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STRIKE PAGE

1 CASE NUMBER: BC470714  
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES  
3 LOS ANGELES, CALIFORNIA MONDAY, OCTOBER 17, 2016  
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN  
5 APPEARANCES: (AS HERETOFORE NOTED.)  
6 REPORTER: ELORA DORINI, CSR NO. 13755  
7 TIME: 11:00 A.M.  
8

9 ---000---

10

11 THE COURT: WE'RE ON THE RECORD. SO WHY  
12 DOESN'T SOMEONE BRING ME UP TO DATE WHERE YOU ARE.

13 MR. PARIS: ALL RIGHT. WE WENT THROUGH THE  
14 19-PAGE INDEX OF EXHIBITS. WE'VE COME TO A NUMBER OF  
15 STIPULATIONS AND A LARGE NUMBER OF WITHDRAWALS, AS  
16 WELL.

17 THE COURT: ALL RIGHT.

18 MR. PARIS: SO AT THIS POINT, I GUESS, I'LL  
19 JUST LET YOU KNOW WHAT WE'VE COME TO. STARTING ON  
20 PAGE 2, AT EXHIBIT 167, WE'VE AGREED TO PAGE --  
21 IDENTIFIED AS 2030.

22 THE COURT: YES.

23 MR. PARIS: GOING TO PAGE 3 AT EXHIBIT 181.  
24 THAT IS TO BE WITHDRAWN.

25 THE COURT: EXCUSE ME, JUST ONE SECOND.  
26 ON 167, WHICH HAD ONE PAGE IDENTIFIED, WHAT'S HAPPENED  
27 TO THAT?

28 MR. PARIS: PAGE 2019 WAS ALREADY RECEIVED,

1 SUBJECT TO A LIMITING INSTRUCTION.

2 THE COURT: OKAY.

3 MR. PARIS: AND THEN 2030, WE STIPULATED TO  
4 ITS ADMISSIBILITY TO BE RECEIVED.

5 THE COURT: STIPULATED WHAT? I'M SORRY.

6 MR. PARIS: TO ITS ADMISSIBILITY AND TO BE  
7 RECEIVED.

8 THE COURT: SO IT CAN BE RECEIVED?

9 MR. PARIS: SO IT CAN BE RECEIVED.

10 THE COURT: OKAY. AND NEXT?

11 MR. PARIS: EXHIBIT NUMBER 181. PLAINTIFF  
12 WITHDRAWS THE REQUEST AS TO EXHIBIT 181.

13 THE COURT: WITHDRAWN, OKAY. NEXT.

14 MR. PARIS: EXHIBIT NUMBER 183. STIPULATED AS  
15 TO ADMISSIBILITY AND ASK TO BE RECEIVED.

16 THE COURT: IT WILL BE RECEIVED. ALL RIGHT.

17 MR. PARIS: EXHIBIT NUMBER 207 ON PAGE 4 OF  
18 THE INDEX. STIPULATED AS TO ADMISSIBILITY OF THE BATES  
19 RANGE 002732 THROUGH 002750.

20 THE COURT: AND THAT'S STIPULATED AND MAY BE  
21 RECEIVED. CORRECT? IS THAT CORRECT?

22 MR. PARIS: THAT'S CORRECT.

23 THE COURT: OKAY. THERE WAS ANOTHER  
24 PAGE, 2876, THAT WAS MARKED.

25 MR. PARIS: THAT ONE, THERE IS NO STIPULATION  
26 AS TO THAT PAGE.

27 THE COURT: SO IS THAT STILL AT ISSUE, THEN?

28 MR. PARIS: STILL AT ISSUE.

1 MR. PRAGER: YOUR HONOR, IF I MAY. THAT'S ONE  
2 OF THE DISABILITY EXHIBITS.

3 JUST TO BE CLEAR, TO HELP MR. PARIS FOR A  
4 SECOND, WE'VE CATEGORIZED A NUMBER OF DISABILITY  
5 EXHIBITS INTO GROUPINGS TO ADDRESS TO THE COURT WHAT  
6 MR. PARIS HAS DONE TO OUTLINE THE ISSUES WE'LL NEED THE  
7 COURT NEEDS TO ADDRESS AND GIVE US SOME GUIDANCE ON.

8 THE COURT: ALL RIGHT. GO AHEAD, MR. PARIS.

9 MR. PARIS: AS TO EXHIBIT 324, STIPULATE AS TO  
10 THE ADMISSIBILITY, AND ASK IT TO BE RECEIVED INTO  
11 EVIDENCE.

12 THE COURT: HOLD ON JUST A SECOND.

13 MR. PARIS: 324 IS ONE OF THE EXHIBITS  
14 IDENTIFIED IN THE DEPOSITION OF BETH MINOR.

15 THE COURT: ALL RIGHT. AND THAT'S STIPULATED,  
16 MAY BE RECEIVED?

17 MR. PARIS: THAT'S CORRECT, YOUR HONOR.

18 THE COURT: OKAY. NEXT.

19 MR. PARIS: EXHIBIT 326 IS ANOTHER EXHIBIT  
20 IDENTIFIED IN THE DEPOSITION OF BETH MINOR. STIPULATED  
21 AS TO ITS ADMISSIBILITY AND ASKED TO BE RECEIVED.

22 THE COURT: ALL RIGHT.

23 MR. PARIS: EXHIBIT 328. THAT'S TO -- EXHIBIT  
24 TO THE CANDIS NELSON DEPOSITION. STIPULATE AS TO ITS  
25 ADMISSIBILITY AND ASK TO BE RECEIVED.

26 THE COURT: ALL RIGHT.

27 MR. PARIS: EXHIBIT 339. THAT'S EXHIBIT 12 TO  
28 THE DEPOSITION OF CANDIS NELSON. STIPULATE AS TO THE

1           ADMISSIBILITY AND ASK TO BE RECEIVED.

2                   THE COURT:   ALL RIGHT.

3                   MR. PARIS:   EXHIBIT 341 IS -- PLAINTIFF  
4           WITHDRAWS THE REQUEST AS TO THAT EXHIBIT.

5                   THE COURT:   ALL RIGHT.

6                   MR. PARIS:   EXHIBIT 400.   THAT'S EXHIBIT 7 TO  
7           THE DEPOSITION OF MUZEYYAN BALABAN.   STIPULATE AS TO  
8           THE ADMISSIBILITY AND ASK TO BE RECEIVED.

9                   THE COURT:   ALL RIGHT.   BE RECEIVED.

10                  MR. PARIS:   EXHIBIT 403.   THAT'S EXHIBIT  
11           NUMBER 10 TO THE DEPOSITION OF MUZEYYAN BALABAN.  
12           STIPULATE AS TO ADMISSIBILITY AND ASK TO BE RECEIVED.

13                  THE COURT:   IT WILL BE RECEIVED.

14                  MR. PARIS:   EXHIBIT 404, 405, 406, 407,  
15           AND 408, ALL OF THOSE.   EXHIBITS 11 THROUGH 15 TO THE  
16           DEPOSITION OF MUZEYYAN BALABAN.   ALL OF THOSE,  
17           STIPULATE TO ADMISSIBILITY, AND ASK TO BE RECEIVED.

18                  THE COURT:   ALL RIGHT.   BE RECEIVED.

19                  MR. PARIS:   EXHIBIT 409.   EXHIBIT 16 TO THE  
20           DEPOSITION OF MUZEYYAN BALABAN.   STIPULATE AS TO  
21           ADMISSIBILITY, ASK TO BE RECEIVED.

22                  THE COURT:   ALL RIGHT.   BE RECEIVED.

23                  MR. PARIS:   EXHIBIT 436, WHICH IS EXHIBIT 15  
24           TO THE DEPOSITION OF KIMBERLY ROGERS.   STIPULATE AS TO  
25           ADMISSIBILITY AND ASK TO BE RECEIVED.

26                  THE COURT:   ALL RIGHT.

27                  MR. PARIS:   EXHIBIT 437, WHICH IS EXHIBIT 16  
28           TO THE DEPOSITION OF KIMBERLY ROGERS.   STIPULATE TO

1           ADMISSIBILITY AND ASK TO BE RECEIVED.

2                   THE COURT:   ALL RIGHT.

3                   MR. PARIS:   EXHIBIT 500.   PLAINTIFF WITHDRAWS  
4           THE REQUEST AS TO THAT EXHIBIT.

5                   THE COURT:   ALL RIGHT.   WITHDRAWN.

6                   MR. PARIS:   EXHIBIT 502, WHICH IS EXHIBIT 4 TO  
7           THE DEPOSITION OF SANDERS.   STIPULATE AS TO  
8           ADMISSIBILITY AND ASK TO BE RECEIVED.

9                   THE COURT:   ALL RIGHT.

10                  MR. PARIS:   EXHIBIT 533, WHICH IS EXHIBIT 23  
11           TO THE DEPOSITION OF SUSAN PENDER.   STIPULATE AS TO  
12           ADMISSIBILITY, SUBJECT TO THE LIMITING INSTRUCTION, AND  
13           ASK TO BE RECEIVED.

14                  THE COURT:   OKAY.

15                  MR. PARIS:   EXHIBIT 537, WHICH IS EXHIBIT 27  
16           TO THE DEPOSITION OF SUSAN PENDER.   STIPULATE AS TO  
17           ADMISSIBILITY, SUBJECT TO LIMITING INSTRUCTION, AND ASK  
18           TO BE RECEIVED.

19                  THE COURT:   OKAY.

20                  MR. PARIS:   EXHIBIT 559, WHICH IS EXHIBIT 8 TO  
21           THE DEPOSITION OF PINEDO.   PLAINTIFF WITHDRAWS THE  
22           REQUEST.

23                  THE COURT:   ALL RIGHT.   BE DEEMED WITHDRAWN.

24                  MR. PARIS:   NEXT ONE I HAVE HERE IS  
25           EXHIBIT 708, SPECIFICALLY BATES NUMBER --

26                  THE COURT:   EXCUSE ME, THAT'S 708?

27                  MR. PARIS:   ON THE INDEX, IT'S AT THE BOTTOM  
28           OF PAGE 12.

1 THE COURT: WHAT'S THE EXHIBIT NUMBER?

2 MR. PARIS: 708. YES. MY APOLOGIES.

3 THE COURT: GO AHEAD.

4 MR. PARIS: THE SPECIFIC BATES NUMBER  
5 OF 016283, WHICH IS EXHIBIT 4 TO THE DEPOSITION OF  
6 MICHELLE HOCHSTEIN. STIPULATE AS TO ADMISSIBILITY AND  
7 ASK TO BE RECEIVED.

8 THE COURT: ALL RIGHT.

9 MR. PARIS: THE PORTION OF EXHIBIT 708  
10 SPECIFICALLY IDENTIFIED AS BATES NUMBER 016290  
11 THROUGH 016291, EXHIBIT 6 TO THE DEPOSITION OF  
12 MICHELLE HOCHSTEIN. PLAINTIFF WITHDRAWS THE REQUEST AS  
13 TO THAT -- THOSE BATES.

14 THE COURT: ALL RIGHT. BE DEEMED WITHDRAWN.

15 MR. PARIS: EXHIBIT 710. SPECIFIC BATES  
16 NUMBERS 017043 THROUGH 017044. PLAINTIFF WITHDRAWS THE  
17 REQUEST AS TO THOSE SPECIFIC.

18 THE COURT: WILL BE DEEMED WITHDRAWN.

19 MR. PARIS: EXHIBIT 719, WITH THE SPECIFIC  
20 BATES RANGE 019387 THROUGH 019388, EXHIBIT 6 TO THE  
21 DEPOSITION OF VICTORIA SCHEELE. STIPULATE AS TO  
22 ADMISSIBILITY AND ASK TO BE RECEIVED.

23 THE COURT: ALL RIGHT. BE RECEIVED.

24 MR. PARIS: EXHIBIT 720, THE SPECIFIC BATES  
25 RANGE OF 019679 THROUGH 019680, EXHIBIT 12 TO THE  
26 DEPOSITION OF VICTORIA SCHEELE. PLAINTIFF WITHDRAWS  
27 THE REQUEST AS TO THAT EXHIBIT.

28 THE COURT: ALL RIGHT. DEEMED WITHDRAWN.

1 MR. PARIS: EXHIBITS 765, 766, AND 767.  
2 PLAINTIFF WITHDRAWS THE REQUEST AS TO THOSE EXHIBITS.

3 THE COURT: THEY WILL BE DEEMED WITHDRAWN.

4 MR. PARIS: EXHIBITS 785 AND 786 WERE MARKED  
5 FOR IDENTIFICATION ONLY. THERE WAS ALREADY A  
6 STIPULATION AS TO THEIR ADMISSIBILITY. THEY WERE  
7 ALREADY PUBLISHED TO THE JURY DURING DR. ACHAR'S --

8 THE COURT: ALL RIGHT. SO THOSE ARE RECEIVED.

9 MR. PARIS: THOSE ARE TO BE RECEIVED.

10 EXHIBIT 789, THE PARENTING PAMPHLET, THE  
11 OWNER'S MANUAL. THERE WAS TWO IDENTIFIED PAGES.  
12 STIPULATE AS TO ADMISSIBILITY AND ASK TO BE RECEIVED.

13 THE COURT: ALL RIGHT. IT WILL BE RECEIVED.

14 MR. PARIS: I BELIEVE THAT'S EVERYTHING FROM  
15 THE...

16 THE COURT: 1077.78.

17 MR. PARIS: MY APOLOGIES. ONE MORE. AS TO  
18 EXHIBIT 1077 WITH THE SPECIFIC BATES NUMBER 1077.78.  
19 STIPULATE AS TO ADMISSIBILITY AND ASK TO BE RECEIVED.

20 THE COURT: ALL RIGHT. BE RECEIVED.

21 MR. PARIS: THERE'S STILL A LARGE OF NUMBER OF  
22 EXHIBITS TO BE WITHDRAWN AS DUPLICATIVE. I CAN READ  
23 THOSE AT THIS POINT.

24 THE COURT: DO YOU HAVE THOSE NUMBERS?

25 MR. PARIS: I DO, INDEED.

26 THE COURT: LET'S PUT THEM ON THE RECORD,  
27 MR. PARIS. YOU'RE DOING WONDERFULLY SO FAR.

28 MR. PARIS: THANK YOU, YOUR HONOR.



1 THE COURT: YOU'RE WELCOME.

2 MR. PARIS: ALL RIGHT. PLAINTIFF WITHDRAWS  
3 THE REQUEST AS TO EXHIBITS 248, 260, 262, 263, 264,  
4 325, 331, 332, 334, 335, 336, 337, 338, 340, 366, 377,  
5 381, 382, 383, 386, 387, 399, 402, 425, 443, 444, 453,  
6 458, 488, 489, 491, 494, 495, 499, 504, 512, 516, 517,  
7 558. AND THAT LOOKS TO BE ALL OF THEM.

8 THE COURT: ALL RIGHT.

9 MR. PARIS: ANYTHING THAT'S REMAINING IS STILL  
10 IN DISPUTE.

11 THE COURT: ALL RIGHT. WELL, THE -- AS --  
12 MS. SWISS AND MR. GUTERRES, DID YOU FOLLOW MR. PARIS'S  
13 RECITATION?

14 MS. SWISS: YES.

15 THE COURT: AND IS IT ACCURATE, AS YOU  
16 UNDERSTAND IT?

17 MS. SWISS: YES.

18 THE COURT: ALL RIGHT. SO ALL OF THOSE  
19 EXHIBITS WHICH HAVE BEEN WITHDRAWN, WILL BE DEEMED  
20 WITHDRAWN. AS FOR THOSE EXHIBITS, WHICH HE HAS  
21 RECITED, FOR WHICH THERE IS A STIPULATION THEY BE  
22 RECEIVED, WILL BE RECEIVED IN EVIDENCE.

23 SO, MR. PARIS, DO YOU HAVE A LIST OF WHAT'S  
24 LEFT? OR ARE WE GOING TO RELY ON THE CLERK TO DO THAT?

25 MR. PARIS: MY APOLOGIES. WE HAD THE  
26 CONFERENCE, AS YOU COULD TELL, THIS MORNING. I WILL --  
27 I CAN HAVE THAT TO YOU BY TOMORROW.

28 THE COURT: NOW, THE -- I'M GOING TO TAKE --

1 WE'LL TAKE A SHORT RECESS, GIVE THE CLERK THE  
2 OPPORTUNITY TO CREATE A FURTHER LIST. AND THEN WE WILL  
3 TAKE A LOOK AT THOSE WHICH HAVE NOT BEEN WITHDRAWN, AND  
4 THOSE TO WHICH THERE'S NO STIPULATION.

5 SO WE'LL BE IN RECESS FOR WHATEVER PERIOD OF  
6 TIME THE CLERK NEEDS.

7 THE CLERK: JUST A FEW MINUTES.

8 (LUNCH WAS TAKEN FROM 11:58 A.M. TO 1:32 P.M.)

9 THE COURT: ON THE RECORD. WHERE ARE WE ON  
10 OUR LIST? HAS THAT BEEN RECONCILED?

11 MR. PARIS: IT'S BEEN -- I HAVE IT HERE. I  
12 JUST HAVEN'T HAD A CHANCE TO DELIVER IT TO YOU YET.  
13 THIS IS THE INDEX OF WHAT IS REMAINING, AS OF THIS  
14 AFTERNOON.

