M A S T E R I N D E X

OCTOBER 24, 2016

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M A S T E R I N D E X

OCTOBER 24, 2016

EXHIBITS

PLAINTIFF'S	MARKED	RECEIVED	REJECTED
	NONE	OFFERED	

DEFENDANT'S	MARKED	RECEIVED	REJECTED
	NONE	OFFERED	

(EXHIBITS ADMITTED INTO EVIDENCE WERE DONE VIA STIPULATION OFF THE RECORD PLEASE REFER TO CLERK'S TRANSCRIPT.)

CASE NUMBER: BC470714
CASE NAME: DUVAL V COUNTY OF LOS ANGELES
LOS ANGELES, CALIFORNIA MONDAY, OCTOBER 24, 2016
DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN
APPEARANCES: (AS HERETOFORE NOTED.)
REPORTER: ELORA DORINI, CSR NO. 13755
TIME: 8:10 A.M.

---OOO---

THE COURT: GOOD MORNING TO EVERYONE. WE'RE ON THE RECORD. SO A COUPLE OF QUESTIONS TO GET UP TO DATE, AND I THINK MR. PRAGER IS PROBABLY THE ONE WHO IS WORKING ON IT.

DO YOU HAVE WHAT IS THE SUGGESTED VERDICT FORM NUMBER 2 RELATING TO THE UNRUH CLAIM, ACT CLAIM, AND THE TWO DISABILITY CLAIMS?

MR. PRAGER: I EXPECT TO HAVE IT JUST AFTER LUNCH. AND THE ANSWER IS, WE WORKED ON IT OVER THE WEEKEND, WE CAN AGREE TO USE THE FORM WITH THE UNRUH AND THE THREE PARTIES ALL ON THE SAME FORM.

THE COURT: ALL RIGHT.

MR. PRAGER. AND THE FEDERAL CLAIMS WILL NOT BE ANY DIFFERENT REALLY THAN WHAT WE TALKED ABOUT. WE'LL CONSOLIDATE THEM DOWN INTO THE ELEMENTS FOR THE 504 CLAIM, THE TITLE TWO CLAIM, AND THEN HAVE THE ONE CACI DAMAGES DESCRIPTIONS FOR THOSE CLAIMS.

THE COURT: ALL RIGHT. ONE OF THE -- ONE OF

THE CONCERNS I HAVE ABOUT THAT VERDICT FORM IS THAT A SUBSTANTIAL PART OF ALL OF THE PLAINTIFF'S CLAIMS ON ALL THE DIFFERENT CAUSES OF ACTION IS A CLAIM FOR DAMAGES FOR EMOTIONAL DISTRESS.

AND THOSE DAMAGES WOULD ALSO BE AWARDABLE IN WHAT I'LL CALL THE DISCRIMINATION CLAIMS.

MR. PRAGER: YES.

THE COURT: AND IT SEEMS TO ME IT'S RATHER DIFFICULT TO SORT OUT WHEN SOMEONE'S EXPERIENCING EMOTIONAL DISTRESS.

I THINK THERE'S SOME DIFFICULTY IN BEING ABLE TO PINPOINT WHAT SPECIFIC MATTER OR FACT, UNDERLYING EVENT HAS CONTRIBUTED TO, OR WHAT EXTENT IT CONTRIBUTES TO, EMOTIONAL DISTRESS.

IN THE VERDICT FORM, ARE YOU ACCOUNTING IN SOME WAY AT -- WELL, LET ME BACKTRACK TO SAY THAT IT -- WHAT WE REFER TO AS VERDICT FORM ONE, WHICH HAS TO DO WITH THE SEIZURE AND THEY ALL -- AND DECEPTION CLAIMS.

WE HAD, AT LEAST TENTATIVELY, AGREED LAST FRIDAY WHEN WE WERE WORKING ON IT THAT WE HAVE HAD ONE QUESTION FOR DAMAGES SO HOPEFULLY WE WOULD AVOID THE AWARDING OF THE SAME DAMAGES MORE THAN ONCE.

WE WOULD WANT TO DO THE SAME THING IN THE VERDICT FORM NUMBER 2 ON THE DISCRIMINATION CLAIMS BUT WE ALSO WOULD HAVE TO MAKE SURE THAT, EVEN THOUGH WE HAVE TWO DIFFERENT VERDICT FORMS AND DIFFERENT CLAIMS, THAT THEY DON'T AWARD THE SAME DAMAGES ON THE DISCRIMINATION CLAIMS THAT THEY MIGHT AWARD ON THE --

THE CLAIMS SUBJECT -- THAT ARE COVERED BY VERDICT FORM NUMBER 1.

HOW DO WE HANDLE THAT?

MR. PRAGER: I THINK YOU'VE ALREADY ANSWERED THE QUESTION PREVIOUSLY WHEN YOU SUGGEST THAT THERE WILL BE A HEARING ON THE VERDICT BEFORE IT'S CONFIRMED.

AND HERE'S THE RISK WE HAVE IF WE WERE TO, FOR EXAMPLE, OMIT EMOTIONAL DAMAGES ON ONE OF THE CLAIMS, LIKE THE FEDERAL CLAIMS, AND LEAVE THEM IN FOR THE STATE CLAIMS AND VICE VERSA.

IT'S VERY POSSIBLE THAT THE PLAINTIFF COULD FAIL ON ONE GROUP OF CLAIMS. SO SHE COULD FAIL ON THE STATE CLAIM OR SHE COULD FAIL ON THE FEDERAL CLAIMS.

AND THE CONSTRUCTIVE VERDICT FORM WHERE WE DON'T INCLUDE EMOTIONAL DISTRESS BECAUSE WE ANTICIPATE THAT SHE COULD FAIL ON THE OTHER CLAIM WOULD THEN NOT ACCOUNT FOR ALL HER DAMAGES IN THE CLAIMS SHE'S SUCCESSFUL ON.

TO HELP ALLAY THE CONCERN ABOUT DOUBLE DAMAGES, WHICH I UNDERSTAND, THE FEDERAL CLAIMS ARE COMPENSATORY. THEY ARE NOT EXEMPLARY IN ANY WAY. SO THEY ARE MORE AKIN TO COMPENSATORY AND BREACH OF CONTRACT THEORIES UNDER 504 AND TITLE 2.

ON THE STATE DISABILITY DISCRIMINATION CLAIMS, THEY ARE MORE EXEMPLARY IN NATURE, WHICH IS WHY, WHEN WE TALKED FRIDAY, WE TALKED ABOUT THE NECESSARY DAMAGES EVEN THOUGH THE CACI INSTRUCTION SAYS PENALTY.

IN THAT INSTRUCTION AS YOUR HONOR IS AWARE,

THERE IS A MULTIPLIER ON THE DAMAGES. SO I THINK THE SHORT ANSWER IS, THERE IS A RISK, AND I UNDERSTAND IT.

THERE ARE DIFFERENT PUBLIC POLICIES IN PLAY BETWEEN THE STATE AND FEDERAL CLAIM, AND I DON'T KNOW HOW WE CAN OMIT ANYTHING ON EITHER VERDICT FORM BECAUSE WE RUN THE RISK OF THEN NOT ACCOUNTING FOR SOME PORTION OF DAMAGES.

I THINK THE BEST OPPORTUNITY TO SOLVE THAT PROBLEM IS TO LEAVE EVERYTHING IN PLACE.

AND IF THE JURY AWARDS, JUST SAY, $10 FOR DISTRESS ON THE FEDERAL CLAIMS AND $10 FOR DISTRESS ON THE STATE CLAIMS AND THE COURT BELIEVES IT'S THE SAME CONDUCT, THE COURT CAN MODIFY THE JUDGMENT, YOU KNOW, WHATEVER THE LAW REQUIRES THE COURT TO DO.

THE COURT: I'D BE HAPPY TO HEAR FROM THE DEFENSE ON THIS IN A MOMENT, BUT AT LEAST MY PRESENT REACTION IS I DON'T THINK THAT'S SATISFACTORY.

I DON'T THINK THAT I -- IF WE GET A VERDICT FORM, OR ASSUMING THAT THEY FOUND DAMAGES FOR ONE OR MORE OF THE CLAIMS ON THE FIRST -- I DON'T THINK THAT THE -- I DON'T THINK THE COURT CAN DO THAT.

AND -- GO AHEAD.

MR. PRAGER: MR. MCMILLAN JUST SUGGESTED THAT WE COULD TRY THIS APPROACH:

HOW ABOUT IF, FOR EXAMPLE, WE STRUCTURE THE FEDERAL CLAIMS FIRST, HAVE THE DAMAGES SECTION AFTER BOTH FEDERAL CLAIMS, AND THEN HAVE THE STATE CLAIM ON THE CACI FORM AND INDICATE THE JURY SHOULD NOT AWARD

COMPENSATION FOR ANY AREA OF DAMAGE THEY PREVIOUSLY AWARDED FOR.

BUT JUST TO BE CLEAR, CIVIL CODE SECTION 504.3B SAYS THE REMEDIES UNDER THE STATE DISCRIMINATION CLAIMS ARE IN ADDITION TO ANY OTHER REMEDIES OF LAW, ANY OTHER MULTIPLIERS SITTING THERE.

SO I RESPECT THE FACT YOU DON'T WANT TO AWARD DAMAGES TWICE FOR THE SAME, SAY, EMOTIONAL DISTRESS, BUT THERE STILL WILL BE THIS MULTIPLE QUESTION ON THE CACI FORM.

THE COURT: I UNDERSTAND THE MULTIPLIER, AND I THINK THAT'S A SEPARATE ISSUE. THAT'S AN ADDITIONAL REMEDY PROVIDED UNDER THE UNRUH ACT. AND THAT REALLY -- SO FOR THE MOMENT, I'M NOT CONCERNED ABOUT THE MULTIPLIER.

I AM CONCERNED ABOUT WHAT THE COMPENSATORY DAMAGES AWARDED FOR AN UNRUH ACT VIOLATION, COMPENSATORY DAMAGES AWARDED FOR THE TWO FEDERAL DISCRIMINATION CLAIMS, AND COMPENSATORY DAMAGES AWARDED ON THE DECEPTION AND SEIZURE CLAIMS AND INTENTIONAL INFLICTION, AND SO ON.

AND -- WHICH IS WHAT I STARTED BY ADDRESSING, THAT IT SEEMS TO ME THAT THERE WOULD PROBABLY NEED -- OR AT LEAST WE COULD CONSIDER THE NEED FOR A JURY INSTRUCTION WHICH COULD COVER THIS SUBJECT.

BUT I WOULD NOT WANT, ON THE VERDICT FORMS, TO HAVE THE OPPORTUNITY FOR THE JURY, IF WE COULD AVOID IT, TO AWARD DAMAGES FOR THE SAME HARM TO THE PLAINTIFF

THAT THEY'VE AWARDED ON OTHER CAUSES OF ACTION.

LET ME ALSO SAY THAT PART OF MY CONCERN IS THAT NOT ONLY -- THAT DAMAGES CANNOT BE AWARDED TWICE, BUT WE DO WANT TO, IF WE'RE ABLE, TO IDENTIFY WHAT DAMAGES ARE BEING AWARDED ON EACH CLAIM.

AND THE REASON FOR THAT IS THAT I THINK THAT WE ALL AGREE THERE IS A HIGH LIKELIHOOD THAT WHATEVER THE RESULT OF THE CASE IS, THERE WILL BE AN APPEAL.

AND ON APPEAL, IT'S POSSIBLE THAT THERE COULD BE A REVERSAL ON SOME CAUSE OF ACTION BUT NOT ON OTHERS. IN OTHER WORDS, THE APPEAL MIGHT NOT BE ENTIRELY SUCCESSFUL FOR WHOEVER IS THE APPEALING PARTY.

AND IT'S ENTIRELY POSSIBLE BOTH PARTIES WILL BE APPEALING PARTIES.

AND SO, TO GIVE YOU AN EXAMPLE OF WHAT I'M TALKING ABOUT, LET'S ASSUME THAT THERE IS A FINDING FOR THE PLAINTIFF ON THE CAUSE OF ACTION FOR SEIZURE OF THE CHILD WITHOUT A WARRANT.

AND THERE'S AN AWARD OF DAMAGES THAT INCLUDES BOTH ECONOMIC AND NON-ECONOMIC DAMAGES. AND LET'S SAY THAT THE, BY WAY OF EXAMPLE, THAT THERE WAS ALSO AN AWARD TO THE PLAINTIFF ON THE TWO DECEPTION CLAIMS.

AND JUST STOPPING THERE WITHOUT GETTING TO VERDICT FORM NUMBER 2, I THINK THE WAY THAT WE HAVE STRUCTURED THE VERDICT FORM FOR THE DECEPTION AND SEIZURE CLAIMS THAT WE WOULD BE ABLE TO TELL WHAT DAMAGES HAVE BEEN AWARDED ON EACH CAUSE OF ACTION.

EVEN THOUGH THEY CAN'T BE DUPLICATED, THE

VERDICT FORM SHOULD NEVERTHELESS REFLECT WHAT DAMAGES ARE AWARDED.

BECAUSE IF IT DOESN'T, AND ON APPEAL, LET'S SAY THE DECEPTION CLAIMS -- LET'S SAY YOU PREVAIL ON THE DECEPTION CLAIMS, THE DEFENSE APPEALS THAT, AND THEY'RE SUCCESSFUL IN GETTING THE VERDICT ON THE DECEPTION CLAIMS THROWN OUT, THE PLAINTIFF --

BUT THEY LOSE ON THE ISSUE OF THE SEIZURE. WE WOULD WANT TO BE ABLE TO TELL FROM THE VERDICT FORM WHAT THE DAMAGES ARE FOR THE SEIZURE CLAIM.

DO YOU FOLLOW WHAT I'M SAYING?

MR. PRAGER: I DO.

THE COURT: OKAY. WELL, I WANT TO CARRY THIS FURTHER. IT GETS MORE COMPLICATED WHEN WE GO TO THE DISCRIMINATION CLAIMS.

AND WE WOULD WANT TO BE ABLE TO TELL FROM THE VERDICT FORM WHAT DAMAGES HAVE BEEN AWARDED FOR EACH CAUSE OF ACTION, BUT ALSO TO KNOW WHETHER ANY OF THOSE DAMAGES ARE DUPLICATIVE OF DAMAGES AWARDED ON ANOTHER CAUSE OF ACTION.

SO LET'S JUST SAY THERE'S A RECOVERY -- PUTTING ASIDE THE MULTIPLIER FOR A MOMENT, WHICH -- FOR THE MOMENT -- LET'S SAY THERE'S AN AWARD TO PLAINTIFF ON ALL THREE OF THOSE CLAIMS, AND DAMAGES ARE AWARDED ON THREE OF THEM.

THEN LET'S SAY ON APPEAL, THE COURT OF APPEAL, THE DEFENDANT APPEALS AND IS SUCCESSFUL IN THEIR APPEAL AS TO THE CLAIMS FOR THE FEDERAL VIOLATIONS.

BUT YOU STILL HAVE A STATE VIOLATION. I'M NOT SURE IF IT'S POSSIBLE OR NOT, BUT --

MR. PRAGER: YEAH.

THE COURT: BUT I THINK IT IS. AND THEN IT COMES TIME TO ENTER A JUDGMENT ON THE VERDICT. THE COURT WOULD HAVE TO BE ABLE TO TELL FROM THE VERDICT FORM WHAT DAMAGES HAVE BEEN AWARDED ON ANY ONE OF THOSE CAUSES OF ACTION.

BUT ALSO KNOW THAT THEY'RE NOT DUPLICATIVE OF DAMAGES AWARDED ON ANOTHER CAUSE OF ACTION, WHETHER IT BE ANY ONE OF THE THREE DISCRIMINATION CLAIMS OR WHETHER IT BE ANY OF THE CLAIMS THAT ARE COVERED BY WHAT WE'VE REFERRED TO AS VERDICT FORM NUMBER 1.

SO THE VERDICT FORMS NEED TO ESTABLISH WHAT DAMAGES THEY FIND FOR EACH CLAIM, BUT ALSO VERIFY THAT THEY ARE NOT DAMAGES WHICH ARE BEING AWARDED -- THAT ARE -- WE WOULD NEED TO KNOW THAT THEY'RE NOT AWARDING THE SAME DAMAGES TWICE.

SO IF THEY FOUND, FOR EXAMPLE, DAMAGES FOR EMOTIONAL DISTRESS ON THE SEIZURE CLAIM, WE WANT TO MAKE SURE THAT IF THEY AWARD DAMAGES FOR EMOTIONAL DISTRESS ON THE DISCRIMINATION CLAIM, THAT WE KNOW WHETHER THEY ARE BEING AWARDED ON SOMETHING ELSE, SOME EMOTIONAL DISTRESS OTHER THAN THE EMOTIONAL DISTRESS FOR WHICH THERE IS AN AWARD ON THE SEIZURE CLAIM.

OTHERWISE, YOU END UP NOT BEING ABLE TO ENTER A VERDICT. IF YOU CAN'T MAKE THAT -- EXCUSE ME -- ENTER A JUDGMENT ON THE VERDICT UNLESS YOU HAVE THAT

INFORMATION, AND IF YOU'RE UNABLE TO TELL THAT, THEN YOU HAVE TO HAVE A NEW TRIAL. SO THIS IS HUGELY COMPLICATED, AS I SEE IT.

AND MAYBE IT CAN BE HANDLED BY INSTRUCTION. BUT IT ALSO OCCURS TO ME THAT THE VERDICT FORMS, WE NEED TO DO AS MUCH AS WE CAN ON THE VERDICT FORM TO VERIFY AND ASCERTAIN WHAT DAMAGES ARE BEING AWARDED AND WHETHER ANY OF THOSE DAMAGES AWARDED ON ANY CLAIM ARE ALSO DAMAGES THAT THEY'VE AWARDED ON ANOTHER CLAIM.

THIS ISN'T EASY. BECAUSE OF THE NATURE OF THE DIFFERENT CLAIMS YOU HAVE HERE, IT JUST IS, I THINK, EXTRAORDINARILY COMPLICATED. SO, MR. MCMILLAN.

MR. MCMILLAN: YEAH. IN LISTENING TO YOUR HONOR'S COMMENTS AND ACTUALLY WORKING ON THE VERDICT FORMS SOME MORE, SORT OF FOLD IN THE 3920 VERDICT FORM THAT WE HAD DISCUSSED LAST WEEK, IT OCCURS TO ME THAT WE COULD POTENTIALLY FASHION A JURY INSTRUCTION --

AND THERE MAY ALREADY BE A CACI INSTRUCTION THAT WE CAN WORK WITH IT TO SORT OF CREATE SOMETHING A LITTLE TIGHTER --

THE COURT: THERE IS THAT CACI INSTRUCTION THAT GOES ALONG WITH THAT VERDICT FORM, AND I GUESS WE'D HAVE TO TAKE A LOOK AT IT TO SEE IF WE THINK THAT SUFFICIENT TO AVOID THIS POTENTIAL DILEMMA.

OR WHETHER SOMETHING FURTHER NEEDS TO BE SAID TO MAKE SURE THAT WE HAVE PROVIDED CLARITY TO THE JURY, AND THAT THEY WOULD MAKE THE RIGHT FINDINGS.

IN OTHER WORDS, NOT AWARDING -- THEY CAN AWARD

THE SAME DAMAGES ON, LET'S JUST SAY CAUSE OF ACTION -- LET'S SAY THEY AWARD DAMAGES ON SEIZURE, AND THEY AWARD DAMAGES ON ONE OF THE DECEPTIVE CLAIMS.

AND LET'S JUST SAY THE NUMBER IS X DOLLARS. WHAT WE NEED TO KNOW: IS THE X DOLLARS THEY AWARD ON THE SECOND CLAIM THE SAME X DOLLARS OR Y DOLLARS THEY AWARDED ON THE FIRST CLAIM.

MR. MCMILLAN: RIGHT.

THE COURT: OR ARE THEY ENTIRELY DIFFERENT, OR ARE THEY PARTIALLY DIFFERENT? IN OTHER WORDS, IS SOME PART OF THAT AWARD AN AWARD FOR DAMAGE THAT WAS NOT AWARDED ON THE FIRST CAUSE OF ACTION, AS AN EXAMPLE. FOLLOW WHAT I'M SAYING?

MR. MCMILLAN: I UNDERSTAND EXACTLY WHAT YOUR HONOR'S SAYING, AND I SHARE THE EXACTLY SAME CONCERN. I'VE BEEN DOWN THIS DAMAGES ROAD BEFORE ON APPEAL, AND IT'S A VERY UNCOMFORTABLE PLACE TO BE, ESPECIALLY IF YOU'RE THE PREVAILING PLAINTIFF AT A LONG TRIAL.

AND WE DON'T WANT TO BE THERE AT ALL.

THE COURT: IF THERE'S A FULL DEFENSE VERDICT, WE WON'T HAVE TO WORRY ABOUT IT.

MR. MCMILLAN: RIGHT.

THE COURT: OR, IF THERE'S A PLAINTIFF'S VERDICT ON ONLY ONE CLAIM, WE DON'T HAVE TO WORRY ABOUT IT. AS SOON AS YOU GET AN AWARD ON MORE THAN ONE CLAIM, THEN IT BECOMES PROBLEMATIC.

AND REALLY, THE PROBLEM IS THE SAME, THEN. NO MATTER HOW MANY MORE THAN ONE CLAIMS THERE'S AN AWARD

DAMAGES, IT'S JUST THE POTENTIAL BECOMES, PERHAPS, GREATER, BUT THE PROBLEM REMAINS THE SAME.

MR. MCMILLAN: RIGHT. EXACTLY. SO WHAT I WAS THINKING IS WE CAN DO IT -- AND THIS IS WHAT I WAS MISSING.

THE LAST TIME AROUND I HAD ONE OF THESE CASES, I DIDN'T HAVE AN INSTRUCTION TELLING THE JURY, LOOK, YOU CAN ONLY AWARD DAMAGES RELATIVE TO A PARTICULAR CONDUCT ONE TIME.

YOU CAN'T GIVE MULTIPLE AWARDS FOR THE SAME INJURY. AND I THINK HAD WE HAD THAT INSTRUCTION, THINGS WOULD HAVE BEEN A LITTLE LESS COMPLICATED ON APPEAL.

BUT IF WE HAVE THAT INSTRUCTION, AND THEN WE ALSO HAVE SOMETHING IN THE VERDICT FORM THAT SAYS SOMETHING TO THE EFFECT OF NON- -- WHAT IS THE AMOUNT OF DAMAGES NOT ALREADY AWARDED IN PRIOR CLAIMS.

THE COURT: AND THAT'S ONE OF THE WAYS OF DOING IT MAYBE IS TO -- I'M NOT SURE IN THE FIRST VERDICT FORM IF MAYBE WE'RE GOING TO BE ABLE TO TELL.

BUT I'M NOT SURE. PROBABLY ON BOTH OF THEM, IT MAY BE THAT WE SHOULD -- WE'RE GOING HAVE TO HAVE THAT, SOMETHING LIKE THAT, TO HAVE THE JURY TELL US -- HAVE YOU AWARDED THE SAME DAMAGES ON THIS AS YOU DID ON ANYTHING ELSE.

MR. MCMILLAN: RIGHT. AND I THINK WE HAVE TO DO THAT TO AVOID THE DUPLICATION.

THE COURT: AND IF THEY'RE NOT IDENTICAL, IF

THEY ARE THE SAME, OKAY. THEY'RE THE SAME DAMAGE. IF THEY'RE NOT, WHAT PART OF THE DAMAGES IS -- ARE AWARDED THAT HAVE NOT PREVIOUSLY BEEN AWARDED.

