

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID BLOCKOWICZ, MARY BLOCKOWICZ,
LISA BLOCKOWICZ, individuals,

Plaintiffs,

vs.

JOSEPH DAVID WILLIAMS,
MICHELLE RAMEY, individuals, and
XCENTRIC VENTURES, L.L.C.,

Defendants.

No. 09 C 3955

Chicago, Illinois
November 10, 2009
1:36 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES F. HOLDERMAN

APPEARANCES:

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Also Present: Mr. David Blockowicz and
Ms. Mary Blockowicz

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1 (Proceedings in open court.)

2 THE CLERK: 09 C 3955, Blockowicz versus Williams,
3 hearing on a motion.

4 MR. NELSON: Good morning, Your Honor.

5 Cameron Nelson and Kevin O'Shea on behalf of the
6 Blockowicz plaintiffs.

7 THE COURT: Good afternoon.

8 MR. O'SHEA: Good afternoon, Your Honor.

9 MR. CARTER: Good morning, Your Honor.

10 Garrett Carter on behalf of Xcentric Ventures.

11 THE COURT: And good afternoon to you.

12 MS. SPETH: Your Honor, my name is Maria Speth. I am
13 general counsel for Xcentric Ventures out of Arizona.

14 THE COURT: Good afternoon. Thank you for coming.

15 We have this dilemma that has resulted from the
16 continuing display of the information that the plaintiffs seek
17 to have taken down.

18 I have read the response to the motion, the response
19 by non-party Xcentric Ventures, L.L.C. to the motion. I was
20 hoping that, perhaps, we might be able to reach a resolution in
21 this case in some way to accommodate everyone.

22 Let me just ask Xcentric's lawyers, is there any way
23 that you could agree to remove the material?

24 MS. SPETH: Your Honor -- and also I notice that you
25 had indicated to our local counsel that you might want our

1 client here. He is available by phone, if you'd like that,
2 but --

3 THE COURT: Okay.

4 MS. SPETH: But, for now, if you want me to just
5 speak, I can tell you, I have represented the client for ten
6 years, so I have a pretty good indication of what the client
7 does.

8 THE COURT: Okay.

9 MS. SPETH: Because of the enormous amount of
10 information on the website and because of sort of a floodgate
11 problem that we're worried about, the client is concerned that
12 if the client does it for one person, then everybody will want
13 him to do it. And so the client has, over the ten years that I
14 represented this client, never, ever agreed to take down a
15 report. This client has spent over a million dollars in legal
16 fees protecting the rights of reports to stay posted, and, you
17 know, perhaps that's why we call it Xcentric Ventures, Your
18 Honor.

19 You know, perhaps that might not be the most -- it
20 may not sound like the most reasonable approach, but the client
21 is pretty passionate and pretty adamant. I have never been
22 able to succeed in convincing him to take down a report
23 voluntarily. And any time that a court has ordered it, we have
24 taken it up on appeal and fought it until it couldn't be fought
25 anymore. That's just his mentality, Your Honor.

1 THE COURT: All right. Mr. Nelson, what do you
2 think?

3 MR. NELSON: Your Honor, I -- we did offer one
4 halfway solution, but I take it that wouldn't be accepted
5 either, about removing it at least from search engine
6 detection. We have prepared a response.

7 THE COURT: Was that proposed?

8 MS. SPETH: I have never heard that proposal before,
9 Your Honor.

10 THE COURT: Oh.

11 MS. SPETH: I -- well, but I should be fair. I mean,
12 it probably wouldn't have helped much. My client doesn't have
13 any control over what the search engines do and don't do.
14 Google goes out and searches what they want to search. My
15 client doesn't do any optimization or anything like that; that
16 a lot of websites spend a lot of money on optimization. My
17 client's budget on search engine optimization is zero. He's
18 never optimized anything.

19 There is something called a "do not crawl" code that
20 you can put in a report that you tell Google not to crawl that
21 report. My client is afraid and fearful that if he does that
22 for a report, Google will not crawl his entire website.