15 THE COURT: ALL RIGHT. SO, MR. GUTERRES?

16 MR. GUTERRES: YES, YOUR HONOR?

17 THE COURT: YOU INDICATED BEFORE THE NOON  
18 RECESS THAT THERE ARE CERTAIN CATEGORIES OF DOCUMENTS,  
19 WHICH APPARENTLY REPRESENT A SIGNIFICANT NUMBER OF  
20 DOCUMENTS, THAT YOU FELT COULD BE ADDRESSED AS A GROUP.

21 MR. GUTERRES: YES, YOUR HONOR.

22 THE COURT: TELL US WHAT THOSE ARE.

23 MR. GUTERRES: I THINK THE TWO CATEGORIES  
24 RELATES TO THE CIVIL RIGHTS INVESTIGATION DOCUMENTS.

25 MR. PRAGER: DISABILITY DISCRIMINATION.

26 MR. GUTERRES: YEAH. THE DISABILITY  
27 DISCRIMINATION DOCUMENTS. AND THE SECOND CATEGORY OF A  
28 GOOD CHUNK OF THOSE HAVE TO DO WITH THE DAMAGES

1 EXHIBITS BY MS. DUVAL.

2 MR. PRAGER: MAY I ADDRESS THE DISABILITY  
3 DISCRIMINATION EXHIBITS, YOUR HONOR?

4 THE COURT: WELL, YOU CAN, BUT LET ME -- AS TO  
5 THE DISCRIMINATION DOCUMENTS, THESE ARE LETTERS OR  
6 EMAILS --

7 MS. SWISS: WITHIN THE DISCRIMINATION  
8 DOCUMENTS, THERE'S -- WITHIN THAT, TWO CATEGORIES, TWO  
9 GRAND CATEGORIES.

10 THE ONE CATEGORY ARE THE CIVIL RIGHTS  
11 INVESTIGATION UNIT REPORTS. AND THE ISSUE IS,  
12 NUMBER ONE, WHETHER THOSE REPORTS SHOULD BE ADMITTED AT  
13 ALL.

14 AND IF SO, IF THEY SHOULD BE ADMITTED WITH ALL  
15 OF THEIR ATTACHMENTS. IT IS DEFENDANT'S POSITION --  
16 THIS CHANGED, DEPENDING ON THE COURT'S POSITION ON  
17 THAT.

18 THE SECOND CATEGORY IS, THERE ARE EXHIBITS  
19 CREATED BY THE PLAINTIFF'S COUNSEL THAT WERE USED IN  
20 DIFFERENT DEPOSITIONS, THAT WERE STATEMENTS FROM THE --  
21 FROM THE REPORTS.

22 AND THERE WAS -- TAKEN FROM THE REPORTS, PUT  
23 ON A PIECE OF PAPER BY PLAINTIFF'S COUNSEL, AND THEN  
24 PLAINTIFF'S COUNSEL CIRCLED TRUE OR FALSE ON THOSE  
25 PIECES OF PAPER.

26 AND THE PLAINTIFF WOULD LIKE THOSE ADMITTED  
27 INTO EVIDENCE, AND THE DEFENSE WILL BE OBJECTING TO ALL  
28 OF THOSE. AND THAT'S PROBABLY UPWARDS OF 20 EXHIBITS.

1 IT'S SAME TYPE OF EXHIBIT AND IT'S THE SAME OBJECTION  
2 TO ALL OF THEM.

3 THE COURT: OKAY. AND AS TO THE DOCUMENTS  
4 PERTAINING TO DAMAGES, I DO RECALL SEEING SUMMARIES  
5 THAT HAVE BEEN PREPARED BY MS. DUVAL. AND THERE MAY  
6 ALSO BE DOCUMENTS WHICH ARE ACTUAL RECEIPTS OR  
7 BILLINGS.

8 MR. GUTERRES: CORRECT, YOUR HONOR.

9 THE COURT: SO THOSE TWO CATEGORIES?

10 MR. GUTERRES: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. AND THE -- ALL RIGHT.

12 SO LET'S GO TO THE -- REFER TO GENERICALLY AS THE  
13 DISCRIMINATION DOCUMENTS. SO, MR. PRAGER, YOU'RE GOING  
14 TO NEED TO TELL ME SOMETHING ABOUT THOSE.

15 MR. PRAGER: THANK YOU, YOUR HONOR. AND I  
16 HAVE A COPY HERE OF ONE OF THE FORMS THAT MS. SWISS IS  
17 TALKING ABOUT, IF THE COURT WOULD LIKE IT.

18 THE COURT: THE TRUE OR FALSE THING?

19 MR. PRAGER: YES.

20 THE COURT: ALL RIGHT.

21 MR. PRAGER: TO START WITH, YOUR HONOR, THIS  
22 IS A MODEL YOU'RE LOOKING AT. AND BEFORE YOU, I  
23 BELIEVE, IS 4.1, BUT THE EXHIBIT NUMBERS THAT ARE  
24 BEFORE THE COURT WITH THIS TYPE OF INFORMATION  
25 ARE 704, 708, 710.

26 AND I CAN GIVE YOU MORE SPECIFICS IF YOU WANT,  
27 BUT WE AGREE THIS MODEL HAS BEEN REPLICATED A NUMBER OF  
28 TIMES. FROM PLAINTIFF'S PERSPECTIVE, THIS WAS ASKED OF

1 THE WITNESS, AND THE WITNESS CONFIRMED THAT THIS  
2 INFORMATION WAS IN THE REPORT THAT IT WAS DRAWN FROM.

3 NOW, WHEN WE OFFERED THE VIDEOTAPED  
4 DEPOSITIONS, THE PORTIONS OF THESE DOCUMENTS THAT HAVE  
5 BEEN PROFFERED WERE THE ONES THE WITNESS MADE REFERENCE  
6 TO AS PART OF THE VIDEOTAPED DEPOSITION.

7 IN RULING ON THE VIDEOTAPED DEPOSITIONS, THE  
8 COURT STRUCK THE REFERENCES TO TRUE/FALSE ON THE BOTTOM  
9 OF THE PAGE. SO WE ARE TALKING -- COUNSEL IS TALKING  
10 ABOUT HOW TO MANAGE THESE DOCUMENTS.

11 THE PLAINTIFF BELIEVES THAT THEY'LL SAVE TIME,  
12 AND THEY CAN BE DEMONSTRATIVE, TO HELP CONFIRM WHAT THE  
13 WITNESSES' TESTIMONY WAS AS THEY ADOPTED IT IN EACH  
14 VIDEO DEPOSITION.

15 THE PLAINTIFF'S SUGGESTION IS, BECAUSE THE  
16 COURT STRUCK THE TRUE/FALSE ON THE BOTTOM OF THE PAGE,  
17 IS TO BLACK OUT OR OMIT -- OR WE CAN EVEN GO BACK AND  
18 ELIMINATE IT IF THE COURT WANTS US TO -- THE TRUE/FALSE  
19 BUSINESS ON THE BOTTOM OF THE PAGE.

20 AND JUST USE THE STATEMENTS WHICH THE JURY  
21 HEARD READ TO THE WITNESS, WHICH THE WITNESS CONFIRMED  
22 DURING EACH WITNESS'S DEPOSITION.

23 AND, AGAIN, THE GOAL WOULD BE TRY AND SAVE  
24 TIME ON CLOSING ARGUMENT AND MAKE THEM DEMONSTRATIVE OF  
25 THE INFORMATION EACH WITNESS TESTIFIED TO.

26 BECAUSE, AS THE COURT'S WELL AWARE, THIS IS A  
27 VERY DOCUMENT-INTENSIVE CASE. AND ANYTHING WE CAN DO  
28 TO JUST SUMMARIZE INFORMATION AND MAKE IT MORE

1 DIGESTIBLE AND PRESENTABLE TO THE JURY, WE THINK WOULD  
2 AID THE JURY IN MAKING THEIR DECISION.

3 THAT'S THE FIRST GROUPING. THE SECOND  
4 GROUPING, IF YOU WANT TO MOVE ON RIGHT NOW, IS, THERE  
5 ARE EFFECTIVELY FIVE CIVIL RIGHTS REPORTS IN THE CASE.  
6 AND I'LL GIVE YOU AN EXAMPLE OF WHERE THEY CAN BE  
7 FOUND.

8 EXHIBIT 219 IS THE AUGUST 2ND, 2010, CIVIL  
9 RIGHTS REPORT. AND WE'VE DISCUSSED WHAT TO DO WITH  
10 THESE REPORTS, AND HOW TO NICELY MANAGE THEM TO THE  
11 DEGREE THEY'LL BE ADMITTED OR REFUSED, AND SO FORTH AND  
12 SO ON.

13 SO THERE ARE FIVE REPORTS. THERE'S A  
14 JULY 30TH REPORT, AN AUGUST 2ND REPORT, A SEPTEMBER 9TH  
15 REPORT, AND I BELIEVE IT'S A DECEMBER 23, 2009, REPORT.  
16 AND THE LAST ONE IS MISDATED, BUT THE REPORT WAS  
17 GENERATED ON JANUARY 7TH, 2011.

18 THE PLAINTIFF MOVES TO SEEK -- PLAINTIFF HAS  
19 ALREADY OFFERED THE JULY 30TH REPORT, THE AUGUST 2ND  
20 REPORT, AND THE SEPTEMBER 9TH REPORT THROUGH THEIR  
21 CONCLUSIONS, BOTH THROUGH MR. URQUIZO, WHO TESTIFIED  
22 HERE LIVE, AND THROUGH ALL THE VIDEOTAPED DEPOSITIONS  
23 THAT THE COURT RULED UPON.

24 SO THE PLAINTIFF WAS WANTING TO OFFER THE  
25 REPORT IN ENTIRETY, UNDER THE RULE OF COMPLETENESS, OR  
26 AT LEAST THOSE CONCLUSIONS THAT WERE READ BY THE  
27 WITNESSES AS PART OF THEIR DEPOSITIONS. TO SAVE TIME,  
28 I'LL TELL YOU THAT THE DEFENSE OBJECTS, AND THEY CAN

1 TELL YOU WHY THEY OBJECT.

2 BUT THIS IS THE DECISION TREE WE'VE TALKED  
3 ABOUT, TO HELP THE COURT GIVE US SOME GUIDANCE ABOUT  
4 THE COURT'S THINKING. AND MAYBE, AFTER THE COURT GIVES  
5 US SOME ELUCIDATION AS TO YOUR THINKING, WE CAN TRY AND  
6 COME BACK AND TRY AND SEE HOW WE CAN RESOLVE THESE  
7 DEBATES.

8 THE FIRST QUESTION, AS WE SEE IT, IS, ADMIT  
9 THE DOCUMENT OR NOT. SO WOULD THE COURT RECEIVE, FOR  
10 EXAMPLE, EXHIBIT 219. YES OR NO. AND THEN, IF THE  
11 ANSWER IS YES, THE NEXT QUESTION IS, WOULD THE DOCUMENT  
12 BE RECEIVED IN ITS ENTIRETY OR JUST A PORTION OF THE  
13 DOCUMENT.

14 AND AFTER THAT, DEPENDING ON ANSWERS TO 1  
15 AND 2, THE DEFENSE MAY WANT TO REVISIT THEIR  
16 PERSPECTIVE ON THESE ISSUES.

17 AND IF THE REPORTS ARE OFFERED, I WOULD SAY,  
18 MORE COMPLETELY THAN NOT COMPLETELY, THE DEFENSE HAS  
19 EXPRESSED THEIR WILLINGNESS -- OR THEIR DESIRE, I  
20 SHOULD SAY -- TO HAVE ALL THE EXHIBITS ATTACHED TO EACH  
21 OF THOSE REPORTS AND INCLUDED WITH, FOR EXAMPLE,  
22 EXHIBIT 219.

23 WHEREAS THE PLAINTIFF HAS ONLY OFFERED THE  
24 ACTUAL REPORT WITHOUT THE CORRESPONDING EXHIBITS THAT  
25 MAY GO INTO HUNDREDS OF PAGES THEMSELVES.

26 THERE IS ONE DOCUMENT THE COURT HAS BEFORE IT,  
27 WHICH HAS THE MAJORITY OF THE EXHIBITS. I THINK IT'S  
28 NUMBER 207.

1           AND THE COURT HAS, AS OF THIS TIME, TAKEN THAT  
2           AND IS HOLDING IT IN ABEYANCE UNTIL THIS PROCESS IS  
3           FURTHER WORKED THROUGH, TO TRY AND WINNOW THAT AMOUNT  
4           OF PAGES DOWN, SEE WHAT WE CAN DO TO RESOLVE THAT ISSUE  
5           AS WELL.

6           THE COURT: ALL RIGHT. SO WITH THAT, I WANT  
7           TO GO BACK TO THE SO-CALLED TRUE/FALSE TYPE OF  
8           DOCUMENT. I WANT TO MAKE SURE THAT I UNDERSTAND WHAT'S  
9           ON ONE OF THESE DOCUMENTS, THIS -- WHAT I'LL CALL THE  
10          STATEMENT AT THE TOP.

11          WHICH IS A STATEMENT WHICH THEN IS TO BE A  
12          TRUE OR FALSE ANSWER UNDERNEATH IT. THE STATEMENT IS  
13          SOMETHING THAT CAME FROM ANOTHER DOCUMENT?

14          MR. PRAGER: YES.

15          THE COURT: AND THEN THE WITNESS IN THIS  
16          EXAMPLE, WHICH IS LYNNETTE MORGAN-NICHOLS, WAS ASKED IN  
17          HER DEPOSITION AS TO WHETHER OR NOT THE STATEMENT WAS  
18          TRUE?

19          MR. PRAGER: YES.

20          THE COURT: AND SHE TESTIFIED, IN THIS  
21          INSTANCE OF THE EXAMPLE YOU GAVE ME, THAT YES, THAT WAS  
22          A TRUE STATEMENT?

23          MR. PRAGER: YES.

24          THE COURT: AND YOU WANT THIS TYPE OF DOCUMENT  
25          AS DEMONSTRATIVE DURING, AMONG OTHER THINGS, CLOSING  
26          ARGUMENT, IN ORDER, AS YOU INDICATED, TO SUCCINCTLY  
27          ADDRESS CERTAIN TESTIMONY.

28          MR. PRAGER: BECAUSE THERE ARE FIVE REPORTS,



1 AND BECAUSE EACH REPORT HAS A DIFFERENT CONCLUSION, IT  
2 IS GOING TO GET TO BE A LOT OF INFORMATION FOR THE  
3 JURY TO --

4 THE COURT: OKAY. ALL RIGHT. SO I DO  
5 UNDERSTAND THE DOCUMENT. MS. SWISS IS STANDING, SO  
6 SOMETHING YOU WANT TO SAY ABOUT THIS DOCUMENT?

7 MS. SWISS: YES, YOUR HONOR. EACH ONE OF  
8 THESE DOCUMENTS, LIKE THE EXAMPLE YOU HAVE, IT WAS NOT  
9 ASKED WHETHER THE STATEMENT IS TRUE. IT WAS -- THIS IS  
10 A PHRASE FROM ONE OF THE SPECIFIC REPORTS.

11 AND THE QUESTION WAS ASKED, WAS THIS  
12 INFORMATION IN THE REPORT, AND DID YOU BELIEVE IT AT  
13 THE TIME THAT THE REPORT WAS WRITTEN. WHICH IS  
14 DIFFERENT THAN SAYING, SITTING HERE TODAY, THIS IS A  
15 TRUE STATEMENT.

16 AND FOR THESE COUNSEL-CREATED DOCUMENTS TO BE  
17 ADMITTED AS EXHIBITS, I BELIEVE IS GOING TO BE  
18 MISLEADING AND ALSO CUMULATIVE, BECAUSE IN THE  
19 DEPOSITIONS THAT WERE READ, THERE WAS DISCUSSION ABOUT  
20 EACH OF THESE STATEMENTS THAT WAS ALREADY READ TO THE  
21 JURY. SO THAT SHOULD ALREADY BE IN EVIDENCE.

22 THE COURT: I'VE HEARD ENOUGH ON THIS. THIS  
23 DOCUMENT WOULD NOT BE RECEIVED IN EVIDENCE. IT ISN'T  
24 EVIDENCE.

25 AND I DO WANT TO MAKE A CERTAIN DISTINCTION  
26 THAT, BESIDES MATTERS THAT ARE EVIDENCE, RECEIVED IN  
27 THE TRIAL, IT IS OFTEN THE CASE IN A TRIAL THAT COUNSEL  
28 WILL USE MATTERS WHICH ARE DEMONSTRATIVE.

1 BY DEMONSTRATIVE, I MEAN SOMETHING WHICH IS  
2 USED TO ASSIST IN THE ARGUMENT OR STATEMENTS THAT ARE  
3 BEING MADE, WHICH, THEMSELVES, ARE NOT EVIDENTIARY.

4 THERE IS AN INSTRUCTION, A CACI INSTRUCTION, I  
5 FORGET THE EXACT NUMBER, BUT IT'S AROUND 5020. AND I  
6 KNOW IT'S IN THE 5000 SERIES THAT ADDRESSES  
7 DEMONSTRATIVE EVIDENCE.