MR. MCMILLAN: WELL, ONE WAY WE COULD ALSO ADDRESS THAT IS, WE HAVE THE INSTRUCTION, THEN WE HAVE THE VERDICT FORM THAT EACH STATE SAYS NON-DUPLICATIVE, NON-DUPLICATIVE DAMAGES, SOMETHING YOU HAVEN'T ALREADY DONE.

AND THEN AT THE END HAVE A TOTAL VERDICT FORM THAT JUST BASICALLY SAYS WHAT IS THE TOTAL DAMAGES AWARDED THAT ARE NOT DUPLICATIVE, OR SOMETHING LIKE THAT. SO THAT THEN THEY CAN GO THROUGH AND SUM IT UP AND TELL US --

THE COURT: WELL, HOW IT GETS DONE, I DON'T KNOW. BUT I AGREE WITH YOU THAT WE'RE GOING TO HAVE TO DO SOMETHING. AND SO I HAVE --

MR. GUTERRES, MS. SWISS, I'M HAPPY TO HAVE YOU CHIME IN ON THIS, BUT IT JUST SEEMS TO ME THAT WE HAVE TO ACCOMPLISH THIS IN SOME MANNER. AND, OF COURSE, HERE WE ARE TODAY ON OUR DAY JOB, AND WE'RE NOT GOING TO HAVE MUCH OPPORTUNITY TODAY TO WORK ON THIS.

MR. GUTERRES: UNDERSTOOD, YOUR HONOR. I MEAN, WE UNDERSTAND WHAT THE COURT IS SAYING, AND WE'LL JUST HAVE TO FIGURE OUT HOW BEST TO ADDRESS IT, WHETHER IT'S PUTTING 100 PERCENT AT THE END OR PUTTING SOME INSTRUCTION THAT EXPLAINS TO THE JURY NOT TO DUPLICATE DAMAGES.

THE COURT: PERIODICALLY, YOU SEND MS. NAU

BACK SOMEWHERE, AT LEAST SOMETIMES SHE'S NOT HERE. AND I NOTICE IN MANY OF THE POINTS AND AUTHORITIES I GET, SHE'S OFTEN THE SIGNING PARTY.

MR. GUTERRES: THE BRAINS OF OUR OPERATION.

THE COURT: AND MR. PARIS HAS HAD A DIFFERENT RESPONSIBILITY, AND MR. KING.

I'M JUST WONDERING IF AMONG MR. KING, MR. PARIS, MS. NAU, WHILE THE REST OF US ARE ENGAGED IN OUR DAY JOB, THEY MIGHT BE ABLE TO MEET AND CONFER, SEE IF YOU CAN COME UP WITH SOME CONSTRUCTIVE SOLUTIONS AS TO WHAT WE OUGHT TO DO.

MS. SWISS: I'M HAPPY TO VOLUNTEER MS. NAU FOR THAT.

THE COURT: I WAS VOLUNTEERING HER ALSO.

MS. SWISS: GREAT IDEA.

THE COURT: YES. WE HAVE MORE PERSONS OVER HERE ON THE OTHER SIDE, AND I'M NOT SURE OF WHO THE VOLUNTEER OR VOLUNTEERS WILL BE, BUT MR. PARIS IS NODDING HIS HEAD, UNDERSTANDING THAT IN RELATIVE RELATIONSHIPS OF PERSONS ON THE TOTEM POLE, HE MAY BE A PERSON TASKED WITH THIS.

MR. PARIS: I BELIEVE THAT MAY BE A DISTINCT POSSIBILITY, YOUR HONOR.

THE COURT: THAT'S ENTIRELY POSSIBLE.

MR. MCMILLAN: MS. CHUNG ISN'T HERE, SO WE COULD ALWAYS HAVE THE TWO OF THEM SINCE SHE'S NOT HERE TO DEFEND HERSELF.

THE COURT: THAT'S RIGHT. ALL RIGHT. LET ME

GO ON TO ANOTHER ISSUE, THEN WE'LL TRY TO BRING SOME CONCLUSION TO THIS.

EXCUSE ME. WE'LL GO OFF THE RECORD ON THE DUVAL CASE.

(PAUSE IN THE PROCEEDINGS)

THE COURT: ALL RIGHT. SO NEXT QUESTION THAT I HAVE -- AND I NOTICE EVERYONE'S STILL HERE -- SO WE HAD THE ISSUE OF DEFENDANT'S MOTION FOR NON-SUIT ON THE DISCRIMINATION CLAIM BASED ON TREMORS.

AND MR. PRAGER, AND -- AND I UNDERSTAND. I'M NOT ASKING YOU TO REPEAT WHAT WE ORDERED BEFORE ON BOTH OF THESE CLAIMS, BOTH THE MUNCHAUSEN'S AND THE ISSUE OF TREMORS -- THAT WHAT YOU'RE PROCEEDING ON IS A CLAIM OF DECEPTION OR DISABILITY.

WITH THE CLAIM OF DECEPTION OR DISABILITY WHAT HARM DO YOU CONTEND HAS OCCURRED, THAT THE EVIDENCE SUPPORTS HAS OCCURRED IN CONNECTION WITH THE CLAIM OF THE PERCEPTION OF DISABILITY BASED ON THE TREMORS?

MR. PRAGER: THEY MADE MOM SEEM ANXIOUS AND UNTRUSTWORTHY AND NOT CREDIBLE BECAUSE OF HER SHAKING CONDITION, WITHOUT EXPLAINING THE MEDICAL JUSTIFICATION AS MS. DUVAL PROVIDED TO THE SOCIAL WORKERS TO EXPLAIN WHY SHE'S SHAKING.

SO THEY TOOK HER MEDICAL CONDITION, THE SYMPTOMS OF HER MEDICAL CONDITION, AND THEY USED IT TO DISPARAGE HER TO THE COURT TO SUPPORT THEIR ONGOING CONSTRUCTION THAT SHE HAS PROFOUND PROBLEMS AND SHOULD NOT BE TRUSTED. AND THAT SHE'S NEGLECTING HER SON, AND

THE CHILD SHOULD BE REMOVED FROM HER CARE.

YOUR HONOR, THE HARM SPECIFICALLY WOULD BE THAT THE CHILD WAS REMOVED AS PART OF THIS ONGOING EFFORT TO CAST HER AS HAVING SYMPTOMS OF BEING UNTRUSTWORTHY AND CREDIBLE.

AND I'M LOOKING FOR IT RIGHT NOW AS WE SPEAK, BUT THERE WERE CIVIL RIGHTS REPORTS WHERE THE CIVIL RIGHTS UNIT DETERMINED THAT MOTHER LOST HER SON BECAUSE OF THIS CONDUCT IN PART, THE MUNCHAUSEN'S BEING PART AND THE TREMORS BEING PART.

THE COURT: SO YOU WOULD BE ASKING THE JURY TO DECIDE -- LET'S ASSUME FOR A MOMENT THAT THE DEFENDANTS HAD A PERCEPTION, THIS WOULD REALLY BE TRUE ON BOTH OF THE CLAIMS ABOUT THE MUNCHAUSEN'S AND THE TREMORS.

MR. PRAGER: YES.

THE COURT: THAT THAT PERCEPTION CAUSED -- WHO? THE JUVENILE COURT? TO NOT GIVE PROPER WEIGHT TO -- TELL ME AGAIN, IF YOU WOULD.

MR. PRAGER: SURE. AND I DON'T THINK IT'S JUST A SINGLE FACTOR. BECAUSE I HAVE THE FURTHER INFORMATION YOU REQUESTED, AND I CAN GO THROUGH IT WITH THE COURT IF THE COURT WOULD LIKE.

BUT WITH REGARD TO THIS POINT, THERE WERE CONCLUSIONS THAT BECAUSE THE SOCIAL WORKERS FORMED THE BELIEF THAT MOTHER WAS MUNCHAUSEN'S, AND THEY BEHAVED THAT WAY.

THEY MADE REPRESENTATIONS TO THE COURT THAT MOTHER WAS MUNCHAUSEN'S AND THE TREMOR BUSINESS TO CAST

HER AS BEING UNTRUSTWORTHY.

AND I THINK IN TOTAL, THAT CREATES A PICTURE FOR THE JUVENILE COURT WHERE MOTHER IS NOT DESERVING OF HER SON OR CANNOT BE TRUSTED WITH HER SON, AND SHE LOST HER SON.

AS AN ADDITIONAL BASIS FOR THE DISCRIMINATION CLAIMS, THE SOCIAL WORKERS STILL MADE RECOMMENDATIONS AGAINST GIVING SERVICES.

NOW, THE COURT'S HEARD THOSE SERVICES WERE OFFERED TO MOTHER, BUT THE POINT IS THEY STILL MADE RECOMMENDATIONS NOT TO PROVIDE THOSE SERVICES BECAUSE OF WHAT THE CIVIL RIGHTS UNIT SAYS WAS THIS PERCEPTION BUSINESS.

AND BY ITSELF, THAT IS ACTIONABLE BECAUSE THEY'RE MAKING RECOMMENDATIONS TO DENY SERVICES OR GIVE THEM LESSER SERVICES BASED ON A PROTECTED CLASS. SHE FORTUNATELY -- THE COURT DID NOT ACCEPT THAT RECOMMENDATION AT THAT MOMENT IN TIME.

BUT OUR POSITION IS, IN AND OF ITSELF, IF YOU MAKE A RECOMMENDATION BASED UPON A PROTECTED STATUS, THAT WOULD BE ACTIONABLE. BECAUSE YOU'RE NOT SUPPOSED TO MAKE RECOMMENDATIONS BASED UPON THE PROTECTED STATUSES THAT THE CIVIL RIGHTS UNITS ENFORCES.

THE COURT: I'M GOING TO HEAR FROM YOU IN A MOMENT, MS. NAU.

I'M JUST TRYING TO GET CLEAR, AND SO THE HARM -- LET'S SAY FOR A MOMENT, WHICH ISN'T MY MEMORY OF THE EVIDENCE, BUT I'LL TAKE YOUR MEMORY OF THE

EVIDENCE -- NO, I DID SEE -- I DID SEE WHAT YOU SUBMITTED TO ME BUT WE'RE GOING NOW TO AN ADDITIONAL STEP BEYOND WHAT HAD BEEN SUBMITTED TO ME.

THAT -- MY RECOLLECTION IS THAT I DON'T THINK ANYONE EVER SAID THAT SHE HAD MUNCHAUSEN'S. AND FIRST OF ALL, I REALIZE FROM THE DEFENDANT'S POINT OF VIEW THAT THE ISSUE DIDN'T COME UP UNTIL AFTER THE ORIGINAL DETENTION HEARING.

BUT -- JUST ASSUMING -- BECAUSE -- THIS MAY OR MAY NOT APPLY TO WHAT OCCURRED IN THE DETENTION HEARING, BUT YOUR ALLEGATION OR YOUR CONTENTION WOULD BE THAT THIS CERTAINLY COULD HAVE HAD EFFECT -- FROM YOUR POINT OF VIEW, DID -- HAVE EFFECT ON THE JURISDICTION, ON THE DECISIONS MADE AT THE JURISDICTION DISPOSITION HEARING. CORRECT.

MR. PRAGER: YES.

THE COURT: SO NECESSARILY DIDN'T HAVE TO COME UP AT THE DETENTION HEARING. BUT THE HARM IS -- AND ASSUMING YOU'RE FACTUALLY CORRECT THAT THEY DID WHAT? THAT THEY DENIED SERVICES BASED ON THE PERCEPTION THAT SHE HAD TREMORS AND THAT THE TREMORS WHAT?

MR. PRAGER: THE TREMORS WERE USED TO MISCHARACTERIZE HER NERVOUSNESS, TO MAKE IT APPEAR THAT SHE WAS UNTRUSTWORTHY.

IF YOU'D LIKE, YOUR HONOR, I REALIZE YOU READ IT, I CAN TRY GIVE AND YOU CONTEXT BY JUST -- BY COVERING, FOR EXAMPLE, NUMBER ONE IN THE FURTHER REFERENCE WE PROVIDED TO YOU.

BECAUSE, OF COURSE, THIS IS A DEMURRER TO THE EVIDENCE WE OFFERED IN OUR CASE. SO ALL WE HAVE TO DO IS MAKE A PRIMA FACIE SHOWING THAT WE HAVE EVIDENCE, I THINK THE COURT, AS A MATTER OF LAW, MUST DENY THE MOTION FOR NON-SUIT.

THE COURT: I DON'T THINK THAT'S QUITE TRUE. I AGREE, PARTLY, WITH WHAT YOU'RE SAYING. THE MOTION IS FOR NON-SUIT. AND A NON-SUIT, AMONG OTHER THINGS CAN BE BASED ON, THERE'S NO EVIDENCE OF DAMAGE, OF HARM.

SO IT ISN'T JUST THAT THE -- NON-SUIT WOULDN'T BE BASED JUST IF THERE WAS NO EVIDENCE OF PERCEPTION OF THESE. AND IF THAT WAS THE SOLE TEST, THEN THERE WOULD BE PROBABLY BE A FACTUAL ISSUE. WHICH THE FACTUAL ISSUE WOULD PREVENT THERE BEING A NON-SUIT.

BUT A NON-SUIT CAN BE GRANTED NOT JUST BECAUSE THERE'S BEEN A VIOLATION -- WELL, I'LL REFER TO THIS BROADLY AS A VIOLATION OF DUTY, THAT IS, THEY SHOULD NOT PERCEIVE SOMEBODY TO HAVE A DISABILITY AND DO SOMETHING AS A RESULT OF THAT.

BUT THERE HAS TO BE SOMETHING THAT WAS DONE. AND SO TAKE ME TO THAT NEXT STEP, THEN.

MR. PRAGER: LET ME READ YOU THE NUMBER 1 ITEM ON THE FURTHER REFERENCE TO MAKE IT VERY CLEAR.

"FURTHER, DCFS MADE THE RECOMMENDATION THAT CP DUVAL NOT BE ALLOWED TO REUNIFY WITH HER SON. THEREFORE CP DUVAL WAS DIFFERENTLY TREATED IN THE RECEIPT OF SERVICES BECAUSE SHE WAS A QUALIFIED

INDIVIDUAL WITH A DISABILITY (TREMORS; MUNCHAUSEN'S)," WAS ONE OF THE THINGS THE CIVIL RIGHTS UNIT SAID.

AND THEN, OF COURSE, THE COUNTY ADOPTED THAT AS A TRUTHFUL STATEMENT.

THE COURT: ALL RIGHT. SO, IS YOUR CONTENTION THEN IS THAT THE HARM WAS THAT SHE WAS DENIED REUNIFICATION SERVICES?

MR. PRAGER: YES. AND TO BE VERY CLEAR, SHE WAS DENIED THE RECOMMENDATION FOR THOSE SERVICES, WHICH WOULD BE A LESSER SERVICE COMPARED TO SOMEONE ELSE WHO DID NOT SUFFER TREMORS OR MUNCHAUSEN'S.

SO THE ARGUMENT IS, THERE WOULD BE A RECOMMENDATION FOR REUNIFICATION SERVICES, WHEREAS IN OUR SITUATION, THEY RECOMMENDED AGAINST IT BECAUSE OF HER TREMORS AND THIS PERCEPTION OF MUNCHAUSEN'S. AND WE ALSO --

THE COURT: WHAT EVIDENCE DO WE HAVE OF THAT?

MR. PRAGER: WELL, WE HAVE --

THE COURT: IF THEY RECOMMENDED AGAINST IT, NUMBER ONE AND NUMBER TWO -- ACTUALLY I HAVE A NUMBER OF QUESTIONS. NUMBER TWO, MY RECOLLECTION IS THAT SHE DID RECEIVE A NUMBER OF SERVICES FOR A PERIOD TIME.

MR. PRAGER: CORRECT.

THE COURT: AND NUMBER THREE, THAT, IN THE FINAL DISPOSITION, AND HAVE I'D TO LOOK BACK AT IT, IT MAY HAVE BEEN PART OF THE ORDER THAT THERE WOULD BE NO REUNIFICATION SERVICES.

BUT I ALSO HAVE A RECOLLECTION THAT THERE IS

EITHER A WELFARE AND INSTITUTIONS CODE SECTION, OR SOME OTHER AUTHORITY WHICH PRECLUDES THE AWARDING OF REUNIFICATION SERVICES FOR THE -- WHERE THE PERSON IS THE CAUSE OF THE HARM TO THE MINOR.

ISN'T THAT CORRECT?

MS. SWISS: YES. IT'S WELFARE AND INSTITUTIONS CODE 361.5, AND THAT WAS THE BASIS FOR THE INITIAL RECOMMENDATION FOR NO REUNIFICATION SERVICES.

THE COURT: RIGHT.

MS. SWISS: WHEN THERE'S AN ALLEGATION OF SEVERE NEGLECT UNDER WELFARE AND INSTITUTIONS 300 E, IF IT'S SEVERE NEGLECT, THEN THEY CAN RECOMMEND NO REUNIFICATION SERVICES.

AND THAT'S WHAT HAPPENED AT THE INITIAL PETITION STAGE.

THE COURT: THAT JUST ANSWERED THAT QUESTION FOR THE MOMENT. IT TAKES ME TO THE NEXT QUESTION. AND WHAT'S THE HARM FOR NOT BEING OFFERED REUNIFICATION SERVICES?

MR. PRAGER: THE DENIAL ITSELF IS A HARM, BUT THE POINT IS --

THE COURT: OKAY. IT'S A HARM. HOW DO WE EQUATE -- WHAT'S THE REMEDY FOR THAT? DAMAGES?

MR. PRAGER: THERE COULD BE DAMAGES, YES, AND OBVIOUSLY, FOR THAT DISCRETE EVENT, THE DAMAGES WOULD NOT BE AS SIGNIFICANT AS THE ULTIMATE CONCLUSION OF THE CIVIL RIGHTS UNIT, THAT SHE LOST HER SON BECAUSE OF THE CONDUCT OF MS. SCHEELE OR MS. NELSON IN THIS CASE. OR

THEY WERE CONTRIBUTING FACTORS TO HER LOSING HER SON.

AND JUST, IF I COULD, YOUR HONOR, ON NUMBER TWO, IN THE LETTER THE COUNTY SENT TO THE PLAINTIFF, IT SAYS THAT, "YOUR COMPLAINT REVEALED A VIOLATION OF YOUR CIVIL RIGHTS ON THE BASIS OF YOUR DISABILITY.

"THERE IS EVIDENCE THAT THE DEPARTMENT STAFF INVOLVED IN YOUR CASE SUBJECTED YOU TO INAPPROPRIATE CONDUCT, DENIED YOU BENEFITS OR SERVICES, OR TREATED YOU DISPARATELY BASED ON YOUR DISABILITY."

AND WE ALREADY KNOW FROM NUMBER ONE THAT THAT CIVIL RIGHTS INVESTIGATOR WAS TALKING ABOUT TREMORS AND MUNCHAUSEN'S. SO FROM OUR PERSPECTIVE, WE DON'T NEED TO TEASE OUT PRECISELY WHAT A JURY COULD RELY ON TO CONCLUDE THAT MS. DUVAL SUFFERED A HARM.

BECAUSE IT'S KIND OF A MULTIFACTORIAL APPROACH HERE WHERE THEY ALLEGED TREMORS, AND THEY MISUSED HER TREMORS, AND THEY MISUSED THE MUNCHAUSEN'S BUSINESS TO SUPPORT THEIR PERCEPTION THAT SHE SHOULD NOT HAVE HER SON.

THE COURT: ALL RIGHT.

MR. PRAGER: AND ALSO I THINK THE SEVERE NEGLIGENCE ALLEGATION WAS STRICKEN. I DON'T THINK THAT WAS SUSTAINED BY THE COURT. THE 300 E ALLEGATION.

THE COURT: AND -- SO YOU WOULD BE ASKING THEM, THE JURY TO AWARD DAMAGES BECAUSE OF THIS, THE LOSS OF HER SON.

MR. PRAGER: CORRECT. BUT I THINK THE

EVIDENCE IS CLEAR THAT MUNCHAUSEN'S WAS THE PRINCIPAL DRIVER. I THINK TREMORS IS JUST A SUPPORTING BASIS FOR WHAT THE SOCIAL WORKERS WERE MISUSING TO DRAW THEIR CONCLUSIONS.

THE COURT: MS. NAU? YOU'VE BEEN WAITING.

MS. NAU: YES, YOUR HONOR. PLAINTIFF HAS NOT PRESENTED ANY EVIDENCE THAT HER TREMORS DISABILITY SOMEHOW CONTRIBUTED TO THE LOSS OF HER SON IN THE DECISIONS OF THE JUVENILE COURT. THAT'S SIMPLY NOT IN ANY EVIDENCE THAT'S BEEN PRESENTED.

I BELIEVE WHEN WE WERE BRIEFING THIS THAT PLAINTIFF'S ARGUMENT WAS THAT SHE WAS DENIED REUNIFICATION SERVICES ON THE BASIS OF HER TREMORS DISABILITY.

BUT AS YOUR HONOR HAS STATED, THAT RECOMMENDATION WAS MADE BY DCFS LONG BEFORE, IN NOVEMBER 2009, LONG BEFORE ANYBODY KNEW SHE HAD A TREMORS DISABILITY OR A PERCEIVED MUNCHAUSEN'S DISABILITY, AND THAT WAS BASED ON THE COUNTS ALLEGED --

THE COURT: LET ME JUST INTERRUPT YOU FOR A MOMENT TO SAY THAT THAT GOES TO AN EVIDENTIARY ISSUE ABOUT WHEN MUNCHAUSEN EVEN AROSE.

AND THE POINT YOU MADE IN ONE OF THE -- IN THE -- IN ONE OF YOUR MORE RECENT SUBMISSIONS TO THE COURT WAS THAT MUNCHAUSEN'S HAD NEVER EVEN BEEN MENTIONED AT THE TIME OF THE DETAINMENT OF THE CHILD AND THE PREPARATION OF THE DETENTION HEARING REPORT.

AND THAT THE FIRST MENTION OF MUNCHAUSEN WAS

BY MS. DUVAL'S ATTORNEY IN ARGUMENT AT THE -- I BELIEVE IS WAS AT THE DETENTION HEARING, SAYING IT WASN'T A MUNCHAUSEN'S CASE. AND NO ONE AT THAT POINT WAS CONTENDING THAT IT WAS.

AND I UNDERSTAND THAT. BUT LET ME INTERRUPT YOUR ARGUMENT IN ORDER TO ASK MR. PRAGER ANOTHER QUESTION, IF I COULD.

DOES THAT RAISE AN ISSUE OF LAW TO BE DECIDED BY THE COURT, JUST AS IT DOES IF THERE'S AN ISSUE OF LAW TO BE DECIDED BY THE COURT IN THE DECEPTION CLAIMS?

BECAUSE I DON'T THINK I CAN LET A JURY DECIDE THAT THE JUVENILE COURT OFFICER MADE THE FINDINGS AND ORDERS THAT SHE DID BASED ON THAT.

BUT -- BECAUSE -- LOOK, ASSUMING FOR THE MOMENT THAT THERE WAS SOME DISCRIMINATION, AND EVEN ASSUMING FOR THE MOMENT -- YOUR CLAIM IS THAT SHE WAS DENIED REUNIFICATION.

WELL, OKAY, BUT HOW DO WE EQUATE THAT -- AND YOU TOOK AN ADDITIONAL STEP THAT IT CAUSED THEM TO -- IT CAUSED DCFS, YOU'RE SAYING, TO GIVE LESS CREDENCE TO HER VERACITY, PERHAPS HER OBJECTIVITY -- AND IT RESULTED IN THE LOSS OF HER CHILD.