23 By the way, I'm not sure that that fear is well
24 founded, but my -- but that's how he feels, and we've never
25 been successful on that one either.

1 THE COURT: Okay. Let me just consult with my court
2 reporter for a moment.

3 (Court conferring with his court reporter.)

4 MS. SPETH: Your Honor -- I apologize.

5 THE COURT: All right. Go ahead, Ms. Speth.

6 MS. SPETH: Along the lines of a potential
7 resolution, on November 1st, we launched a beta program for an
8 arbitration program. And we haven't done our first arbitration
9 yet, but we have hired our first arbitrator, who is a former
10 judge in Arizona. And the idea of the program is that you
11 submit the report and then the position of the person who it
12 was posted against to the arbitrator, and the arbitrator makes
13 a ruling as to whether the report is true or not. The person
14 who opposes the report gets to pick up to ten statements in the
15 report that are -- that they think are false and prove that
16 they're false, and then the arbitrator makes a ruling.

17 The nice thing about it, based upon opposing
18 counsel's concern about the search engines, is that the result,
19 the ruling of the arbitrator, gets put in the title before the
20 existing title, so that when the search engines pick it up,
21 what the search engines see is a ruling -- let's assume that
22 they can prove it's false, which I don't know. I mean, there
23 is a risk here. The risk is the arbitrator could find it's
24 true, which would be really bad for them. But assuming that
25 the arbitrator found it was false, the first thing that the

1 title would say would be: "Arbitrator's decision. This" --
2 "The following report has been determined to be false," and
3 that's what would read before the negative listing.

4 We instituted the program because of situations like
5 this, and it is still brand new in beta testing. We've got all
6 the documents done and ready to go, and we sent out our first
7 packets to a couple of interested people by November 1st.

8 Perhaps there might be some interest from the
9 plaintiffs in this case on that program, Your Honor.

10 THE COURT: Who is the former judge in Arizona?

11 MS. SPETH: Bruce Meyerson. And he's not affiliated
12 with *RipoffReport*. We hired him as an independent contractor
13 to do -- and we'll -- eventually, the idea is we'll have a
14 whole panel of arbitrators, but he's -- for now, we have one.

15 THE COURT: Okay. And his name is M-y-e-r-s-o-n?

16 MS. SPETH: M-e-y-e-r-s-o-n.

17 THE COURT: Okay.

18 MS. SPETH: First name Bruce.

19 THE COURT: All right.

20 MS. SPETH: It was a superior court judge.

21 THE COURT: Okay. In Mesa or --

22 MS. SPETH: In Maricopa County, Arizona.

23 THE COURT: Okay.

24 MS. SPETH: On the -- it's state-court level.

25 THE COURT: Yes. Thank you.

1 MR. NELSON: Your Honor, a couple of issues.

2 Now, this was vaguely proposed to us in our
3 correspondence back and forth that you may have reviewed. Our
4 response is -- a couple -- we can't agree to it for a number of
5 reasons.

6 First of all, our clients have already got that
7 decision from a court that those statements are false, and
8 they've, at some expense, had to obtain that. We don't know
9 the details of the program, who's paying for the arbitrator,
10 any of those things.

11 In addition, one of the reasons we had to file a
12 lawsuit as opposed to approaching *RipoffReports* privately is
13 because they're not -- they weren't the only ones hosting these
14 statements. So MySpace and a site called *ComplaintsBoard.com*
15 and other websites were also hosting these defamatory
16 statements, and they've voluntarily taken them down.

17 So we can't agree for the reason that we had to get
18 this federal judgment, we had to -- our clients had to expend
19 some fees to get that, and essentially getting another
20 respected jurist to look at it would seem duplicative to us.
21 That's already been accomplished in this case.