8 THE FACT THAT SOMETHING IS DEMONSTRATIVE DOES  
9 NOT MAKE IT ADMISSIBLE. AND IN MY VIEW, THESE  
10 STATEMENTS OF WHICH YOU HAVE GIVEN ME THE EXAMPLE, ARE  
11 NOT EVIDENTIARY. THEY'RE SIMPLY DEMONSTRATIVE OF  
12 EVIDENCE IN THE CASE.

13 I'M NOT RULING, AT THE MOMENT, AS TO WHETHER  
14 OR NOT THEY MAY BE USED BECAUSE THERE'S A PROBLEM --  
15 OTHER PROBLEMS TO DEAL WITH IN DEMONSTRATIVE MATTERS.

16 BUT I WANTED TO ADDRESS THAT DISTINCTION  
17 BETWEEN EVIDENCE AND DEMONSTRATIVE MATTERS. THIS MAY  
18 VERY WELL BE DEMONSTRATIVE. SOMETHING LIKE THIS MAY BE  
19 DEMONSTRATIVE.

20 VERY OFTEN, IN CASES OF COMPLEX, OR AT LEAST  
21 SUBSTANTIAL EVIDENCES, OFTEN WITH SOME COMPLEXITY, IT'S  
22 VERY COMMON FOR COUNSEL TO CREATE A CHART THAT WOULD  
23 SHOW, ON A CHART, SERIES OF EVENTS THAT THE EVIDENCE  
24 HAS SHOWN.

25 THE CHART ITSELF IS NOT EVIDENCE. BUT SUCH A  
26 CHART, JUST AS AN EXAMPLE, DEPENDING ON THE ACCURATE  
27 REFLECTION OF WHAT EVIDENCE HAS BEEN, CAN BE USED IN  
28 DEMONSTRATION OF THE ARGUMENT.

1           AND THE DEMONSTRATION TO HELP THE JURY FOLLOW  
2           VERY OFTEN -- COMPLEX, BUT CERTAINLY, SOMETHING WHICH  
3           HAS BEEN A GREAT DEAL OF EVIDENCE.   AND THAT'S WHY WE  
4           HAVE THE CACI INSTRUCTION.

5           TO POINT OUT TO THE JURY, WHICH I ALWAYS  
6           ENCOURAGE COUNSEL TO DO, THAT IF THEY HAVE PUT TOGETHER  
7           SOMETHING WHICH THEY USE, TEND TO USE FOR DEMONSTRATIVE  
8           PURPOSES, BUT WHICH ITSELF IS NOT EVIDENCE AND  
9           THEREFORE NOT RECEIVED IN EVIDENCE, THAT I BELIEVE THEY  
10          SHOULD LET THE JURY KNOW THAT, DURING THEIR CLOSING  
11          ARGUMENT.

12          AND THAT'S WHY WE HAVE THE CACI INSTRUCTION.  
13          SO THE JURY UNDERSTANDS THAT YES, THEY'VE SEEN THIS,  
14          BUT IT WAS FOR DEMONSTRATIVE PURPOSES AND IS NOT  
15          EVIDENTIARY ITSELF.

16          AND I VIEW THIS AS BEING IN THAT CATEGORY.   IT  
17          MAY BE DEMONSTRATIVE, BUT IT IS NOT EVIDENCE.  
18          SOMETHING THAT COUNSEL PUTS TOGETHER TO BE ABLE TO  
19          DEMONSTRATE A POINT IS NOT EVIDENCE ITSELF.

20          SO AS TO THESE DOCUMENTS, HOWEVER MANY THEY  
21          ARE, THEY WILL NOT BE RECEIVED.   YOU SHOULD OFFER THEM.  
22          AND I WILL NOT RECEIVE THEM IN EVIDENCE, BUT THAT WAY  
23          YOU CAN PROTECT YOUR RECORD AND YOUR RIGHTS.   SO THAT'S  
24          MY SUGGESTION, HOW IT SHOULD BE TREATED.

25          MR. PRAGER:   MAY I ASK A QUESTION FOR  
26          DEPARTMENT?

27          THE COURT:   YES.

28          MR. PRAGER:   I KNOW THE COURT INDICATED

1 PREVIOUSLY THAT THERE WILL BE SOME PERIOD OF TIME  
2 BETWEEN THE CLOSE OF EVIDENCE AND CLOSING ARGUMENT.

3 TO THE EXTENT THIS DOCUMENT WOULD BE  
4 RE-CRAFTED AND OFFERED AS DEMONSTRATIVE EVIDENCE, WOULD  
5 THAT BE THE RIGHT TIME TO DO THAT?

6 THE COURT: WELL, YES, IT WOULD. BEFORE YOUR  
7 CLOSING ARGUMENTS, AS I STARTED OUT AT THE BEGINNING OF  
8 THE CASE, I EXPLAINED THAT NOTHING GETS SHOWN TO THE  
9 JURY EXCEPT BY STIPULATION OF THE PARTIES OR WITH  
10 APPROVAL OF THE COURT.

11 THAT PLAYS TO MATTERS WHICH ARE EVIDENTIARY,  
12 BUT IT CAN ALSO APPLY TO MATTERS THAT ARE  
13 DEMONSTRATIVE. SO IF ANYONE IS INTENDING ON USING  
14 DEMONSTRATIVE AIDS DURING THEIR CLOSING ARGUMENT, THEN  
15 THOSE AIDS WOULD HAVE TO BE DISCLOSED TO THE OTHER  
16 SIDE.

17 AND IF THERE IS AN OBJECTION TO USING THE  
18 DEMONSTRATIVE MATERIAL, THEN THE COURT WOULD MAKE THE  
19 DECISION AS TO WHETHER OR NOT IT IS SOMETHING THAT  
20 PROPERLY FALLS WITHIN A DESCRIPTION OF DEMONSTRATIVE  
21 MATTERS, AS OPPOSED TO AN EXPOSITION.

22 SO THE ANSWER -- THE ANSWER IS, SIMPLY, YES.

23 MR. PRAGER: IF WE COULD DO IT QUICKLY, THEN,  
24 YOUR HONOR, BASED ON YOUR SUGGESTION, THE EVIDENCE THAT  
25 WE'LL BE WITHDRAWING, BASED ON THE COURT'S SUGGESTION  
26 TODAY --

27 THE COURT: YOU DON'T HAVE TO WITHDRAW THEM.  
28 YOU CAN OFFER THEM. IT'S ONE THING TO WITHDRAW THEM

1       WHEN YOU LOOK AT THEM AND THINK, YOU KNOW, I DON'T  
2       REALLY NEED THIS.  SO THAT'S WHY YOU HAVE A NUMBER OF  
3       WITHDRAWN MATTERS.

4               IT JUST DEPENDS ON HOW YOU LOOK AT THIS.  BUT  
5       I'M NOT, BY TELLING YOU THAT -- YOU KNOW, I'VE BEEN  
6       ASKED, HOW DO I VIEW THESE THINGS, AND I'VE TOLD YOU.  
7       THAT DOES NOT MEAN THAT YOU SHOULD GIVE UP YOUR RIGHT  
8       TO OFFER IT.

9               AND IF YOU CHOOSE TO OFFER IT, THEN I'LL MAKE  
10       THE RULING ON IT.  AND IF YOU ARE GOING TO OFFER IT,  
11       JUST GIVE US THE EXHIBIT NUMBERS AND I'LL MAKE THE  
12       RULING.

13              MR. PRAGER:  AND WE'LL MAKE SURE THAT WE KEEP  
14       IT ALL TIGHT FOR YOU, TO SAVE TIME.  BECAUSE BOTH SIDES  
15       AGREE THAT THIS IS A CERTAIN CATEGORY, OR PIECE OF  
16       INFORMATION OR EVIDENCE.

17              AND I APPRECIATE THE COURT SAYING WE'RE  
18       PROTECTING OUR RECORD HERE.  BUT THERE'S NO REASON TO  
19       HAVE YOU BELABOR IT AND GO THROUGH DOCUMENT BY  
20       DOCUMENT, WHEN THEY SAY DIFFERENT THINGS, THAT THEY'RE  
21       ALL CREATED FOR THE SAME PURPOSE.

22              THE COURT:  OKAY.  THAT'S GOOD.

23              MR. PRAGER:  AND THEN THE SECOND WAS JUST THE  
24       REPORTS, WHATEVER THE COURT WANTS TO SUGGEST ABOUT  
25       THAT.

26              THE COURT:  I DON'T -- GIVE ME THE EXHIBIT  
27       NUMBER OF ONE OF THE REPORTS.

28              MR. PRAGER:  219.

1           THE COURT: ALL RIGHT. AS TO THIS CATEGORY OF  
2 DOCUMENTS, MS. SWISS, YOU WANTED TO ADDRESS IT?

3           MS. SWISS: YES, YOUR HONOR. AS MR. PRAGER  
4 TOLD THE COURT, THERE ARE, I BELIEVE, FIVE DIFFERENT  
5 REPORTS THAT WERE COMPLETED BY THE CIVIL RIGHTS  
6 INVESTIGATION UNIT, AND THEN SUBMITTED TO THE STATE.

7           EACH OF THE REPORTS ALSO HAS ITS OWN  
8 ATTACHMENTS, SOME OF WHICH ARE ATTACHED IN THE SPECIFIC  
9 EXHIBITS THAT COUNSEL MET AND CONFERRED ABOUT. SOME  
10 ARE NOT. THERE WAS MULTIPLE VERSIONS WITHIN THE  
11 EXHIBITS.

12           SO IF WE GET THAT FAR, WE'LL HAVE TO CONFER  
13 AND AGREE ON WHICH ONES WILL BE -- WE WOULD REQUEST BE  
14 RECEIVED BY THE COURT. THE COUNTY'S POSITION, WITH  
15 REGARD TO EACH OF THE REPORTS, IS THAT THEY SHOULD NOT  
16 BE RECEIVED INTO EVIDENCE.

17           THEY ARE CUMULATIVE OF THE TESTIMONY THAT HAS  
18 BEEN HEARD FROM MS. CONDON, MS. HOCHSTEIN, AND  
19 MS. MORGAN-NICHOLS. THE COURT HAS ALREADY ADMITTED  
20 INTO EVIDENCE THE LETTER OF DETERMINATION THAT WAS THE  
21 INITIAL CONCLUSION.

22           AND THE REPORTS ARE QUITE LENGTHY, FILLED WITH  
23 MULTIPLE LAYERS OF HEARSAY AND VARIOUS ATTACHMENTS, THE  
24 ATTACHMENTS OF WHICH SOME OF THEM ARE ALREADY ADMITTED  
25 INTO EVIDENCE, SOME OF THEM ARE EXTRANEOUS. SO THE  
26 POSITION WOULD BE THAT, UNDER 350 AND 352, THESE SHOULD  
27 NOT BE ADMITTED INTO EVIDENCE.

28           AND THEY'RE ALSO -- AS PART OF THE 352

1 ARGUMENT, EACH OF THE REPORTS THE PLAINTIFF IS  
2 REQUESTING BE INTO EVIDENCE, EACH OF THOSE CONCLUSIONS  
3 HAVE BEEN OVERTURNED BY THE COUNTY ITSELF.

4 SO THE RECORD, IF THESE EXHIBITS WERE TO BE  
5 ADMITTED, WOULD BE MISLEADING TO THE JURY BECAUSE IT  
6 DOES NOT REFLECT THE FINAL CONCLUSION MADE BY THE  
7 COUNTY.

8 THE COURT: SO YOUR OBJECTIONS TO THE REPORTS  
9 THEMSELVES, PUTTING ASIDE THE ISSUE OF ATTACHMENTS  
10 ARE -- JUST GIVE ME, SUCCINCTLY, WHAT THE ACTUAL  
11 OBJECTION IS.

12 MS. SWISS: THEY WOULD BE HEARSAY, CUMULATIVE,  
13 AND 352, MISLEADING, AND 350.

14 THE COURT: ALL RIGHT. SO, MR. PRAGER, THOSE  
15 ARE THE OBJECTIONS. YOUR RESPONSE TO THE OBJECTIONS  
16 IS?

17 MR. PRAGER: YOUR HONOR, AS TO HEARSAY, THEY  
18 ARE STATEMENTS AGAINST INTEREST BY A PARTY OPPONENT.  
19 WE THINK THEY'RE ALSO ADMISSIONS. THEY ARE ADMISSIONS  
20 OF FAULT ON BEHALF OF THE COUNTY OF LOS ANGELES.

21 THEY SAY THAT MS. SCHEELE AND MS. NELSON BOTH  
22 VIOLATED MS. DUVAL'S CIVIL RIGHTS. SO THERE ARE A  
23 NUMBER OF DIFFERENT HEARSAY EXCEPTIONS WE CAN TALK  
24 ABOUT, BUT ADOPTIVE DIVISIONS OR STATEMENTS AGAINST  
25 INTEREST ARE -- THE THRUST HERE IS THAT THE COUNTY IS  
26 ADMITTING THEY DID WRONG --

27 THE REPORTER: (CLARIFICATION).

28 MR. PRAGER: -- TO SAY THAT THEY'VE ADMITTED

1 DOING WRONG TO MS. DUVAL.

2 AND THIS INVESTIGATION, THESE REPORTS, ARE  
3 SOME OF THE BASIS FOR EXHIBIT 202, WHICH THE COURT  
4 ALREADY RECEIVED INTO EVIDENCE, WHICH IS THE LETTER  
5 ADVISING MS. DUVAL THAT SHE IS THE VICTIM OF  
6 DISCRIMINATION BY MS. NELSON AND MS. SCHEELE.

7 NOW, IN TERMS OF THE NEXT, THE CUMULATIVE  
8 ASPECT OF IT, I COULDN'T DISAGREE MORE. AND THE REASON  
9 IS, EACH REPORT HAS ITS OWN NUANCE, AND THE NUANCES ARE  
10 SHIFTING.

11 SO FOR EXAMPLE, AND WE'D HAVE TO GO BACK AND  
12 LOOK AT THE EVIDENCE ADMITTED ON THIS POINT, BUT FOR  
13 THE JULY 30TH REPORT, THERE IS EVIDENCE FROM  
14 MR. URQUIZO THAT THERE WAS NO RECOMMENDATION FOR  
15 DISCIPLINE IN THAT REPORT.

16 SO THE STATE WANTED DISCIPLINE FOR NELSON AND  
17 SCHEELE, AND THAT DISCIPLINE RECOMMENDATION WAS  
18 INCLUDED IN THE AUGUST 2ND REPORT.

19 THEN THE COUNTY SENT ITS SEPTEMBER 9TH REPORT  
20 TO THE STATE, INDICATING TO THE STATE THAT MS. DUVAL  
21 HAD NOW LOST HER CHILD BECAUSE OF THE CONDUCT OF NELSON  
22 AND SCHEELE.

23 THAT FINDING WAS DIFFERENT THAN THE FINDINGS  
24 ON AUGUST THE 2ND OR THE REPORT BEFORE THAT, ON  
25 JULY 30TH. AFTER THAT POINT IN TIME, BECOME THE  
26 REPORTS WHERE THE COUNTY TRIED TO CHANGE THE FINDINGS.  
27 AND THAT WOULD HAVE BEEN IN DECEMBER 2010.

28 FIRST, WHERE THE COUNTY SENDS THE REPORT TO



1 THE STATE SAYING THAT MS. SCHEELE DID NOT VIOLATE  
2 MS. DUVAL'S CIVIL RIGHTS, BUT MS. NELSON DID VIOLATE  
3 MS. DUVAL'S CIVIL RIGHTS.

4 AND AFTER THAT COMES THE FINAL REPORT, WHICH  
5 IS ON JANUARY 7, 2011, WHICH SAYS THAT NO SOCIAL WORKER  
6 VIOLATED HER CIVIL RIGHTS, BUT NELSON AND SCHEELE BROKE  
7 POLICY. AND THERE'S RECOMMENDATIONS FOR DISCIPLINE AND  
8 RETRAINING FOR NELSON AND SCHEELE BECAUSE THEY BROKE  
9 POLICY.

10 AS A FOUNDATIONAL MATTER, THE PLAINTIFF DID  
11 NOT OFFER, I DON'T BELIEVE, THE DECEMBER, 2010 REPORT  
12 OR THE JANUARY, 2011 REPORT YET.

13 SOME OF THE CONCLUSIONS FROM THE REPORTS MAY  
14 HAVE BEEN READ BY SOME OF THE WITNESSES,  
15 MS. CONDON IN PARTICULAR -- I'D HAVE TO GO BACK AND  
16 VERIFY THAT IN GREATER DETAIL, YOUR HONOR -- BUT THE  
17 REPORTS THEMSELVES, AS A SELF-CONTAINED DOCUMENT, WERE  
18 NOT OFFERED BY THE PLAINTIFF AT EVIDENCE.

19 SO THE FOCUS RIGHT NOW, FROM OUR PERSPECTIVE,  
20 WOULD BE THE FIRST THREE EXHIBITS, AND THEY APPEAR IN  
21 MULTIPLE PLACES THROUGHOUT THE RECORD. AND THERE WAS  
22 NO EFFORT TO PUT DUPLICATION IN OUR RECORD.