THAT IS A HUGE JUMP. AND WHEN YOU SAY THE RESULT IS THE LOSS OF A CHILD, TO ME, YOU'RE IMPLICATING, ALSO, A LEGAL ISSUE AS TO WHETHER OR NOT THERE WAS ANY EVIDENCE BEFORE THE -- THAT IF -- IF THE SAME KIND OF LEGAL ISSUE IS PRESENTED BY THE DECEPTION CLAIMS.

MR. PRAGER: WELL, WHAT I CAN TELL YOU IS THAT --

THE COURT: NO. DON'T TELL ME WHAT YOU CAN TELL ME. ANSWER THAT QUESTION. I'LL PUT THAT IN THE FORM OF A QUESTION: DOESN'T THAT RAISE A LEGAL ISSUE FOR THE COURT TO DECIDE?

MR. PRAGER: I THINK SHE WAS DENIED SERVICES, AND I THINK A JURY, AS A MATTER OF FACT, CAN DECIDE WHAT SERVICES SHE WAS DENIED.

SO I DON'T KNOW THAT WE HAVE TO IMPLICATE THE JUDICIAL OFFICER'S THINKING TO DETERMINE THE SCOPE OF THE HARM SHE SUFFERED BY BEING MISLABELED.

I THINK CONDUCT HERE BASICALLY IS, IF YOU WILL, SHE'S BEEN LIBELLED OR SLANDERED BY DCFS, BY ATTRIBUTING THIS MENTAL ILLNESS SHE DOESN'T HAVE, TO HER.

AND THAT'S A GOOD PART OF THE HARM BECAUSE NOW SHE'S BEEN STIGMATIZED BY THE ATTRIBUTION OF THESE CONDITIONS SHE DOESN'T HAVE. AND ONCE SHE'S -- I THINK THAT'S THE QUESTION FOR THE JURY IS, ONCE SHE'S PERCEIVED AS HAVING THE CONDITION, SHE SATISFIES THE STATUTE.

AND THE QUESTION THEN FALLS, OF COURSE, WHAT ARE HER DAMAGES. AND I THINK THE JURY IS ENTITLED TO CONSIDER THAT AND, OBVIOUSLY, IF THE COURT HAS TROUBLE WITH THE CONCLUSION, THE ISSUE CAN BE REVISITED. BUT WE SURVIVED THE MSJ ON THIS ISSUE AS WELL. THIS ISSUE HAS NEVER ARISEN IN COURT THUS FAR.

THE COURT: LOOK, I KNOW THAT MOST OF THESE CLAIMS SURVIVED THE MOTION FOR SUMMARY JUDGMENT. I DON'T KNOW IF THAT HAS ANY INFLUENCE ON ME AT ALL THAT YOU DID BECAUSE AT THIS POINT IN TIME I'M CONFRONTED WITH THE MOTION FOR NON-SUIT.

AND AMONG OTHER THINGS THAT ARE ALREADY STATED, NOT ONLY MUST SHOW THE WRONG, YOU MUST SHOW THE HARM. AND THE HARM DETERMINES, I BELIEVE -- NEEDS TO TRANSLATE INTO SOME REMEDY THAT CAN BE PROVIDED BY THE COURT.

IT WON'T BE SUFFICIENT, AND I DON'T THINK -- FOR THE JURY TO SAY, WELL, YES, THEY DISCRIMINATED AGAINST HER BECAUSE THEY THOUGHT SHE HAD MUNCHAUSEN'S. AND -- AND SHE DIDN'T GET REUNIFICATION WITH THE CHILD.

OKAY. SHE DIDN'T GET REUNIFICATION SERVICES. THAT DOESN'T MEAN THERE HAS TO BE SOME FURTHER STEP BEYOND THAT.

MR. PRAGER: IN THE JURIS DISPOSITION REPORT IS WHEN DCFS FILED THE INFORMATION REGARDING THE MUNCHAUSEN'S. SO IT'S TRUE THAT AS OF NOVEMBER 3RD, THEY HADN'T FILED IT --

THE COURT: YEAH, THEY DID, BUT AT THE TIME ALL THEY SAID, SOMETHING TO THE EFFECT IT MUST BE RULED OUT. DIDN'T THEY?

MR. PRAGER: THEY SAID THAT SHE POSSIBLY HAS MUNCHAUSEN'S BUT THE PROBLEM IS THE SOCIAL WORKERS WERE UNLICENSED AND NOT QUALIFIED TO DO THAT. AND THE --

THE COURT: SO IT IS -- IS THAT -- IS THAT

THEN PART OF THE ISSUE OF NON- -- A MOTION --

THE LEGAL ISSUE THE COURT MUST DECIDE, AS TO WHETHER THERE WAS EVIDENCE BEFORE THE JUDICIAL OFFICER WHICH IS A REASONABLE BASIS FOR THE DECISION, TAKING INTO ACCOUNT MATTERS WHICH WERE OMITTED, MATTERS WHICH WERE FALSE, MATTERS WHICH HAD NOT BEEN SUFFICIENTLY EXPLAINED? BECAUSE --

MR. PRAGER: IF I COULD, PERHAPS, ADDRESS THAT --

THE COURT: -- IT SEEMS THE TO ME THAT, INEVITABLY, THAT'S WHAT THIS COMES TO.

MR. PRAGER: ON AUGUST 2ND, PRIOR TO THE FINAL CONCLUSION OF THE CHILD CUSTODY, THE CIVIL RIGHTS UNIT ISSUED FINDINGS THAT PLAINTIFF HAD SUFFERED A DENIAL OF SERVICES AND LESSER SERVICES.

THE COURT: I UNDERSTAND. IT WAS LATER CHANGED. BUT YEAH, THAT WAS AT THE TIME, AND I MENTIONED EARLIER, IN THE MOTION FOR NON-SUIT OVER MUNCHAUSEN'S, THAT I THOUGHT THERE WAS A FACTUAL ISSUE.

AT THE TIME I MADE THAT RULING, NOT REALIZING YOU WERE ALSO BASING THE CLAIM ON TREMORS, ALTHOUGH YOU WERE, THEN I ASKED FOR SOME ADDITIONAL INFORMATION ON THAT.

NOW, HAVING LOOKED AT THE ADDITIONAL INFORMATION, IT OCCURS TO ME THAT I DID NOT ADEQUATELY ADDRESS THE MOTION FOR NON-SUIT ON THE CLAIM OF MUNCHAUSEN'S.

SO LET'S JUST SAY AS TO EITHER ONE OF THEM --

IF YOU WANT TO CONCENTRATE ON THE MUNCHAUSEN'S, FINE, BUT ONE OR BOTH, IT WAS NOT -- I DID NOT PERCEIVE IT TO BE THE ARGUMENT AT THE TIME THAT -- THAT IT WAS NOT ARGUED AT THE TIME, NOR PRESENTED TO ME AT THE TIME, AS TO THE ISSUE THAT I'M NOW DISCUSSING.

SO, GOING BACK TO MY STATEMENT, I WANT TO KNOW WHERE THIS IS INCORRECT THAT A WRONG MUST BE -- MUST HAVE CAUSED A HARM. AND, IN TURN, WE'RE NOT GOING TO JUST DECLARE THAT THIS WAS WRONG.

YOU'RE SEEKING DAMAGES, AND THE DAMAGES, YOU TOLD ME A WHILE AGO, ARISE FROM THE LOSS OF THE CHILD.

IF IT ARISES FROM THE LOSS OF THE CHILD, THEN IT APPEARS TO ME THAT THIS PRESENTS THE SAME KIND OF FACTUAL -- SAME ISSUE OF THE LAW THAT MUST BE DECIDED BY THE COURT AS TO WHETHER OR NOT, IF MUNCHAUSEN'S HAD NEVER BEEN MENTIONED, IF TREMORS HAD NEVER BEEN MENTIONED --

AND I DON'T KNOW WHETHER THEY WERE OR NOT, BUT THEY PROBABLY WERE SOMEWHERE IN ONE OF THOSE REPORTS.

THAT IF THEY HAD NOT BEEN MENTIONED, WOULD IT MAKE ANY DIFFERENCE IN WHAT THE COURT HAD DECIDED. OR, HAVING BEEN MENTIONED, DOES THAT MAKE A DIFFERENCE IN WHAT THE COURT DECIDED?

MR. PRAGER: I THINK YOU'RE TALKING ABOUT THE SCOPE OR EXTENT OF DAMAGES RIGHT THERE. BECAUSE THERE STILL WAS AN AUGUST 2ND FINDING -- STRIKE THAT.

THERE WAS AN AUGUST 2ND DETERMINATION BY THE CIVIL RIGHTS UNIT THAT SHE HAD RECEIVED LESSER

SERVICES. AND THAT, IN AND OF ITSELF, WE THINK IS ACTIONABLE.

IT WOULD NOT BE ACTIONABLE TO THE SAME EXTENT, OF COURSE, AS LOSING A CHILD, BUT IT WOULD BE ACTIONABLE. AND THEN LATER, AFTER THAT, THE CIVIL RIGHTS UNIT MAKES FURTHER DETERMINATIONS THAT MOTHER WAS SEPARATED FROM THE CHILD, DENIED SERVICES, AND SUFFERED HARM.

AND I CAN LOOK THROUGH THIS AND CITE THE HARM TO YOU AS WELL, BUT IT WAS THE STRESS, THE FINANCIAL LOSSES SHE INCURRED IN HAVING TO DEAL WITH THE DCFS PROCESS, BEING SUDDENLY WEANED FROM HER SON BECAUSE SHE WAS BREASTFEEDING AT THE TIME, ALL THESE THINGS.

SO, EVEN WITH THE MATERIALITY ARGUMENT YOU'RE RAISING YOUR HONOR, THERE IS AN OPPORTUNITY FOR THE PLAINTIFF TO SHOW THAT SHE LOST SERVICES AND BENEFITS EVEN PRIOR TO THE FINAL DETERMINATION.

AND THERE IS FACTUAL INFORMATION TO SUGGEST THERE WAS A CONCLUSION, OR THERE WAS A THOUGHT, THAT THIS STIGMA THAT WAS APPLIED TO HER BY CALLING HER MUNCHAUSEN, CARRIED THROUGH THE PROCEEDINGS, RESULTED AS A FURTHER BASIS FOR HER TO LOSE HER SON.

AND IF I COULD, JUST TO CLARIFY ONE THING. AGAIN, THE TREMORS BUSINESS IS, HER POSITION IS, SHE TOLD THE SOCIAL WORKERS SHE HAD TREMORS AND THE SOCIAL WORKERS DID NOT REPORT THE TREMORS TO THE COURT.

THEY MISCHARACTERIZED HER AS BEING NERVOUS AND ANXIOUS. SO THAT'S THE TREMOR BUSINESS THAT WE'RE

TALKING ABOUT. AGAIN, IT'S A MISCHARACTERIZATION OF HER MEDICAL CONDITION.

THE COURT: ALL RIGHT. MS. NAU, I INTERRUPTED YOUR DISCUSSION. AND -- YOU CAN GO AHEAD.

MS. NAU: THANK YOU, YOUR HONOR. THIS ISN'T ABOUT WHAT FURTHER OPPORTUNITY PLAINTIFF HAS TO SHOW SOMETHING. SHE'S HAD THE OPPORTUNITY.

WHAT'S BEFORE YOU IS DEFENDANT'S NON-SUIT MOTION AND SHE HASN'T PRESENTED ANY EVIDENCE THAT SHE'S BEEN DENIED ANY SERVICES ON THE BASIS OF EITHER HER TREMORS OR HER MUNCHAUSEN'S BY PROXY.

TO THE EXTENT THAT THE ARGUMENT IS THAT IT SOMEHOW IMPACTED THE JUDGE'S DECISION TO DENY THOSE SERVICES OR TO TAKE HER CHILD AWAY, PLAINTIFF HASN'T SHOWN THAT EITHER.

BUT IF YOUR HONOR BELIEVES THAT THAT IS -- THAT PLAINTIFF HAS SOMEHOW MET ENOUGH TO MOVE PAST THE NON-SUIT, THEN IT IS AN ISSUE FOR THE COURT TO DECIDE. AND IT IS SOMETHING THAT'S ADDRESSED IN OUR MATERIALITY BRIEF, AT LEAST INSOFAR AS THE MUNCHAUSEN BY PROXY.

I DON'T BELIEVE WE ADDRESSED THE TREMORS, SPECIFICALLY, IN THAT BRIEF BUT THE REASONS FOR THE JUVENILE COURT'S DECISIONS ARE HIGHLIGHTED THEREIN. SO.

THE COURT: OKAY. THANK YOU.

SO MR. PRAGER, LET ME GO BACK TO WHAT YOU JUST -- BEFORE -- YOU SAID, I THINK YOU'RE TALKING ABOUT THE SCOPE OR EXTENT OF DAMAGES RIGHT THERE

BECAUSE THERE STILL WAS AN AUGUST 2ND FINDING -- STRIKE THAT.

THERE WAS AN AUGUST -- I'M NOT SURE OF THE WORD THERE -- A DETERMINATION BY THE CIVIL RIGHTS UNIT THAT SHE HAD RECEIVED LESSER SERVICES AND THAT, IN AND OF ITSELF, IS ACTIONABLE.

HOW IS IT ACTIONABLE?

MR. PRAGER: TO THE EXTENT SHE WAS STIGMATIZED OR SUFFERED SOME HARM. AND THERE IS EVIDENCE THAT SHE WAS DENIED THE CHANCE TO BOND WITH HER CHILD, PROVIDE BREASTFEEDING WITH HER CHILD, CHILD WAS REMOVED FROM HER. THAT WOULD BE THE HARM.

BUT EVEN IN AND OF ITSELF -- LET'S LOOK AT IT THIS WAY, YOUR HONOR: LET'S ASSUME FOR ONE SECOND THAT THERE IS A VIOLATION OF THE STATUTE, IN A VACUUM, WITH NO ACTUAL DAMAGES, JUST FOR DISCUSSION PURPOSES.

THAT'S WHY THE UNRUH STATUTE AND THE DISABLED PERSONS STATUTE HAS STATUTORY DAMAGES, OR A FLOOR, $4000 FOR UNRUH, BECAUSE THE PUBLIC POLICY IS HERE TO ADVANCE THESE CLAIMS AND END DISCRIMINATION. SO THE LAW AFFORDS DAMAGES ON A PER SE BASIS TO ENSURE A PLAINTIFF CAN'T BE NON-SUITED.

SO IF NOTHING ELSE WERE TO OCCUR, JUST FOR DISCUSSION PURPOSES, IF THE PLAINTIFF COULD NOT SHOW ANY DAMAGES BUT SHE SUFFERED THE INVIDIOUS DISCRIMINATION WE'RE TALKING ABOUT, THERE WOULD BE A $4000 PENALTY.

THE COURT: UNDER THE UNRUH ACT.

MR. PRAGER: YES.

THE COURT: ALL RIGHT. SO LET ME ASK YOU ABOUT THE TWO FEDERAL CLAIMS. THERE IS NO EQUIVALENT PROVISION OF DAMAGE ON THE FEDERAL CLAIMS AND THERE WAS -- SO THERE WOULD HAVE TO BE A COMPENSABLE HARM SHOWN, AND THAT'S THE PART I DON'T SEE.

MR. PRAGER: WELL, LOOK, I UNDERSTAND WHAT YOU'RE STRUGGLING WITH, THE ISSUE -- YOU'RE NOW TAKING THE MATERIALITY ISSUE ON THE 83 CLAIM, AND YOU'RE SEEING, IN YOUR MIND, AS IT APPLIES TO THE DISABLED DISCRIMINATION CLAIMS.

THE COURT: I'M NOT SAYING THEY DO. I'M REALLY ASKING THE QUESTION. BECAUSE IN THE ARGUMENT -- IF THE ARGUMENT IS MADE THAT THE DENIAL OF SOME SERVICE, WHATEVER IT MIGHT HAVE BEEN, FOR A DISCRIMINATORY REASON CAUSED HARM, AND THE HARM WAS THE LOSS OF THE CHILD, I DON'T --

I'M JUST ASKING THE QUESTION, BUT I HAVE DIFFICULTY AND I'M UNABLE TO SEE HOW WE WOULD EVER LET A JURY RESOLVE THAT.

THIS IS REMINISCENT OF OUR DISCUSSION EARLIER IN THE CASE ABOUT LETTING THE JURY DECIDE WHAT A JUDICIAL OFFICER WOULD HAVE DONE.

AND ON FURTHER LOOK AT THAT ISSUE, WE ALL AGREED THAT THE CASE IS, IN FACT -- INDICATED THAT IS A LEGAL ISSUE TO BE DECIDED BY THE COURT.

AND IT WAS IN RESPONSE TO THAT, THEN, THAT WE WENT THROUGH THE BRIEFING THAT WAS DONE OF THE

OMISSIONS, FALSEHOODS, INCOMPLETE PRESENTATION OF EVIDENCE BY THE DCFS.

ON WHICH, INCIDENTALLY, I DO HAVE A RATHER LENGTHY TENTATIVE DECISION. ACTUALLY, IT'S NOT TENTATIVE, IT'S JUST THE WRITING OF THE DECISION IS NOT COMPLETED. BUT EVEN AS I SIT HERE, IT'S SOME -- APPROXIMATE SEVEN OR EIGHT PAGES LONG.

AS SOON AS YOU TELL ME THAT SOMETHING -- THAT THIS -- THE RESULT OF THIS WAS THE LOSS OF THE CHILD, MY QUESTION WAS, DOESN'T THAT RAISE THE SAME KIND OF LEGAL ISSUE THAT MUST BE -- A LEGAL ISSUE TO BE DECIDED BY THE COURT, JUST LIKE THE DECEPTION CLAIMS?

AND I'M TALKING ABOUT THE FEDERAL CAUSES OF ACTION, NOW, ALSO, BECAUSE I AGREE WITH YOU THAT UNRUH PRESENTS US WITH SOMETHING DIFFERENT, AND IF NOTHING ELSE, THE VIOLATION HAS SHOWN THERE IS A PENALTY WHICH COULD BE WARRANTED EVEN IF THERE ARE NO DAMAGES SHOWN, THE PENALTY CAN BE AWARDED.

MR. PRAGER: THE HARD PART FOR COUNSEL, YOUR HONOR, IS, THIS ISSUE IS COMING UP NOW FOR THE FIRST TIME. SO IT'S HARD TO REALLY ADDRESS IT WITH SOME KIND OF FORCE BECAUSE WE WERE ALL PRESENT WHEN THE 83 SIDE OF THE CASE HAD THESE ISSUES COME UP, AND THEY WERE ADDRESSED.

BUT THERE WAS NEVER ANY EFFORT TO TRY AND HAVE THEM APPLY TO THE DISABILITY SIDE OF THE CASE. AND OF COURSE, THERE'S TWO VERDICT FORMS IN THE CASE. THERE'S BEEN TWO OPENINGS IN THE CASE BECAUSE IT'S ALMOST LIKE

HAVING TWO CASES IN THE SAME CASE.

SO TO TRY THE MATERIALITY ISSUE, IF WE'RE CALLING IT THAT, ON A DISABLED CLAIM, WE'VE NEVER HAD THAT COME UP IN A CASE.

I REALIZE COUNSEL FOR BOTH SIDES IS VERY CAUGHT UP WITH THE SEIZURE ISSUE, THE WARRANT CASES, THE COURT'S FAMILIAR WITH IT, IT'S BEEN EXTENSIVELY BRIEFED AND DISCUSSED.

I'M UNAWARE OF ANY APPLICATION OF THIS TYPE OF REASONING TO A DISABLED ACCIDENT CASE OR A DISABLED DISCRIMINATION CASE.

I THINK THE WAY THE REASONING MOST OFTEN GOES, THERE IS AN ALLEGATION OF DISCRIMINATION, THERE IS AN ALLEGATION OF WHAT THE HARM IS, AND THEN THE JURY IS FREE TO AGREE OR DEGREE WITH THOSE FINDINGS.

I UNDERSTAND WHERE THE COURT'S TROUBLED. I GET IT BUT, YOU KNOW --

THE COURT: WELL, I AGREE WITH WHAT YOU'RE SAYING, IT'S THE FIRST TIME WE HAVE SPECIFICALLY ADDRESSED THIS.

AND, AGAIN, GOING BACK TO THE STATEMENT YOU MADE ABOUT -- ASSUMING FOR A MOMENT THAT THERE WAS A DISCRIMINATION, AND I INDICATED THAT I THOUGHT THERE WAS A FACTUAL ISSUE ORIGINALLY, OVER THE ISSUE, THE MUNCHAUSEN'S, BECAUSE OF HOCHSTEIN'S FINDINGS AND STATEMENTS, SO ON, THE -- AND -- I DON'T KNOW --

LET'S SAY THERE WASN'T A LAWSUIT FILED AT ALL FOR A MOMENT. AT THAT POINT IN TIME, I DON'T KNOW WHAT

REMEDIES THERE WOULD BE IF THERE -- IF SOME -- WITHIN THE JURISDICTION OF THE JUVENILE COURT.

IF IT WAS FOUND THAT SOME SERVICE WAS DENIED BASED ON DISCRIMINATION, IT WOULD SEEM TO ME AMONG OTHER THINGS THAT AN APPLICATION, AS ANY REMEDY, AN APPLICATION TO THE JUVENILE COURT TO ORDER A CERTAIN SERVICE TO BE PROVIDED.

I DON'T KNOW WHAT THE REMEDIES WOULD BE. BUT THE REMEDY SOUGHT HERE IS THE REMEDY OF DAMAGES.

MR. PRAGER: CORRECT.

THE COURT: AND, AGAIN, EXCLUDING UNRUH BECAUSE OF THE REASONS WE'VE STATED, FOR THE TWO FEDERAL CLAIMS, I'M TROUBLED, FOR REASONS I'VE ALREADY STATED. I WON'T REPEAT THEM.

AND IT DID OCCUR BECAUSE YOU RECALL THAT OVER THE WEEKEND I INDICATED TO YOU THAT I WOULD CONSIDER THE FURTHER BRIEFING THAT YOU HAD PROVIDED ON THE TREMOR ISSUE AS WELL AS THE ONES SUBMITTED BY THE DEFENSE.

BOTH OF THEM SUBMITTED LAST FRIDAY, I TOLD YOU I WOULD REVIEW THEM AND HAVE A RULING FOR YOU THIS MORNING. I ALSO TOLD YOU THAT I WOULD ATTEMPT TO HAVE A RULING ON THE ISSUE OF LAW TO BE DECIDED BY THE COURT OVER THE DECEPTION CLAIMS.

AND I ENDED UP IN -- WELL, I'VE DONE A GREAT DEAL OF WORK ON IT. AND THE ACTUAL RULING HAS NOT BEEN COMPLETED ON THE LETTER BUT I ALSO SPENT A SIGNIFICANT AMOUNT OF TIME OVER THE WEEKEND OVER THIS -- THE ISSUES

RAISED ABOUT THE MOTION FOR NON-SUIT ON TREMORS.

AND WHEN I THOUGHT IT THROUGH, AND ATTEMPTED TO RESEARCH THIS TO FIND OUT WHAT REMEDIES THERE ARE, I DIDN'T FIND ANYTHING ON IT THAT WAS MEANINGFUL ABOUT YOUR CLAIM OF PERCEIVED DISABILITY.