22 THE COURT: The only advantage of the proposal that's
23 been made by the third party is they will post the decision.

24 I don't know. I guess, let me just ask, would
25 Xcentric agree to post the decisions of these other judges?

1 MS. SPETH: Oh, they can post it themselves right
2 now. They are absolutely welcome to, for free. I know there's
3 been some --

4 THE COURT: But can they post it in the location that
5 you have indicated?

6 MS. SPETH: That's the difference, Your Honor. If
7 they post an update, it will come up as an update, so the
8 original heading will be there and then it will say: "Update.
9 A federal judge has," you know, "issued an injunction against
10 this order" -- or, "against this posting and determined that
11 it's false." And it would be updated, but it wouldn't be
12 first. Whereas, with the arbitration program, we'll put it
13 first.

14 And they have always had the opportunity to do an
15 update such as the one I just described for no cost whatsoever.

16 THE COURT: Okay.

17 MS. SPETH: Your Honor --

18 THE COURT: Go ahead.

19 MS. SPETH: -- the *ComplaintsBoard* website is still
20 posting the content as well. I --

21 MR. NELSON: (Nodding.)

22 MS. SPETH: Well, Mr. Gingras, who's in-house
23 counsel, said he looked it up and saw it. I have not
24 personally seen it, but he said it was still there. But maybe
25 -- I'm not sure who's right or who's wrong, but that is what he

1 told me.

2 MR. NELSON: I am 100 percent certain it is gone.
3 The only thing that remains is some Google cache pages, and
4 those are being cleared as we speak.

5 THE COURT: Well, that is not the issue before us
6 today. I mean, it has been official to the plaintiffs, but --
7 all right. Well, Mr. Nelson, you said you had a reply that you
8 were wanting to file?

9 MR. NELSON: We do. I have -- we have prepared an
10 oral argument sort of addressing the whole reply, if the Court
11 is willing to hear that, and I would like to give it. If the
12 Court wanted to narrow the issues, I can also do that for you.

13 THE COURT: Well, I would like to narrow the issues.
14 How do I do that?

15 MR. NELSON: In our view, we think that some of
16 these -- the issue about whether the defendants actually
17 authored these posts is not one that really requires argument,
18 because the Court already found that, and there was substantial
19 evidence in support of that.

20 THE COURT: Okay.

21 MR. NELSON: So that would be one topic we can
22 certainly skip, if the Court is inclined to agree with its
23 earlier decision.

24 THE COURT: You may go forward, yes.

25 MR. NELSON: Okay. Looking at the defendants' -- at

1 Xcentric's response brief, *RipoffReports* is still sort of
2 missing the point. They want to put themselves in the shoes of
3 defendants, and the whole point of our motion is that they are
4 not the defendants. We're not treating them as defendants.
5 We're not suing them.

6 And they keep making the argument that asking for
7 injunctive relief is the same thing as suing somebody. The
8 case they cite in support of that doesn't support that
9 statement, and it's just not the situation we have here.

10 The legal situation we're presenting to the Court is
11 the Court's issued an injunction against some defendants out
12 there who made statements on the *RipoffReport* website, and they
13 did so in reliance on knowing *RipoffReports'* policies that they
14 wouldn't remove posts.

15 So the only question is under Rule 65 is
16 *RipoffReports* in active participation, in concert with
17 defendants? That is not the same thing as adjudicating
18 substantive rights. Nobody's asking for an injunction against
19 *RipoffReports*. If they want to post their own statements about
20 the Blockowicz family, they are welcome to.

21 We believe they're overreading the Communications
22 Decency Act and the other case law that is out there in a way
23 that effectively would gut a court's power to make sure
24 defendants don't -- to make sure that defendants comply with
25 court's orders.

1 If we were to accept *RipoffReports'* version of
2 events, a federal court or a state court would be powerless to
3 stop defendants from making defamatory statements on their
4 website. It would confer with them essentially 100 percent
5 immunity.

6 THE COURT: Well, no, can't -- let me just ask on
7 that point. We have stopped the defendants.

8 MR. NELSON: Yes.

9 THE COURT: The defendants have stopped. The problem
10 your clients are facing is what the defendants have previously
11 done remains --

12 MR. NELSON: Yes.

13 THE COURT: -- and it's available every moment.

14 MR. NELSON: Yes, sir.

15 THE COURT: So we have stopped the defendants. I
16 mean, we have done that. In my opinion, we have done it
17 effectively. What we haven't done is removed the past damage,
18 because that remains. And the question really is: Can I
19 compel the third party, Xcentric, to remove those statements?

