for  
4 identification.)

5 BY MR. KAUFMAN:

6 Q. Have you seen this document before?

7 A. Can you scroll through it?

8 Q. Yeah. Yeah. I'm happy to scroll. You tell  
9 me when to stop or move up or otherwise.

10 A. I may have, but it doesn't look familiar right  
11 off the bat.

12 Q. Do you know if these are records of calls to  
13 the plaintiff using Bright Pattern?

14 A. I do not know. I don't want to say that it is  
15 because I don't know in just looking at this.

16 Q. Is there -- do you recall a time where you  
17 ever requested call records for the calls attempted to  
18 plaintiff using Bright Pattern in a form other than  
19 that screenshot we were just looking at?

20 A. Yes.

21 Q. Who did you make that request to?

22 A. To KC Reben.

23 Q. Did KC provide them to you?

24 A. He did.

25 Q. Do you recall now whether these are the

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1 records that KC provided to you?

2 A. It's in a different format than I had provided  
3 it.

4 Q. Do you know what format KC provided it to you  
5 in?

6 A. It was in a TXT file.

7 Q. The difference of format is this is a PDF;  
8 is that correct?

9 A. Yes.

10 Q. Other than that, does this appear to be --  
11 does this appear to be similar to the record that KC  
12 provided you when you requested records of all calls  
13 attempted to the plaintiff's telephone number using  
14 Bright Pattern?

15 A. It does. It's just formatted differently.

16 Q. Okay. I'll represent to you that this is how  
17 it was produced by Bright Solar Marketing.

18 Did you ever have any communications with  
19 anyone about what these different fields in these call  
20 logs signify?

21 A. So I asked Bright Pattern to provide a  
22 glossary of the terms.

23 Q. Did they?

24 A. Yes.

25 MR. KAUFMAN: I'm going to mark as Exhibit 5

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1 the email string starting at Bates number HRM 1.

2 (Plaintiff's Exhibit 5 was marked for  
3 identification.)

4 BY MR. KAUFMAN:

5 Q. Is this the email string between you and KC  
6 regarding the request for call logs for calls made  
7 using Bright Pattern to the plaintiff and the glossary  
8 with which to interpret them?

9 A. Can you scroll down, please? I cannot see.

10 Q. Sure. Absolutely.

11 A. That's correct.

12 Q. If we scroll down here, starting at HRM 4, you  
13 say Steven. Do you see where it says "Steven,  
14 provided" and then there appears to be a glossary of  
15 the terms on Pages 4 and 5 that appear in those call  
16 records?

17 A. Yes. That's what Bright Pattern sent to me.  
18 I did not send that to them.

19 Q. Okay. So after Bright Pattern sent that to  
20 you, you said, this is fantastic, thank you so much, I  
21 am able to understand this data for the most part. Is  
22 that correct?

23 A. That's correct.

24 Q. That's when you've asked for the glossary and  
25 then they provided the glossary. Did the glossary

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1 provide you the information that you were missing?

2 A. For the most part, yes.

3 Q. Is it your understanding that the glossary  
4 accurately describes what each of the fields in the  
5 call logs we just reviewed as Exhibit 4 signify?

6 MR. GOHEEN: Object to the form.

7 THE WITNESS: As I said, for the most part.  
8 Some of them I still do not fully understand.

9 BY MR. KAUFMAN:

10 Q. Okay. Let's go through them. Which ones  
11 don't you fully understand? I can scroll down. You  
12 just tell me when.

13 A. Okay. Internal code.

14 Q. So where it says dispo-internal code?

15 A. Yes.

16 Q. Do you know what the field dispo signifies?

17 A. Dispo would be the button that was pressed by  
18 the agent as a result of the call, whether it be  
19 appointment, do not call, so...

20 Q. Okay. What other fields?

21 A. Dispo code undefined.

22 Q. Okay. Do you know what the field dispo code  
23 means?

24 A. I do not.

25 Q. Is the code -- is the field dispo code a field

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1 used by Bright Solar?