BECAUSE THE NON-SUIT IS TO THE WHOLE CLAIM, AND A NON-SUIT CAN BE GRANTED IF THERE'S NO EVIDENCE OF DAMAGE. AND, IN OTHER WORDS, IF YOU CAN FIND THERE WAS A WRONG, AND IF SOMEONE HASN'T PROVED ANY DAMAGE, THE PARTY DEFENDING THAT CLAIM WOULD BE ENTITLED TO A NON-SUIT.

SO BECAUSE ALL CLAIMS HAVE SOME REMEDY, AND I DON'T SEE A REMEDY HERE THAT COULD BE AWARDED. I'M CERTAINLY NOT GOING TO LET THE JURY MAKE THE DECISION -- WELL, I SHOULDN'T SAY THAT.

I'M QUESTIONING WHETHER I WOULD LET THE JURY MAKE THE DECISION.

MAKING THE STEPS THAT YOU HAVE MADE IN YOUR ARGUMENT, THAT SHE WAS DENIED A SERVICE, THAT SOMEHOW SHE WAS PERCEIVED AS BEING LESS CREDIBLE OTHERWISE THAN SHE WOULD HAVE BEEN BUT FOR THIS DISCRIMINATION BY DCFS AND THAT ALL RESULTED IN THAT SHE LOST HER CHILD.

I JUST DON'T SEE HOW WE GET THERE.

MR. PRAGER: LET'S TAKE THE MOMENT IN TIME WHERE THE RECOMMENDATION IS REMOVE THE CHILD FROM THE MOTHER. OKAY? LET'S STOP THERE FOR A SECOND AND CALL IT A FIREWALL.

OUR POSITION IS A MINIMUM. WHEN THERE IS A

RECOMMENDATION TO DENY SERVICES, THERE WOULD BE DAMAGES TO HER.

THEY MAY NOT BE MUCH, IF THAT'S WHAT THE COURT IS SUGGESTING, BUT THEY WOULD STILL CONSEQUENTIAL DAMAGES TO HER, AND IT COULD ALSO BE STILL NON -- OR GENERAL DAMAGES TO HER BECAUSE SHE'S STILL BEING DENIED LESS SERVICES.

AND I CAN IMAGINE LOTS OF SCENARIOS WHERE, FOR EXAMPLE, A PERSON OF A CERTAIN RACE IS DENIED SERVICES. AND I THINK IT WOULD BE VERY UNFAIR TO SAY, WELL, I DON'T GIVE YOU SERVICES BECAUSE OF ANY OF THESE CLASSES.

AND THEN TO SAY THEY HAVE NO DAMAGES OR NO OPPORTUNITY TO PRESENT THOSE DAMAGES TO A JURY WOULD BE DOUBLY DAMNING TO THEM INDIVIDUALLY BECAUSE THEY'RE BEING DISMISSED BY THE GOVERNMENTAL ENTITY THAT DENIED THEM EQUAL SERVICES AND THEY'RE BEING DENIED TO COME TO COURT AND TELL THEIR STORY TO A JURY AND SEEK WHATEVER IS REASONABLE FROM THE JURY AND ALLOWED BY LAW.

AND I UNDERSTAND -- I HEARD YOU IN YOUR CONCERNS, YOUR HONOR, I GET IT. BUT THAT DOESN'T MEAN THAT THIS HAS NO VALUE WHATSOEVER. AND IN THIS AREA OF LAW, AS YOU KNOW --

THE COURT: WHAT WOULD THE MEASURE BE? FIRST OF ALL, YOU'RE TALKING ABOUT THE RECOMMENDATION, BUT IT'S THE COURT, THE JUVENILE COURT THAT MADE THE DETERMINATION AT THE DETENTION HEARING ON NOVEMBER 6TH.

I DON'T HAVE THE TRANSCRIPT IN FRONT OF ME,

BUT THEY'RE THE ONES WHO MAKE THE DETERMINATION WHETHER OR NOT A SERVICE SHOULD BE PROVIDED.

AND MY RECOLLECTION IS -- THAT -- WHICH I'D BETTER NOT STATE, MY RECOLLECTION IS THAT THEY SAID SOMETHING ABOUT REUNIFICATION IN THE ORDER MADE ON NOVEMBER 6TH.

AND IT MAY HAVE BEEN THAT THEY WERE THEY WERE DEFERRING ON THAT -- OR DENYING IT? WHAT WAS IT?

MS. NAU: YOUR HONOR, AT THE NOVEMBER 6TH DETENTION HEARING, REUNIFICATION SERVICES WERE ORDERED FOR MS. DUVAL.

THE COURT: OKAY. WERE ORDERED.

MR. PRAGER: THERE'S OTHER --

THE COURT: AND SHE DID RECEIVE REUNIFICATION SERVICES FOR SOME PERIOD OF TIME.

MS. NAU: SHE DID.

THE COURT: AND THEN -- THEY WOULD HAVE BEEN -- I KNOW THEY WERE CUT OFF AS OF THE AUGUST 9TH HEARING, AND I DO REMEMBER, SPECIFICALLY, THAT OCCURRING.

BUT THAT WAS MY RECOLLECTION, THAT THERE WERE SEVERAL SERVICES PROVIDED TO MS. DUVAL FOLLOWING THE DETENTION HEARING. AND HOW LONG THOSE SERVICES CONTINUED, I DON'T KNOW BECAUSE THERE WAS NO EVIDENCE ON IT. BUT THERE WAS EVIDENCE AND, IN FACT, MS. DUVAL TESTIFIED TO HAVING RECEIVED CERTAIN SERVICES.

MR. PRAGER: THERE'S STILL ISSUES THAT MS. SCHEELE, FOR EXAMPLE, DID NOT PROPERLY ADMINISTER

HER DUTIES. SHE WAS MISCHARACTERIZING THE TREMORS. MS. NELSON WAS ALSO INFORMED OF THE TREMORS, THE SHAKING HANDS, AND THEY DID NOT TELL THE COURT THAT.

SO I UNDERSTAND WHAT THE COURT -- THIS COURT IS SAYING ABOUT YOUR CONCERNS. NEVERTHELESS, THEY STILL DID NOT PROVIDE THE PLAINTIFF EQUAL SERVICES, SERVICES SHE WAS DESERVING OF, ENTITLED TO.

AND THE CIVIL RIGHTS UNIT HAS AGREED AND SAID SHE IS A VICTIM OF DISCRIMINATION, AND WAS GIVEN LESSER SERVICES.

THE COURT: LET'S ASSUME THAT THERE'S AT LEAST A FACTUAL ISSUE AS TO WHETHER OR NOT THERE WAS DISCRIMINATION. AND THAT FACTUAL ISSUE WOULD BE SUFFICIENT TO PREVENT A NON-SUIT BASED ON A FINDING OF DISCRIMINATION.

BUT THAT'S MY POINT, IS THAT A NON-SUIT ADDRESSES ADDITIONAL ELEMENTS OF A CLAIM, AND THE EVIDENCE -- I DON'T RECALL THERE BEING ANY EVIDENCE THAT SHE WAS DENIED SERVICES UNTIL THE -- I REMEMBER THE SPECIFIC DENIAL IN THE DISPOSITION DECISION BY THE COURT ON AUGUST 9TH.

AND I THINK THE EVIDENCE IS UNCLEAR AS TO -- AT LEAST IT'S UNCLEAR TO ME AS I'M SITTING HERE -- EXACTLY WHAT SHE WAS PROVIDED FROM AUGUST -- FROM THE NOVEMBER 6TH CLAIM, BUT SHE TESTIFIED TO RECEIVING SERVICES. I KNOW THERE WAS A REPORT FILED OF SERVICES THAT HAD BEEN PROVIDED.

THERE WAS SOME REPORTING OF SERVICES PROVIDED

IN THE ORIGINAL DETENTION REPORT. THOSE SERVICES INCLUDED, AMONG OTHER THINGS, SOME OF THE MEDICAL THAT SHE ATTAINED AT THE CATC FACILITY AND THE FAILURE TO THRIVE CLINIC AT HARBOR-UCLA.

THEY HAD -- AND I HAVEN'T COMMITTED THOSE REPORTS TO MEMORY BUT I CERTAINLY SPENT A LOT OF TIME LOOKING AT THEM OVER THE WEEKEND.

SO THERE WERE SERVICES PROVIDED. NOW -- SO, IF THERE'S SOMETHING -- SOME SERVICE THAT WASN'T PROVIDED OR WASN'T PROVIDED SUFFICIENTLY, WE'VE GOT NO EVIDENCE OF THAT.

MR. PRAGER: I THINK THERE IS. FOR EXAMPLE, NUMBER 4 ON THE INFORMATION GIVEN TO YOU SAYS THAT MS. DUVAL WAS DIFFERENTLY TREATED IN THE RECEIPT OF SERVICES BECAUSE SHE'S A QUALIFIED INDIVIDUAL OF A DISABILITY --

THE COURT: NO. NO. WHAT YOU STATE IN HERE IS THAT DCFS MADE THE RECOMMENDATION THAT SHE NOT BE ALLOWED TO REUNIFY WITH HER SON. THE COURT, ON NOVEMBER 6TH, SAYS SHE WAS ENTITLED TO IT.

SO ARE YOU SAYING THAT BECAUSE THEY MADE THE RECOMMENDATION, EVEN THOUGH IT WASN'T FOLLOWED BY THE COURT, THAT IT'S ACTIONABLE AND THAT IT CREATED -- CAUSED HER SOME DAMAGE?

MR. PRAGER: BECAUSE IT WAS BASED ON A PROTECTED CLASS, YES.

THE COURT: OKAY. I GOT THE ARGUMENT. DO YOU -- LET ME STATE THAT A LITTLE DIFFERENTLY.

I UNDERSTAND, I BELIEVE I -- I CERTAINLY UNDERSTAND WHAT YOU'VE BEEN TELLING ME. AND I DO UNDERSTAND THAT THIS IS THE FIRST TIME YOU'VE HAD A CHANCE TO ADDRESS IT, THIS MORNING.

AND I WILL STATE, THE FIRST TIME I HAD A CHANCE TO ADDRESS IT WAS OVER THE WEEKEND, IN READING THE BRIEFS THAT I RECEIVED LAST FRIDAY. AND I ATTEMPTED TO FIND, OVER THE WEEKEND IF I COULD, SOME ANSWER TO THE QUESTIONS THAT I'M ASKING, AND WAS UNABLE TO DO SO.

ALTHOUGH A GOOD PART OF THE WEEKEND WAS ALSO SPENT IN DEALING WITH THE ISSUE OF LAW THAT WE ALL AGREED NEEDED TO BE DECIDED BY THE COURT. SO I HAVEN'T FOUND AN ANSWER. WE'RE GETTING SHORT ON TIME.

BUT I'M GOING TO HAVE TO HAVE WHATEVER ANSWER SOMEONE CAN GIVE ME VERY SHORTLY BECAUSE I DO NEED -- I AM VACATING MY RULING DENYING THE NON-SUIT ON THE MUNCHAUSEN'S CLAIM.

I WILL ADDRESS THE MOTION FOR NON-SUIT ON BOTH THE -- ON THE ISSUE OF DISCRIMINATION BASED ON TREMORS AND MUNCHAUSEN. IT DOES APPEAR TO ME THAT THERE IS A FACTUAL ISSUE WHICH PROBABLY SHOULD GO TO THE JURY ON THE UNRUH ACT CLAIM BECAUSE OF ITS PROVISION OF PENALTIES, EVEN WITHOUT PROOF OF ACTUAL DAMAGE.

AND SO THAT ISN'T TROUBLING ME. BUT THE TWO FEDERAL CLAIMS DO TROUBLE ME, FOR THE REASONS I'VE STATED.

NOW, MOSTLY, I HAVE QUESTIONS, NOT ANSWERS,

AND I WANT TO KNOW HOW SOON THE TEAM IS GOING TO GO TO WORK ON TRYING TO PROVIDE ME WITH WHATEVER FURTHER -- WHATEVER GUIDANCE YOU CAN.

MR. PRAGER: WE'LL START TONIGHT. AND THIS IS THE FIRST WE'VE HEARD OF IT SO I HAVE NO IDEA -- I KNOW THIS ISSUE IS WELL-ADDRESSED, I BELIEVE BY CASE LAW, ON THE 83 CLAIM.

I HAVE TO FIND WHAT I'M GOING FIND ON THIS ISSUE IN DISCRIMINATION LAW, AND I'M NOT SURE WHAT WE'RE GOING TO FIND.

SO I CAN REPORT TO YOU TOMORROW MORNING AND TRY TO MAKE PROGRESS. THAT'S THE BEST I CAN OFFER RIGHT NOW.

THE COURT: I WOULD AGREE. YOU'RE GOING TO BE HERE DURING THE DAY, SO THAT WILL BE FINE. AND SO I'LL HEAR FURTHER FROM THE DEFENSE BY TOMORROW MORNING. ARE YOU STILL PLANNING TO FINISH YOUR EVIDENCE TOMORROW?

MR. GUTERRES: YES, YOUR HONOR, DEPENDING ON -- WE HAVE, I THINK, FOUR WITNESSES LINED UP FOR TODAY, SO -- POTENTIALLY FIVE, DEPENDING ON HOW QUICKLY WE MOVE. THAT MIGHT BE OPTIMISTIC, BUT WE'RE STILL HOPING TO BE DONE BY TOMORROW.

THE COURT: ALL RIGHT. I HAVE ANOTHER MESSAGE FROM A JUROR WHO HAS A PREPAID TRIP PLANNED BEGINNING NOVEMBER 4TH.

SO I'LL ACKNOWLEDGE TO HER -- JUROR NUMBER 11, MS. HENDERSON. I'LL ACKNOWLEDGE THAT I'M AWARE OF IT AND SHE'LL BE ABLE TO TAKE HER TRIP.

ANYTHING ELSE AT THIS TIME?

MR. GUTERRES: NO, YOUR HONOR, THANK YOU.

THE COURT: ALL RIGHT. WE'LL GO BACK TO OUR DAY JOB, THEN, IN A MOMENT. IF EVERYBODY'S READY, WE'LL GET THE JURORS IN.

(JURY PRESENT)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY)

THE COURT: EVERYONE MAY BE SEATED. EVERYONE IS PRESENT. MS. HENDERSON, I RECEIVED YOUR MESSAGE. YOU WILL TAKE THAT TRIP. DON'T WORRY ABOUT IT.

AND MR. GUTERRES, MS. NAU, WHO'S CALLING THE NEXT WITNESS?

MS. NAU: IT IS ME, YOUR HONOR. THE DEFENSE WILL CALL MS. WENDY CRUMP.

THE COURT: ALL RIGHT.

WENDY CRUMP,

WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. NAU:

Q GOOD MORNING, MS. CRUMP.

A GOOD MORNING.

Q WHAT IS YOUR CURRENT PROFESSION?

A I'M A REGISTERED DIETICIAN.

Q AND FOR HOW LONG HAVE YOU BEEN A REGISTERED

DIETICIAN?

A I GRADUATED IN 1987.

Q IN OCTOBER 2009, DID YOU HAVE YOUR OWN PRACTICE?

A YES. I DID.

Q AND WHAT'S THE NAME OF THAT PRACTICE?

A "NUTRITIONALLY FIT."

Q DO YOU STILL HAVE THE SAME PRACTICE?

A YES. I DO.

Q IN OCTOBER 2009, DID YOU SEE BOTH CHILDREN AND ADULTS IN YOUR PRACTICE?

A YES. I DID.

Q ARE THERE CERTAIN CONDITIONS THAT YOUR PATIENTS HAD, FOR WHICH THEY WOULD COME TO SEE YOU FOR A DIETARY CONSULT?

A YES.

Q WHAT ARE THOSE CONDITIONS?

A I SEE DIABETICS, PREDIABETICS, UNDERWEIGHT, OVERWEIGHT, HIGH CHOLESTEROL, HYPERTENSION, GI DISORDERS --

Q WIDE RANGE OF THINGS --

THE COURT: CAN EVERYBODY HEAR? NO. SO, EVERYBODY, IT'S VERY IMPORTANT THAT WE HEAR EVERYTHING YOU HAVE TO SAY. TRY TO KEEP YOUR VOICE UP A LITTLE BIT AND TALK INTO THE MICROPHONE.

THE WITNESS: OKAY.

MS. NAU: DO WE NEED ANYTHING REPEATED OR...

THE COURT: I'M GOING TO ASK THE REPORTER TO

PLEASE READ BACK THE LAST TWO QUESTIONS AND ANSWERS TO MAKE SURE THE JURY HEARD THE TESTIMONY. BEGINNING WITH, "ARE THERE CERTAIN CONDITIONS."

(THE RECORD WAS READ AS REQUESTED)

THE COURT: ALL RIGHT. THANK YOU. GO AHEAD.

BY MS. NAU:

Q WHAT TYPE OF ADVICE DO YOU GIVE TO YOUR PATIENTS?

MR. MCMILLAN: OBJECTION: VAGUE.

THE COURT: SUSTAINED.

BY MS. NAU:

Q DO YOU RECALL SEEING BABY RYAN AT YOUR PRACTICE IN 2009?

A YES. I DO.

Q DO YOU RECALL THE FIRST TIME THAT YOU SAW HIM?

A YES. I DO.

Q WHAT WAS THE DATE OF THAT?

A EXACT DATE, I THINK IT WAS OCTOBER OF 2009.

Q OKAY. SOMETIME IN OCTOBER?

A RIGHT.

Q AND WHO CAME WITH HIM TO THAT VISIT?

A HIS MOTHER CAME WITH HIM, AND HIS FATHER, AND HIS FATHER'S WIFE, I BELIEVE THAT WAS HIS WIFE. THE PARENT OF THE FATHER -- BOTH PARENTS.

Q DO YOU KNOW WHY BABY RYAN WAS BROUGHT TO SEE YOU IN OCTOBER 2009?

A HIS UNDERWEIGHT STATUS.

Q DID YOU SPEAK TO EITHER OF BABY RYAN'S PARENTS

BEFORE THE APPOINTMENT?

A YES. I DID.

Q TO WHOM DID YOU SPEAK?

A I SPOKE WITH BOTH PARENTS.

Q HOW -- DID YOU TALK TO THEM ON THE PHONE?

A YES.

Q AND DO YOU RECALL HOW MANY TIMES YOU HAD SPOKEN WITH MS. DUVAL PRIOR TO MEETING HER?

A I BELIEVE IT WAS TWO TIMES PRIOR TO MEETING HER.

Q DO YOU REMEMBER WHAT THOSE CONVERSATIONS WERE ABOUT?

A THE INITIAL CONVERSATION WAS ABOUT BRINGING HER SON IN BECAUSE HIS WEIGHT -- HE WAS UNDERWEIGHT. THE SECOND CALL WAS IN REGARDS TO A CUSTODY BATTLE OVER THE CHILD.

AND I BELIEVE -- THEN THERE WAS ANOTHER -- THERE MIGHT HAVE BEEN ANOTHER CALL, OR THAT COULD HAVE BEEN PART OF THE SECOND CALL, ASKING ABOUT MY CREDENTIALS AND LICENSE.

THE COURT: AGAIN, BEFORE YOU GO AHEAD, I THINK THE JURORS ARE HAVING SOME, AT LEAST SOME ARE HAVING SOME DIFFICULTY HEARING YOUR TESTIMONY, MS. CRUMP. AND I KNOW I'VE SAID THIS, BUT --

THE WITNESS: TALK LOUDER.

THE COURT: AND I UNDERSTAND THAT THIS ISN'T WHAT YOU DO, AND IT MIGHT BE UNCOMFORTABLE TO BE HERE, BUT I DO NEED TO HAVE YOU SPEAK UP SUFFICIENTLY,

INCLUDING INTO THE MICROPHONE SO THAT EVERYBODY CAN HEAR EVERYTHING. GO AHEAD.

BY MS. NAU:

Q YOU SAID ONE CALL WAS ABOUT A CUSTODY BATTLE. DO YOU REMEMBER WHAT MS. DUVAL TOLD YOU ABOUT THAT?

A NOT SPECIFICS. IT WAS JUST THAT THERE WAS A CUSTODY BATTLE OVER THE CHILD.

Q AND YOU SAID YOU ALSO SPOKE WITH MR. MILLS BEFORE THE INITIAL VISIT. WAS THAT ALSO ON THE PHONE?

A YES. IT WAS.

Q AND WHAT DO YOU RECALL ABOUT THAT CONVERSATION?

A THAT HE HAD ASKED ABOUT WHAT A DIETICIAN DOES, AND MY CREDENTIALS.

Q DID YOU ONLY TALK TO HIM ONE TIME BEFORE THE VISIT?

A YES.

Q DO YOU KNOW IF A PHYSICIAN HAD REFERRED BABY RYAN TO YOUR PRACTICE?

A IT WASN'T SPECIFICALLY TO MY PRACTICE. IT WAS JUST -- SHE WAS RECOMMENDED TO SEEK NUTRITIONAL COUNSELING FOR HER SON. SO NOT SPECIFICALLY MYSELF.

MR. MCMILLAN: OBJECTION, YOUR HONOR: NONRESPONSIVE. MOVE TO STRIKE --

THE COURT: ALL RIGHT. THE OBJECTION IS SUSTAINED. MOTION TO STRIKE IS GRANTED. THE ANSWER WILL BE STRICKEN. THE JURY DISREGARD IT. WE'RE GOING TO GO OFF THE RECORD FOR A MOMENT.

(PAUSE IN THE PROCEEDINGS)

THE COURT: GO AHEAD.

BY MS. NAU:

Q STEPPING BACK FOR A MOMENT, YOU SAID YOU HAD A PHONE CONVERSATION WITH MR. MILLS, AND THAT HE ASKED YOU WHAT A DIETICIAN DOES. WHAT DID YOU TELL HIM?

A I TOLD HIM WHAT A DIETICIAN DOES.

Q WHAT DOES A DIETICIAN DO?

A PROVIDE NUTRITIONAL COUNSELING FOR AN INDIVIDUAL BASED ON THEIR DIETARY NEEDS.

Q DO YOU ADVISE REGARDING SPECIFIC TYPES OF FOODS TO EAT?

A YES. I DO.

Q PRIOR TO SEEING BABY RYAN, HAD YOU SEEN OTHER CHILDREN -- WELL, DO YOU RECALL HOW OLD BABY RYAN WAS WHEN HE CAME TO YOU SEE YOU?

A 14 MONTHS OLD.

Q HAD YOU SEEN OTHER CHILDREN HIS AGE BEFORE?

A YES.

Q CAN YOU ESTIMATE HOW MANY?

A MAYBE A HANDFUL.

Q WHAT WAS YOUR UNDERSTANDING AS TO HOW MS. DUVAL FOUND YOU AS A -- TO BE THE DIETICIAN TO SEE BABY RYAN?

MR. MCMILLAN: OBJECTION: LACKS FOUNDATION, CALLS FOR SPECULATION.

THE COURT: OVERRULED.

THE WITNESS: I'M NOT SURE EXACTLY HOW SHE

FOUND ME. BUT -- SO I DON'T KNOW THE ANSWER TO THAT QUESTION.

THE COURT: SUSTAINED. (LAUGHTER.)

BY MS. NAU:

Q WHAT DID YOU DO AT THE APPOINTMENT WITH BABY RYAN?

A I -- WE SPOKE ABOUT WHAT THE BABY WAS EATING RIGHT NOW, AND THEN I GAVE RECOMMENDATIONS ABOUT WHAT NEEDED TO BE DONE IN ORDER FOR THE BABY TO GAIN WEIGHT.

Q DID YOU WEIGH HIM AT THAT VISIT?

A YES. I DID.

Q WHAT DO YOU RECALL ABOUT HIS WEIGHT?

A HE WAS UNDERWEIGHT.