20 MR. NELSON: And we believe you can. Well, I agree
21 with you that that is --

22 THE COURT: Just to set the issue, Ms. Speth, you
23 believe I can't?

24 MS. SPETH: That's correct, Your Honor.

25 THE COURT: Okay.

1 MR. NELSON: Okay. The defendants in their brief
2 have cited a bunch of cases, but we'll explain why those cases
3 are really not relevant to this situation. There's actually
4 very few cases that deal with the issue that we have here,
5 which is: Do you have the authority? Admittedly, there's only
6 a couple. I believe they favor us.

7 THE COURT: Yes, I wish there were more.

8 MR. NELSON: Do you have the authority to give this
9 order? And we gave two examples in our brief. There was the
10 case from Iowa where the Arizona prison officials were -- the
11 judge sort of preemptively said, "If you don't obey my order, I
12 will consider you in active concert and participation," and
13 then there is the abortion protestor case out of the Ninth
14 Circuit. That's really the -- there are a few other cases
15 along those lines, but they're not as factually close. That's
16 really it on this issue.

17 All the cases the defendants cite are interesting
18 because none of them involve this situation. None of them
19 involve a situation where we had an injunction against
20 defendants and someone was merely asking their help. All of
21 those cases in their brief, either they were sued or service
22 providers like them were sued. And there is a salient fact in
23 all of them, is that in all the cases except for the ones that
24 they were involved in, the providers took the statements down.

25 There's a case against MySpace where the party

1 complained that they didn't take it down fast enough, and there
2 was -- you know, it -- in all those cases, the question was not
3 whether the court had authority under Rule 65. The question
4 was whether those people faced liability for civil damages for
5 not acting fast enough, or for not acting in a thorough enough
6 manner, or for not policing their website enough. We are not
7 making any of those claims here.

8 The Seventh Circuit recently ruled in a *Craigslist*
9 case on this issue, and it significantly has said that it
10 doesn't necessarily agree with all the other circuits that have
11 ruled on this.

12 THE COURT: Which case is that? I am sorry. I
13 didn't --

14 MR. NELSON: I have it here.

15 THE COURT: -- have that one in front of me.

16 MR. NELSON: Yeah. It's *Chicago Lawyers' Committee*
17 *for Civil Rights Under Law versus Craigslist*. It's -- the
18 citation is 519 F.3d 666.

19 THE COURT: Okay. Well, it wasn't that recent. I
20 thought it was like last week.

21 MR. NELSON: No. There was a case last week from
22 Judge Grady, also I believe involving *Craigslist*.

23 THE COURT: Well, I have great respect for Judge
24 Grady, but he is not the Seventh Circuit.

25 MR. NELSON: That's correct. Okay. So I -- the

1 *Chicago Lawyers' Committee* case is significant. The facts of
2 the case are simply that they -- a lawsuit was filed claiming
3 that they were violating FHA requirements, Federal Housing
4 requirements, by allowing discrimination and choosing
5 roommates, for example.

6 The Seventh Circuit analyzed the CDA and especially
7 looked closely at what other circuits were doing with the CDA.
8 Now, certainly many other courts have found that the CDA gives
9 very broad immunity. The Seventh Circuit disagrees. They do
10 not believe that the immunity is as broad as the other courts
11 have interpreted it.

12 And the salient factor by the CDA is that there's a
13 *quid pro quo* there. They give web-service providers some
14 degree of immunity, but it is called the Communications Decency
15 Act. The *quid pro quo* is that those web-service providers are
16 going to exercise some policing ability.