2 A. Not to my knowledge.

3 Q. Okay. Any others?

4 A. Can you stop for a sec?

5 The action dialer configured dial rule  
6 follow-up declaration -- declaration.

7 Q. Do you know what the field action signifies?

8 A. I do not.

9 Q. Okay. Any other fields?

10 A. Rescheduled from.

11 Q. What does the --

12 (Crosstalk)

13 Q. Sorry.

14 A. Rescheduled from internal.

15 Q. What is the -- do you know what the field  
16 reschedule from signifies?

17 A. I do not.

18 Q. Okay. Any others?

19 A. Resched tz.

20 Q. Do you know what that field signifies?

21 A. I do not.

22 Q. Any others?

23 A. Rescheduled to.

24 Q. Okay. Any others?

25 A. Reschedule phone.

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1 Q. Any others?

2 A. Start time internal.

3 Q. Is that a field you're familiar with?

4 A. No.

5 Q. Any others?

6 A. Work item ID internal.

7 Q. Is that a field you're familiar with?

8 A. No.

9 Q. Any others?

10 A. GIID.

11 Q. Is that a field you're familiar with?

12 A. No.

13 Q. Is it your understanding that Bright Pattern's  
14 platform records information about the call that might  
15 not be recorded by Bright Solar?

16 MR. GOHEEN: Object to the form.

17 THE WITNESS: I'm -- I'm not sure on that.

18 BY MR. KAUFMAN:

19 Q. Okay. After GIID, are there any others?

20 A. Dialing, ringing, process, connection, CPA  
21 start, CPA result, offset, internal.

22 Q. Do you know what any of those fields mean?

23 A. No.

24 Q. Okay. What about call direction? Do you know  
25 what that field means?

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1 A. I've never used that field, but the  
2 description in the glossary seems explanatory.

3 Q. Okay. So other than the ones you've  
4 identified, your understanding was consistent with the  
5 glossary of what those terms were; is that correct?

6 A. That's correct.

7 MR. KAUFMAN: I'm going to mark as exhibit --

8 MR. GOHEEN: Let's take a break before you go  
9 further. It's been about an hour and 15 minutes.

10 MR. KAUFMAN: Okay. That's fine.

11 Let's take an eight-minute break. 1:20 resume  
12 or 10:20 for you guys?

13 MR. GOHEEN: Sure.

14 MR. KAUFMAN: Okay.

15 THE REPORTER: This marks the end of Media  
16 Number Two. The time is 10:12 a.m. We are off the  
17 record.

18 (A recess was taken.)

19 THE REPORTER: This marks the beginning of  
20 Media Number Three. The time is 10:22 a.m. We are on  
21 the record.

22 MR. KAUFMAN: I'm going to share my screen  
23 again, and we're going to mark as Exhibit 6, a  
24 document starting at Bates number BSM 1705.

25 (Plaintiff's Exhibit 6 was marked for

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1 identification.)

2 BY MR. KAUFMAN:

3 Q. Have you seen this document before?

4 A. I have.

5 Q. What is it?

6 A. This is a screenshot of call records in  
7 Xencall.

8 Q. Are these records of calls from Bright Solar  
9 Marketing to the plaintiff using Xencall?

10 A. Calls from Bright Solar Marketing and made  
11 to Bright -- Bright -- made to Bright Solar Marketing  
12 by the plaintiff.

13 MR. GOHEEN: Avi, if you could take the blue  
14 off, it's easier to read when the blue is not --

15 MR. KAUFMAN: Yeah. Sorry about that, not  
16 intentional.

17 BY MR. KAUFMAN:

18 Q. Okay. So just to be clear. These are records  
19 of inbound and outbound calls between Bright Solar  
20 Marketing and the plaintiff; is that correct?

21 A. That's correct.

22 Q. These are calls only using Xencall;  
23 is that correct?

24 A. That's correct.

25 Q. Do you know why these calls were made to the

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1 plaintiff using Xencall and the ones that we looked at  
2 before were made using Bright Pattern?