23 THE CHALLENGE WE HAVE IS, GIVEN ALL THE VIDEO  
24 DEPOS IN THE CASE, WHEN THE WITNESS SAYS, "I REFER TO  
25 EXHIBIT 15," IT MAY ALSO BE EXHIBIT 22 IN SOME OTHER  
26 DEPO.

27 BUT IF THAT EXHIBIT'S NOT THERE, THERE WAS A  
28 CONCERN THAT, WHEN THE JURY'S ASKED -- OR THE JURY MAY

1 ASK FOR EXHIBIT 15 FOR, SAY, CONDON'S DEPO, IT WOULDN'T  
2 BE PART OF THE RECORD.

3 AND THE WAY THAT COUNSEL HAVE AGREED TO  
4 ADDRESS THIS PROBLEM IS TO PRODUCE A TABLE, A MASTER  
5 TABLE OF ALL THE REPORTS, FOR EXAMPLE, AND THEN  
6 INDICATE WHAT EXHIBIT NUMBERS THEY WOULD BE.

7 SO IF THERE WAS A SINGLE DEPOSITION, AND THIS,  
8 SAY, AUGUST 2ND REPORT WAS AN EXHIBIT TO THAT  
9 DEPOSITION, THE NUMBER WOULD BE CROSS-REFERENCED SO THE  
10 JURY WOULD KNOW EXACTLY WHERE THE INFORMATION CAME  
11 FROM.

12 IS THAT CLEAR, YOUR HONOR?

13 THE COURT: YES.

14 MR. PRAGER: OKAY. AND THEN THE LAST THING  
15 ON 352. THESE ARE STATEMENTS OF INTEREST AGAINST THE  
16 PARTIES, WHERE THEY'RE ADMITTING THEY DID WRONG TO  
17 MS. DUVAL. WE DO NOT THINK THAT'S CONFUSING OR  
18 MISLEADING. WE JUST THINK IT'S DETRIMENTAL TO THE  
19 COUNTY AND THE OTHER DEFENDANTS.

20 AND THIS REPORT APPLIES TO NELSON AND SCHEELE.  
21 IT DOES NOT -- THIS OFFERING DOES NOT APPLY TO THE  
22 OTHER DEFENDANTS IN THE CASE BECAUSE THE COUNTY DID NOT  
23 DETERMINE THAT ANY OTHER SUBJECT OF INVESTIGATION DID  
24 WRONG EXCEPT MS. SCHEELE AND MS. NELSON.

25 SO WE DON'T THINK IT'S PREJUDICIAL. WE THINK  
26 IT'S VERY PROBATIVE OF THE UNLAWFUL CONDUCT OF THE  
27 COUNTY AND ITS ACTORS.

28 TO MAKE ONE OTHER POINT CLEAR, FOR THE RECORD,

1 MS. SWISS HAS SUGGESTED THAT THE COUNTY -- I'M SORRY,  
2 THE STATE REVERSED THEIR FINDINGS. YOU'VE HEARD THE  
3 TESTIMONY FROM MR. URQUIZO. I THINK HE TESTIFIED THAT  
4 THE INVESTIGATION WAS SUSTAINED AND HIS FILE WAS  
5 CLOSED.

6 AND THERE WILL BE A GREAT DEAL OF TESTIMONY  
7 REGARDING WHAT WE ALLEGE ARE FAILURES BY THE COUNTY TO  
8 THEN NOTIFY MS. DUVAL THAT THERE WERE SUBSEQUENT  
9 REDETERMINATIONS WHERE SHE WAS OWED A LETTER, AND IT  
10 WAS NEVER SENT TO HER.

11 THE COURT: WE ALREADY HAVE EVIDENCE TO THAT  
12 TESTIMONY.

13 MR. PRAGER: THANK YOU, YOUR HONOR.

14 THE COURT: ANYTHING FURTHER ON THIS?

15 MS. SWISS: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. THE OBJECTION OF  
17 HEARSAY IS GOING TO BE SUSTAINED. THE REPORTS WILL NOT  
18 BE RECEIVED. BY AND LARGE, IT MAY VERY WELL BE,  
19 ALTHOUGH WE DO NOT HAVE THE TESTIMONY, THAT THIS  
20 POSSIBLY COULD BE A BUSINESS RECORD AS WELL.

21 BUT A BUSINESS RECORD -- WE'VE HAD THE  
22 DISCUSSION BEFORE, IS ADMISSIBLE ONLY AS A RECORD OF AN  
23 ACT, CONDITION, OR EVENT. AND IT IS NOT ADMISSIBLE FOR  
24 OPINIONS AND OTHER MATTERS OTHER THAN AN ACT,  
25 CONDITION, OR EVENT.

26 WE DO NOT EVEN HAVE THE TESTIMONY THAT  
27 ESTABLISHES EACH OF THESE, OR ANY OF THESE, AS BEING A  
28 BUSINESS RECORD. AND THE RECORD -- REPORT, ITSELF, IS

1 HEARSAY.

2 THE TESTIMONY WHICH IS ALREADY IN THE RECORD  
3 IS A DIFFERENT MATTER, AND IS WHATEVER -- TESTIMONY IS  
4 IN THE RECORD IS IN THE RECORD. BUT THE REPORT ITSELF  
5 IS HEARSAY, AND THE OBJECTION WILL BE SUSTAINED.

6 SO I'M NOT GOING TO RECEIVE THOSE. IF YOU  
7 WANT TO GIVE US, AGAIN, THE NUMBERS OF THOSE REPORTS, I  
8 THINK YOU SHOULD OFFER THEM, AND -- TO PRESERVE YOUR  
9 RIGHTS. AND MY RULING WILL BE THAT THEY WILL NOT BE  
10 RECEIVED, BUT THEN YOU'VE PROTECTED YOUR RIGHT.

11 NOW, THE NEXT CATEGORY OF DOCUMENTS APPEAR TO  
12 BE THE ONES RELATED TO DAMAGES. AND THERE, AS I  
13 UNDERSTOOD IT, WE HAVE TWO DIFFERENT TYPES OF  
14 DOCUMENTS.

15 ONE WAS SUMMARIES, AND I'LL JUST TELL YOU IN  
16 ADVANCE, SUMMARIES, THEY CAN BE DEMONSTRATIVE BUT THEY  
17 ARE NOT EVIDENTIARY, AND SO SUMMARIES WILL NOT BE  
18 RECEIVED.

19 ACTUAL BILLINGS MAY BE RECEIVED IN EVIDENCE,  
20 ASSUMING THAT WE HAVE THE TESTIMONY THAT THE BILL WAS  
21 RECEIVED AND WAS PAID. TECHNICALLY, THOSE BILLINGS  
22 COULD BE DEEMED HEARSAY.

23 BUT NEVERTHELESS, THERE'S -- WHILE IT'S NOT A  
24 STATED EXCEPTION, THAT SUCH BILLINGS ARE COMMONLY  
25 RECEIVED IN SUPPORT OF THE PERSON'S TESTIMONY THAT THEY  
26 WERE, IN FACT, RECEIVED AND PAID.

27 IT'S THE PAYMENT WHICH IS THE EVIDENCE OF THE  
28 HARM, NOT THE BILL ITSELF. BUT THE BILLINGS, AND I

1 DON'T KNOW WHAT THIS MAY COVER, THOSE BILLINGS COULD BE  
2 RECEIVED.

3 DO WE HAVE ANY OTHER CATEGORIES OF DOCUMENTS  
4 TO BE ADDRESSED AT THIS TIME? IF NOT, WHAT I DO WANT  
5 TO DO IS, THEN, TAKE A RECESS SO THAT YOU CAN TAKE A  
6 LOOK AT -- IN LIGHT OF WHAT I'VE TOLD YOU, WHAT WOULD  
7 BE OFFERED -- WHAT IT IS YOU WANT TO OFFER.

8 AND I WANT TO DO IT TO PROTECT YOUR RECORD, IF  
9 YOU FEEL THAT'S WHAT YOU SHOULD DO, SO WE CAN FIND OUT  
10 WHICH THOSE ARE SPECIFICALLY. I'LL MAKE A RULING.

11 THERE'S SOME THAT WILL BE WITHDRAWN. THAT'S  
12 FINE. BUT ANY OF THESE DOCUMENTS WE'VE TALKED ABOUT,  
13 LET'S GET THE IDENTIFICATION OF THOSE ON THE RECORD,  
14 AND THEN THE RULING ON THE SPECIFICS -- WHAT WAS  
15 REFUSED BY THE COURT, WHAT WAS GRANTED BY THE COURT.

16 MR. PRAGER: IT MAY ALSO BE A GOOD USE OF OUR  
17 TIME TO GIVE US A CHANCE -- I'M NOT SURE IF WE COULD  
18 GET IT ALL DONE RIGHT NOW. BUT THERE WERE A NUMBER OF  
19 DOCUMENTS ADMITTED FOR DIFFERENT PURPOSES, LIKE  
20 MR. URQUIZO HAS SOME OTHER DOCUMENTS.

21 SO WE'D NEED TO MAKE SURE THEY'RE ALL  
22 DISCUSSED WITH THE COURT. SO I SUPPORT WHAT THE COURT  
23 IS SUGGESTING, JUST NOT SURE WE CAN GET IT ALL DONE IN  
24 THE NEXT 30 MINUTES, TAKE A BREAK, TO LINE IT ALL UP  
25 FOR YOU.

26 THE COURT: THAT WOULD BE FINE.

27 SO MS. SWISS, MR. GUTERRES, ARE YOU WITH ME --  
28 UNDERSTAND WHAT I THINK OUR NEXT STEPS SHOULD BE?

1 MR. GUTERRES: YES, YOUR HONOR.

2 MS. SWISS: YES, YOUR HONOR.

3 MR. GUTERRES: THERE ARE TWO OTHER CATEGORIES.  
4 I DON'T KNOW IF THE COURT WANTS TO ADDRESS IT NOW OR  
5 LATER.

6 THE COURT: WELL, WHY DON'T YOU AT LEAST TELL  
7 ME WHAT THEY ARE.

8 MR. GUTERRES: ONE ARE EMAILS THAT ARE GOING  
9 BACK AND FORTH BETWEEN THIRD-PARTY WITNESSES, NAMELY  
10 DOCTORS AND MR. MILLS. AND WE'RE OBJECTING ON THE  
11 GROUNDS OF HEARSAY. THERE'S A COUPLE OF THOSE.

12 AND THEN THE DELIVERED SERVICE LOGS, WHICH ARE  
13 THE CONTACTS -- DISCUSSIONS AND COMMUNICATIONS BETWEEN  
14 THE SOCIAL WORKERS AND VARIOUS FOLKS. AND OUR  
15 OBJECTION TO THOSE -- TO THAT OFFERING IS THAT IT'S  
16 MULTIPLE HEARSAY.

17 THE COURT: OKAY. WELL, LET ME -- I'LL HEAR  
18 FROM YOU IN A SECOND, MR. MCMILLAN.

19 LET ME JUST TELL YOU, ON THE EMAILS, MOST OF  
20 THE EMAILS PROBABLY ARE NOT EVIDENTIARY. THEY'RE  
21 COMMUNICATIONS, AND THEY MAY NOT -- AND MAY NOT BE  
22 OFFERED FOR AN EVIDENTIARY PURPOSE. AND BY THAT, I  
23 MEAN THAT --

24 LET ME BACKTRACK AND SAY, THERE'S SEVERAL  
25 DIFFERENT CATEGORIES. I IMAGINE, IF I THOUGHT ABOUT IT  
26 A LITTLE LONGER, IT MIGHT BE MORE THAN SEVERAL. AND  
27 THERE'S SEVERAL DIFFERENT BASES, IN ANY EVENT, WHICH  
28 MIGHT CONSIDER THE ADMISSIBILITY OF EMAILS.

1           IF EMAILS ARE NOT OFFERED FOR THE TRUTH OF THE  
2 MATTER, BUT SIMPLY TO EXPLAIN SOMEONE'S CONDUCT OR  
3 SOMETHING THAT OCCURS, THEN THEY MAY BE RECEIVED FOR  
4 THAT BASIS ALONE.

5           AND IF SO, THEY COULD BE INCLUDED ON THE LIST  
6 THAT YOU WERE GOING TO DO, OF DOCUMENTS THAT ARE TO BE  
7 RECEIVED IN EVIDENCE FOR A LIMITED PURPOSE. SO THERE  
8 CAN BE A NON-HEARSAY PURPOSE TO THEM.

9           SECONDLY, EMAILS, MANY OF THEM COULD BE  
10 SUBJECT TO -- TO AN OBJECTION AS TO HEARSAY. BUT  
11 HEARSAY ISN'T EVEN IMPLICATED UNLESS THE STATEMENT OR  
12 WHAT IS SAID WITHIN A GIVEN DOCUMENT OR GIVEN OCCASION  
13 IS, IN FACT, EXPOSITORY.

14           IN OTHER WORDS, THERE'S NOTHING ABOUT THEM  
15 THAT GOES TO THE TRUTH OF WHAT'S BEING SAID. AND IF  
16 THAT'S THE CASE, THEN IT'S NOT EVEN SUBJECT TO A  
17 HEARSAY OBJECTION.

18           SO YOU HAVE THESE DIFFERENT CATEGORIES TO  
19 EMAILS. BUT I THINK THE MOST COMMON ONE, WHICH IS ONE  
20 YOU COULD LOOK AT HERE, IS WHETHER THEY ARE ONES WHICH  
21 COULD BE RECEIVED, THAT ARE NOT BEING OFFERED FOR THE  
22 TRUTH OF WHATEVER IS SAID.

23           THEY'RE BEING OFFERED TO EXPLAIN WHAT SOMEONE  
24 DID OR WHAT THEIR CONDUCT WAS OR THEIR RESPONSE TO  
25 SOMETHING. SO WITHOUT SEEING ALL OF THEM, IT'S HARD  
26 FOR ME TO SAY.

27           BUT, IN AND OF THEMSELVES, IF THEY'RE OFFERED  
28 TO THE TRUTH OF THE MATTER STATED THEREIN, THEN A

1 HEARSAY OBJECTION WOULD BE VALID. BUT THERE'S A NUMBER  
2 OF OTHER BASES TO USE EMAILS.

3 THE DSL LOGS -- THE DSL LOGS WOULD SEEM TO ME  
4 TO CONSTITUTE A BUSINESS RECORD. WE HAVE TESTIMONY  
5 ABOUT HOW THE SOCIAL WORKER USES THE SERVICE LOGS. IT  
6 BECOMES A RECORD OF CERTAIN THINGS THAT THEY'VE DONE.

7 AND WE HAVE, AT LEAST, SOME TESTIMONY THAT I'M  
8 REMEMBERING WITHOUT EVEN LOOKING, VERIFYING THAT, YES,  
9 THAT'S AN ENTRY THAT I MADE.

10 AND AS A BUSINESS RECORD -- AND I THINK THE  
11 TESTIMONY IS PROBABLY SUFFICIENT TO MEET THE  
12 REQUIREMENTS TO ESTABLISH A BUSINESS RECORD. AND MANY  
13 OF THE ENTRIES IN THE DSL ARE RECORDS OF AN ACT OR  
14 PARTICULAR EVENT.

15 THEY WOULD HAVE TO BE LOOKED AT TO SEE WHETHER  
16 SOME REDACTION MAY BE NECESSARY. I'VE SEEN THEM, JUST  
17 IN PASSING. I HAVEN'T READ ANY OF THEM. BUT THEY ALL  
18 SEEM -- MOST OF THEM SEEMED TO BE FAIRLY SUCCINCT, THAT  
19 IS, THEY WERE NOT SOME KIND OF ESSAY OR A MORE  
20 EXPOSITORY DOCUMENT.

21 THEY DID SEEM TO TRACE SAYING SOMETHING, LIKE,  
22 "CALLED SO AND SO," OR SOMETHING LIKE THAT. WELL,  
23 THAT'S AN EVENT. AND I THINK THAT CAN SATISFY IT.

24 SO I THINK THE DSLS HAVE THE POTENTIAL OF  
25 BEING RECEIVED, ALTHOUGH SOME REDACTION MAY NOT BE  
26 NECESSARY. THAT'S HOW I'M SEEING THEM. I'M HAPPY TO  
27 RULE ON THEM MORE SPECIFICALLY.

28 BUT I THINK, IN EACH OF THESE AMASSED EMAILS,



1       THERE'S POTENTIAL FOR SOME, PERHAPS ALL, TO BE  
2       ADMITTED.  AND THE DSL, I THINK THERE'S A VERY STRONG  
3       POSSIBILITY A SUBSTANTIAL PART OF IT COULD BE ADMITTED.

4               NOW, IT WON'T BE ADMITTED -- I DON'T THINK  
5       THERE'S A FOUNDATION FOR MANY OF THE ENTRIES.  WHAT YOU  
6       HAVE THERE IS A RECORD THAT'S MADE BY DIFFERENT  
7       PERSONS.  AND I DON'T KNOW WHETHER EVERYBODY WHO HAD  
8       MADE AN ENTRY HAS TESTIFIED.