17 The purpose of the CDA was really to establish at
18 what level could you sue a web-service provider for not
19 policing enough, and the CDA --

20 THE COURT: Successfully sued.

21 MR. NELSON: Yes.

22 THE COURT: I mean, you can sue them by paying the
23 money and filing a complaint --

24 MR. NELSON: Correct.

25 THE COURT: -- and try to serve them, yes.

1 MR. NELSON: So the CDA says that -- and the Seventh
2 Circuit's take on it is that while the CDA says you cannot sue
3 successfully for not policing enough, but it doesn't foreclose
4 all lawsuits.

5 I just point to that case because, again, we're not
6 suing under the CDA, we're not asking for liability, and our
7 position is this is solely a Rule 65 issue. But it is
8 significant that this circuit has found that the immunities
9 that the defendants are relying on in their brief are not as
10 broad as all of the other cases that are out there from other
11 circuits.

12 Our view is that this is solely a Rule 65 issue.
13 It's solely a question of whether the power to ask this third
14 party to comply with the injunction is within the Court's
15 necessary and appropriate powers.

16 We think it's a practical issue, not a strictly legal
17 issue, because what it comes down to is if the Court can't make
18 these websites take this down, from now on, all people like the
19 defendant, Mr. Williams, now have a safe haven. They can --
20 any website that says, "Hey, we're just going to" -- "we're a
21 third party, and we don't have any liability," they have the
22 safe haven to do whatever they want.

23 THE COURT: Right. They can post and run.

24 MR. NELSON: And --

25 THE COURT: Just as the defendants in this case did.

1 MR. NELSON: Yes. And we don't believe -- there's
2 not a case out there that countenances that result. Not a
3 single one of these cases involves a situation where we had a
4 judgment against a defendant and the website refused to pull it
5 down.

6 To illustrate the -- kind of knife edge of the
7 dividing line here, many of the CDA cases that the Seventh
8 Circuit is not sure it agrees with involve a situation where
9 they -- where someone sends an e-mail -- they don't have a
10 court judgment, but they send an e-mail to the website provider
11 and they say, "Well, I say it's false." And many courts have
12 said, "Well, the website doesn't have to take it down just
13 based on you saying it's false."

14 But this case, this case before the Court is not even
15 like any of those cases. And I would submit that even those
16 courts, those other circuits would agree with us in this case.
17 Here, we're not asking the website provider to conduct an
18 investigation or determine it's false or do any of those
19 things. We've done all of that work for the website. We've
20 got the judgment.

21 There is not a case out there, not one, that suggests
22 that someone can leave up defamatory statements once given a
23 judgment and all the work's been done for them. Cases do
24 defend website providers on the grounds that if someone just
25 e-mails you, you know, we're not going to demand that people

1 conduct investigations. But that's not this case. This case
2 is the exception to all of those rules because we did all of
3 these things first.

4 So, to the extent the defendants rely on the CDA, the
5 Seventh Circuit has stated some general disagreement with the
6 other circuits. And, again, we think we're operating really
7 within the Court's necessary and appropriate powers to enforce
8 this injunction. We don't think we're really operating, in a
9 sense, under the CDA at all.

10 THE COURT: Well, actually, my understanding of the
11 defendants' position is they're really not presenting the CDA
12 as a defense. What they are saying is, "If you sue us, we will
13 present the CDA as a defense." "You haven't sued them, and
14 we're actually doing nothing."

15 MR. NELSON: Well, that's --

16 THE COURT: Isn't that your position, Ms. Speth?

17 MS. SPETH: Yes, Your Honor.

18 THE COURT: You are doing nothing?

19 MS. SPETH: We're hosting a website --

20 THE COURT: Hosting a website.

21 MS. SPETH: -- with millions of postings on it.

22 THE COURT: Right, where others can post, including
23 the plaintiffs. And that's the real issue. I mean, this is a
24 unique case.

25 MR. NELSON: Well, I think in this case, the

1 defendants -- it might be a stretch to say that *RipoffReports*
2 is doing nothing. *RipoffReports* actively solicits this kind of
3 stuff on its website.