3 A. They just switched services to a new -- new  
4 dialing service.

5 Q. But you said both were being used  
6 simultaneously at sometime; is that correct?

7 A. That's correct.

8 Q. Do you know how long that overlap period  
9 lasted?

10 A. I do not know the overlap period of the two.

11 Q. Here on the next page, is this a record from  
12 Xencall as well?

13 A. It is.

14 Q. Okay. What is this a record of?

15 A. This is a record of Floyd Bales' lead in  
16 Xencall.

17 Q. Where it says "affiliate," what does that  
18 signify?

19 A. That is the HR, the High Roller Marketing  
20 affiliate that generated the lead.

21 Q. What does it mean for an affiliate to generate  
22 a lead?

23 MR. GOHEEN: Object to the form.

24 Go ahead.

25 THE WITNESS: They gather leads via social

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1 media marketing.

2 BY MR. KAUFMAN:

3 Q. Do they do that by directing people to pages  
4 setup by High Roller Marketing to capture consumer  
5 information?

6 MR. GOHEEN: Object to the form.

7 If you know.

8 THE WITNESS: I'm not really sure about the  
9 intricacies of their process.

10 BY MR. KAUFMAN:

11 Q. Why is it important for Bright Solar Marketing  
12 to know who the affiliate associated with a lead is?

13 MR. GOHEEN: Object to the form.

14 You can answer.

15 THE WITNESS: I'm not sure why -- why it's  
16 important for Bright Solar Marketing to know that  
17 information.

18 BY MR. KAUFMAN:

19 Q. Why is it included in the Xencall profile for  
20 Mr. Bales' lead?

21 MR. GOHEEN: Object to the form.

22 THE WITNESS: Would be speculating on that,  
23 why it's included.

24 BY MR. KAUFMAN:

25 Q. Who inputs that information who the affiliate

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1 is?

2 A. I would be speculating on that as well.

3 Q. What does a lead ID field signify?

4 A. The lead ID is just an ID, a unique  
5 identification number assigned to that lead.

6 Q. Who assigns the lead ID?

7 A. I'd be speculating. I believe that comes from  
8 High Roller Marketing.

9 Q. Did Bright Solar have a client relationship  
10 management software that integrated with Bright  
11 Pattern?

12 A. Yes.

13 Q. What software?

14 A. The -- that is called the Lead Locker Room.

15 Q. What's the Lead Locker Room?

16 A. It's a storage site of leads that flow in from  
17 social media marketing via HRM.

18 Q. So that's -- does Lead Locker Room also  
19 integrate with Xencall?

20 A. It does.

21 Q. This information that we're looking at on the  
22 Xencall record relating to the lead, would that be  
23 information flowing through Lead Locker Room into  
24 Xencall?

25 A. That is correct.

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1 Q. So any information regarding the lead included  
2 in Xencall would also be available in Lead Locker  
3 Room; is that correct?

4 A. Not in all instances. So, for instance, if  
5 you call a homeowner and they want to update their  
6 address or make any, you know, edits to their email  
7 address or anything like that, that would not be in  
8 the Lead Locker Room. It would be in -- in Xencall.

9 Q. So Lead Locker Room would reflect the  
10 information as received from High Roller, Xencall  
11 would reflect any edits to that information; is that  
12 correct?

13 A. To my knowledge, yes.

14 MR. KAUFMAN: I'm going to mark as Exhibit 7,  
15 a document starting at Bates BSM 1696.

16 (Plaintiff's Exhibit 7 was marked for  
17 identification.)

18 BY MR. KAUFMAN:

19 Q. Have you seen this document before?

20 A. I have.

21 Q. What is it?

22 A. This is a glossary of the Bright Pattern log  
23 terms that we had spoken about on our previous session  
24 as well.

25 Q. Is this information taken from that email with

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1 KC, between you and KC?

2 A. It should have been, yes. To my knowledge,  
3 yes.

4 Q. What was the purpose of creating this sheet  
5 called Bright Pattern Log Terms Defined after  
6 receiving the glossary from KC?

7 A. This is just a glossary for -- it's the same  
8 document. It should be.

9 Q. Were you asked to put it into a different  
10 format from the email?

11 A. I may have done that on my own into Word.

12 Q. Why?

13 A. No specific reason. Just put it into Word.  
14 More digestible.

15 Q. Is your understanding that the fields here  
16 would be consistent with the fields as described in  
17 KC's email?