9               YOU'LL HAVE TO REMIND ME OF THAT, BUT IF WE DO  
10       NOT HAVE THE TESTIMONY OF THE PERSON MAKING IT, I THINK  
11       WE'RE NOT GOING TO HAVE A SUFFICIENT BASIS TO RECEIVE  
12       IT IN EVIDENCE.

13               BUT I THINK SOME OF IT CAN BE, CERTAINLY,  
14       BECAUSE I DO REMEMBER SOME OF THE WITNESSES TESTIFYING  
15       ABOUT ENTRIES THAT THEY'VE MADE.

16               MR. MCMILLAN:  YOUR HONOR, THE ONLY THING I  
17       WOULD ADD TO THAT IS THAT THESE ARE OFFICIAL RECORDS.  
18       AND THAT WHILE A PUBLIC ENTITY, IN CERTAIN  
19       CIRCUMSTANCES, CAN BE VIEWED AS A BUSINESS, THERE ARE,  
20       AS I UNDERSTAND IT ANYWAY --

21               IN LOOKING AT THE PRACTICE GUIDE, AND I  
22       HAVEN'T GONE AND LOOKED AT THE CASES YET -- BUT THE  
23       OFFICIAL RECORDS, THE REQUIREMENTS FOR ADMITTING THOSE,  
24       AT LEAST AS TO THE FOUNDATIONAL REQUIREMENTS, ARE MORE  
25       LIBERAL THAN THE FOUNDATIONAL REQUIREMENTS FOR A  
26       STANDARD BUSINESS RECORD.

27               AND BASICALLY, WHAT IT APPEARS WE HAVE TO  
28       SHOW, AND I BELIEVE WE'VE DONE THAT THROUGH MOST OF THE

1 DEPOSITIONS IS, NUMBER ONE, THAT THE DSL IS AN OFFICIAL  
2 RECORD THAT'S REQUIRED BY LAW TO BE CREATED AND  
3 MAINTAINED IN THE COURSE OF THE GOVERNMENT'S BUSINESS  
4 IN ADMINISTERING THESE CHILD WELFARE CASES.

5 IN FACT, IT'S PART OF THE STATE-OWNED  
6 AND -OPERATED CWSCMS SYSTEM, THE DELIVERED SERVICE LOG  
7 CONTACT NOTES.

8 AND THE STATE ACTUALLY USES THOSE CONTACT  
9 NOTES AND THE CWSCMS DATABASE TO COMPILE ITS FEDERAL  
10 REPORTING, TO DO STUDIES OF STATISTICAL INFORMATION  
11 RELATIVE TO CHILDREN BEING TAKEN INTO CUSTODY OR PLACED  
12 IN FOSTER CARE OR TREATED, IN SOME WAY, WITHIN THE  
13 CONTEXT OF THE CHILD WELFARE SYSTEM.

14 SO THAT'S THE DATABASE WE'RE TALKING ABOUT.  
15 AND BY LAW, THE SOCIAL WORKERS, WHEN THEY GO OUT AND DO  
16 THESE INVESTIGATIONS, THEY ARE REQUIRED --

17 AND I THINK THEY'VE ALL TESTIFIED TO THIS, AT  
18 LEAST, THE DEPOSITIONS THAT HAVE BEEN PLAYED TO THE  
19 JURY --

20 THAT BY LAW, THEY'RE REQUIRED, FAIRLY  
21 CONTEMPORANEOUS IN TIME, WITHIN A FEW DAYS OF THE  
22 EVENT, TO SIT DOWN IN FRONT OF THE COMPUTER, ENTER  
23 WHATEVER IT WAS THAT THEY DID, AND THEN MOVE ON.

24 AND THEY'VE ALSO ALL TESTIFIED THAT THEY'RE  
25 REQUIRED, AGAIN BY LAW, TO BE TRUTHFUL, ACCURATE, AND  
26 COMPLETE IN THOSE DSL ENTRIES.

27 BECAUSE THEY KNOW THAT SOCIAL WORKERS DOWN THE  
28 LINE, INCLUDING SUPERVISORS, ARE GOING TO BE REVIEWING

1 THOSE DSL ENTRIES AND MAKING DECISIONS IN THE CASE,  
2 BASED ON THE INFORMATION THAT'S CONTAINED IN THAT  
3 DELIVERED SERVICE LOG.

4 THE COURT: I THINK -- I DON'T KNOW IF YOU'RE  
5 ADDING TO THE DISCUSSION WE'VE HAD.

6 REGARDLESS OF WHAT THE PURPOSE IS, A BASIS IN  
7 WHICH YOU'RE OFFERING THESE AS AN OFFICIAL RECORD IS --  
8 ACTUALLY, I CAN LOOK AND SEE -- THERE'S ANOTHER  
9 SECTION, IT'S SECTION 1280 OF THE EVIDENCE CODE, WHICH  
10 IS A RECORD BY PUBLIC EMPLOYEE.

11 AND IT SETS FORTH THE ADMISSIBILITY OF SUCH  
12 RECORDS. AND IF YOU LOOK AT ITS CRITERIA, THEY ARE THE  
13 SAME AS FOR A BUSINESS RECORD.

14 MR. MCMILLAN: OKAY.

15 THE COURT: WHICH IS SUPPORTING WHAT I'M --  
16 WHAT I'M SAYING, IS THEY MAY VERY WELL BE ADMISSIBLE.  
17 BUT YOU HAVE TO -- BUT I DON'T THINK IT CHANGES --  
18 MAYBE IT WOULD, AND YOU CAN MAKE -- IF YOU PRESENT ME  
19 SOME AUTHORITY ON IT, I'LL BE HAPPY TO CONSIDER IT.

20 BUT IF YOU LOOK AT SECTION 1280, YOU'LL SEE  
21 WHAT MAKES A RECORD BY A PUBLIC EMPLOYEE ADMISSIBLE.  
22 AND IT'S ESSENTIALLY THE SAME. AND IT HAS TO BE A  
23 RECORD OF AN ACT, CONDITION OR EVENT, AMONG OTHER  
24 THINGS. SO --

25 MR. MCMILLAN: I'LL LOOK AT THAT CLOSER  
26 TONIGHT.

27 THE COURT: IF YOU LOOK AT IT AND COMPARE IT,  
28 I THINK IT'S 1271, AS TO THE ADMISSIBILITY OF BUSINESS

1 RECORDS.

2 IF YOU LOOK AT 1280, IT IS -- THE ONE  
3 EXCEPTION IS FOR A BUSINESS RECORD. THE CUSTODIAN OR  
4 OTHER QUALIFIED WITNESS TESTIFIES TO ITS IDENTITY AND  
5 THE MODE OF ITS PREPARATION.

6 THE OTHER -- THAT'S NOT REQUIRED IN 1280.  
7 BUT 1280 DOES REQUIRE THAT THE WRITING IS MADE BY AND  
8 WITHIN THE SCOPE AND DUTY OF A PUBLIC EMPLOYEE.  
9 SECONDLY, THE WRITING WAS MADE AT OR NEAR THE TIME OF  
10 THE ACT, CONDITION, OR EVENT.

11 AND LASTLY, THE SOURCE OF THE INFORMATION AND  
12 METHOD AND TIME OF PREPARATION WAS SUCH AS TO INDICATE  
13 ITS TRUSTWORTHINESS. THE VERY NATURE OF THOSE LOGS  
14 WOULD SATISFY THAT LAST BECAUSE IT'S THE PERSON -- THE  
15 SOCIAL WORKER IS THE SOURCE OF THE INFORMATION.

16 AND THEIR TESTIMONY IS THAT THEY MAINTAINED  
17 THIS AT OR ABOUT THE TIME THAT THEY'RE GOING ABOUT  
18 DOING THESE DIFFERENT THINGS. I'M NOT TRYING TO SELL  
19 YOU ON IT. LOOK AT 1280. IT'S VERY SIMILAR TO 1271.

20 AND IF THOSE CONDITIONS CAN BE SATISFIED, THEN  
21 THE PORTIONS -- AT LEAST PORTIONS, IF NOT ALL OF THEM,  
22 WOULD BE ADMISSIBLE. I THINK THE REAL QUESTION ARISES  
23 IF YOU'RE OFFERING ENTRIES TO WHICH WE HAVE NO  
24 TESTIMONY.

25 THAT WOULD -- YOU MAY HAVE DIFFICULTY IF YOU  
26 DON'T HAVE THE PERSON WHO'S TESTIFYING, TO SUBSECTION B  
27 OF 1280, THAT THE WRITING WAS MADE AT OR NEAR THE TIME  
28 OF THE ACT, CONDITION, OR EVENT.

1 I'LL LEAVE IT TO UP TO YOU. I'M JUST POINTING  
2 OUT THAT WITH WHAT THE COURT THINKS, AT LEAST, IT WOULD  
3 BE ADMISSIBLE.

4 MR. MCMILLAN: YOUR HONOR, ONE OTHER QUESTION  
5 ON THAT ISSUE. I THINK THAT, YEAH, WE'RE PROBABLY  
6 OKAY, AT LEAST AS TO THE RECORDINGS THAT WERE MADE, FOR  
7 EXAMPLE, BY MS. ROGERS OR MS. PENDER OR MS. SCHEELE OR  
8 MS. NELSON.

9 BECAUSE THEY TESTIFIED IN THEIR DEPOSITIONS  
10 WHAT THEY DID, HOW DID THEY IT, HOW THEY GOT THE  
11 INFORMATION INTO THE DSL. BUT THEN, THERE'S OTHER  
12 INFORMATION IN THERE THAT, FOR EXAMPLE, MS. ROGERS SAID  
13 THAT SHE REVIEWED.

14 SHE REVIEWED THE DSL AND THE INFORMATION  
15 CONTAINED IN IT BEFORE SIGNING OFF ON THE DETENTION  
16 REPORT. SO THIS WOULD BE -- THE QUESTION IS:

17 WE'RE SUBMITTING THE OTHER INFORMATION SHE  
18 REVIEWED, NOT NECESSARILY TO SHOW THAT THAT'S WHAT  
19 REALLY HAPPENED, BUT TO SHOW THAT MS. ROGERS WOULD HAVE  
20 HAD THAT INFORMATION AVAILABLE TO HER AT THE TIME, AND  
21 THEN MADE THE DECISION TO EITHER SUPPRESS IT OR  
22 DISCLOSE IT.

23 SO IT'S NOT SO MUCH BEING OFFERED FOR THE  
24 TRUTH OF THE MATTER ASSERTED IN THE DSL ENTRY AS IT IS  
25 FOR THE PROPOSITION THAT MS. ROGERS WOULD HAVE KNOWN  
26 THAT THERE WAS AT LEAST SOMETHING THERE THAT SHOULD  
27 HAVE BEEN REPORTED TO THE COURT.

28 THE COURT: WELL, YOU CREATE LEVELS OF

1 COMPLEXITY IN MAKING THE ARGUMENT THAT YOU'VE MADE. IF  
2 YOU'RE ABLE TO SHOW -- AND I DO NOT RECALL HER  
3 TESTIMONY, AS TO WHAT SPECIFIC ENTRIES SHE READ AND  
4 RELIED ON --

5 THE FACT THAT SHE SAID SHE LOOKED AT THEM, I  
6 DON'T THINK IS -- AT THE SERVICE LOG -- I DON'T BELIEVE  
7 IS SUFFICIENT. I THINK THE EVIDENCE, TO EVEN CONSIDER  
8 IT BE RECEIVED FOR A LIMITED PURPOSE, AS TO WHAT IT WAS  
9 THAT SHE CONSIDERED, SO BE IT.

10 BUT WE'RE GOING TO HAVE TO HAVE EVIDENCE OF  
11 WHAT IT WAS THAT SHE LOOK AT, AS OPPOSED TO THE GENERAL  
12 STATEMENT OF HAVING LOOKED AT THE LOG. BECAUSE I  
13 RECALL, AND I HAVEN'T LOOKED AT IT IN ANY DETAIL,  
14 THERE'S A NUMBER OF ENTRIES.

15 MR. MCMILLAN: YEAH, THERE'S, LIKE, 88 PAGES.  
16 BUT I THINK WE ONLY RELY ON -- SPECIFICALLY RELY, FOR  
17 SUPPRESSIONS AND MISSTATEMENTS, ON MAYBE 10 OR 12 PAGES  
18 OF THE 88. THAT'S JUST OFF THE TOP OF MY HEAD.

19 THE COURT: IF YOU WANT TO GET THOSE IN, I  
20 REALLY THINK THERE'S PROBABLY -- IF IT COULD COME IN  
21 EITHER UNDER 1271 OR UNDER 1280, THEY COULD.

22 BUT YOU'RE GOING TO HAVE TO HAVE EITHER A  
23 PERSON USE ONE THAT IS PUT IN BY THE WITNESS WHO HAS  
24 TESTIFIED TO HAVING MADE THAT ENTRY.

25 OR IF YOU WANT TO GET IN ONES FOR LIMITED  
26 PURPOSE AS SOMETHING THEY CONSIDERED -- IN OTHER WORDS,  
27 LIMITED PURPOSE, NOT FOR THE TRUTH OF THE MATTER, BUT  
28 TO SHOW WHAT INFORMATION THEY RELIED ON, THEN YOU MAY

1 HAVE TO BE ABLE TO SHOW ME IN THE RECORD WHERE ANYONE  
2 HAS IDENTIFIED THOSE.

3 IT ISN'T SUFFICIENT JUST TO MAKE THE BROAD  
4 GENERAL STATEMENT, AS FAR AS ADMISSIBILITY IS  
5 CONCERNED. THIS DOESN'T AFFECT THE WITNESS'S  
6 TESTIMONY, BUT DOES AFFECT THE ADMISSIBILITY OF THE  
7 DOCUMENT.

8 AND YOU MAY LOOK AT -- YOU MAY HAVE THE  
9 TESTIMONY THAT YOU NEED FOR -- TO BE ABLE -- YOU MAY  
10 HAVE TESTIMONY WHICH SATISFIES WHAT IT IS YOU WANT TO  
11 PROVE.

12 AND THAT'S A WHOLE DIFFERENT SUBJECT. IF  
13 EVIDENCE IS IN THE RECORD, THEN IT'S THERE. IT'S A  
14 DIFFERENT QUESTION WE'RE DEALING WITH, WITH  
15 ADMISSIBILITY.

16 MR. MCMILLAN: WITH RESPECT TO THE DOCUMENTS,  
17 YOU MEAN.

18 THE COURT: YES.

19 MR. MCMILLAN: OKAY. BECAUSE I THINK THAT --  
20 I CAN GO THROUGH THE VIDEO EXCERPTS AGAIN, BUT I THINK  
21 YOU ARE CORRECT AS TO, PROBABLY, EVERY ONE OF THE  
22 IMPORTANT ONES.

23 THERE'S SIGNIFICANT TESTIMONY ABOUT WHAT IT  
24 SAYS, WHAT'S THERE, AND WHAT THE PARTICULAR DEFENDANT  
25 DID OR DIDN'T DO WITH IT. SO I THINK THAT MAY ACTUALLY  
26 BE COVERED.

27 MR. GUTERRES: YOUR HONOR, WE'RE -- I DON'T  
28 WANT TO GET INTO THE SPECIFICS. WE WERE JUST TRYING TO

1 GET SOME GUIDANCE ON THE GENERAL TOPICS. BUT IF WE'RE  
2 GOING TO GET INTO THE SPECIFIC EXHIBITS, THEN WE MIGHT  
3 AS WELL DO THAT. BUT...

4 THE COURT: WELL, WE'RE GOING TO RECESS IN A  
5 JUST A MOMENT, AND YOU CAN HAVE THAT DISCUSSION.  
6 BECAUSE I KNOW, NOW, YOU'VE ASKED, IN EFFECT, FOR AN  
7 INDICATION OF HOW THE COURT WOULD BE VIEWING THESE.  
8 AND I'VE INDICATED HOW I DO VIEW THESE.

9 AND YOU'LL THEN HAVE YOUR DISCUSSION AS TO  
10 WHAT YOU WANT TO DO ABOUT THESE GIVEN EXHIBITS. THE  
11 DECISION MAY BE THAT YOU WANT THEM. AND IF YOU DO,  
12 THEN WE'LL SEE WHAT THE STANDARDS FOR ADMISSIBILITY  
13 WOULD BE, AND THE SPECIFIC RULING THAT WOULD BE MADE.

14 IF YOU LOOK AT IT AND REALIZE THAT, FOR  
15 EXAMPLE, WE ALREADY HAVE THE TESTIMONY, IT MAY NOT, THE  
16 ACTUAL EXHIBIT, MAY NOT BE AS IMPORTANT TO YOU.

17 MR. MCMILLAN: THAT HELPS. I THINK WE CAN  
18 SPEND, PROBABLY, MAYBE, 45 MINUTES OR SO AND RESOLVE A  
19 BUNCH OF THESE JUST MEETING AND CONFERRING.

20 THE COURT: ANY OTHERS YOU WANT TO TALK ABOUT  
21 RIGHT NOW, IN TERMS OF GENERALITY?

22 MR. MCMILLAN: THERE WAS -- WE'VE BEEN SORT OF  
23 VISITING AND REVISITING, THE EXTENT OF EXHIBIT  
24 NUMBER 24, IT'S A 372-PAGE DOCUMENT. MUCH OF THAT, IN  
25 FACT, THE WHOLE THING IS SUBJECT TO A LIMITING  
26 INSTRUCTION.