Q YOU SAID YOU ALSO SPOKE ABOUT WHAT THE -- OR CAN YOU DESCRIBE WHAT BABY RYAN'S APPEARANCE WAS?

MR. MCMILLAN: OBJECTION: LACKS FOUNDATION, CALLS FOR SPECULATION.

THE COURT: OVERRULED. THAT JUST CALLS FOR A YES OR NO, CAN YOU DESCRIBE. SO --

THE WITNESS: YES.

THE COURT: OKAY.

BY MS. NAU:

Q AND WHAT DID HE LOOK LIKE TO YOU?

A HE LOOKED SMALL FOR HIS AGE. JUST -- HE WAS VERY QUIET, NO BABBLING, NO GESTURES OR MOVEMENT OR -- JUST SAT VERY PEACEFULLY. AND JUST LOOKED, BUT DIDN'T HAVE EXPRESSION. AND NEVER MADE A SOUND.

Q AND WAS THAT ATYPICAL OF OTHER 14-MONTH-OLD

CHILDREN YOU HAD TREATED BEFORE?

MR. MCMILLAN: OBJECTION: LACKS FOUNDATION, SPECULATION, EVIDENCE CODE SECTION 780.

THE COURT: SUSTAINED AS TO LACKING FOUNDATION OF -- IT ISN'T ESTABLISHED SHE HAS LOOKED AT OTHER 14-MONTH-OLD CHILDREN BEFORE THEN.

BY MS. NAU:

Q HAD YOU TREATED OVER 14-MONTH-OLD CHILDREN BEFORE BABY RYAN?

A WITHIN THAT AGE RANGE, YES.

Q AND BASED ON YOUR -- BASED ON YOUR EXPERIENCE WITH CHILDREN THAT AGE, WAS THERE ANYTHING ABOUT BABY RYAN'S APPEARANCE THAT WAS ATYPICAL?

MR. MCMILLAN: OBJECTION: IT'S STILL LACKING IN FOUNDATION. ALSO VAGUE.

THE COURT: OVERRULED.

THE WITNESS: YES.

BY MS. NAU:

Q WHAT ABOUT IT WAS ATYPICAL?

A THAT A CHILD OF THAT AGE WOULD NOT MAKE A SOUND. HE SAT THERE WITHOUT EXPRESSION. DIDN'T -- JUST SAT, DIDN'T MOVE. AND THAT'S VERY UNUSUAL FOR A BABY OF THAT AGE. NO -- MAKE NO SOUNDS, NO MOVEMENT, NO SQUIRMING.

Q AND YOU STATED THAT AT THAT APPOINTMENT, YOU WENT OVER SOME OF THE FOODS THAT BABY RYAN WAS EATING?

A YES.

Q WHO GAVE YOU THAT INFORMATION?

A MS. DUVAL.
Q DO YOU RECALL WHAT FOODS SHE HAD SAID HE WAS EATING?
A I DIDN'T MEMORIZE IT, NO. I'D HAVE TO LOOK.
Q DO YOU REMEMBER ANYTHING ABOUT IT?
A IT WASN'T A LOT OF FOOD.
Q WHAT WAS YOUR -- DID YOU HAVE ANY UNDERSTANDING AS TO WHO THE CHILD -- WHO HAD CUSTODY OF THE CHILD AT THAT TIME?
A THE MOTHER.
Q BASED ON THE INFORMATION YOU OBTAINED DURING THE VISIT, WERE YOU CONCERNED FOR BABY RYAN?
A YES.
Q WHY WERE YOU CONCERNED?
A HIS WEIGHT WAS -- HE WAS SEVERELY UNDERWEIGHT.
Q WAS THERE ANYTHING CONCERNING ABOUT THE FOOD INTAKE THAT MS. DUVAL HAD REPORTED?
MR. MCMILLAN: OBJECTION: VAGUE.
THE COURT: OVERRULED.
THE WITNESS: IT WASN'T ENOUGH FOOD. AND IT WAS JUST ALARMING. HIS WEIGHT WAS SO UNDERWEIGHT THAT THAT WAS JUST CONCERNING. SO, ALTHOUGH THERE WAS A REPORT OF WHAT HE WAS EATING, I DON'T KNOW IF THAT WAS WHAT HE WAS EATING ALL OF THE TIME.
WHEN I GET A 24-HOUR CALL, IT'S BASED ON 24 HOURS, IT'S NOT OVER A LONG PERIOD OF TIME. SO I WOULD ASSUME THAT OVER A LONG PERIOD OF TIME, IT VARIED.
AND SO, IN ORDER FOR HIM TO HAVE THIS LOW OF A

WEIGHT, THERE HAD TO HAVE BEEN SOMETHING THAT CAUSED THAT, AND THAT WOULD CERTAINLY BE SOMETHING IN REGARDS TO FEEDING.

BY MS. NAU:

Q SO, AT THAT FIRST VISIT -- YOU MENTIONED A 24-HOUR INTAKE. IS THAT WHAT YOU STATED?

A YES.

Q SO, AT THAT FIRST VISIT, THE REPORT OF WHAT HE WAS BEING FED, THAT WAS BASED ON THE PRIOR 24 HOURS?

A YES.

Q DID YOU MAKE ANY RECOMMENDATIONS TO THE PARENTS AT THAT FIRST VISIT?

A YES. I DID.

Q DO YOU RECALL WHAT THOSE WERE?

A THEY WERE PROVIDED A LIST OF THINGS. I CAN'T BE SPECIFIC, BUT I CAN GIVE YOU SOME EXAMPLES OF THINGS THAT I WOULD HAVE RECOMMENDED.

Q PLEASE DO.

MR. MCMILLAN: OBJECTION: FOUNDATION, SPECULATION. ALSO EVIDENCE CODE SECTION 1523, SUBPARAGRAPH A.

THE COURT: OVERRULED. ARE YOU SAYING THAT YOU HAD A CUSTOM AND PRACTICE OF CERTAIN THINGS THAT YOU RECOMMEND FOR SOME SEVERELY UNDERWEIGHT CHILD?

THE WITNESS: YES.

THE COURT: ALL RIGHT. GO AHEAD. THE OBJECTION IS OVERRULED.

THE WITNESS: SO, ONE OF THE THINGS I WOULD

HAVE RECOMMENDED WOULD BE TO HAVE LIQUIDS BETWEEN MEALS. THE STOMACH IS SMALL, SO IF YOU WERE TO GIVE LIQUIDS BETWEEN MEALS, THERE WOULD BE ONLY A LIMITED AMOUNT OF SPACE FOR THE FOOD.

SO THE RECOMMENDATION WAS TO PROVIDE LIQUID BETWEEN MEALS, AND HIGH-PROTEIN SHAKES, PEDIASURE. IF THE BABY DIDN'T LIKE THE PEDIASURE, TO MIX IT WITH MILK.

AND TO FEED THE BABY OFTEN, EVERY 2 TO 3 HOURS, BRING SNACKS FOR THE BABY TO EAT. AND PROVIDE HIGH-CALORIE, HIGH-PROTEIN FOODS.

BY MS. NAU:

Q IF I COULD HAVE YOU TAKE A LOOK AT EXHIBIT 1089.42.

THE WITNESS HAS REQUESTED IF SHE CAN GET HER GLASSES. IS THAT OKAY?

THE COURT: SURE. I'VE ALREADY GOT MINE.

THE WITNESS: OKAY.

BY MS. NAU:

Q HAVE YOU SEEN THAT DOCUMENT BEFORE?

A YES. I HAVE.

Q WHAT IS IT?

A IT'S A SHEET THAT I GIVE TO PATIENTS THAT NEED TO GAIN WEIGHT.

Q DO YOU RECALL IF YOU GAVE THIS SHEET TO MS. DUVAL ON OCTOBER 16TH?

A YES. I DID.

Q AND DOES THIS REFRESH YOUR RECOLLECTION AS TO

WHAT, SPECIFICALLY -- FOODS YOU RECOMMENDED MS. DUVAL FEED BABY RYAN?

A YES.

Q AND WHAT ARE THE FOODS ON THE LIST?

A WOULD YOU LIKE ME TO READ ALL OF THEM OR JUST A FEW?

Q JUST A FEW IS FINE.

A OKAY. SO BREAD. BAGELS. PANCAKES. WAFFLES WITH BUTTER. CREAM CHEESE AND SYRUPS. AVOCADO SLICES WITH SANDWICHES. PREPARE VEGETABLES WITH BUTTER OR MELTED CHEESE.

FRUIT WITH ICE CREAM. SUBSTITUTE CREAM FOR MILK IN RECIPES. MELT CHEESE ON EGGS, HAMBURGERS AND SANDWICHES. ADD GRAVY TO MEAT AND POTATOES. SPREAD PEANUT BUTTER ON CRACKERS AND BREAD.

GRANOLA CEREAL, GRANOLA BARS. MELT BUTTER OVER PASTA OR NOODLES. OFFER HIGH-CALORIE MILK SHAKES BETWEEN MEALS. OFFER LIQUIDS AFTER MEALS. COOK OATMEAL WITH WHOLE MILK. ADD LESS WATER TO FROZEN CONCENTRATE JUICE.

EAT BANANA, PINEAPPLE, RAISINS, DRIED APRICOTS, AND DATES. ADD OVALTINE OR CARNATION INSTANT BREAKFAST TO WHOLE MILK. ADD EVAPORATED MILK INSTEAD OF WATER TO SOUP. EAT PEAS, CORN, CARROTS AND WINTER SQUASH WITH CHEESE OR BUTTER.

Q THANK YOU. IF YOU COULD TAKE A LOOK AT -- IT'S THE SAME EXHIBIT, BUT AT THE BOTTOM IT SAYS 1089.15. SHOULD BE A FEW PAGES BEFORE IT.

DO THOSE APPEAR TO BE YOUR NOTES FROM YOUR FIRST VISIT WITH BABY RYAN?

A YES.

Q AND THE NEXT PAGE, 1089.16, IT SAYS AT THE BOTTOM. ARE THOSE ALSO YOUR NOTES FROM THAT SAME DAY?

A YES.

Q AND THE NEXT PAGE, 1089.17. ARE THOSE ALSO YOUR NOTES FROM 10/16?

A YES.

Q AND TURNING BACK TO THE -- AND DID YOU WRITE THESE NOTES ON THAT SAME DAY DURING THE VISIT?

A YES. I BELIEVE SO.

Q TURNING BACK TO -- DO YOU RECALL MS. DUVAL AND MR. MILLS ARGUING DURING THAT VISIT?

A YES. I DO.

Q WHAT WAS THAT ARGUMENT ABOUT?

A I DON'T RECALL, SPECIFICALLY, WHAT IT WAS ABOUT. BUT THERE WAS ARGUING GOING ON.

Q DO YOU REMEMBER ANYTHING THAT WAS SAID?

MR. MCMILLAN: OBJECTION: LACKS FOUNDATION, SPECULATION BASED ON HER PRIOR ANSWER.

THE COURT: OVERRULED. CALLS FOR A YES OR NO ANSWER. EITHER YOU DO RECALL IT OR YOU DON'T.

THE WITNESS: NO.

BY MS. NAU:

Q YOU STATED THAT AT THIS VISIT, YOU HAD WEIGHED BABY RYAN, AND YOU ALSO TOOK A 24-HOUR FOOD INTAKE FROM THE -- FROM MS. DUVAL.

IS THERE ANYTHING ELSE THAT YOU DID AT THAT MEETING?

A AND PROVIDED RECOMMENDATIONS.

Q AND DID YOU ALSO REVIEW MEDICAL RECORDS FOR BABY RYAN?

A I LOOKED AT THE SHEET FROM THE PREVIOUS VISIT, WHICH -- THE BABY WAS NINE MONTHS AT THE TIME, WHAT HIS WEIGHT WAS.

Q YOU SAID A PREVIOUS VISIT. A PRIOR VISIT WITH A PEDIATRICIAN?

A YES.

Q DO YOU REMEMBER THE NAME OF THAT PEDIATRICIAN?

A THERE'S TWO NAMES THAT COME TO MIND BUT I DON'T RECALL WHICH NAME IT WAS SO I'M GOING TO SAY NO.

Q WHAT ARE THE NAMES THAT COME TO MIND?

A FEDDER AND GILL. SO I DON'T RECALL WHICH ONE WAS THE --

Q YOU SAID IT WAS FROM A NINE-MONTHS VISIT. WAS IT YOUR UNDERSTANDING THAT THAT WAS THE MOST RECENT PEDIATRIC APPOINTMENT BABY RYAN HAD HAD?

A YES.

Q AND HOW DID YOU KNOW THAT?

A BECAUSE THAT WAS WHAT -- THAT WAS THE LAST VISIT, I WAS TOLD. HE WAS AT THE PEDIATRICIAN.

Q OTHER THAN THE RECOMMENDATIONS FOR HIGH-CALORIE FOODS THAT WE'VE DISCUSSED, DID YOU MAKE ANY OTHER RECOMMENDATIONS TO MS. DUVAL AND MR. MILLS AT THAT FIRST VISIT?

A YES. THAT THE BABY BE SEEN BY A PEDIATRICIAN AS SOON AS POSSIBLE.

Q AND WHY DID YOU ADVISE THAT?

A BECAUSE HE NEVER HAD A 12-MONTH CHECKUP, AND BECAUSE THE CHILD HAD -- THE BABY HAD NEVER BEEN SEEN BY THE SAME PEDIATRICIAN TWICE.

THERE WAS NO HISTORY ON HIM, SO IF, IN FACT, HE HAD BEEN SEEN BY A PEDIATRICIAN CONSECUTIVE TIMES, THIS WOULD HAVE BEEN ALERTED TO THE PEDIATRICIAN.

IF THERE'S THREE CONSECUTIVE VISITS, AND THE WEIGHT AND THE HEIGHT BEGINS TO FALL OFF THE GROWTH CURVE, IT WOULD BE ALERTED THAT THERE'S SOMETHING WRONG WITH THE CHILD.

SO, THERE WAS NO HISTORY. SO I BELIEVE THAT'S WHY THIS WAS NOT DETECTED SOONER THAN WHEN I SAW HIM.

MR. MCMILLAN: OBJECTION, YOUR HONOR: NONRESPONSIVE, NARRATIVE RESPONSE. ALSO LACKING IN FOUNDATION. MOVE TO STRIKE.

THE COURT: OVERRULED.

BY MS. NAU:

Q NOW, WERE THERE ANY SPECIFIC RISKS YOU WERE CONCERNED ABOUT FOR BABY RYAN?

A DEVELOPMENTAL DELAYS, BRAIN DEVELOPMENT BEING AFFECTED.

Q AND TURNING TO THE NEXT PAGE WHICH IS 1089.17, WHAT IS THIS -- WHAT ARE YOUR NOTES SHOWING HERE?

A THE CALORIE REQUIREMENTS FOR A BABY OF THIS AGE.

Q AND WHAT ARE THOSE CALORIE REQUIREMENTS?
A A THOUSAND TO 1300 CALORIES A DAY.
Q AND THEN, BASED ON YOUR 24-HOUR INTAKE FOR MS. DUVAL, DID YOU DETERMINE WHAT PERCENTAGE OF THIS REQUIREMENT BABY RYAN WAS MEETING?
A I WROTE, "BASED ON THE FOOD RECORD, BABY TAKING IN 30 TO 50 PERCENT OF CALORIE NEEDS AND LESS THAN 20 TO 30 PERCENT OF THE PROTEIN RANGE."
THE AVERAGE RANGED FROM 385 CALORIES TO 600 CALORIES A DAY.
Q AND THAT RANGE, THAT WAS YOUR ASSESSMENT OF WHAT HIS AVERAGE CALORIE INTAKE WAS?
A YES.
Q AND BELOW THAT, THERE'S SOME WRITING -- WELL, DID YOU -- DID YOU KNOW IF BABY RYAN HAD BEEN DIAGNOSED AS FAILURE TO THRIVE AT THAT TIME?
A NO.
Q THERE'S A REFERENCE HERE TO "FTT CHILD." DID YOU WRITE THAT?
A YES.
Q DID YOU DETERMINE THAT BABY RYAN WAS FAILURE TO THRIVE?
MR. MCMILLAN: OBJECTION: LACKS FOUNDATION, CALLS FOR SPECULATION, EVIDENCE CODE SECTION 780.
THE COURT: THE OBJECTION AS TO FOUNDATION, SUSTAINED.
BY MS. NAU:
Q WHY DID YOU WRITE "FTT CHILD"?

A I BELIEVE I THOUGHT HE POSSIBLY COULD HAVE BEEN FAILURE TO THRIVE BECAUSE THE WEIGHT WAS BELOW THE THIRD PERCENTILE.

Q BEYOND GIVING THE HIGH-CALORIE TIPS LIST WE DISCUSSED, DID YOU TALK WITH MS. DUVAL AND MR. MILLS ABOUT THINGS TO FEED THE CHILD?

A YES. I DID.

Q AND DO YOU RECALL ANYTHING ELSE THAT YOU TOLD THEM, BESIDES WHAT'S LISTED ON THAT?

MR. MCMILLAN: OBJECTION: ASKED AND ANSWERED.

THE COURT: OVERRULED.

THE WITNESS: I BELIEVE I RECOMMENDED PEDIASURE, SO...

BY MS. NAU:

Q DID YOU MAKE A CALL TO THE CHILD ABUSE HOTLINE REGARDING BABY RYAN?

A YES, I DID.

Q DO YOU RECALL WHEN YOU DID THAT?

A IT WAS A FEW DAYS AFTER I HAD SEEN BABY RYAN.

Q AND HAD YOU EVER CALLED THE HOTLINE BEFORE?

A NO.

Q HAVE YOU EVER CALLED SINCE?

A NO.

Q WHY DID YOU CALL?

A I WAS VERY CONCERNED ABOUT THE BABY. AND AFTER REVIEWING MY DATA, I FELT THAT I NEEDED TO HAND THIS OVER TO SOMEONE WHO COULD MAKE THAT DECISION AS TO WHETHER THE CHILD WAS IN DANGER.

BUT I'M A MANDATED REPORTER, SO IF I SEE SOMETHING THAT IS ALARMING, AND I FELT THIS WAS VERY ALARMING, I NEED TO REPORT IT.

Q AND DID YOU PREPARE A -- WELL, ACTUALLY, IF YOU COULD TURN TO 1089.14. IT SHOULD BE JUST A FEW PAGES BEFORE WHERE YOU ARE.

ARE THOSE YOUR NOTES?

A YES.

Q AND DO YOU RECALL WHEN YOU WROTE THEM?

A I WOULD IMAGINE IT WAS WRITTEN AFTER I HAD MADE THE REPORT BECAUSE THE GENTLEMAN THAT I HAD REPORTED TO WAS THIS GENTLEMAN.

Q OKAY. SO THAT NAME AT THE TOP THERE, OBED NWAUKWA, N-W-A-U-K-W-A, AND THE FIRST NAME O-B-E-D, THAT'S THE PERSON YOU SPOKE WITH ON THE HOTLINE?

A YES.

Q DO YOU RECALL IF YOU MADE THESE NOTES ON THAT SAME DAY?

A YES.

Q AND A FEW LINES DOWN THERE'S THE WORDS -- WELL, IT SAYS, "UNDER WT," AND, "IN MY PROFESSIONAL OPINION, SOMETHING TO DO WITH FEEDING."

IS THAT SOMETHING THAT YOU TALKED TO MR. NWAUKWA ON THE HOTLINE ABOUT?

MR. MCMILLAN: OBJECTION: LACKS FOUNDATION, ALSO IMPROPER REFRESHMENT OF RECOLLECTION.

THE COURT: OVERRULED.

THE WITNESS: YES.

BY MS. NAU:

Q AND WHAT DO YOU MEAN -- WHAT DID YOU MEAN THAT IT HAD SOMETHING TO DO WITH FEEDING?

A THAT THE CHILD WAS NOT BEING FED ENOUGH. SO THIS IMPACTED HIS WEIGHT.

Q DID YOU SUBMIT A SCAR, A SUSPECTED CHILD ABUSE REPORT?

A I THINK I WOULD NEED TO SEE WHAT THAT IS BECAUSE I'M NOT FAMILIAR WITH THAT.

Q OKAY. AND IF YOU COULD TURN TO 1089.34.

DOES THAT REFRESH YOUR RECOLLECTION AS TO WHETHER YOU PREPARED A SUSPECTED CHILD ABUSE REPORT?

A YES.

Q AND IS THIS YOUR HANDWRITING ON THIS PAGE?

A YES.

Q DO YOU RECALL WHEN YOU FILLED THIS OUT?

A 10/19/09.

Q SO THAT'S THE SAME DAY THAT YOU CALLED THE HOTLINE?

A YES.

Q AND THIS REPORT, IT ASKS YOU FOR A SUMMARY OF WHAT -- SUMMARIZE WHAT THE ABUSED CHILD OR PERSON ACCOMPANYING THE CHILD SAID HAPPENED.

WHAT DID YOU WRITE?

A "CHILD WAS BROUGHT INTO MY OFFICE BY BOTH PARENTS IN ORDER TO RECEIVE DIETARY NUTRITIONAL COUNSELING FOR THEIR CHILD'S UNDERWEIGHT STATUS.

"CHILD IS SEVERELY UNDERWEIGHT AND NEEDS TO BE

SEEN BY A PEDIATRICIAN. HOWEVER, PARENTS INVOLVED IN A CUSTODY BATTLE AND CAN'T AGREE ON A PEDIATRICIAN.

"THIS REPORTER IS EXTREMELY CONCERNED ABOUT THE POSSIBILITY OF FAILURE TO THRIVE FOR THIS CHILD."

Q AND HOW DID YOU SUBMIT THIS FORM?

A I DON'T REMEMBER. I KNOW THE CALL WAS MADE FIRST, AND I DID THIS AFTER THE CALL.

Q DO YOU RECALL IF MR. NWAUKWA HAD ASKED YOU TO FILL OUT THE FORM?

MR. MCMILLAN: OBJECTION: LEADING.

THE COURT: OVERRULED.

THE WITNESS: I DON'T REMEMBER.

BY MS. NAU:

Q WERE YOU SUBSEQUENTLY CONTACTED BY ANY SOCIAL WORKERS FROM THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES?

A YES. I WAS.

Q DO YOU RECALL WHEN THE FIRST TIME YOU WERE CONTACTED BY THEM WAS?

A NO. IT MAY BE IN THE NOTES. THE DATE, NO. NOT EXACT DATE.

Q ALL RIGHT. SORRY TO BACK UP A LITTLE BIT. IF YOU COULD GO BACK TO 1089.19?

A OKAY.

Q AND HAVE YOU SEEN THIS DOCUMENT BEFORE?

A YES.

Q WHAT IS IT?

A IT'S A CHILD HISTORY -- DIET HISTORY

QUESTIONNAIRE.

Q AND WAS THIS SOMETHING THAT YOU GAVE TO BABY RYAN'S PARENTS AT THAT FIRST VISIT?

A NO. THEY DID NOT RECEIVE THIS.

Q OKAY. DID YOU FILL THIS OUT?

A YES.

Q AND TURNING TO -- SO THIS DOCUMENT INCLUDES THE PAGES 1089.19, 1089.20, AND 1089.21.

IS THAT RIGHT?

A CORRECT.

Q SO TURNING TO THE THIRD PAGE, WHICH IS 1089.21, DID YOU WRITE THE INFORMATION ON THAT PAGE?

A YES.

Q AND WHAT IS -- WELL, WHAT IS IT SHOWING, OR WHAT IS IT?

A IT SAYS WHAT THE BABY ATE FOR BREAKFAST, LUNCH, DINNER.