18 A. I wouldn't know right off the top of my head.  
19 I -- I may have made edits to this, to the -- to the  
20 terms that I understood. I'm not -- however, I'm not  
21 sure on that.

22 Q. To the extent that you edited any of the terms  
23 that you understood, would those edits reflect your  
24 understanding of how the Bright Pattern system logged  
25 information about calls?

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1 A. Sorry. What do -- what do you mean? Can you  
2 expand on that?

3 Q. Well, to the extent that you edited something,  
4 why would you have edited any of the definitions that  
5 KC provided you?

6 MR. GOHEEN: Object to the form, asked and  
7 answered.

8 You can answer again.

9 THE WITNESS: If I understood them, I may have  
10 made edits. I may not have. I don't even recall.

11 BY MR. KAUFMAN:

12 Q. Why would you have made edits if you did, if  
13 you understood them?

14 A. For our counsel to understand the differences.

15 Q. Your edits weren't based off having a  
16 differing understanding from KC about what any of the  
17 terms meant, were they?

18 A. What? Sorry. What do you mean by that?

19 Q. So to the extent that you made any edits to  
20 the glossary as KC provided it to you, you didn't make  
21 any substantive edits based off of your belief that  
22 what KC was telling you what the fields meant was  
23 inaccurate; is that accurate?

24 A. That's -- yeah, I was not making edits because  
25 I believe KC's -- KC is the source of the data, so I

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1 trust his accuracy.

2 MR. KAUFMAN: I'm going to share with you and  
3 mark as Exhibit 8 a spreadsheet titled FLDNC  
4 7.1.21-present CSV.

5 (Plaintiff's Exhibit 8 was marked for  
6 identification.)

7 BY MR. KAUFMAN:

8 Q. Have you seen this document before?

9 A. I have.

10 Q. What is it?

11 A. This is a download of the do not call list  
12 from one of our dialers.

13 Q. Which dialer?

14 A. This appeared to be from Xencall.

15 Q. Would the do not call list on Xencall be the  
16 same as the do not call list on Bright Pattern?

17 MR. GOHEEN: Object to the form.

18 THE WITNESS: There would be overlap, yeah.  
19 These are the combined, I believe. To the best of my  
20 knowledge, this is a combined do not call list from  
21 the dialers, actually, yeah.

22 BY MR. KAUFMAN:

23 Q. Who generated this record?

24 A. I downloaded this list.

25 Q. From where?

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1 A. From the dialers.

2 Q. How did you limit it to Florida numbers?

3 A. By going off of area codes in Florida.

4 Q. Take me through the process. You logged in to  
5 the Bright Pattern platform, and then what did you do  
6 to end up with a record that was only Florida numbers  
7 that were on the DNC after July 1st, 2021?

8 A. I gathered a list of Florida area codes online  
9 and then downloaded the entire list and filtered out  
10 any numbers that did not have area codes that matched  
11 Florida area codes.

12 Q. What software did you use to query the list to  
13 limit it to Florida area codes?

14 A. I used Excel to prepare this data.

15 Q. What does it mean for a telephone number to be  
16 on the Florida DNC 7.1.21 to present CSV?

17 A. That means the numbers on the do not call list  
18 in the dialers and -- will not be called.

19 Q. How does a number end up on the do not call  
20 list in the dialer so that it won't be called?

21 A. Consumers can request during phone calls that  
22 they be placed on the do not call list, and the agents  
23 should be placing them on that list and that's how  
24 their number ends up on here.

25 Q. So if I understand correctly, between

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1 January 1st -- excuse me, between July 1st and --  
2 I wonder why it won't go to the end here.

3 A. If you select one of the numbers and hit  
4 control shift arrow down, it'll go to the bottom of  
5 the list.

6 Q. There we go. Thank you. Okay. So if I  
7 understand this correctly, this FLDNC 7.1.21 to  
8 present signifies that there were 55,589 telephone  
9 numbers that were added to Bright Solars' internal do  
10 not call list from July 1st, 2021, to June 28th, 2022,  
11 that had Florida area codes; is that correct?