4 THE COURT: Wait, wait. But that's not what they did
5 here.

6 MR. NELSON: I mean -- right. I --

7 THE COURT: I have to deal with the facts here.

8 There is no indication they actively solicited the defendants
9 to post on their website.

10 MR. NELSON: They do tell all their users, including
11 the defendants, "If you post here, we'll never remove it."

12 THE COURT: Right.

13 MR. NELSON: They have a waving of flags --

14 THE COURT: Well, that's Mr. Magedson's position that
15 Ms. Speth has articulated.

16 MR. NELSON: Right.

17 THE COURT: And you have worked with him how long?

18 MS. SPETH: Ten years.

19 MR. NELSON: The effect of that, though, is to wave a
20 flag to people like Mr. Williams and say, "We're your safe
21 haven. You can say" -- "You can do whatever you want on our
22 website. We're going to protect your identity, and we're going
23 to try our best to prevent any of these statements from being
24 taken down." That's a little more than just doing nothing.
25 They're inviting this kind of behavior.

1 They -- Mr. Williams did not go to a more reputable
2 website -- "more reputable" is not fair to them, but that he
3 did not go to, say, more --

4 THE COURT: Accommodating.

5 MR. NELSON: -- cooperative websites.

6 THE COURT: Yes. Okay. Cooperative.

7 MR. NELSON: Okay. He went here, and he went here
8 for that reason. That puts him in active concert and
9 participation, just to the extent that they've now got the
10 court order.

11 THE COURT: Okay. Do we know that's why he went to
12 it?

13 MR. NELSON: No. That is my argument, Your Honor.

14 THE COURT: That's your inference from the fact that
15 you sued him and he's done nothing.

16 MR. NELSON: Well, and the inference from the
17 statements on *RipoffReport's* website, the terms of service and
18 the types of statements that they've made there.

19 THE COURT: Well, we don't know why Williams won't.

20 MR. NELSON: He won't talk to us, and we can't ask
21 him.

22 THE COURT: Right, right. Ms. Speth, is there
23 anything you want to say, or other counsel?

24 MS. SPETH: If I may, Your Honor? Thank you.

25 Mr. Williams went to a lot of sites. That's one of

1 the things that Mr. Nelson told you early on. He actually
2 posted this in numerous places.

3 THE COURT: Right.

4 MS. SPETH: So he didn't single us out because he
5 thought this was the place. He posted it wherever he wanted to
6 post.

7 And, actually, Your Honor, I need to step back for a
8 minute. I understand that this Court has already made a
9 finding that Mr. Williams is the author, but that was a finding
10 on default.

11 THE COURT: It was a finding on default. There was
12 no evidence in opposition --

13 MS. SPETH: Right.

14 THE COURT: -- and Mr. Williams did not contest it.

15 MS. SPETH: Correct. Mr. Williams did not come
16 forward and contest it, Your Honor.

17 THE COURT: Right.

18 MS. SPETH: But, as we say in our papers, our
19 internal records indicate that there were three different
20 authors with three different IP addresses, none of which have
21 any contact information that match Mr. Williams.

22 I am not saying Mr. Williams is not the author. I am
23 saying as vis-a-vis my client, who's a third party, there has
24 been no evidence that Mr. Williams is really the author, which
25 means we can't be in active concert with Mr. Williams if he's

1 not actually the author. Of course, my position is even if he
2 is the author, we are not in active concert with him.

3 Your Honor, I understand that you sit in equity, and
4 I understand that right now, your job is to balance hardships,
5 and I also understand that it's easy to look at this family and
6 say that they've got a hardship here because what's posted on
7 *RipoffReport* appears to be, you know, nasty about them. And
8 I --

9 THE COURT: Yes. They have been in my courtroom. I
10 feel some compassion for them.

11 MS. SPETH: If I were sitting in your shoes, I would
12 as well, Your Honor. In fact, I do. But you are balancing
13 that hardship against the hardship of the First Amendment, you
14 know, not the hardship, but the interests of the First
15 Amendment, and due process, Your Honor.