Q AND WAS THAT BASED ON THE 24-HOUR INTAKE WE WERE TALKING ABOUT?

A YES.

Q AND WHAT -- WHAT HAD THE BABY EATEN FOR BREAKFAST?

A RICE PUDDING, 12 CHEERIOS, CUCUMBER, PEACH, CREAM OF WHEAT. AND GOING BACK, I THINK -- I CAN'T BE EXACT BUT IT COULD HAVE BEEN THE SIDE THING WAS MAYBE WHAT HE EATS, BUT NOT EXACTLY THE 24 HOURS.

BECAUSE IT LOOKS LIKE A SIDE NOTE. AND THEN LUNCH IS HALF AN APPLE, HALF RICE PUDDING, HALF A CUP

OF RICE PUDDING, CUCUMBER. DINNER IS ONE-AND-A-HALF OUNCES OF CHICKEN, WHOLE QUESADILLA, AND WATER.

Q AND SO IT'S YOUR RECOLLECTION THAT THE WRITING THAT'S KIND OF OFF TO THE SIDE, NOT ON THE LINE NEXT TO BREAKFAST, MAY HAVE BEEN OTHER FOODS HE HAD EATEN, BUT NOT IN THE LAST 24 HOURS?

A YES.

MR. MCMILLAN: OBJECTION: LACKS FOUNDATION, CALLS FOR SPECULATION.

THE COURT: OVERRULED.

BY MS. NAU:

Q AND WHAT ABOUT THIS INTAKE, THIS BREAKFAST, AND LUNCH AND DINNER. WAS THERE ANYTHING ABOUT IT THAT CONCERNED YOU?

MR. MCMILLAN: LACKS FOUNDATION, SPECULATION.

THE COURT: OVERRULED.

THE WITNESS: IT'S NOT THAT MUCH FOOD.

BY MS. NAU:

Q DO YOU RECALL WHEN THE SECOND TIME IT WAS THAT YOU SAW BABY RYAN?

A I BELIEVE IT WAS TWO WEEKS LATER.

Q AND WHAT DID YOU DO AT THAT VISIT?

A BOTH PARENTS BROUGHT IN THEIR DIET INTAKE SHEETS FOR THE TWO WEEKS PRIOR TO THE VISIT.

Q SO YOU RECEIVED A FOOD INTAKE FORM FROM EACH OF THE PARENTS?

A YES.

Q DID THE FOOD REPORTED IN THAT INTAKE SEEM

ADEQUATE?

MR. MCMILLAN: OBJECTION: FOUNDATION, SPECULATION.

BY MS. NAU:

Q DO YOU RECALL?

THE COURT: OVERRULED.

THE WITNESS: I NEED TO LOOK. THERE WERE SEVERAL DIFFERENT FOOD INTAKES, SINCE I'VE SEEN THE BABY ON TWO DIFFERENT OCCASIONS. SO I NEED TO LOOK AT THAT BEFORE COMMENTING ON SOMETHING SPECIFICALLY.

BY MS. NAU:

Q OKAY. SO IF YOU COULD LOOK AT 1089.25. AND WHAT -- DO YOU RECALL WHO PREPARED -- WELL, IS THIS ONE OF THE FOOD INTAKES PREPARED BY THE PARENTS?

A YES.

Q AND DO YOU RECALL WHO PREPARED THIS ONE?

A MS. DUVAL.

Q AND THERE'S SOME HANDWRITTEN NOTES ON THIS PAGE. ARE THOSE YOURS?

A YES.

Q AND I CAN GIVE YOU SOME TIME TO REVIEW THIS. BUT THE QUESTION WILL BE WHETHER THE FOOD INTAKE REPORTED -- OR THE FOOD REPORTED IN THIS LOG SEEMED ADEQUATE TO YOU.

A STILL WAS NOT ENOUGH FOOD.

Q THERE'S SOME NOTES ON THE SIDE OF THE PAGE THAT SAYS, "BASED ON FOOD RECORD, TAKING IN APPROXIMATELY 30 PERCENT TO 50 PERCENT OF K CAL NEEDS."

A YES.
Q AND YOU WROTE THAT?
A YES.
Q AND THAT'S BASED ON YOUR REVIEW OF THIS PARTICULAR FOOD LOG?
A YES.
Q AND THEN, DID YOU ALSO MAKE A DETERMINATION AS TO THE PERCENTAGE OF THE PROTEIN NEEDS OF THE CHILD WERE BEING MET?
A YES.
Q AND WHAT WAS THAT?
A LESS THAN 30 PERCENT.
Q BASED ON THIS FOOD LOG, DID YOU MAKE ANY DETERMINATION AS TO WHETHER MS. DUVAL HAD FOLLOWED THE RECOMMENDATIONS YOU PROVIDED AT THE OCTOBER 16TH MEETING?
MR. MCMILLAN: OBJECTION: LACKS FOUNDATION, CALLS FOR SPECULATION.
THE COURT: OVERRULED. IT CALLS FOR A YES OR NO ANSWER.
THE WITNESS: REPEAT THE QUESTION AGAIN?
BY MS. NAU:
Q YEAH. BASED ON THIS FOOD LOG, DID YOU MAKE ANY DETERMINATION AS TO WHETHER MS. DUVAL HAD FOLLOWED THE RECOMMENDATIONS YOU PROVIDED AT THE OCTOBER 16TH APPOINTMENT?
A YES. I DID.
Q AND WHAT WAS THAT DETERMINATION?

A THAT NOT ALL RECOMMENDATIONS WERE BEING FOLLOWED.

Q WHAT RECOMMENDATIONS WEREN'T BEING FOLLOWED?

MR. MCMILLAN: OBJECTION: LACKS FOUNDATION, CALLS FOR SPECULATION.

THE COURT: OVERRULED.

THE WITNESS: THE SHAKES WEREN'T.

BY MS. NAU:

Q SORRY? THE SHAKE --

A I BELIEVE THERE WAS SOMETHING ON MY NOTES, SOMETHING ABOUT THE PEDIASURE, AND SHAKES. I DON'T SEE THAT. I SEE, "BERRY SHAKE WITH ONE OUNCE OF BACK TO BASIC MILK."

SO THAT WOULD BE SOMETHING THAT WOULD NOT BE ENOUGH IN TERMS OF RECOMMENDATIONS. VEGGIE PUFFS WOULD NOT HAVE BEEN A RECOMMENDATION.

Q DID YOU HAVE ANY OTHER -- ARE YOU STILL LOOKING?

A NO. GO AHEAD.

Q OKAY. DID YOU HAVE ANY OTHER CONCERNS ABOUT WHAT WAS REPORTED BY MS. DUVAL IN THE FOOD LOG HERE?

MR. MCMILLAN: OBJECTION: VAGUE.

THE COURT: OVERRULED.

THE WITNESS: ON OCTOBER 18TH, IT APPEARS THAT THE DIET RECALL -- OR THE DIET RECORD WAS OVERINFLATED.

IT STATED THAT THE BABY HAD EATEN A COMBO PIZZA FROM COSTCO, THREE-QUARTERS OF A SLICE-AND-A-HALF OF PIZZA, WHICH A CHILD, A BABY OF THAT STATURE AND

SIZE WOULD NOT BE ABLE TO CONSUME THAT AMOUNT OF FOOD.
BY MS. NAU:
Q AND THAT WAS FOR ONE MEAL ON OCTOBER 18TH. RIGHT?
A CORRECT.
Q DO YOU RECALL WHETHER -- WELL, WERE YOU EVER TOLD THAT BABY RYAN HAD ANY RESTRICTIONS ON THE FOODS HE COULD EAT?
A I BELIEVE THAT MS. DUVAL WAS CONCERNED ABOUT FOOD ALLERGIES FOR BABY RYAN. THAT HE HAD FOOD ALLERGIES.
MR. MCMILLAN: OBJECTION: NONRESPONSIVE, MOVE TO STRIKE.
THE COURT: OVERRULED.
BY MS. NAU:
Q DO YOU RECALL THAT -- WELL, DID MS. DUVAL -- DID MS. DUVAL EVER TELL YOU THAT SHE COULDN'T FEED BABY RYAN CERTAIN FOODS BECAUSE OF THOSE FOOD ALLERGIES?
A SHE MENTIONED THAT SHE WOULD SEE RASHES IF HE WAS FED MILK.
Q DO YOU RECALL WRITING A LETTER SUMMARIZING YOUR VISITS WITH BABY RYAN?
A YES. I DO.
Q AND WHEN DID YOU WRITE THAT LETTER?
A I NEED TO LOOK TO SEE IF THERE WAS A DATE ON THAT LETTER.
Q YEAH. IF YOU COULD -- MIGHT BE ABLE TO HELP. IF YOU COULD LOOK AT -- ACTUALLY, EXHIBIT 60, WHICH IS

GOING TO BE SOMEWHERE ELSE. RIGHT HERE. EXHIBIT 60, BATES 001156.

DOES THAT APPEAR TO BE THE LETTER THAT YOU WROTE?

A YES.

Q AND DOES THAT REFRESH YOUR RECOLLECTION AS TO WHEN YOU WROTE IT?

A THE DATE IS JUNE 29, 2010.

Q WHY DID YOU WRITE THAT LETTER?

A I BELIEVE I WAS ASKED TO WRITE THE LETTER.

Q DO YOU RECALL WHO ASKED YOU?

A NO, I DON'T.

Q WHAT DID YOU SAY IN THAT LETTER REGARDING MS. DUVAL'S FEEDING BABY RYAN?

MR. MCMILLAN: OBJECTION: LACKS FOUNDATION, IMPROPER REFRESHMENT OF RECOLLECTION.

THE COURT: THE -- THE OBJECTION IS OVERRULED FOR THE QUESTION. THE QUESTION ASKED WHAT DID SHE SAY. AND SO, WITHOUT LOOKING AT THE LETTER, ARE YOU ABLE TO ANSWER WHAT YOU SAID IN THE LETTER WITHOUT LOOKING?

THE WITNESS: WITHOUT LOOKING, NO.

THE COURT: ALL RIGHT. NOW, TAKE IT FROM THERE.

MS. NAU: ALL RIGHT.

BY MS. NAU:

Q AND IF YOU COULD LOOK AT THE LETTER AND REVIEW IT, AND LET ME KNOW IF THAT REFRESHES YOUR RECOLLECTION AS TO WHAT YOU SAID REGARDING MS. DUVAL'S FEEDING OF

THE CHILD.

A OKAY.

Q SO WHAT DID YOU SAY IN THAT LETTER REGARDING MS. DUVAL'S FEEDING OF BABY RYAN?

MR. MCMILLAN: OBJECTION, YOUR HONOR: IT'S -- I THINK WE'RE LOOKING FOR HER REFRESHED RECOLLECTION.

THE COURT: THAT'S CORRECT. THE --

MS. NAU: I CAN REPHRASE.

THE COURT: ALL RIGHT.

BY MS. NAU:

Q MS. CRUMP, HAS YOUR RECOLLECTION BEEN REFRESHED AS TO WHAT YOU WROTE IN THAT LETTER REGARDING MS. DUVAL'S FEEDING OF THE CHILD?

A YES.

Q AND WHAT IS YOUR RECOLLECTION?

A THAT SHE WAS NOT FEEDING THE BABY ENOUGH.

Q AND WHAT, SPECIFICALLY, DID YOU SAY ABOUT THAT?

MR. MCMILLAN: OBJECTION: LACKS FOUNDATION, CALLS FOR SPECULATION.

THE COURT: OVERRULED. MS. CRUMP, THE QUESTION IS, RIGHT NOW, IN REFERENCE TO HAVING REFRESHING YOUR RECOLLECTION IN LOOKING AT THE LETTER, DO YOU NOW RECALL, WITHOUT LOOKING AT IT, WHAT YOU --

WHAT, SPECIFICALLY, DID YOU SAY ABOUT THAT, REFERRING TO THE PREVIOUS ANSWER THAT SHE WAS NOT FEEDING THE BABY ENOUGH.

NOW, CAN YOU RECALL WITHOUT LOOKING AT THE

LETTER?

THE WITNESS: YES. THAT MANY OF MY SUGGESTIONS WERE DISMISSED BECAUSE EITHER THE BABY DID NOT LIKE THEM OR HAD POSSIBLE ALLERGIES TO THE FOOD.

BY MS. NAU:

Q AND THAT WAS DISMISSED BY MS. DUVAL?

A YES.

Q DID YOU ALSO -- WELL, DO YOU RECALL ANY DISCREPANCIES BETWEEN WHAT MS. DUVAL SAID SHE HAD FED THE CHILD AND WHAT MR. MILLS SAID HE HAD FED THE CHILD?

MR. MCMILLAN: OBJECTION: VAGUE.

THE COURT: SUSTAINED THAT IT IS UNCLEAR WHETHER YOU'RE ASKING IF EACH ONE SAID THAT THEY HAD FED SOMETHING DIFFERENT, OR WHETHER ONE WAS SAYING WHAT THE OTHER HAD FED, OR OTHER POSSIBILITIES OF VAGUENESS.

SO YOU HAVE TO CLARIFY THE QUESTION.

MS. NAU: I CAN REPHRASE.

BY MS. NAU:

Q DID YOU WRITE ANYTHING IN THIS LETTER REGARDING DISCREPANCIES BETWEEN WHAT MS. DUVAL HAD SAID SHE FED THE CHILD AND MR. MILLS HAD FED THE CHILD?

A YES.

Q AND WHAT WAS THAT?

A THAT ACCORDING TO MY RECOMMENDATIONS WITH FOOD SUGGESTIONS, THAT MR. MILLS WAS SURPRISED TO LEARN THAT THE BABY DID LIKE SOME OF THE FOODS THAT WERE DISMISSED EARLIER BY MS. DUVAL WHEN THEY WERE -- WHEN THE BABY TRIED THEM WITH THE FATHER.

Q SO YOUR UNDERSTANDING WAS THAT MS. DUVAL HAD DISMISSED SOME OF YOUR RECOMMENDATIONS BASED ON THE FACT THAT THE CHILD HAD ALLERGIES OR FOOD RESTRICTIONS?
A YES.
Q AND THAT MR. MILLS WAS SURPRISED BECAUSE THE CHILD COULD EAT THOSE SAME FOODS?
A YES.
Q DO YOU KNOW -- WELL, DO YOU KNOW WHO YOU GAVE THIS LETTER TO?
A I DON'T REMEMBER.
Q DID YOU HAVE AN UNDERSTANDING THAT IT WOULD BE USED IN A COURT PROCEEDING?
A NO.
Q BUT EVERYTHING YOU WROTE IN THE LETTER WAS TRUTHFUL AT THE TIME THAT YOU WROTE IT. RIGHT?
A YES.
MR. MCMILLAN: LACKS FOUNDATION, SPECULATION, ARGUMENT.
THE COURT: OVERRULED.
BY MS. NAU:
Q DID YOU ATTEND A TEAM DECISION-MAKING MEETING IN NOVEMBER 2009?
A YES.
Q AND DO YOU KNOW WHAT A TEAM DECISION-MAKING MEETING IS?
A AT THE TIME, I DID NOT. NO.
Q WHY DID YOU ATTEND?
A I WAS ASKED BY SUSAN TO ATTEND.

Q AND THAT'S SUSAN PENDER?
A YES.
Q WHAT HAPPENED AT THE -- WELL -- YEAH, WHAT'S YOUR RECOLLECTION OF WHAT HAPPENED AT THE TDM?
MR. MCMILLAN: OBJECTION: CALLS FOR A NARRATIVE RESPONSE, FOUNDATION, SPECULATION.
THE COURT: OVERRULED.
THE WITNESS: THERE WERE PEOPLE, DIFFERENT PEOPLE LIKE MYSELF REPORTING ON WHAT WENT ON WITH THE BABY, THEIR OBSERVATIONS OF WEIGHTS OF THE CHILD, AND NOTES WRITTEN ON THE BOARD AFTER PEOPLE HAD SPOKEN.
BY MS. NAU:
Q DID YOU SPEAK AT THE TDM?
A YES.
Q DID YOU EXPRESS ANY CONCERNS REGARDING BABY RYAN'S CONDITION AT THE TDM?
A YES.
Q DO YOU RECALL, SPECIFICALLY, WHAT YOU SAID?
A NOT SPECIFICALLY, NO.
Q IF I COULD HAVE YOU LOOK AT BACK IN THAT FIRST BINDER, AT 1089.3. WELL, I GUESS START AT 1089.2.
DOES THAT DOCUMENT THAT STARTS AT 1089.2 AND ENDS AT 1089.4, HAVE YOU SEEN IT BEFORE?
A YES.
Q AND WHAT IS IT?
A IT'S A DECLARATION OF MYSELF.
Q IT'S A DECLARATION. AND ON THE LAST PAGE, ON 1089.4, IS THAT YOUR SIGNATURE?

A YES.
Q AND BEFORE YOU SIGNED THIS DECLARATION, DID YOU REVIEW IT?
A YES.
Q AND IS EVERYTHING CONTAINED IN IT -- OR WAS EVERYTHING CONTAINED IN IT TRUTHFUL AND ACCURATE TO THE BEST OF YOUR KNOWLEDGE, AT THE TIME YOU SIGNED IT?
A YES.
Q AND IF YOU COULD FOCUS ON PARAGRAPH 11, AND LET ME KNOW IF THAT REFRESHES YOUR RECOLLECTION AS TO WHAT CONCERNS YOU EXPRESSED AT THE TDM?
MR. MCMILLAN: OBJECTION: LACKS FOUNDATION AS TO NEED FOR REFRESHMENT OF RECOLLECTION.
THE COURT: OVERRULED. SHE TESTIFIED SHE COULDN'T RECALL, SPECIFICALLY, WHAT SHE SAID. GO AHEAD.
THE WITNESS: YOU WANT ME TO READ WHAT WAS WRITTEN?
BY MS. NAU:
Q WELL, JUST AFTER REVIEWING THAT, DOES THAT REFRESH YOUR RECOLLECTION AS TO WHAT CONCERNS YOU HAD STATED?
A YES.
Q AND WHAT WERE THOSE?
A THAT THE CHILD WAS UNDERWEIGHT AND THAT MS. DUVAL'S NOT COOPERATIVE WITH MY RECOMMENDATIONS TO FEED THE BABY HIGH-CALORIE FOODS SO THAT HE COULD SAFELY GAIN WEIGHT.

Q FOLLOWING THE TDM -- WELL, OTHER THAN THE OCTOBER 16TH AND OCTOBER 30TH VISITS WE DISCUSSED, DID YOU SEE BABY RYAN AT ANY OTHER POINT?

A I SAW HIM ONE TIME AFTER THE TDM.

Q DO YOU RECALL ANYTHING ABOUT THAT VISIT?

A IT WAS NOT AS HEATED.

Q AND WAS MS. DUVAL PRESENT AT THAT VISIT?

A YES.

Q BY THAT TIME -- WELL, AT THAT TIME, DID YOU HAVE AN UNDERSTANDING THAT THE CHILD -- THAT MR. MILLS HAD CUSTODY OF THE CHILD?

A YES.

MS. NAU: I HAVE NOTHING FURTHER.

THE COURT: ALL RIGHT. MR. MCMILLAN.

MR. MCMILLAN: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. MCMILLAN:

Q LET'S JUST START WITH THIS -- WHAT WAS THIS, EXHIBIT NUMBER 1089.2 THROUGH .4. YOU HAVE IT THERE IN FRONT OF YOU.

THAT'S A DECLARATION THAT YOU SIGNED UNDER PENALTY OF PERJURY AT THE REQUEST OF MS. SWISS OVER HERE. CORRECT?

A YES.

Q AND IN THE PROCESS OF PUTTING TOGETHER THIS DECLARATION, YOU YOURSELF DIDN'T TYPE IT UP. RIGHT?

A NO.

Q IN FACT, WHAT YOU DID, YOU HAD A SERIES OF TELEPHONE CONVERSATIONS WITH MS. SWISS, MADE SOME EMAILS BACK AND FORTH, AND SHE TYPED IT UP AND WROTE IT UP?

MS. NAU: OBJECTION -- OH, SORRY.

BY MR. MCMILLAN:

Q AM I RIGHT ABOUT THAT?

A YES.

Q AND THEN AT SOME POINT AFTER THAT -- LET ME ASK YOU: DO YOU REMEMBER THE DATE THAT IT WAS THAT YOU SIGNED THIS DECLARATION?

A NO.

Q WELL, WAS IT WITHIN A YEAR OF NOVEMBER 2009?

A I WOULD NEED TO LOOK AT THE DATE THAT IT WAS SIGNED.

Q SURE. SURE. YOU HAVE IT THERE IN FRONT OF YOU. RIGHT?

A IT LOOKS LIKE THERE WAS AN ERROR IN THE DATE. IT SAYS JANUARY 28TH, 2013 -- 20134 (SIC).

Q CORRECT. NOW, DO YOU RECALL THERE BEING A MOTION FILED SOMETIME AFTER JANUARY 2014?

A I DON'T RECALL.

Q DO YOU RECALL MS. SWISS CALLING YOU UP AND ASKING YOU TO HELP THEM OUT BY GIVING THEM A DECLARATION SOMETIME AROUND JANUARY 2014?

A IT COULD HAVE BEEN, ACCORDING TO THIS, 2013, 2014.

Q OKAY. BUT YOU DO RECALL, DON'T YOU, MA'AM,

THAT AFTER THIS -- YOU SIGNED THIS DECLARATION, WHETHER IT WAS 2013 OR 2014, THAT ON FEBRUARY 5TH, 2015, YOU AND I MET IN A DEPOSITION?

A AT DEPOSITION, YES.

Q YOU REMEMBER THAT?

A YES.

Q YOU REMEMBER WE ALSO MET SOMETIME PRIOR TO THAT AT A -- ACTUALLY, IT WAS AUGUST 21ST OF 2014, WHEN YOU GAVE A SWORN STATEMENT?

A YES.

MS. NAU: OBJECTION YOUR HONOR: THE DEFENSE REQUESTS A SIDEBAR.

THE COURT: ALL RIGHT. IS THERE A GROUND FOR YOUR OBJECTION, OR ARE YOU GOING TO TELL ME AT THE SIDEBAR?

MS. NAU: I'LL TELL YOU THAT AT THE SIDEBAR.

THE COURT: ALL RIGHT.

(THE FOLLOWING PROCEEDINGS WERE HELD AT THE SIDEBAR OUTSIDE THE PRESENCE OF THE JURY)

THE COURT: WE'RE AT SIDEBAR. COUNSEL ARE PRESENT. YES?

MS. NAU: YOUR HONOR, THE RECORDED STATEMENT THAT MR. MCMILLAN IS REFERRING TO WAS NOT A DEPOSITION AT WHICH DEFENSE COUNSEL WERE PRESENT OR INVITED TO.

SO THE DEFENSE OBJECTS TO ANY USE OF THAT RECORDED STATEMENT FOR IMPEACHMENT PURPOSES OR OTHER PURPOSES DURING THIS TRIAL.

MS. SWISS: THERE WAS A DEPOSITION ACTUALLY TAKEN IN THIS CASE THAT WAS PROPERLY NOTICED, AND THAT ALL PARTIES WERE ABLE TO ATTEND.

THERE WAS A MEETING BETWEEN MS. CRUMP AND HER ATTORNEY AND PLAINTIFF'S COUNSEL WHERE THEY ASKED HER QUESTIONS UNDER OATH.

WE WERE NOT INVITED. WE DON'T FEEL IT WAS PROPERLY SCHEDULED, SO THESE STATEMENTS SHOULD NOT BE ABLE TO USED DURING THESE PROCEEDINGS.