27 AND THE COURT, YOUR HONOR, HAD RAISED ON  
28 THURSDAY OR FRIDAY, I DON'T RECALL WHICH DAY LAST WEEK,



1       WHETHER OR NOT THE PLAINTIFF WANTED TO RECONSIDER  
2       ADMITTING THE ENTIRETY OF THAT DOCUMENT INTO EVIDENCE.

3               AND WE THOUGHT ABOUT IT OVER THE WEEKEND. I  
4       DID ORDER A COPY OF THE TRANSCRIPT SO I COULD GET A  
5       CLEAR UNDERSTANDING WHAT WAS GOING ON, BECAUSE AS  
6       THINGS WERE GOING ON THE FLY --

7               THE COURT: I REMEMBER US HAVING THAT  
8       DISCUSSION. WHATEVER WAS SAID, I AGREE WITH YOU. WE  
9       DID ADDRESS THAT. AND YOU WERE GOING TO CONSIDER THAT  
10      SUBJECT.

11              MR. MCMILLAN: CORRECT. AND WE HAVE  
12      CONSIDERED IT. AND IN LOOKING AT IT, IT'S 372 PAGES.  
13      IT ALMOST EQUALS THE TOTAL SUM OF ALL THE OTHER  
14      EVIDENCE THAT, IN TERMS OF DOCUMENTS, HAS COME IN, SO  
15      FAR.

16              AND PLAINTIFF, WE'VE BEEN WORKING ON PARING  
17      DOWN WHAT'S THERE THAT WE ACTUALLY NEED TO HAVE IN  
18      EVIDENCE. AND WE'VE BEEN MEETING AND CONFERRING WITH  
19      DEFENSE COUNSEL ON THAT, WE WANT TO CONTINUE THAT  
20      PROCESS.

21              I DON'T KNOW IF WE'LL GET TO A LIST TODAY, OF  
22      THE PIECES THAT WE CAN SLOUGH OFF.

23              THE COURT: WELL, LET'S TAKE THE RECESS, AND  
24      ALL OF YOU CAN LOOK AT YOUR POSITIONS AND CONFER. YOU  
25      KNOW, THIS -- THERE'S ACTUALLY A LOT OF PROGRESS THAT  
26      HAS BEEN MADE TODAY.

27              BECAUSE THROUGH THE MEETING AND CONFERRING, A  
28      LOT OF DECISIONS HAVE BEEN MADE ABOUT WHICH ONES COULD

1 COME IN. WE HAD A NUMBER OF STIPULATIONS THAT -- ONES  
2 TO BE RECEIVED. WE HAD A NUMBER THAT HAVE BEEN  
3 WITHDRAWN. THAT'S A GREAT DEAL OF PROGRESS.

4 I NOTICE OUR LIST IS NOW DOWN TO 11 PAGES, SO  
5 I CONSIDER THAT TO BE A GREAT DEAL OF PROGRESS, EVEN  
6 FROM THE LAST ITERATION. THAT WAS 19 PAGES. I WISH I  
7 DIDN'T REMEMBER THINGS LIKE THAT. SO WE MADE A LOT OF  
8 PROGRESS.

9 I DON'T KNOW THAT WE'LL WRAP THIS UP ENTIRELY,  
10 BUT SOME MORE TIME NOW, I THINK, SOME FURTHER PROGRESS  
11 CAN STILL BE MADE. I THINK IT'S WORTH DOING.

12 AND I'VE TOLD YOU THAT I THINK WE'RE GOING TO  
13 NEED, PROBABLY, ANOTHER DAY OFF THIS WEEK BECAUSE I  
14 THINK THERE'S STILL MUCH TO BE DONE, INCLUDING THE  
15 ISSUES RELATING TO THE FALSE EVIDENCE CLAIMS.

16 AND THE -- WHEN EACH OF YOU HAVE PUT IN  
17 WHATEVER FORM YOU WANT, THE FINAL FORM, YOU WANT TO BE  
18 CONSIDERED BY THE COURT ON THAT, WE'LL HEAR WHATEVER  
19 ARGUMENT YOU HAVE. ALTHOUGH I THINK IT'S GOING TO  
20 PRETTY MUCH SPEAK FOR ITSELF. BUT WE'LL TAKE A LOOK AT  
21 IT.

22 WE'RE GOING TO NEED SOME TIME FOR THAT. AND  
23 I'M TRYING TO THINK ABOUT WHEN -- WHAT LATER DAY THIS  
24 WEEK WE WOULD TAKE OFF. AND I KNOW THAT THE DEFENSE  
25 NEEDS TO KNOW THIS, IN TERMS OF SCHEDULING. I THINK IT  
26 SHOULD PROBABLY BE EITHER THURSDAY OR FRIDAY.

27 I COULD TELL YOU, ONE REASON WHY IT COULD BE  
28 THURSDAY, IS YOU ARE ALL GOING TO BE SURPRISED BY

1 EARTHQUAKE DRILL AT 10:20 A.M. ON THURSDAY, AT WHICH  
2 TIME ALL OF US WILL BE -- EVERYONE, LITERALLY, WILL BE  
3 EVACUATING FROM THE BUILDING.

4 THE COURT ATTENDANT HAS LOCATIONS WHERE  
5 PARTICIPANTS IN THE TRIAL ARE TO GO AND CONGREGATE.  
6 THERE'S A SET-ASIDE AREA FOR THE JUDICIAL OFFICERS, AND  
7 THEY WILL -- THEY DO IT. THEY ACTUALLY SEND SHERIFF'S  
8 DEPUTIES THROUGH THE WHOLE BUILDING TO MAKE SURE  
9 EVERYBODY'S GOTTEN OUT.

10 IN OTHER WORDS, I CAN'T GO HIDE IN CHAMBERS.  
11 SO BY THE TIME THEY DO THAT, AND THEN YOU GET EVERYBODY  
12 BACK IN, I DON'T KNOW, DON, HOW LONG DOES IT NORMALLY  
13 TAKE? 45 MINUTES TO AN HOUR?

14 THE CLERK: YEAH.

15 THE COURT: PART OF THE DRILL, AND I'M NOT  
16 MAKING FUN OF THE DRILL, BECAUSE IF WE EVER HAVE  
17 ANOTHER MAJOR EARTHQUAKE, WHICH WE KNOW WE WILL SOONER  
18 OR LATER, THAT CAN BE REALLY SERIOUS BUSINESS.

19 SO ONE OF THE THINGS THEY DO, ALSO, IS TO --  
20 ALL THE SHERIFF'S DEPUTIES THAT WORK IN THIS BUILDING  
21 HAVE SPECIFIC DUTIES, WHAT THEY HAVE TO DO. AND ONE OF  
22 THOSE MAJOR DUTIES IS MAKING SURE PEOPLE WHO NEED  
23 ASSISTANCE RECEIVE THE ASSISTANCE.

24 (PAUSE IN THE PROCEEDINGS)

25 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.

26 MR. MCMILLAN: OKAY. YOUR HONOR, MET AND  
27 CONFERRED WITH MR. GUTERRES.

28 AND WHAT WE'RE GOING TO DO, FOR THE MOMENT, ON

1 EXHIBIT NUMBERS 82 AND 85 IS, WE'RE GOING TO DEFER  
2 THOSE, GETTING RULINGS ON THOSE, FOR A COUPLE DAYS  
3 UNTIL WE SEE IF WE CAN GET SOME MORE FOUNDATION THROUGH  
4 THE LIVE WITNESSES, THAT SORT OF THING.

5 AND THERE MAY BE PIECES OF THEM WE CAN SLOUGH  
6 OFF, TOO. AND WITH RESPECT TO -- AND THIS IS SORT OF A  
7 BROAD SWATH OF EXHIBITS, GOES FROM 586 ALL THE WAY  
8 THROUGH AND INCLUDING 603, THOSE ARE THE PLAINTIFF'S  
9 DAMAGES EXHIBITS.

10 586, 589, 590, 593, 594, THOSE ARE ALL  
11 SUMMARIES. BASICALLY, EXCEL SPREADSHEETS SUMMARIZING  
12 THE UNDERLYING RAW DATA, AND TABULATING IT FOR TOTALS.  
13 THAT'S WHAT THOSE EXHIBITS ARE. SO PLAINTIFF WOULD  
14 MOVE THOSE INTO EVIDENCE.

15 IT'S MY UNDERSTANDING THAT THE DEFENDANTS  
16 OBJECT TO THOSE SUMMARIES COMING IN. AND BASED ON  
17 YOUR HONOR'S EARLIER DISCUSSIONS AND GUIDANCE, WE JUST  
18 NEED TO GET A RULING ON THOSE.

19 THE COURT: AS TO THE SUMMARIES, THE OBJECTION  
20 IS SUSTAINED. THEY'RE A DOCUMENT PREPARED SIMPLY  
21 PROVIDING A SUMMARY OF THESE MATTERS, AND THEY'RE  
22 SUMMARIES, THEY ARE NOT ADMISSIBLE.

23 SO THEY WILL NOT BE RECEIVED.

24 MR. GUTERRES: I'M SORRY. I DIDN'T -- OKAY.  
25 WE GOT THE NUMBERS.

26 MR. MCMILLAN: AND IF WE NEED TO, I HAVE THEM  
27 MARKED DOWN.

28 THE COURT: I THINK THE NUMBERS YOU MENTIONED

1 WERE 586, 589, 590, 594?

2 MR. MCMILLAN: AND ALSO 593. AND THAT WAS IT  
3 FOR THE SUMMARIES.

4 THE NEXT CATEGORY OF DOCUMENTS, I'M NOT SURE  
5 WHAT YOU WOULD CALL THEM. WHAT THEY ARE ARE LEDGERS OF  
6 EXPENSES THAT ARE PAID, AND THE AMOUNT OF THE PAYMENT.  
7 SO -- AND THOSE INCLUDE EXHIBIT NUMBERS 587, 588, 591,  
8 592, 595, 597, AND THAT'S IT.

9 AND PLAINTIFF WOULD OFFER THOSE LEDGERS INTO  
10 EVIDENCE. IT'S MY UNDERSTANDING DEFENDANTS WOULD  
11 OBJECT TO THE LEDGERS.

12 THE COURT: LET ME SEE ANY ONE OF THOSE WITHIN  
13 THE REALM OF -- 587. ALL RIGHT. THE OBJECTION IS?

14 MR. GUTERRES: YOUR HONOR, HEARSAY. IT LACKS  
15 FOUNDATION, AND IT'S ALSO CUMULATIVE. MS. DUVAL'S  
16 TESTIFIED AS TO WHAT HER DAMAGES ARE. THERE'S NOT A  
17 LOT OF FOUNDATION FOR ANY OF THESE LEDGERS OR  
18 SUMMARIES, WHATEVER THEY MAY BE.

19 THE COURT: THEY ARE SIMPLY A LIST THAT SHE  
20 HAS MADE OF WHAT'S BEEN PAID. THE OBJECTIONS ARE  
21 SUSTAINED.

22 THESE ARE NOT EVIDENCE OF ANYTHING, WHETHER  
23 SHE SUMMARIZED -- THIS MAY BE A DEMONSTRATIVE THAT  
24 YOU -- I'M NOT SAYING IT WOULD BE SPECIFICALLY IN THIS  
25 CASE, BUT SOMETIMES -- BECAUSE I DON'T THINK SHE  
26 TESTIFIED TO EACH OF THE ENTRIES. I THINK SHE GAVE A  
27 TOTAL.

28 SO THIS PROBABLY WOULD NOT BE -- BUT YOU MIGHT

1 CREATE, FOR THOSE WHO TESTIFY TO A TOTAL, YOU MIGHT  
2 VERY WELL PUT TOGETHER, JUST AS A DISTINCTION BETWEEN  
3 THAT AND THIS, SOME SORT OF CHART SUMMARIZING HER  
4 TESTIMONY THAT SHE HAD X NUMBER OF DOLLARS THAT SHE  
5 PAID FOR THIS, AND SO ON FOR THIS.

6 AND THAT WOULD BE A DEMONSTRATIVE. NOT  
7 EVIDENCE. THAT'S REALLY ALL THIS IS. EACH OF THESE  
8 IS, REALLY, JUST DEMONSTRATIVE. HER CREATING A LIST OF  
9 WHAT SHE'S PAID, THAT ISN'T EVIDENTIARY.

10 MR. MCMILLAN: UNDERSTOOD, YOUR HONOR. AND  
11 THEN, WITH RESPECT TO THE BALANCE OF THAT BLOCK OF  
12 EXHIBITS, WE HAVE EXHIBIT NUMBER 596, 598, 599, 600,  
13 601, 602, AND 603, WHICH CONSISTS OF THE ACTUAL  
14 RECEIPTS.

15 NOW, EXHIBIT NUMBER 599, THERE ARE TWO  
16 SPECIFIC PAGES IN THERE THAT, IN ADDITION TO RECEIPTS,  
17 HAVE A LITTLE SUMMARY ON THEM. THAT IS 7508 AND 7509.

18 WITH RESPECT TO THAT PORTION OF THOSE TWO  
19 PAGES THAT CONSIST OF A SUMMARY, PLAINTIFF WOULD BE  
20 WILLING TO REDACT THOSE SUMMARIES FROM THOSE PAGES.

21 AND PLAINTIFF WOULD MOVE ALL THOSE LISTED  
22 EXHIBITS I JUST REFERENCED INTO EVIDENCE.

23 THE COURT: I'M PROBABLY GOING TO HAVE TO LOOK  
24 AT THESE -- 596 IS A SERIES OF EARNINGS STATEMENTS.

25 MR. MCMILLAN: OH, YEAH. ACTUALLY,  
26 YOUR HONOR, ON THE EARNINGS STATEMENTS,  
27 SPECIFICALLY 596, WE CAN WITHDRAW THAT PARTICULAR  
28 EXHIBIT. IT'S NOT RECEIPTS.

1           YOU'RE CORRECT. IT IS EARNING STATEMENTS.  
2           AND I DON'T KNOW THAT, WITH RESPECT TO 596, IT ACTUALLY  
3           SHOWS ANYTHING OTHER THAN HER EARNINGS. SO 596, WE  
4           WOULD WITHDRAW.

5           THE COURT: IT'S WITHDRAWN.

6           AND I'M LOOKING AT 598. FIRST PAGE OF 598 IS,  
7           AGAIN, A SUMMARY PREPARED, WHICH -- THIS IS A  
8           MISCELLANEOUS EXPENSES.

9           MR. GUTERRES: YOUR HONOR, I DON'T THINK I  
10          HAVE THE SUMMARY, WHICH IS THE RECEIPT. I'VE GOT --  
11          THE BATES RANGES ON 598 I HAVE IS 7466 THROUGH 7470.

12          MR. MCMILLAN: CORRECT. THAT'S CORRECT.

13          THE COURT: ALL RIGHT. THE ONE I'M LOOKING AT  
14          IS 7465. AND THAT WASN'T EVEN IDENTIFIED?

15          MR. MCMILLAN: CORRECT.

16          THE COURT: ALL RIGHT. THEN -- AND FOR GOOD  
17          REASON. SO THE REMAINING PAGES ARE IN FORMS OF  
18          RECEIPTS FOR DIFFERENT EXPENSE, A SUMMARY OF DIFFERENT  
19          EXPENSES.

20          ONE IS THE SIGNATURE PAGE WHERE  
21          THE RETENTION -- ATTORNEY RETENTION AGREEMENT WITH  
22          ATTORNEY PARK. AND THEN THE REMAINING PAGES ARE COPIES  
23          OF RECEIPTS FOR PURCHASES.

24          THE OBJECTIONS WILL BE OVERRULED AS TO THEM.  
25          THEY'LL BE RECEIVED.

26          MR. MCMILLAN: AND THAT WAS AS TO 598,  
27          YOUR HONOR?

28          THE COURT: YES. 599 IS A VERY BRIEF, JUST

1 TWO ENTRIES ON IT, NEVERTHELESS A SUMMARY OF EXPENSES  
2 FOR --

3 MR. GUTERRES: YOUR HONOR, 599 ACTUALLY STARTS  
4 WITH 7472, WHICH SHOULD BE AT THE TOP.

5 MR. MCMILLAN: YEAH, UPPER LEFT-HAND CORNER.

6 MR. GUTERRES: AND THEN GOES THROUGH 7530.

7 THE COURT: I'M LOOKING AT THE WRONG ONE.

8 YES. 599 IS -- APPEARS TO BE A TOTAL OF 58 PAGES?

9 MR. MCMILLAN: I THINK THAT'S ABOUT RIGHT.

10 THE COURT: IT DOES GO FROM BATES NUMBERED  
11 PAGES 7472 TO 7530. 599, I'LL HAVE TO REVIEW PAGE BY  
12 PAGE BECAUSE THERE ARE 58 PAGES OF DIFFERENT DOCUMENTS,  
13 SOME OF WHICH MAY BE RECEIVABLE, AND OTHERS NOT. SO  
14 I'LL HAVE TO DEFER.