16 Xcentric is operating a business and trying to keep
17 afloat in difficult financial times and is sued constantly, and
18 the CDA, the Communications Decency Act, has been its survival.
19 It would not be in business right now.

20 Now, perhaps Mr. Nelson would say, "All the better if
21 it were not in business," and I'm sure he feels that way, and
22 perhaps Your Honor feels that way, but, Your Honor, this
23 website has helped a lot of people. It was, perhaps, misused
24 in this case, but it's helped a lot of people.

25 And no one can expect my client to be the judge and

1 jury of every posting, to decide whether it's true or false, so
2 my client has to take a hard line and say, "Look, I can't
3 decide whether something's true or false, and I am not going to
4 take it down unless a court order has been issued." And to
5 order my client, you need to have an evidentiary hearing with
6 my client actually present, because there's been this two-step
7 process, go in against somebody who's in default, who's not
8 going to put up a fight, get your ruling, and then try to
9 substitute my client in the place of that person. My client
10 has not had his day in court or its day in court.

11 And absent that day in court, Your Honor, we have
12 some misstatements that have been made, things like my client
13 charges people to file rebuttals, completely false, the fact
14 that two of these postings are from 2003 and are far outside
15 the statute of limitations and never should have survived in
16 this case. And the only reason they survived is there was no
17 one on the other side to point out to Your Honor that they were
18 old and outside the statute. And Mr. Nelson took the position
19 that they were somehow rewritten, which is absolutely not
20 accurate. So there was -- you know, my client never had the
21 opportunity to come in as a defendant and prove his case.

22 And so I'm -- you know, I realize and I appreciate
23 that you're giving us somewhat of that opportunity now, but we
24 believe there would need to be a full evidentiary hearing.

25 Your Honor, the other issue that we have here with

1 respect to the First Amendment is people use this website for
2 good. People use all of these websites for good. And Congress
3 has made a decision that free speech on the internet is of
4 paramount importance and, therefore, were going to shield the
5 operators of the website from liability for claims and from
6 lawsuits that might result in injunctions.

7 The case law is very clear that injunctive relief is
8 also not available against websites.

9 Mr. Nelson has mentioned a couple of times that the
10 Seventh Circuit doesn't go that far. I completely disagree,
11 Your Honor, and I encourage you to read the case that he has
12 cited.

13 The Seventh Circuit has not narrowed the
14 Communications Decency Act in any way, shape, or form. There
15 is full safe haven or safe harbor as to Xcentric Ventures.

16 But, Your Honor, what it comes down to -- and I
17 understand it's a difficult balancing of hardships, and there
18 are two difficult interests that you're balancing up against
19 one another. The bottom line is under the rule, you need to
20 find we're in active concert with somebody that my client has
21 never spoken to, does not know, has never met, has never
22 communicated with, and has absolutely nothing to do with. I
23 don't see how you can find active concert in that situation,
24 Your Honor. And I'll stop there.

25 MR. NELSON: Judge, I tried to gloss over many of

1 those issues I don't believe to be relevant, but if they're
2 going to be argued, I would like a chance to respond to them,
3 and we haven't had a chance to file a response.

4 THE COURT: If you want to file a reply, you may do
5 so. I --

6 MR. NELSON: Well, we're prepared to argue them
7 today. Well, I was prepared to cross-examine Mr. Magedson,
8 because it was my understanding that if evidence was going to
9 be offered --

10 THE COURT: Did you subpoena him?

11 MR. NELSON: Oh, no. But the Court ordered last week
12 that if witnesses were going to be relied on, that they
13 be here.

14 THE COURT: Yes, I did. What I said was "lawyers and
15 parties."

16 Well, what in Magedson's affidavit do you desire to
17 dispute?

18 MR. NELSON: The first, this identity issue, the
19 suggestion that we don't know who posted these statements.
20 That, Your Honor, we believe is -- just absolutely has no place
21 here.