MR. MCMILLAN: YOUR HONOR, IT'S NOT CLEAR TO ME HOW IT'S DIFFERENT THAN THE DECLARATION UNDER OATH. IT'S A STATEMENT UNDER OATH.

THE COURT: WELL, I DON'T KNOW HOW YOU CAN TAKE A SWORN STATEMENT -- WHO HAD THE AUTHORITY TO TAKE A SWORN STATEMENT?

MR. MCMILLAN: THE COURT REPORTER ACTUALLY SWORE HER IN.

THE COURT: THEN IT IS A NOT A SWORN STATEMENT. THERE'S NO SUCH THING.

MR. MCMILLAN: WELL, AN OATH WAS ADMINISTERED TO HER BEFORE SHE WAS QUESTIONED.

THE COURT: SHE HAD NO AUTHORITY TO ADMINISTER AN OATH AND TAKE TESTIMONY WITH NO NOTICE OF THE DEFENDANTS. SO THIS IS NOT THE EQUIVALENT OF A DEPOSITION. AND IT WILL NOT BE USED LIKE A DEPOSITION.

MR. MCMILLAN: WELL, IF PRIOR INCONSISTENT STATEMENTS, WHETHER THEY'RE SWORN OR UNSWORN --

THE COURT: THAT MAY BE DIFFERENT. BUT YOU'RE

NOT GOING TO CHARACTERIZE THIS AS A SWORN STATEMENT IN FRONT OF THE JURY AND A STATEMENT UNDER OATH, WHEN YOU HAVEN'T GIVEN NOTICE.

AND THERE IS NO SUCH THING UNDER THE LAW AS A SWORN STATEMENT TAKEN. IT'S EITHER A DEPOSITION OR IT'S NOT.

SO IF THERE'S SOMETHING THAT SHE SAID THAT WAS DIFFERENT, THEN YOU CAN INQUIRE, BUT THIS WILL NOT BE CHARACTERIZED TO THE JURY AS A SWORN STATEMENT, AND IT WILL NOT BE USED AS A DEPOSITION.

MR. MCMILLAN: OKAY. BUT THAT IS NOT A PROHIBITION AGAINST USING IT AS A PRIOR INCONSISTENT STATEMENT. AM I UNDERSTANDING THAT CORRECTLY?

THE COURT: THAT'S CORRECT.

MR. MCMILLAN: OKAY.

MS. SWISS: ONE MORE QUESTION: IF IT IS USED AS A PRIOR INCONSISTENT STATEMENT, COUNSEL WILL NOT BE ALLOWED TO READ FROM IT TO IMPEACH HER?

THE COURT: NO.

MS. SWISS: OKAY.

THE COURT: THE JURY NEEDS TO BREAK, BY THE WAY, WHILE WE REVIEW IT, THE PRIOR INCONSISTENT STATEMENT, DURING THE BREAK.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY)

THE COURT: WE'RE GOING TO TAKE THE MORNING RECESS AT THIS TIME. APPROXIMATELY 10 MINUTES. ALL JURORS PLEASE REMEMBER THE ADMONITION.

(PAUSE IN THE PROCEEDINGS)

THE COURT: LET'S GET THE JURORS IN.

(JURY PRESENT)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE JURY)

THE COURT: ALL RIGHT. EVERYONE MAY BE SEATED. WE'RE ON THE RECORD. EVERYBODY IS PRESENT. GO AHEAD.

MR. MCMILLAN: THANK YOU, YOUR HONOR.

BY MR. MCMILLAN:

Q NOW, YOU'VE GIVEN A LOT OF TESTIMONY, DETAILED TESTIMONY TODAY ABOUT WHAT YOU RECALL, TODAY, THAT HAPPENED AT THE TDM WAY BACK ON NOVEMBER 3RD--

THE COURT: MR. MCMILLAN, PLEASE DON'T MAKE A STATEMENT. SIMPLY ASK A QUESTION.

MR. MCMILLAN: OKAY.

BY MR. MCMILLAN:

Q GOING BACK TO THAT NIGHT, NOVEMBER 3RD -- OR THAT DAY -- NOVEMBER 3RD, 2009, YOU RECALL ATTENDING THE TDM. CORRECT?

A YES.

Q DO YOU REMEMBER WHETHER OR NOT ANY OF THE SOCIAL WORKERS THERE WERE ASKING YOU QUESTIONS?

A I DON'T REMEMBER WHO THE PERSON WAS WHO WAS ASKING ME QUESTIONS, WHAT THEIR TITLE WAS. IT COULD HAVE BEEN A SOCIAL WORKER, IT COULD HAVE BEEN A NURSE. I DON'T RECALL EXACTLY WHO THAT PERSON WAS AND THEIR TITLE.

MR. MCMILLAN: YOUR HONOR, I WOULD READ FROM THE DEPOSITION OF MS. WENDY CRUMP TAKEN ON THURSDAY, FEBRUARY 5TH, 2015, PAGE 109, LINES 10 THROUGH -- NO, I'M SORRY -- LINES 15 THROUGH 17.

THE COURT: ALL RIGHT. JUST A MOMENT, PLEASE.

MS. NAU: OBJECTION: IMPROPER IMPEACHMENT.

THE COURT: YOUR CITATION IS PAGE 109, LINES 15 TO 17?

MR. MCMILLAN: AFFIRMATIVE, YOUR HONOR.

THE COURT: THE OBJECTION IS SUSTAINED.

BY MR. MCMILLAN:

Q WELL, DO YOU RECALL WHETHER OR NOT YOU, YOURSELF, ASKED ANY QUESTIONS?

A NO.

Q WHAT DID YOU DO AT THE MEETING?

A I ATTENDED THE MEETING. I WAS ASKED QUESTIONS IN REGARDS TO THE BABY'S FOOD INTAKE.

Q WHO ASKED YOU QUESTIONS?

A THE NAME OF THE PERSON, I DON'T KNOW.

Q DO YOU RECALL WHAT TYPES OF QUESTIONS WERE ASKED OF YOU AT THE TEAM DECISION-MAKING MEETING?

A IT -- THE QUESTIONS SURROUNDED THE BABY'S FOOD INTAKE.

Q DO YOU RECALL ANYTHING THAT YOU SAID AT THE MEETING?

A SPECIFICALLY, NO.

Q IN FACT, MA'AM, ISN'T IT TRUE THAT YOU DON'T REMEMBER WHAT YOU SAID AT THE MEETING?

A TODAY, NO. I DON'T REMEMBER.
Q ISN'T IT ALSO TRUE, MA'AM, THAT BACK IN 2014 WHEN YOU SIGNED THAT DECLARATION FOR MS. SWISS UNDER PENALTY OF PERJURY, YOU DIDN'T REMEMBER WHAT WAS SAID AT THE MEETING?
A I DON'T REMEMBER.
Q WELL, HOW LONG DID THAT MEETING LAST?
A THE TDM?
Q RIGHT.
A MANY HOURS. EXACTLY HOW MANY HOURS, I DON'T KNOW.
Q WELL, DO YOU REMEMBER WHEN IT STARTED?
A NO.
Q DO YOU REMEMBER WHEN IT ENDED?
A IT WAS LATE.
Q DO YOU REMEMBER BEING PANICKED BECAUSE YOU HAD TO PICK UP YOUR KIDS, AND IT WAS SOMEWHERE AROUND 6:00 P.M.
A YES.
Q WERE YOU ABLE TO LEAVE AT 6:00 P.M. AND GO PICK UP YOUR KIDS?
A I HAD TO WAIT UNTIL THEY WERE DONE, AND THEN I HAD TO GO BACK IN THE ROOM. NO, I COULD NOT LEAVE AT THAT TIME.
Q SO ABOUT WHAT TIME WAS IT WHEN YOU DID FINALLY LEAVE, IF YOU RECALL?
A I DON'T RECALL.
Q WERE YOU ABLE TO PICK UP YOUR KIDS AT SIX?

A NO, I DID NOT PICK UP MY KIDS AT SIX.
Q MADE OTHER ARRANGEMENTS FOR THAT?
A YES.
Q WERE YOU ABLE TO GET HOME IN TIME FOR DINNER?
MS. NAU: OBJECTION: RELEVANCE.
THE WITNESS: I DON'T REMEMBER.
THE COURT: SUSTAINED.
BY MR. MCMILLAN:
Q DO YOU REMEMBER BEING THERE IN THAT MEETING SOMETIME -- WHEN YOU FIRST GOT THERE, SOMETIME AROUND 3:30 P.M. ON NOVEMBER 3RD?
A I DON'T REMEMBER THE TIME.
Q DO YOU REMEMBER WHETHER THE SUN WAS STILL UP?
A YES. THE SUN WAS UP.
Q AND BY THE TIME YOU GOT OUT OF THE MEETING, YOU REMEMBER THE SUN BEING DOWN?
A YES.
Q WOULD IT BE FAIR TO ESTIMATE THAT THAT MEETING LASTED SOMEWHERE BETWEEN 3 AND 4 HOURS?
A YES.
Q AND AT THAT MEETING, I THINK YOU DESCRIBED THIS TO ME BEFORE, IT WAS IN A ROOM, AND THERE'S A CONFERENCE TABLE IN THE ROOM. DO YOU REMEMBER THAT?
A YES.
Q AND THERE'RE PEOPLE SEATED AROUND THE CONFERENCE TABLE, AND THERE'S A WHITEBOARD UP ON THE WALL?
A YES.

Q AND THERE WAS SOMEBODY WRITING ON THE WHITEBOARD. DO YOU REMEMBER THAT?
A YES.
Q AND THERE WAS SOME TENSION IN THE ROOM, IN THE MEETING, THROUGHOUT THE MEETING. RIGHT?
A YES.
Q AND AT SOME POINT, SOMETHING HAPPENED, AND THE SOCIAL WORKERS, THEY GOT UP, AND THEY TOOK A BREAK, AND THEY WALKED OUTSIDE. RIGHT? DO YOU REMEMBER THAT?
A NO. I DON'T REMEMBER.
Q YOU DON'T REMEMBER THE SOCIAL WORKERS AT ANY POINT IN TIME LEAVING THE ROOM?
A I REMEMBER THEM LEAVING THE ROOM WHEN THE MEETING WAS OVER TO DISCUSS WHAT WAS -- THE OUTCOME WAS OF THE MEETING. BUT I DON'T RECALL, DURING THE MEETING, THAT HAPPENING.
Q OKAY. SO AT THE END OF THE MEETING, THE SOCIAL WORKERS LEFT THE ROOM. RIGHT?
A YES.
Q AND THEN AFTER A WHILE, ABOUT HALF AN HOUR OR SO, THEY CAME BACK. DO YOU REMEMBER THAT?
A YES.
Q WHEN THEY CAME BACK IS WHEN THEY ANNOUNCE TO THE ENTIRE ROOM, WE'RE TAKING THE BABY AND GIVING HIM TO THE FATHER. TRUE?
A YES.
Q YOU REMEMBER -- BEFORE THE SOCIAL WORKERS GOT UP AND LEFT THE ROOM, DO YOU REMEMBER ANY INTERACTIONS

THAT WERE GOING ON BETWEEN THE PARTIES, RIGHT BEFORE THE SOCIAL WORKERS LEFT?

A NO.

Q NOW, WHEN THEY CAME -- WHEN THE SOCIAL WORKERS CAM BACK IN THE ROOM AND THEY ANNOUNCED TO THE GROUP THAT THEY WERE TAKING THE BABY AND GIVING HIM TO THE FATHER, YOU WERE SHOCKED. RIGHT? YOU REMEMBER THAT?

A YES.

Q YOU WERE SHOCKED BECAUSE YOU HAD NO IDEA WHAT WAS GOING TO HAPPEN THAT DAY. NOBODY HAD TOLD YOU. RIGHT?

A CORRECT. YES.

Q I WANT TO GO BACKWARDS IN TIME A LITTLE BIT. DO YOU REMEMBER ANY OF THE OTHER PEOPLE AT THE TDM, BEFORE WE GO BACKWARDS IN TIME?

A I REMEMBER THE PARENTS WERE THERE, THE GRANDPARENTS, AND SOCIAL WORKERS THAT WERE -- I BELIEVE A NURSE, A FRIEND OF MS. DUVAL. AND THAT'S WHAT I REMEMBER WHO WAS AT THE MEETING.

Q DO YOU REMEMBER DR. EVANS FROM THE CATC CLINIC BEING THERE?

A I DON'T REMEMBER.

Q HOW ABOUT DR. EGGE? DO YOU REMEMBER HER BEING THERE?

A I DON'T REMEMBER.

Q YOU MENTIONED EARLIER A DR. GILL. DO YOU REMEMBER HER BEING THERE?

A NO. I DON'T REMEMBER.

Q HOW ABOUT -- YOU KNOW, IN YOUR NOTES THAT MS. NAU WENT OVER WITH YOU, THE DAY WHEN YOU CALLED THE REFERRAL IN TO THE HOTLINE.

DO YOU REMEMBER THOSE NOTES?

A YES.

Q RIGHT UNDER THE NOTE THAT SHE HAD ASKED YOU ABOUT, REGARDING THE CHILD'S FEEDING ISSUES, THERE WAS ANOTHER NOTE, REGARDING THE REGIONAL CENTER.

DO YOU REMEMBER THAT?

A YES.

Q SO AM I CORRECT, MA'AM, THAT YOU KNEW, YOU KNEW, THE FIRST TIME THE PARENTS CAME IN TO YOU, YOU KNEW THIS CHILD HAD BEEN SEEN AND EVALUATED BY THE EASTERN LOS ANGELES REGIONAL CENTER. RIGHT?

A THE FIRST TIME I HAD SEEN HIM?

Q LET ME BACK UP. I'LL TRY TO HELP YOU OUT. YOU SAID YOU MADE THAT CALL TO THE HOTLINE ON OCTOBER 19TH. AM I RIGHT?

A CORRECT.

Q THE ONLY TIME YOU HAD SEEN ANY OF THESE PARENTS WAS OCTOBER 16TH. CORRECT?

A YES.

Q THEN WHEN YOU MADE THAT CALL ON THE 19TH AND TALKED TO, I FORGET HIS NAME, BUT IT WAS A GENTLEMAN, YOU MADE SOME NOTES OF THAT CONVERSATION. YES?

A CORRECT.

Q AND PART OF THOSE NOTES THAT YOU MADE OF THAT CONVERSATION ON THE 19TH INCLUDED THAT COMMENT ABOUT

REGIONAL CENTER. RIGHT?

A THERE'S -- YES. THERE'S SOMETHING THAT SAYS, "REGIONAL CENTER," AND THERE'S A PHONE NUMBER, BUT I DON'T RECALL WHY I HAVE THOSE NOTES OR HOW I KNEW ABOUT THE REGIONAL CENTER. I DON'T RECALL.

Q OKAY. WELL, LET'S BACK UP A LITTLE BIT MORE. YOU SAID IN YOUR TESTIMONY THAT MOM BROUGHT IN WITH YOU (SIC) THE MEDICAL RECORDS FOR THE CHILD'S LAST NINE-MONTH VISIT. RIGHT?

A THE NINE-MONTH VISIT, YES.

Q LET'S GO BACK AND LOOK AT YOUR NOTE. I THINK IT WAS, JUST OFF MEMORY, 1083, BUT THAT COULD BE WRONG. GIVE ME A SECOND, I'LL FIGURE IT OUT. IT WAS EITHER 1083 OR 1089.

IT'S 1089, I'M SORRY. LET'S GO TO PAGE NUMBER 1089.16, IF YOU WOULD. ARE YOU THERE?

A YES.

Q LOOK ABOUT THE MIDDLE OF THE PAGE, WHERE IT SAYS, "RECEIVED MEDICAL RECORDS, HAD PEDIATRIC RECORDS THROUGH NINE MONTHS VISIT."

DID I READ THAT RIGHT? DO YOU SEE THAT? THAT'S YOUR HANDWRITING. RIGHT?

A YES.

Q YOU WROTE THAT NOTE?

A YES.

Q BACK ON THE 16TH OR THE 19TH OF OCTOBER, 2009?

A THERE'S NO DATE ON THIS -- OH, IT'S THE 16TH OF OCTOBER.

Q AND, I'M SORRY. WHERE DID YOU FIND THAT DATE?
A .15 -- 1089.15.
Q OKAY. I SEE IT. SO DOES THAT REFRESH YOUR RECOLLECTION, MA'AM, THAT YOU, IN FACT, HAD RECEIVED AND REVIEWED THE MEDICAL RECORDS, PEDIATRIC RECORDS THROUGH THE NINE MONTHS VISIT?
A THAT'S WHAT I WROTE.
Q OKAY. AND WHEN MOM CAME IN WITH THOSE PEDIATRIC RECORDS FROM THE NINE-MONTH VISIT, AND YOU REVIEWED THEM, DO YOU REMEMBER THAT DR. YIM WAS HER DOCTOR -- OR THE CHILD'S DOCTOR?
A I DON'T REMEMBER WHO THE DOCTOR WAS.
Q OKAY. I'M GOING TO SHOW YOU, AND I'LL HAVE TO GET THE BOOK FOR YOU, IT'S EXHIBIT NUMBER 4, PAGE BEARING BATES NUMBER 000928 -- YOU CAN ACTUALLY SEE IT THERE. SEE AT THE TOP OF THE PAGE THERE, IT SAYS, ALLISON YIM, MD?
A YES.
Q DO YOU RECOGNIZE THIS EXHIBIT AS BEING ONE OF THOSE MEDICAL RECORDS THAT YOU GOT, THAT WENT ALL THE WAY THROUGH THE NINE-MONTH VISIT THAT YOU REVIEWED THERE ON OCTOBER 16TH?
A IT COULD HAVE BEEN.
Q OKAY. AND YOU SEE THERE, AVOCADO. THAT'S A HIGH-CALORIE FOOD. ISN'T IT?
A YES.
Q AND CHICKEN AND TURKEY, THOSE HAVE PROTEIN IN THEM. DON'T THEY?

A YES.
Q CORN, BANANAS, PRUNES, SQUASH, THOSE ARE ALL FOODS THAT WERE ON YOUR LIST. AREN'T THEY?
A CORRECT.
Q AND THE DATE THERE WAS, WHAT IS THAT, APRIL 30, 2009. DO YOU REMEMBER REVIEWING THIS RECORD THAT DAY ON OCTOBER 16, 2009, WHEN YOU MET MS. DUVAL AND MR. MILLS?
A IF THAT'S THE SHEET SHE BROUGHT IN -- I DON'T REMEMBER.
Q REMEMBER -- REMEMBER YOU ALSO TALKED TO US A BIT ABOUT YOUR CONVERSATIONS WITH MR. MILLS. ACTUALLY, CONVERSATIONS WITH A WHOLE BUNCH OF PEOPLE BEFORE THAT MEETING ON OCTOBER 16TH, 2009. DO YOU REMEMBER WHO THEY WERE?
A I HAVE HERE WRITTEN THAT I HAD SPOKEN WITH MS. DUVAL, THE FATHER, AND THE GRANDFATHER.
Q OKAY. AND ACTUALLY, WHEN MS. NAU WAS TALKING TO YOU, I THINK YOU'D SAID THAT YOU'D MENTIONED THE -- YEAH, YOU MET WITH THE FATHER AND MOTHER TOGETHER, OR SOMETHING LIKE THAT.
DO YOU REMEMBER THAT?
A INSIDE MY OFFICE, YES, I DID MEET WITH THE FATHER AND THE MOTHER AND THE BABY INSIDE MY OFFICE, YES.
Q OKAY. LET'S LOOK AT YOUR EXHIBIT 1089.15. IS THERE ANY WAY WE CAN TELL WHAT DATE IT WAS THAT YOU ACTUALLY WROTE THIS NOTE DOWN?

A IT SAYS 10/16/09.
Q OH. RIGHT THERE. I SEE IT. GOT IT. SO MOM CALLED YOU FIRST. RIGHT?
A CORRECT.
Q AND SHE WANTED TO GET YOUR LICENSE NUMBER?
A CORRECT.
Q OKAY. AND THEN AFTER MS. DUVAL CALLED YOU, MR. MILLS CALLED YOU. RIGHT?
A CORRECT.
Q AND HE ASKED YOU WHAT A DIETICIAN DOES, AND WHETHER OR NOT HE COULD BRING SOMEONE ELSE WITH HIM.
DO YOU REMEMBER THAT?
A YES.
Q AND THEN SOMEBODY ELSE CALLED YOU.
RIGHT? THE GRANDFATHER?
A YES.
Q AND HE ASKED YOU, WHAT DO YOU DO? WHAT'S YOUR EXPERIENCE AND EXPERTISE? DO YOU REMEMBER THAT?
A YES.
Q WAS THIS THE -- MR. MILLS'S FATHER?
A YES.
Q WAS THAT ODD? YOU HAD TREATED, I THINK YOU SAID A HANDFUL OF TODDLERS BEFORE IN YOUR PRACTICE. DO YOU RECALL THAT TESTIMONY?
A YES.
Q DID ANY OF THE OTHER OF THAT HANDFUL OF TODDLERS, DID ANY OF THEIR GRANDPARENTS, PARENTS, AND ALL THESE PEOPLE CALL TO FIND OUT WHAT YOU WERE AND --

OR WHO YOU WERE, AND WHAT YOU DID?
A NO.
Q SO WAS THAT ODD?
MS. NAU: OBJECTION: RELEVANCE.
THE COURT: SUSTAINED AS TO ODD.
BY MR. MCMILLAN:
Q SO THEN WE COME TO THE VISIT. NOW, IT'S TRUE, ISN'T IT, MA'AM, THAT MR. MILLS ACTUALLY SHOWED UP BEFORE MS. DUVAL GOT THERE?
A YES.
Q AND HE CAME IN WITH WHO, I THINK, HIS THEN WIFE, AND WAS IT FATHER OR HIS MOTHER, IF YOU REMEMBER?
A I DON'T REMEMBER IF IT WAS HIS FATHER OR HIS MOTHER. IT MIGHT HAVE BEEN BOTH.
Q OKAY. AND THEN WHEN MS. DUVAL CAME, SHE WAS ALONE?
A WITH THE BABY.
Q WITH THE BABY. OKAY. SO WE'RE IN YOUR OFFICE. YOU HAVE A DESK IN THERE?
A YES.
Q AND YOU'RE BEHIND THE DESK --
MS. NAU: OBJECTION: VAGUE AS TO TIME.
THE COURT: I'VE HAD SEVERAL OFFICES SINCE THEN.
JUST A MOMENT. THE OBJECTION AS VAGUE IS SUSTAINED. ASK IT --
BY MR. MCMILLAN:
Q BACK OCTOBER 16, 2009, WHEN YOU HAVE THIS

MEETING WITH MS. DUVAL AND THE BABY, MR. MILLS, HIS WIFE, AND HIS MOTHER AND/OR HIS MOTHER AND HIS FATHER, YOU WERE AT YOUR DESK. RIGHT?

A NO.

Q WHERE WERE YOU?

MS. NAU: OBJECTION: RELEVANCE.

THE COURT: OVERRULED.

THE WITNESS: THERE'S AN AREA OUTSIDE OF MY OFFICE WHERE EVERYBODY CAME IN THROUGH. SO MY OFFICE -- THE ONLY PEOPLE INSIDE OF MY OFFICE WERE MS. DUVAL AND MR. MILLS AND THE BABY.

BY MR. MCMILLAN:

Q OKAY.

A NOBODY ELSE WAS INSIDE MY OFFICE.

Q THAT'S DURING THE MEETING THAT YOU ACTUALLY HAD WITH MS. DUVAL, MR. MILLS, AND THE BABY THOUGH. RIGHT?