15 MR. MCMILLAN: YOUR HONOR, JUST IN LOOKING AT  
16 IT HERE, I SEE ONE PAGE THAT LOOKS LIKE IT'S SOME SORT  
17 OF SUMMARY. THAT'S AT 7477. BEFORE YOUR HONOR SPENDS  
18 TOO MUCH TIME LOOKING THROUGH IT, I'D LIKE TO GO  
19 THROUGH IT THIS EVENING AND SEE IF THERE'S ANY MORE OF  
20 THOSE SORTS OF THINGS IN HERE.

21 THAT WAY YOU DON'T SPEND A LOT OF TIME GOING  
22 THROUGH SOMETHING THAT WE MAY END UP PULLING OUT.

23 THE COURT: WE'LL DEFER ON THAT ONE FOR NOW.

24 MR. MCMILLAN: YEAH, JUST TO SAVE YOUR HONOR  
25 SOME TIME ON THAT. WE'LL GO THROUGH AND TAKE CARE OF  
26 IT. 600 -- 600'S A BIG ONE.

27 MR. GUTERRES: I THINK, YOUR HONOR, WE MAY  
28 NEED A MAGNIFYING GLASS.



1 THE COURT: 600 HAS BEEN IDENTIFIED WITH PAGES  
2 BATES NUMBERS 7532 THROUGH 7769. AND THAT'S SOMEWHERE  
3 IN THE RANGE OF 237 PAGES.

4 MR. MCMILLAN: IN THUMBING THROUGH IT,  
5 YOUR HONOR, IT LOOKS LIKE IT IS SUBSTANTIALLY RECEIPTS.

6 THE COURT: IT DOES. I'VE DONE SOMEWHAT THE  
7 SAME -- SIMPLY TO THUMB THROUGH. THERE ARE A NUMBER OF  
8 BILLS, AS WELL AS RECEIPTS SHOWING PAYMENT.

9 MR. MCMILLAN: THERE'S ONE PAGE IN HERE THAT  
10 IT LOOKS LIKE WE'LL WITHDRAW. IT'S 7585. AND I DON'T  
11 KNOW IF THE SCAN ON THIS, IT WAS A COLOR PAGE OR WHAT  
12 IT WAS, BUT THE COPY IS ACTUALLY ALL BLACK AND  
13 UNREADABLE. SO WE WITHDRAW THAT ONE.

14 THE COURT: YES, IT IS. OF COURSE, NO ONE CAN  
15 COMPLAIN ABOUT ANY PREJUDICE TO THIS --

16 MR. GUTERRES: WE ACTUALLY HAVE NO OBJECTION  
17 TO --

18 THE COURT: THAT'S THE ONE THING WE AGREE TO.

19 MS. SWISS: LET'S PUBLISH THAT ONE TO THE  
20 JURY.

21 MR. MCMILLAN: JUST THROW IT UP THERE.

22 (LAUGHTER.)

23 THE COURT: WELL --

24 MR. MCMILLAN: YOUR HONOR, IT LOOKS LIKE ON  
25 SOME OF THESE, THEY'RE, LIKE, A COVER PAGE WITH A FAX  
26 TRANSMISSION. THAT SORT OF THING.

27 AND IF IT WOULD MAKE IT EASIER ON YOUR HONOR,  
28 THERE'S ANOTHER ONE WHERE WE COULD GO THROUGH IT

1 TONIGHT AND SORT OF YANK OUT THE ONES THAT AREN'T  
2 ACTUALLY, THEMSELVES, A RECEIPT. IN THUMBING THROUGH  
3 IT, IT LOOKS LIKE THERE'S SOME OF THAT IN THERE.

4 THE COURT: YES. IT LOOKS LIKE THAT WOULD  
5 PROBABLY BE A GOOD IDEA. LET ME DEFER ON THAT.

6 MR. MCMILLAN: YEAH. THAT WAS 600.

7 THE COURT: OKAY. AND --

8 MR. MCMILLAN: AND 601, YOUR HONOR, APPEARS TO  
9 BE JUST THE MONITORING EXPENSE RECEIPTS.

10 THE COURT: IT DOES APPEAR THAT WAY TO ME.  
11 NOW, THIS EXHIBIT GOES FROM BATES NUMBERED PAGES 7771  
12 THROUGH 7860. SO THAT WOULD APPEAR TO BE A TOTAL OF 89  
13 PAGES. AND I'M NOT SURE I'VE WORKED WITH EVERY ONE.

14 IT DOES APPEAR TO ME THAT EVERY ONE IS A  
15 RECEIPT FOR MONITORING. AND -- THAT EXHIBIT WILL BE  
16 RECEIVED IF IT TURNS OUT THAT THE DEFENSE WANTS TO GO  
17 THROUGH IT PAGE BY PAGE.

18 I FLIPPED THROUGH THEM ALL BUT IT'S ENTIRELY  
19 POSSIBLE I MISSED SOMETHING. IF THERE'S SOMETHING  
20 OTHER THAN RECEIPTS FOR MONITORING IN THERE, YOU CAN  
21 CALL IT TO MY ATTENTION.

22 MR. GUTERRES: UNDERSTOOD, YOUR HONOR.

23 THE COURT: AND THEN THE NEXT ONE --

24 MR. MCMILLAN: 602, YOUR HONOR. IT WOULD  
25 APPEAR THE FIRST PAGE OF 602, BEARING BATES  
26 NUMBER 7862, IS SOME SORT OF A CHECKLIST. I'M NOT SURE  
27 THAT IT'S A RECEIPT. BUT THE PORTIONS OF THE EXHIBIT  
28 THAT FOLLOW 7863, THROUGH AND INCLUDING 7867, ARE

1 FURTHER COPIES OF ADDITIONAL MONITORING RECEIPTS.

2 THE COURT: YES. IN LOOKING AT THOSE, I THINK  
3 THE FIRST PAGE, 7862, SHOULD NOT BE RECEIVED. THAT'S  
4 JUST SOMEONE'S HANDWRITTEN LISTING, CHECKING OFF DATES.  
5 BUT REMAINING PAGES, 7863 THROUGH 7867, ARE MORE  
6 MONITORING RECEIPTS. AND THOSE WILL BE RECEIVED.

7 MR. MCMILLAN: AND THEN 603, I THINK THAT'S  
8 GOING TO BE A SIMILAR CIRCUMSTANCE AS ONE OF THE  
9 EARLIER ONES, THAT IS, WHERE THERE ARE SOME COVER PAGES  
10 AND FAX SHEETS AND THINGS LIKE THAT, THAT PROBABLY  
11 SHOULDN'T BE HERE.

12 SO WHAT WE'D LIKE TO DO IS DEFER ON 603, AND  
13 WE'LL GO THROUGH THIS EVENING TOO, AND YANK OUT THE  
14 THINGS THAT DON'T --

15 THE COURT: YES, THAT WOULD BE GOOD. THE  
16 FIRST PAGE, ACTUALLY THE FIRST TWO PAGES -- THERE ARE A  
17 NUMBER OF PAGES WHICH ARE SIMPLY RECEIPTS. AND I THINK  
18 THE RECEIPTS THEMSELVES MAY BE RECEIVED. BUT WE'LL PUT  
19 THAT ON THE DEFERRED LIST FOR NOW.

20 MR. MCMILLAN: WE'LL GO THROUGH IT TONIGHT.

21 THE COURT: THAT'S GOOD. SO I THINK THAT  
22 TAKES CARE OF THAT GROUPING.

23 MR. MCMILLAN: CORRECT. THAT TAKES CARE OF  
24 THE BLOCK OF EXHIBITS THAT RELATES TO PLAINTIFF'S  
25 DAMAGES. AND I THINK THE NEXT ONE UP IS MR. PRAGER,  
26 WITH RESPECT TO THE SLIDES.

27 MR. PRAGER: YOUR HONOR, WE WOULD MOVE IN  
28 EXHIBIT 704, WHICH IS EXHIBIT 10 OF LYNNE CONDON'S

1 DEPOSITION.

2 EXHIBIT 708, AND I CAN GIVE YOU THE EXHIBIT  
3 NUMBERS FROM THE DEPOSITION IF THE COURT WOULD LIKE  
4 THEM ALL.

5 THE COURT: NO, I DON'T. IF YOU JUST GIVE ME  
6 THE NUMBERS WHICH YOU'RE ASKING IN, TO BE RECEIVED.

7 MS. SWISS?

8 MS. SWISS: 704 YOU WITHDREW, PER MY NOTES.

9 MR. PRAGER: THAT'S FINE. WE CAN  
10 WITHDRAW 704, YOUR HONOR.

11 THE COURT: 704, RIGHT. WITHDRAWN. WE HAVE  
12 TWO NUMBERS 704 --

13 MS. SWISS: OH, I'M SORRY. MAYBE -- SAME  
14 THING. EXHIBIT 704 BATES 014919, I HAD AS WITHDRAWN.

15 THE COURT: THAT'S CORRECT.

16 MS. SWISS: THERE'S MULTIPLE NUMBERS FOR THAT.

17 MR. PRAGER: YES, YOUR HONOR. THERE'S  
18 TWO 704S.

19 THE COURT: ONE WAS A TRUE/FALSE STATEMENT.  
20 THE SECOND ONE ON THE LISTING GIVEN TO US BY MR. PARIS  
21 WOULD NOT BE RECEIVED, AS ONE OF THE TRUE/FALSE  
22 STATEMENTS.

23 THERE'S ALSO THE OTHER 704 WHICH, FOR PURPOSES  
24 OF THE RECORD, BEARS BATES STAMP PAGES 14890  
25 THROUGH 14894. AND THE LIST IS CHARACTERIZED AS THE  
26 DECLARATION OF LYNNE BOLES CONDON. I DON'T KNOW ABOUT  
27 THAT ONE.

28 MS. SWISS: THAT IS ONE THAT THE DEFENSE IS

1 OBJECTING TO.

2 MR. PRAGER: MAY I HAVE JUST ONE SECOND TO  
3 CONFER?

4 THE COURT: YES.

5 MR. PRAGER: I'M SORRY FOR THE CONFUSION,  
6 YOUR HONOR. IT'S 704, NUMBER 10, CAN BE WITHDRAWN.  
7 THAT'S -- EXHIBIT 704, EXHIBIT NUMBER 10. BECAUSE  
8 THERE'S TWO.

9 THESE ARE ALL IDENTIFIED AS DEPOSITION  
10 EXHIBITS. SO YOU HAVE A SINGLE EXHIBIT NUMBER, AND  
11 THEN THEY'RE SUB-NUMBERED BY THE DEPOSITION EXHIBIT  
12 NUMBER THEY HAD.

13 THE COURT: YES, I UNDERSTAND. BUT I'M NOT  
14 GOING TO ADDRESS THE EXHIBIT NUMBERS. SHOULD BE THE  
15 DEPOSITION EXHIBIT NUMBERS. I JUST WANT TO ADDRESS THE  
16 EXHIBIT NUMBER GIVEN TO A DOCUMENT HERE IN COURT.

17 MR. PRAGER: YES, YOUR HONOR. AND 708  
18 ACTUALLY HAS APPROXIMATELY 12 SEPARATE DEPOSITION  
19 NUMBERS. SO EXHIBIT 708 HAS EXHIBITS 4, 6 -- I'M  
20 SORRY, 6 WAS WITHDRAWN. SO IT WILL BE 708,  
21 EXHIBITS 15, 16, AND I CAN USE THE BATES NUMBERS TO  
22 MAKE IT SIMPLER, YOUR HONOR. SO THAT WOULD BE --

23 MR. GUTERRES: I THINK THAT WOULD BE MORE  
24 ACCURATE. WE'VE BEEN USING BATES NUMBERS, YOUR HONOR.  
25 IF WE COULD STICK TO THE BATES NUMBERS.

26 MR. PRAGER: I'M HAPPY TO, YOUR HONOR. SO  
27 IT'S EXHIBIT 708, AND IT'S BATES NUMBERS 16330, 16332,  
28 16334, 16336, 16340, 16342, 16344, 16346, 16348, 16352,

1 16354, 16356, 16360. AT THE FIRST OFFERING, THAT WOULD  
2 BE THE SLIDES THAT WE DISCUSSED EARLIER THIS AFTERNOON.

3 THE COURT: THESE ARE WHAT WE REFERRED TO  
4 BEFORE AS THE TRUE/FALSE STATEMENTS THAT RELATED --  
5 WERE CREATED FROM TESTIMONY OF HOCHSTEIN.

6 MR. PRAGER: CORRECT. AND THEY WERE OFFERED  
7 TO THE WITNESS DURING THE DEPOSITION. AND THE WITNESS  
8 CONFIRMED THAT THAT STATEMENT WAS CONTAINED IN THE  
9 DOCUMENT THE WITNESS WAS READING FROM.

10 THE COURT: FINE. AS I'VE INDICATED  
11 PREVIOUSLY, THESE TRUE/FALSE STATEMENTS ARE NOT GOING  
12 TO BE RECEIVED. THOSE COMPRISE ALL OF 708, SO 708 IS  
13 NOT GOING TO BE RECEIVED, IN ITS ENTIRETY.

14 MR. PRAGER: AND YOUR HONOR, THE SECOND TYPE  
15 DOCUMENT THAT IS THE SAME KIND SHOULD BE EXHIBIT 710.  
16 AND I'VE GOT THEM WRITTEN DOWN BY EXHIBIT NUMBER, SO I  
17 HAVE TO GO BACK AND VERIFY THE BATES NUMBER.

18 SO FOR RIGHT NOW, YOUR HONOR, WE WOULD  
19 OFFER 17268 THROUGH 17287. AND --

20 THE COURT: ALL RIGHT. THOSE ARE ALSO  
21 TRUE/FALSE STATEMENTS?

22 MR. PRAGER: CORRECT.

23 THE COURT: THE OBJECTION THERETO WILL BE  
24 SUSTAINED. NONE OF THE PAGES OF EXHIBIT 710 WILL BE  
25 RECEIVED.

26 MR. PRAGER: AND, YOUR HONOR, IF I MAY, TO  
27 MAKE A CLEAR RECORD, I'VE GOT THEM BY EXHIBIT NUMBER,  
28 NOT BATES NUMBER, AND THEY SHOULD RANGE FROM

1 EXHIBIT 4.1.1 THROUGH 4.1.20, JUST FOR THE RECORD TO BE  
2 CLEAR.

3 THE COURT: ALL RIGHT. I DON'T HAVE THOSE  
4 NUMBERS AT ALL. WHAT I DO HAVE ON THE EXHIBIT LIST IS  
5 PAGES 17268 THROUGH 17287, A TOTAL OF 19 PAGES  
6 COMPRISING EXHIBIT 710.

7 THEY'VE BEEN CHARACTERIZED TO ME AS EACH ONE  
8 OF THOSE BEING ONE OF WHAT WE CALLED A TRUE/FALSE  
9 STATEMENT. AND THE OBJECTION THERETO WILL BE SUSTAINED  
10 AND NONE OF THOSE PAGES WOULD BE RECEIVED.

11 MR. PRAGER: THANK YOU, YOUR HONOR.

12 MR. MCMILLAN: I THINK THAT'S ABOUT ALL THE  
13 PROGRESS WE COULD MAKE ON THE EXHIBITS TODAY.

14 THE COURT: DO YOU HAVE AN INSTANT SUMMARY OF  
15 ALL THIS, MR. PARIS? YOU PROBABLY DO.

16 MR. PARIS: I MEAN, IF I COULD HOOK UP, I  
17 COULD PRINT THIS OUT.

18 THE COURT: THE CLERK IS KEEPING TRACK AND  
19 WILL BE PRINTING IT OUT. SO I WOULD SAY THAT --

20 MR. MCMILLAN: IT WOULD PROBABLY REDUCE THE  
21 LIST BY ABOUT FIVE MORE PAGES, IT LOOKS LIKE, AT FIRST  
22 GLANCE.

23 THE COURT: I DON'T KNOW IF THIS WILL HELP OR  
24 NOT. BUT LET ME SKIP TO THE LAST PAGE OF MR. PARIS'S  
25 SUMMARY. PAGE 11 OF 11, WHICH BEGINS WITH EXHIBIT  
26 NUMBER 1064, OF WHICH THERE ARE TWO LISTED.

27 AND THESE ARE -- WELL, THE FIRST ONE ON THE  
28 LIST, THE NUMBER OF THE PAGES APPEAR TO BE JUST TWO

1 PAGES, 1655 AND 1656.

2 MR. GUTERRES: YOUR HONOR, THAT'S THE GENETIC  
3 BLOOD TEST THAT WE SHOWED. IT'S A TWO-PAGE DOCUMENT  
4 THAT WE OFFERED, I THINK IT WAS DURING -- IT WAS EITHER  
5 NIESEN OR WEINRAUB WHO HAD INDICATED THEY HAD SOME  
6 GENETIC TESTING.

7 MR. MCMILLAN: YOUR HONOR, THE OBJECTION WOULD  
8 BE THAT IT LACKS FOUNDATION AT THIS POINT IN THE TRIAL,  
9 AND IT ALSO CONSISTS OF HEARSAY.

10 THE COURT: I DON'T RECALL ANY FOUNDATION FOR  
11 THESE TWO PAGES, EITHER, AT THIS TIME. AND SO AT THIS  
12 TIME, IT WOULD NOT BE RECEIVED IN EVIDENCE. BUT THIS  
13 IS CERTAINLY WITHOUT PREJUDICE TO THE POTENTIAL THAT  
14 YOU MIGHT BE ABLE TO LAY A FOUNDATION.