12 A. That's what the data shows, correct.

13 Q. Do you know the total number of numbers on  
14 Bright Solars' do not call list not limited to Florida  
15 numbers?

16 A. I do not.

17 Q. You said you filtered down from a broader  
18 list. How big was the list that you filtered the  
19 Florida telephone numbers from?

20 MR. GOHEEN: Object to the form.

21 THE WITNESS: I don't recall.

22 MR. KAUFMAN: Well, why don't we take a  
23 five-minute break. I think I might be done with you,  
24 but I just want to go through my notes and confirm.

25 MR. GOHEEN: Sure.

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1 MR. KAUFMAN: All right. Thanks.

2 THE REPORTER: This marks the end of Media  
3 Number Three. The time is 10:38 a.m. We are off the  
4 record.

5 (A recess was taken.)

6 THE REPORTER: This marks the beginning of  
7 Media Number Four. The time is 10:42 a.m. We are on  
8 the record.

9 MR. KAUFMAN: Thank you, Mr. Wysong. I don't  
10 have any additional questions for you, subject to  
11 redirection, Mr. Goheen ask you any questions.

12 MR. GOHEEN: I have no questions.

13 MR. KAUFMAN: Perfect. Do you guys want to  
14 read or waive, Barry?

15 MR. GOHEEN: We'll read. You get a chance to  
16 read it at a later date.

17 MR. KAUFMAN: We can go off the record when  
18 you're ready, Amanda, and then, Barry, let's figure  
19 out logistics for the next deposition.

20 THE REPORTER: Okay. This marks the end of  
21 Media Number Four. The time is 10:42 a.m. We are off  
22 the record.

23 (The deposition concluded at 10:42 a.m.)  
24  
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1 CERTIFICATE OF DIGITAL REPORTER

2  
3 I, AMANDA COLBY, a Digital Reporter and  
4 Notary Public in and for the State of California, do  
5 hereby certify:

6  
7 That the foregoing witness was by me duly  
8 sworn; that the proceeding took place before me at the  
9 time and place herein set forth; that the testimony  
10 and proceedings were accurately captured with  
11 annotations by me during the proceeding.

12  
13 I further certify that I am not related to  
14 any of the parties to this action by blood or marriage  
15 and that I am in no way interested in the outcome of  
16 this matter.

17  
18 IN WITNESS THEREOF, I have hereunto set my  
19 hand this 18th day of October, 2022.

20  
21 *Amanda Colby*

22 \_\_\_\_\_  
23 Amanda Colby  
24 Notary Commission California 2408791  
25 Commission Expires: June 23, 2026

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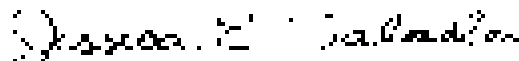
CERTIFICATE OF TRANSCRIPTIONIST

I, Jessica E. Salada, Registered Professional Reporter, do hereby certify:

That the foregoing is a complete and true transcription of the original digital audio recording of the testimony and proceedings captured in the above-entitled matter. As the transcriptionist, I have reviewed and transcribed the entirety of the original digital audio recording of the proceeding to ensure a verbatim record to the best of my ability.

I further certify that I am neither attorney for nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this matter.

IN WITNESS THEREOF, I have hereunto set my hand this 18th day of October 2022.



---

Jessica E. Salada, RPR

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DEPOSITION ERRATA SHEET

Assignment No. J8741667

Case Caption: Floyd Steve Bales v. Bright Solar  
Marketing, Inc.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read  
the entire transcript of my deposition taken in the  
above-captioned matter or the same has been read to  
me, and the same is true and accurate, save and except  
for changes and/or corrections, if any, as indicated  
by me on the DEPOSITION ERRATA SHEET hereof, with the  
understanding that I offer these changes as if still  
under oath.

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
STEVEN WYSONG  
BRIGHT SOLAR MARKETING, LLC

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BALES V. BRIGHT SOLAR MKTG

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DEPOSITION ERRATA SHEET

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STEVEN WYSONG - BRIGHT SOLAR MARKETING, LLC



STEVEN WYSONG  
BALES V. BRIGHT SOLAR MKTG

October 13, 2022  
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