A YES.

Q BEFORE THAT MEETING, MR. MILLS, HE SHOWED UP HALF AN HOUR EARLY. RIGHT?

A I DON'T KNOW IF IT WAS A HALF-HOUR EARLY, I DON'T KNOW IF IT WAS 5 MINUTES, 10 MINUTES, 15 MINUTES, 20 MINUTES. I DON'T KNOW.

Q BUT WHEN HE SHOWED UP, HE WAS THERE WITH HIS WIFE, HIM, AND ONE OR BOTH OF HIS PARENTS. RIGHT?

MS. NAU: OBJECTION: RELEVANCE.

THE COURT: OVERRULED.

THE WITNESS: YES.

BY MR. MCMILLAN:

Q AND DID YOU TALK WITH THEM AS A GROUP, OR DID YOU TAKE MR. MILLS ASIDE AND TALK WITH HIM PRIVATELY?

A I DID NOT SPEAK TO THEM AS A GROUP, NO. AND I DID NOT TAKE ANYBODY ASIDE PRIVATELY.

Q WELL, I'M GOING TO ASK YOU TO LOOK AT YOUR NOTE AGAIN, 1089.15, SPECIFICALLY THE NOTE NEXT TO THE TIME NOTATION OF 4:30. ARE YOU THERE?

A YES.

Q IT SAYS: "FATHER COMES WITH SIGNIFICANT OTHER ASKING TO SPEAK WITH ME BEFORE MEETING. STATES, QUOTE, HE CAN'T SAY WHAT BABY IS EATING," --

AND THEN CAN YOU READ, WHAT DOES THAT SAY?

A IT'S, LIKE, SHORTHAND FOR "BECAUSE."

Q OH. "BECAUSE --"

A "-- IT WILL HELD AGAINST HIM. CLAIMS MOTHER HAS BABY STRIPPED DOWN AT DOCTOR'S OFFICE LOOKING FOR BRUISES."

Q SO THIS ENTIRE CONVERSATION HAPPENED OUTSIDE OF MS. DUVAL'S PRESENCE?

A YES.

Q OKAY. THEN WHEN MS. DUVAL GETS -- WALKS INTO THE MEETING, DID YOU BRING HER TOGETHER WITH MR. MILLS INTO YOUR INNER OFFICE?

A YES. JUST THE TWO OF THEM AND THE BABY.

Q AND THIS PRIOR COMMENT WITH MR. MILLS, WAS THAT OUT THE WAITING ROOM WITH HIS FAMILY AROUND OR DID YOU TAKE HIM ASIDE PRIVATELY TO DO THAT?

A IT WAS IN A PUBLIC AREA, NOTHING WAS PRIVATE. IT WAS IN A PUBLIC AREA.

Q WERE THERE OTHER PEOPLE IN ROOM BESIDES MR. MILLS'S FAMILY?

A I DON'T REMEMBER.

Q AND THEN WHEN YOU WENT IN AND HAD YOUR MEETING WITH THE PARENTS, MR. MILLS, MS. DUVAL, AND THE BABY, DID YOU SHARE WITH MS. DUVAL?

DID YOU SAY, HEY, YOU KNOW, I MET UP WITH MR. MILLS AHEAD OF TIME, AND HE HAS THESE CONCERNS ABOUT HOW HE CAN'T TELL ME WHAT HE'S FEEDING THE BABY BECAUSE IT MAY BE USED AGAINST HIM.

DID YOU SHARE THAT WITH MS. DUVAL?

A NO.

Q WHY NOT?

A BECAUSE WE WERE THERE TO SPEAK ABOUT THE BABY, THE BABY'S WEIGHT, AND THAT'S WHAT THE MEETING WAS ABOUT.

Q AND THAT'S ACTUALLY WHAT YOU TOLD MR. MILLS WHEN HE MADE THESE COMMENTS TO YOU. ISN'T IT?

A CORRECT.

Q TOLD HIM, HEY, YOU NEED TO SET THOSE ISSUES ASIDE. WE'RE HERE TO FOCUS ON THE BABY. RIGHT?

A CORRECT.

Q AND THEN DURING THAT MEETING THAT YOU HAD WITH MS. DUVAL, WHEN YOU STARTED GOING THROUGH THAT 24-HOUR FOOD RECALL. DO YOU REMEMBER THAT?

A YES.

Q MR. MILLS KEPT JUMPING IN ON HER AND INTERRUPTING HER. DO YOU REMEMBER THAT?

MS. NAU: OBJECTION: MISSTATES TESTIMONY.

THE COURT: OVERRULED. BUT -- THAT OBJECTION'S OVERRULED.

MS. NAU: OBJECTION: LACKS FOUNDATION.

THE COURT: NO. WE'RE NOT GOING TO START GUESSING. OVERRULED. IT ASSUMES FACTS THAT HAVE NOT BEEN ESTABLISHED IN THE EVIDENCE. GO AHEAD. THERE'S NO OBJECTION. GO AHEAD. ASK A QUESTION.

THE WITNESS: I REMEMBER ARGUING GOING ON BETWEEN THE TWO OF THEM.

BY MR. MCMILLAN:

Q DO YOU REMEMBER WHO STARTING THE ARGUING?

A NO, I DO NOT REMEMBER THAT.

Q YOU DON'T REMEMBER THAT THE ARGUMENT STARTED WHEN MR. MILLS STARTED JUMPING IN ON MS. DUVAL WHEN SHE'S TRYING TO GIVE YOU YOUR FOOD RECALL?

MS. NAU: OBJECTION: ASSUMES FACTS NOT IN EVIDENCE.

THE COURT: SUSTAINED. DON'T ASK THE QUESTION THAT WAY.

BY MR. MCMILLAN:

Q DO YOU RECALL WHETHER OR NOT IT WAS MR. MILLS THAT STARTED THE ARGUMENT?

MS. NAU: OBJECTION: ASKED AND ANSWERED.

THE COURT: SUSTAINED.

BY MR. MCMILLAN:

Q NOW, YOU TESTIFIED HERE EARLIER THAT YOU RECOMMENDED THEY SEE A PEDIATRICIAN RIGHT AWAY. RIGHT? ASAP, I THINK --

A YES.

Q DIDN'T THEY JUST COME FROM DR. FEDDER, LIKE, TWO WEEKS BEFORE YOUR MEETING?

A I DON'T RECALL.

Q YOU KNOW WHO DR. FEDDER IS. RIGHT?

A PEDIATRICIAN.

Q PEDIATRICIAN. AND WHEN YOU -- AT SOME POINT AFTER YOU MADE THIS REPORT TO SOCIAL SERVICES, MS. PENDER CALLED YOU ON THE PHONE. RIGHT?

A YES.

Q AND YOU TALKED TO HER ABOUT WHAT HAD HAPPENED IN YOUR OFFICE. RIGHT?

A YES.

Q DO YOU RECALL TELLING HER THAT DR. FEDDER, THE PEDIATRICIAN, HAD REFERRED THEM TO SEE YOU?

A I DON'T RECALL.

Q NOW, AT THAT OCTOBER 16TH MEETING, YOU SAID THAT YOU'D GIVEN THE PARENTS SOME RECOMMENDATIONS ABOUT FOODS. WHAT TO FEED THE BABY. DO YOU RECALL THAT?

A YES.

Q AND YOU TOOK NOTES OF THOSE RECOMMENDATIONS. RIGHT?

A YES.

Q IF YOU'D TURN TO PAGE 1089.22. YOU RECOGNIZE

THAT WRITING?
A YES.
Q IT'S YOUR WRITING?
A YES.
Q AND THIS IS ACTUALLY THE NOTE THAT YOU WROTE OUT FOR THE PARENTS RIGHT THERE AT YOUR OFFICE.
ISN'T IT?
A YES.
Q THERE ON THE 16TH?
A YES.
Q THE NOTE THAT YOU METHODICALLY WENT THROUGH AND READ FOR MS. NAU, THAT'S A COMPUTER PRINTOUT.
RIGHT?
A CORRECT.
Q AND THAT'S THE PRINTOUT THAT YOU GAVE THE PARENTS ON OCTOBER 30TH, AT YOUR SECOND MEETING WITH THEM. CORRECT?
MS. NAU: OBJECTION: MISSTATES TESTIMONY.
THE COURT: OVERRULED. IS THAT CORRECT OR NOT?
THE WITNESS: I DON'T RECALL WHAT DATE THAT WAS GIVEN TO THEM. THERE'S NO DATE ON IT.
BY MR. MCMILLAN:
Q OKAY. BUT WE DO KNOW THAT THE HANDWRITTEN NOTE THAT YOU PUT HERE IN YOUR NOTES AT EXHIBIT NUMBER 1089.22, THAT'S THE LIST THAT YOU GAVE THE PARENTS ON THE 16TH?
A THERE'S NO DATE ON THAT. BUT -- SO I CAN'T --

I CAN'T ANSWER THAT CORRECTLY AS TO WHAT DIETARY RECOMMENDATION WAS GIVEN TO THEM ON THOSE DATES.

BUT -- BECAUSE THERE IS NO DATE WRITTEN ON THERE. SO IT WOULD HAVE BEEN A RECOMMENDATION I HAD GIVEN THEM ON EITHER ONE OF THE TWO VISITS, YES.

Q AND THE SAME HOLDS TRUE FOR THAT OTHER TYPEWRITTEN NOTE. YOU DON'T KNOW WHAT DATE YOU GAVE THEM THAT?

A NO, I DON'T.

Q NOW, ON THIS ONE HERE THAT'S HANDWRITTEN, IT'S QUITE A BIT SHORTER. ISN'T IT?

A YES.

Q SAYS: "YO-BABY YOGURT, HUMMUS, AVOCADO, ONE AVOCADO DAILY, THREE MEALS, THREE SNACKS, LIQUIDS BETWEEN MEALS, SHREDDED CHEESE, PEDIASURE, ONE CAN DAILY."

MS. NAU: OBJECTION: IMPROPER READING FROM THE DOCUMENT.

THE COURT: WELL, YEAH --

MR. MCMILLAN: I'LL WITHDRAW THAT. THAT'S FINE.

BY MR. MCMILLAN:

Q YOU'RE LOOKING AT THE DOCUMENT THERE. CAN YOU SHARE WITH US WHAT IT WAS YOU RECOMMENDED MS. DUVAL, MR. MILLS FEED THIS BABY, ON, WHENEVER IT WAS YOU GAVE THEM THIS NOTE?

A WELL, YOU READ SEVERAL THINGS THAT WERE ON THE SHEET. IN ADDITION TO THAT, IT SAYS:

"REVIEWED SERVING SIZES, AGE-APPROPRIATE SERVING SIZES, MAKE SOUPS WITH CHICKEN NOODLES, CARROTS, SERVE SOLID FOODS VERSUS PUREED. BABIES HIS AGE PREFER TEXTURE."

Q ANYTHING ELSE?

A NO.

Q NOW, BANANAS, THEY'RE A FRUIT. RIGHT? AND I'M PUTTING ON THE SCREEN EXHIBIT SECTION 631, BEEN PREVIOUSLY ADMITTED INTO EVIDENCE.

BANANAS ARE A FRUIT. RIGHT?

A YES.

Q IN FACT, THEY'RE A HIGH-CALORIE FRUIT.

AREN'T THEY?

A YES.

Q AND GRAPES, THEY'RE A FRUIT?

A YES.

Q APPLES ARE A FRUIT?

A YES.

Q PEACHES ARE A FRUIT?

A YES.

Q AND THOSE ARE ALL THINGS THAT MS. DUVAL WAS FEEDING THIS BABY. RIGHT?

A YES.

Q CHICKEN, TURKEY, HAMBURGER MEAT, HOT DOGS, THOSE ARE ALL MEATS WITH PROTEIN. RIGHT?

A CORRECT.

Q AND THOSE ARE ALL THINGS THAT MS. DUVAL WAS FEEDING THIS BABY. RIGHT?

MS. NAU: OBJECTION: LACKS FOUNDATION.
THE COURT: SUSTAINED.
BY MR. MCMILLAN:
Q WELL, LET'S GO BACK TO THAT E LARK ENVIRONMENTAL -- NOT ENVIRONMENTAL -- I'M HAVING A BRAIN FREEZE. WHAT IS THAT THING CALLED? LET ME TRY AGAIN.
LET ME GO BACK, FOR A MOMENT, TO THAT EASTERN LOS ANGELES REGIONAL CENTER OCCUPATIONAL THERAPY EVALUATION REPORT. THAT'S ONE OF THE DOCUMENTS THAT MS. DUVAL BROUGHT WITH HER TO YOUR MEETING ON OCTOBER 16TH. RIGHT?
A I DON'T REMEMBER.
Q LET ME TRY AND HELP YOU. OH, BEFORE WE MOVE ON, AWAY FROM THE PICTURE HERE, IS THAT PRETTY MUCH THE WAY YOU REMEMBER THE BABY LOOKING THAT DAY, ON OCTOBER 16TH, WHEN THEY BROUGHT HIM IN TO SEE YOU?
A NO, HE DID NOT LOOK LIKE THAT.
Q WELL, YOU KNOW THAT THE BABY WAS TAKEN FROM MS. DUVAL AT THE TDM ON NOVEMBER 3RD. RIGHT?
A CORRECT.
Q OKAY. AND AFTER THAT POINT IN TIME, SHE WAS NOT ABLE TO BE ALONE WITH HER CHILD AGAIN. YOU KNOW THAT, RIGHT?
MS. NAU: OBJECTION: CALLS FOR SPECULATION.
THE COURT: SUSTAINED.
THE WITNESS: I KNOW HE WAS TAKEN AWAY --
THE COURT: I SUSTAINED THE OBJECTION. DON'T

ANSWER.
BY MR. MCMILLAN:
Q CAN YOU TELL, IN LOOKING AT THIS PICTURE, WHETHER THIS PICTURE WAS TAKEN BEFORE NOVEMBER 3RD, 2009?
MS. NAU: OBJECTION: CALLS FOR SPECULATION --
THE COURT: OVERRULED. CALLS FOR YES OR NO. HE WANTS TO KNOW BY LOOKING AT THE PICTURE, CAN YOU TELL WHETHER IT WAS TAKEN BEFORE NOVEMBER 3RD.
THE WITNESS: NO.
THE COURT: EITHER YOU CAN TELL OR NOT.
BY MR. MCMILLAN:
Q I'M GOING TO SHOW YOU EXHIBIT NUMBER 614. CAN YOU TELL IF THE BABY IN THIS PICTURE -- IS THAT ABOUT HOW HE LOOKED WHEN YOU SAW HIM ON OCTOBER 16TH, 2009?
A I DON'T REMEMBER.
Q CAN YOU TELL, IN LOOKING AT THIS PICTURE HERE, WHETHER OR NOT THIS PICTURE WAS TAKEN BEFORE OCTOBER 16, 2009?
A NO, I CAN'T TELL.
Q ALL RIGHT. GOING BACK TO THE REGIONAL CENTER EVALUATION NOW, THAT'S EXHIBIT NUMBER 9, AND I'LL SHOW YOU PAGE NUMBER 001328, PAGE 9, I THINK IT'S THERE AT THE TOP.
IN LOOKING AT THAT, SEPTEMBER 29TH, 2009. DOES THAT DOCUMENT LOOK FAMILIAR? DOES IT REFRESH YOUR RECOLLECTION THAT THIS IS ONE OF THE DOCUMENTS THAT MS. DUVAL BROUGHT WITH HER ALONG WITH THOSE NINE MONTHS

OF MEDICAL RECORDS?
A I DON'T REMEMBER.
Q BUT YOU DID REVIEW ALL THE RECORDS THAT MS. DUVAL BROUGHT WITH HER THAT DAY. RIGHT?
A IF SHE BROUGHT THEM IN, THEN THEY WERE REVIEWED.
Q THAT DAY?
A I BELIEVE THE ONE THAT I PAID CLOSEST ATTENTION TO WAS THE WEIGHT OF THE BABY AT THE NINE-MONTH VISIT.
Q THE NINE-MONTH VISIT, THAT WOULD HAVE BEEN IN JUNE, SOMETIME AROUND JUNE 24TH, 2009. CORRECT?
A CORRECT.
Q AND THAT WOULD HAVE BEEN, IF YOU REMEMBER, WAS IT DR. YIM OR DR. GILL?
A I DON'T REMEMBER.
Q BUT YOU ALSO REMEMBER THAT A DR. FEDDER WAS THE PEDIATRICIAN THAT TOLD THE PARENTS, OR MS. DUVAL, TO GET A NUTRITION CONSULT. RIGHT?
A I DON'T REMEMBER WHO IT WAS. YOU'RE TELLING ME THAT THAT'S WHO IT IS, BUT I DON'T REMEMBER.
Q WELL, DON'T TAKE MY WORD FOR IT. WERE YOU AWARE THAT THE CHILD, ON AUGUST 27, 2009, HAD AN APPOINTMENT WITH DR. FEDDER, A PEDIATRICIAN, FOR HIS ONE-YEAR CHECKUP?
A NO.
Q SO YOU DIDN'T SEE ANY OF THE WEIGHT INFORMATION ON DR. FEDDER'S RECORDS, OBVIOUSLY, BECAUSE

YOU DIDN'T KNOW. RIGHT?

A NO.

Q SO WHEN YOU WERE MEETING THERE WITH MS. DUVAL, DID SHE TELL YOU THAT SHE AT TIMES BLENDS BEEF AND MIXES IT INTO LENTILS IN A RICE DISH? DO YOU RECALL THAT?

A YES.

Q AND BEEF, THAT'S HIGH IN PROTEIN. YES?

A YES.

Q WHAT ABOUT LENTILS, I DON'T KNOW ABOUT THOSE. ARE LENTILS HIGH IN PROTEIN?

A YES, THEY CONTAIN PROTEIN, YES.

Q AND WE ALREADY TALKED ABOUT HOT DOGS, WE DON'T NEED TO GO THERE AGAIN. NOW, DO YOU RECALL -- GOING A LITTLE FORWARD IN TIME, FROM OCTOBER 16TH, PAST OCTOBER 19TH.

DO YOU RECALL, ON OCTOBER 30TH, TELLING MS. PENDER THAT BOTH PARENTS, BOTH, WERE INCONSISTENT IN THEIR REPORTING OF WHAT AND HOW MUCH THEY WERE FEEDING THE BABY? DO YOU REMEMBER THAT?

A YES.

Q AND WHAT YOU WERE WORRIED ABOUT WITH DAD WAS THAT DAD WAS INFLATING THE AMOUNT THAT THE BABY WAS EATING. RIGHT?

A I WAS WORRIED THAT BOTH WERE NOT COMPLETELY CONSISTENT IN TERMS OF WHAT MIGHT HAVE -- THE BABY MIGHT HAVE BEEN CONSUMING.

Q WELL, ACTUALLY, THE LANGUAGE THAT YOU USED,

MA'AM, WAS "VERY INCONSISTENT." RIGHT?

"BOTH MOM AND DAD ARE VERY INCONSISTENT IN WHAT AND HOW MUCH THEY'RE FEEDING THE BABY"?

A I DON'T RECALL WHAT WAS SAID. BUT YOU HAVE THE NOTES, SO YOU CAN LOOK AT THAT YOURSELF.

Q OKAY. CAN I HAVE YOU TURN TO 1089.53, AND I'LL HELP YOU FIND IT BECAUSE IT'S PROBABLY GOING TO BE PRETTY THICK.

I'LL JUST ASK YOU TO READ THIS, TOP OF THE PAGE OF 1089.53, IT LOOKS LIKE IT'S HIGHLIGHTED IN THERE TOO. JUST READ THAT PART THERE TO YOURSELF.

A OKAY.

Q DOES THAT REFRESH YOUR RECOLLECTION THAT YOUR CONCERN ABOUT FATHER WAS THAT HE WAS OVER-INFLATING THE AMOUNT THE BABY WOULD EAT IN HIS CARE?

A YES.

Q IN FACT, HE WAS SAYING THINGS LIKE, "THE BABY WILL DRINK 32 OUNCES OF MILK WHEN HE'S WITH ME."

CORRECT?

A YES.

Q AND YOU ALSO TOLD MS. PENDER THAT BOTH PARENTS, BOTH, DID NOT SEEM TO BE FOLLOWING THE ADVICE YOU WERE GIVING. BOTH PARENTS. DO YOU REMEMBER THAT?

A YES.

Q AND THE PROBLEM THAT YOU HAD WITH MS. DUVAL WAS THAT, IN YOUR ESTIMATION, IN LOOKING AT HER FOOD DIARY, THERE JUST WASN'T ENOUGH FOOD.

THAT MAYBE SHE WAS EXAGGERATING IT IN THE

DIFFERENT DIRECTION BY MINIMIZING IT. RIGHT?

A NO. BECAUSE THREE-FOURTHS OF A COSTCO PIZZA IS NOT MINIMIZING THE CONSUMPTION OF THE BABY.

Q LET'S GO BACK AND LOOK AT THAT. OKAY. IF YOU CAN GO BACK TO 1089.25. AND THAT'S THE FOOD DIARY THAT MOM ASKED YOU TO -- OR, RATHER, THAT YOU ASKED MOM TO GIVE YOU. CORRECT?

A CORRECT.

Q AND THIS WOULD HAVE BEEN THE FOOD DIARY THAT SHE GAVE YOU ON OCTOBER 30TH. THE SECOND TIME THAT YOU MET WITH THE FAMILY. CORRECT?

A YES.

Q BECAUSE THE FIRST TIME YOU MET WITH THEM, THAT WAS THE 24-HOUR FOOD RECALL, WHERE SHE'S GIVING IT TO YOU BY MEMORY?

A CORRECT.

Q OKAY. AND WE SEE THE ENTRY FOR OCTOBER 18TH IS ACTUALLY PRETTY SPARSE. RIGHT? IT'S JUST LUNCH, SNACK, DINNER, WITH ONE LINE ENTRY ON EACH?

A YES.

Q OKAY. DID YOU ASK HER, WHEN YOU SAT DOWN WITH HER, DID YOU SAY, HEY, LOOK, I'M LOOKING AT THIS, AND CAN YOU EXPLAIN IT TO ME? I DON'T SEE A LOT OF INFORMATION THERE. OR WORDS DO THAT EFFECT?

A AT THE TOP IT SAYS THAT ON THE 17TH, THAT IT WAS AN OVERNIGHT STAY WITH THE DAD. SO BASED ON THAT, I'M ASSUMING SHE GOT THE BABY AT LUNCH, AND THAT'S WHAT SHE RECORDED AS WHEN SHE FIRST BEGAN FEEDING HIM. AND

THAT WAS LUNCHTIME.

MR. MCMILLAN: OBJECTION, YOUR HONOR: MOVE TO STRIKE. IT'S NONRESPONSIVE.

THE COURT: MOTION TO STRIKE IS GRANTED. THE ANSWER IS STRICKEN. THE JURY DISREGARD IT.

WE'RE GOING TO TAKE THE NOONTIME RECESS. WE'RE GOING TO RESUME AT 1:30. ALL JURORS REMEMBER THE ADMONITION.

DON'T HAVE ANY CONTACT WITH ANYBODY ABOUT ANY PERSON, SUBJECT, OR ISSUE INVOLVED IN THIS CASE. DO NOT FORM NOR EXPRESS ANY OPINION ABOUT ANY SUBJECT OR ISSUE IN THE CASE. RESUME AT 1:30.

(WHEREUPON, AT THE HOUR OF 12:02 P.M., THE PROCEEDINGS WERE CONTINUED TO 1:30 P.M.)

---OOO---