15 AND JUST AS AN EXAMPLE --

16 MR. GUTERRES: YOUR HONOR, I'M NOT SURE. I  
17 DON'T KNOW IF PLAINTIFF'S MOVING IT IN, BECAUSE I  
18 THOUGHT THIS LIST WAS A LISTING OF EXHIBITS BEING MOVED  
19 IN BY PLAINTIFFS.

20 THE COURT: I'M NOT SURE EITHER, BUT IT'S  
21 LISTED AS IDENTIFIED BY THE DEFENDANT.

22 MR. MCMILLAN: CORRECT.

23 THE COURT: AND SO IF IT'S NOT BEING OFFERED  
24 BY PLAINTIFF, THEN I DON'T NEED TO ADDRESS IT AT THIS  
25 TIME.

26 MR. GUTERRES: THAT'S FINE, YOUR HONOR. WE'LL  
27 MOVE IT IN WHEN WE NEED TO MOVE IT IN.

28 THE COURT: THAT'S FINE. I'LL GIVE THE



1 DOCUMENTS --

2 MR. MCMILLAN: YOUR HONOR, JUST FOR POINT OF  
3 CLARITY, WHAT WE DID IS, IN PUTTING TOGETHER THE LIST,  
4 WE THOUGHT IT WOULD BE MORE EXPEDITIOUS IF WE JUST TOOK  
5 ALL THE EXHIBITS THAT WERE ON THE CLERK'S LIST AND THEN  
6 PUT THEM ON OUR INDEX, AND IDENTIFIED WHO THEY WERE  
7 OFFERED OR IDENTIFIED BY.

8 THE COURT: AND I SO UNDERSTOOD THIS. THERE  
9 WERE ON THIS -- ON THIS PAGE, AT ONE-ZERO --  
10 EXHIBIT 1077, WHAT IS CALLED THE BUDIN FILE, IT  
11 ACTUALLY LISTS CERTAIN PAGES, SOME OF WHICH HAVE  
12 ALREADY BEEN ADMITTED.

13 AND I DON'T KNOW THAT OTHERS ARE BEING  
14 OFFERED. DO YOU WANT TO TAKE A LOOK AT THAT AND SEE?

15 MR. MCMILLAN: YEAH, WHY DON'T WE DEFER ON  
16 THAT UNTIL TOMORROW. WE'LL TAKE A LOOK AT IT TONIGHT  
17 AND SEE WHAT'S HAPPENING THERE.

18 MS. SWISS: AT LEAST FOR THAT ONE, I THINK  
19 BOTH SIDES HAVE AGREED IN DISCUSSIONS WITH DON, AS  
20 WELL, THAT IT SHOULD BE 1077.39 THROUGH .41. THAT  
21 WOULD INCLUDE .39, .40, AND .41. THAT'S THE COMPLETE  
22 DOCUMENT. OTHER THAN THAT, WE CAN TAKE A LOOK AT IT.

23 MR. MCMILLAN: WE'LL LOOK AT IT TONIGHT AND  
24 FIGURE IT OUT.

25 THE COURT: THAT'S FINE. IT MAY BE THAT I  
26 DON'T NEED THE OTHER PAGES.

27 AND THEN WE ALSO HAVE LISTED AS A PLAINTIFF  
28 EXHIBIT 1088, WHICH IS LISTED THE SUMMARY AS THE

1 NORISSA ENNIS EMAILS. BUT IT LISTS CERTAIN PAGES OF  
2 THAT EXHIBIT, AND I DON'T -- I DON'T REMEMBER ANYTHING  
3 ABOUT HER EMAILS AT THIS TIME.

4 MR. MCMILLAN: I THINK THE NAME OF THE  
5 DOCUMENT IS A LITTLE BIT MISLEADING ON THE LIST.

6 IF YOUR HONOR RECALLS, BOTH FROM MS. ENNIS'S  
7 TESTIMONY AND FROM, I THINK, MS. DUVAL'S TESTIMONY,  
8 THAT PART OF THE REQUIREMENTS FOR MS. ENNIS TO MONITOR  
9 THE VISITS, WAS SHE WAS SUPPOSED TO SIT DOWN, OBSERVE  
10 AND REPORT WHAT SHE'S SEEING.

11 I THINK HER TESTIMONY WAS THAT SHE DID THAT ON  
12 HER BLACKBERRY OR SOME KIND OF TABLET, AND THEN SHE  
13 WOULD SEND THOSE REPORTS ON IN EMAIL FORM.

14 THE COURT: RIGHT. AND I DO REMEMBER THAT  
15 TESTIMONY.

16 MR. MCMILLAN: IN FACT, I'M SURE THAT THAT'S  
17 WHAT THOSE ARE.

18 THE COURT: ALL RIGHT. YOU WANT TO TAKE A  
19 LOOK AT THOSE TOO?

20 MR. MCMILLAN: YEAH. I'LL LOOK AT THOSE AGAIN  
21 TONIGHT AND MAKE SURE WHAT THEY ARE.

22 THE COURT: HAVE WE DONE AS MUCH AS WE CAN DO  
23 TODAY ON THIS?

24 MR. MCMILLAN: I THINK WE HAVE.

25 MR. GUTERRES: I THINK SO, YOUR HONOR.

26 THE COURT: ALL RIGHT. I DO HAVE A TRUE/FALSE  
27 EXEMPLAR, WHICH I CAN GIVE BACK TO MR. PRAGER.

28 IN AN ENTIRELY DIFFERENT SUBJECT, THEN, WE

1 HAVE A JURY RETURNING AT 9:00 A.M. TOMORROW MORNING.  
2 I'M WONDERING IF, BEFORE THE JURY GETS HERE, IF WE  
3 SHOULD ADDRESS AT LEAST PARTS OF THE DEFENDANT'S MOTION  
4 FOR NON-SUIT.

5 THAT IS, WE DON'T HAVE TO ADDRESS ALL PARTS OF  
6 IT BECAUSE WE STILL HAVE TO BE LOOKING AT THE  
7 CHALLENGES TO THE DECEPTION CLAIMS. BUT I THINK WE  
8 COULD PROBABLY -- I THINK, AS TO THE OTHER ONES, AS TO  
9 THE FIRST CAUSE OF ACTION FOR THE SEIZURE WITHOUT A  
10 WARRANT, I THINK THE MOTION IS LIMITED JUST TO BALABAN.

11 MR. GUTERRES: CORRECT, YOUR HONOR.

12 THE COURT: AND THERE WAS A DEMURRER TO THE  
13 CLAIM FOR INTENTIONAL INFLICTION AND TO THE TWO  
14 DIFFERENT CAUSES OF ACTION RELATING TO DISABILITY  
15 DISCRIMINATION.

16 AND IT SEEMED TO ME THAT MAYBE TOMORROW  
17 MORNING WE COULD ADDRESS THOSE. AND IF POSSIBLE, AND I  
18 MEAN, I HAVE LOOKED AT THEM, AND WE'LL HAVE SOME  
19 QUESTIONS, I'LL BE INTERESTED IN HEARING FROM COUNSEL.  
20 BUT WE COULD QUITE POSSIBLY GET A RULING ON SOME OF  
21 THOSE SOMETIME TOMORROW.

22 MR. MCMILLAN: THAT MAKES SENSE, YOUR HONOR.

23 THE COURT: WHY DON'T WE PLAN ON DOING THAT,  
24 STARTING AT 8:00 A.M., WHICH WOULD GIVE US AN HOUR  
25 BEFORE THE JURY GETS HERE.

26 MR. MCMILLAN: JUST SO THAT I'M CLEAR, FOR  
27 WHAT TO PREPARE FOR, THEN, IN TERMS OF ORAL ARGUMENT  
28 IS, IF THERE IS ANY, IT WOULD BE JUST THE UNWARRANTED

1 SEIZURE WITH RESPECT TO BALABAN, AND THEN THE  
2 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, AS TO  
3 MS. SCHEELE, MS. NELSON. AND THEN THE BALANCE WOULD BE  
4 THE ADA ISSUES FOR MR. PRAGER --

5 THE COURT: THAT'S CORRECT. I THINK WE'LL BE  
6 TAKING A LOOK AT ALL THAT ARE INCLUDED IN THEIR MOTION  
7 EXCEPT THE CLAIMS ARISING OUT OF JUDICIAL INFORMATION.  
8 WILL THAT WORK?

9 MR. GUTERRES: YES, YOUR HONOR.

10 MR. MCMILLAN: THANK YOU, YOUR HONOR.

11 MS. CHUNG: YOUR HONOR, IF I MAY. I'VE  
12 UPDATED THAT SUMMARY LIST WITH THE ARGUMENTS ON  
13 PLAINTIFF'S SIDE AND EXCULPATORY AND/OR FALSE  
14 INFORMATION ON THE LEFT --

15 THE COURT: DO YOU WANT TO FILE THAT WITH THE  
16 CLERK? AND I'LL HAVE READ THAT.

17 MS. CHUNG: IT'S SHORT.

18 THE COURT: ALL RIGHT. SO I'LL HAVE READ THIS  
19 BY THE TIME I SEE YOU NEXT, AND WE'LL SEE WHAT FURTHER  
20 DISCUSSION WE MIGHT HAVE.

21 I DON'T THINK IT WILL BE A FULL ARGUMENT, BUT  
22 TOMORROW, WE MIGHT HAVE TIME TO ADDRESS THIS TO SOME  
23 EXTENT. WE'LL CERTAINLY TAKE A LOOK AT THE OTHER BASES  
24 FOR THE MOTION FOR NON-SUIT.

25 MR. PRAGER: BEFORE WE LEAVE TODAY, SHOULD WE  
26 DISCUSS THURSDAY OR FRIDAY FOR THE DAY OFF --

27 THE COURT: YES.

28 MR. GUTERRES: YOUR HONOR, OBVIOUSLY, GIVEN

1 THE NEWS FROM THE COURT, THURSDAY WOULD PROBABLY BE THE  
2 BETTER DAY TO TRY TO CONSIDER AS A DARK DAY. THE ONLY  
3 ISSUE THAT I HAVE IS I'M -- I KNOW THAT MAYBE SOME OF  
4 MY WITNESSES MIGHT ONLY BE AVAILABLE ON THURSDAY.

5 THE COURT: LET'S SEE IF YOU CAN FIND OUT.

6 MR. GUTERRES: YES, THAT'S WHAT I'M TRYING TO  
7 DO.

8 THE COURT: THAT'D BE A GOOD IDEA. YOU KNOW,  
9 WE CAN WORK AROUND THE EXERCISE AND, IN FACT, DEANNA  
10 MIGHT PREFER THAT WE DIDN'T HAVE ANY JURORS HERE. PART  
11 OF HER RESPONSIBILITIES, WHEN WE GET AN EMERGENCY  
12 ALARM, HER FIRST DUTY IS TO TAKE CARE OF THOSE JURORS.

13 I'M HAPPY TO DO IT, I MENTIONED THAT, BUT I  
14 DON'T THINK IT'S THAT BIG A DETERRENT. AND I THINK,  
15 OVERALL, IF THERE'S GOING TO BE A DAY OFF, I THINK THE  
16 JURORS WOULD PROBABLY HAVE A FRIDAY RATHER THAN A  
17 THURSDAY.

18 SO MAYBE THE BEST THING WOULD BE THAT WE WOULD  
19 TENTATIVELY AGREE THAT FRIDAY WOULD BE THE DAY OFF.

20 DOES THAT WORK, MR. MCMILLAN, OR NOT?

21 MR. MCMILLAN: EITHER WAY IS FINE WITH US.  
22 OUR ONLY ISSUE WAS, YOU KNOW, IF IT TAKES AN HOUR OUT  
23 OF THE DAY TO DEAL WITH THE EARTHQUAKE DRILL, I WOULD  
24 RATHER IT BE AN HOUR OUT OF A DAY WHEN, YOU KNOW, WHEN  
25 THE JURY'S NOT HERE, BECAUSE THEN WE DON'T LOSE THAT  
26 FULL DAY WITH THE JURY.

27 IF WE TAKE OFF FRIDAY, I KNOW THE JURY MAY  
28 PREFER IT BECAUSE THEY GET A LONG WEEKEND. AND

1 FRANKLY, FROM MY PERSPECTIVE, THAT MIGHT BE BETTER FOR  
2 US TOO BECAUSE WE GET A LITTLE BREAK. IT'S BEEN PRETTY  
3 HIGH-INTENSITY THE LAST SEVERAL WEEKS.

4 BUT MY CONCERN IS MAKING THE MOST PRODUCTIVE  
5 USE OF THE BIGGEST BLOCK OF TIME THAT WE HAVE WITH THE  
6 JURY. SO I WOULD HAVE A LITTLE BIT OF A CONCERN ABOUT  
7 FRIDAY VERSUS THURSDAY. BUT I -- YOU KNOW, I DEFER TO  
8 EVERYBODY ELSE. WHATEVER WORKS FOR EVERYBODY ELSE.

9 THE COURT: WHY DON'T WE TALK IN THE MORNING  
10 AFTER MR. GUTERRES HAS HAD A CHANCE TO VERIFY THE  
11 AVAILABILITY OF HIS WITNESSES, BECAUSE THAT WILL  
12 CERTAINLY BE INSTRUCTIVE TO US. SO WE'LL DECIDE --  
13 WE'LL HAVE THAT DISCUSSION IN THE MORNING.

14 AND INCIDENTALLY, I DID GET A MESSAGE EARLIER  
15 TODAY THROUGH DEANNA, FROM JUROR NUMBER FOUR, MS. HARO,  
16 WHO HAD, PREVIOUSLY DURING THE TRIAL, SENT THE MESSAGE  
17 THAT THERE WERE A COUPLE OF DAYS, I FORGET THE EXACT  
18 DAYS, I THINK IT WAS OCTOBER 26TH AND 27TH, THAT SHE  
19 WANTED TO BE GONE.

20 IN LIGHT OF MY TELLING THEM LAST WEEK THAT THE  
21 TRIAL WOULD GO INTO NEXT WEEK, SHE WAS CONCERNED ABOUT  
22 HOW THAT MIGHT AFFECT HER.

23 SO I WILL ADDRESS THAT WITH HER TOMORROW AS  
24 WELL, AFTER WE HAVE HAD OUR OWN DISCUSSIONS AND BEFORE  
25 THE JURY.

26 MR. GUTERRES: WHAT DATES WERE THOSE,  
27 YOUR HONOR?

28 THE COURT: I'M NOT -- SPEAKING FROM MEMORY, I

1 REMEMBER IT AS BEING OCTOBER 26TH AND 27TH THAT SHE  
2 WANTED TO BE GONE.

3 THE CLERK: IT'S THE 27TH AND THE 28TH.

4 THE COURT: THAT'D BE THURSDAY AND FRIDAY.  
5 AND THE 28TH WAS THE DAY THAT ALTERNATE JUROR KMET  
6 NEEDED TO GO ON THE PRE-PLANNED TRIP. I DON'T HAVE AN  
7 ANSWER FOR THEM YET. SO PROBABLY WE'LL WAIT AND SEE  
8 HOW IT GOES.

9 BUT THERE'S STILL GOING TO BE OTHER DAYS  
10 BESIDES THE ONE THIS WEEK BECAUSE THERE'S STILL GOING  
11 TO BE -- WE'LL CERTAINLY BE ABLE TO DO, PROBABLY, MORE  
12 OF THE EXHIBITS. FORTUNATELY, WE'RE GETTING DOWN TO A  
13 CONSIDERABLY LESSER NUMBER.

14 THEY'RE MORE MANAGEABLE. BUT WE'RE ALSO GOING  
15 TO HAVE TO HAVE TIME FOR THE FULL ARGUMENT ON THE  
16 MOTION FOR A NEW TRIAL. THE HEARING THAT I BELIEVE  
17 THAT I NEED TO CONDUCT, WILL NEED TO BE DONE.

18 AND THEN, WHATEVER THE OUTCOME IS AFTER THAT,  
19 WE'LL HAVE TO BE, THEN, LOOKING WITH PURPOSE AT THE  
20 VERDICT FORM. BECAUSE BY THEN, WE SHOULD KNOW -- WE  
21 WILL KNOW WHAT CLAIMS ARE IN.

22 AND IF SO, WHATEVER THEY ARE, WE'RE GOING TO  
23 HAVE TO WORK ON THE WORDING, SPECIFIC WORDING, AND THE  
24 ELEMENTS OF ALL THOSE CLAIMS.

25 AND I'VE BEEN DOING SOME WORK ON IT AS WELL.  
26 NOT IN ANTICIPATION OF ANY RULING, JUST TAKING IT AS,  
27 PRESENTLY, FOR ALL OF THE CLAIMS THAT HAVE BEEN MADE.

28 SO THERE'S GOING TO BE SOME OTHER DAYS OFF.

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WE'LL RECESS NOW. WE'LL SEE YOU AT 8:00 A.M. TOMORROW.

(WHEREUPON, AT THE HOUR OF 4:21 P.M.,  
THE PROCEEDINGS WERE ADJOURNED.)

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(THE NEXT PAGE NUMBER IS 7501)