22 THE COURT: Let's move past that.

23 MR. NELSON: Okay.

24 THE COURT: At this point, the ability of the
25 non-party to identify the posters I believe is like an ostrich

1 in a hole, but I understand ostriches actually don't do that,
2 according to the Seventh Circuit opinion that recently came
3 down. So --

4 MR. NELSON: Setting that --

5 THE COURT: -- moving past that.

6 MR. NELSON: Setting that aside --

7 THE COURT: Yes, just setting that aside. I am
8 making no ruling on it. Just setting it aside.

9 MR. NELSON: Okay. The claim about "We don't
10 receive" money is a bit -- let's just say nuanced. Mr.
11 Magedson does receive money from people. It's my -- there are
12 court rulings, and I can read them if the Court wants to hear
13 them. He does receive money from people who want -- as part of
14 his corporate advocacy program. His declaration seems a little
15 -- seems to imply he doesn't ever receive money, and that's not
16 the case. The big dispute was does -- is it necessary to pay
17 to force a rebuttal? No, it's not. Do a lot of people, a lot
18 of companies pay him? Yes, they do.

19 On his website, he describes his corporate advocacy
20 program as something where if you're a member of the program,
21 then they'll step in and update posts if a dispute has been
22 resolved.

23 In the court ruling that I'm referring to --

24 THE COURT: Isn't that what Ms. Speth has described
25 here, this arbitration situation, if there is a determination

1 by Judge Meyerson, that they will post the determination?

2 MR. NELSON: It's a separate program, as I understand
3 from them, but the key feature is that, as I understand the
4 corporate advocacy program, a substantial chunk of money has to
5 be paid to Mr. Magedson to perform this service. The --

6 THE COURT: Well, let me ask Ms. Speth. This
7 arbitration program that you have mentioned here with Judge
8 Meyerson, who pays that?

9 MS. SPETH: Yeah, that's a \$1500 fee. A thousand of
10 it goes to the arbitrator, and 500 goes to *RipoffReport* for
11 administering the program.

12 THE COURT: Okay.

13 MS. SPETH: But there are two different programs. In
14 all fairness, Mr. Nelson is correct. Corporate advocacy is a
15 whole different program. It's completely inapplicable here.
16 It was not offered to these parties because they're not
17 businesses, and it would not have been offered to them. But
18 it's for big businesses that have hundreds of reports, and my
19 client goes in and helps them to remediate between them and
20 their consumers and acts as like an extra -- an outside arm of
21 their customer service and helps resolve the complaints and
22 then posts the results. It can be expensive, but some of these
23 companies have hundreds of reports, and my client has a whole,
24 you know, program that he does for them. It's completely
25 inapplicable here, Your Honor.

1 MR. NELSON: Well, that --

2 THE COURT: Well, let me just ask, Mr. Nelson, is
3 there any evidence that Mr. Williams or anyone working with Mr.
4 Williams paid?

5 MR. NELSON: No. That's not quite how it works, but
6 no, no.

7 THE COURT: Okay.

8 MR. NELSON: And we only bring up the corporate --
9 the only reason this is in there is to suggest how we
10 understand their motivation for not doing what we think is
11 reasonable in this case. It's this -- they've made this
12 argument about how this will open the floodgates. Now, I
13 disagree with them because I don't think there are a lot of
14 plaintiffs out there going to court to get judgments and then
15 approaching them.

16 From what I can see of all the reported cases, and
17 they've been involved in a lot, people are going after them
18 directly, trying to get liability. We haven't done that. So I
19 don't think there's any floodgates opening. But that seems to
20 be their concern. I don't think it's justified. But --

21 THE COURT: Well, sure, it's speculative, and you
22 disagree with their speculation.

23 MR. NELSON: Yeah. This is not a First Amendment
24 case. There's no First Amendment right in defamation. And the
25 defendants, they don't have any substantive interest in the

1 statements at issue here. They're not -- it's not Mr.
2 Magedson's statements.

3 THE COURT: Right.

4 MR. NELSON: They have no First Amendment issue in
5 this case. And there's no hardship to them. We don't believe
6 a balance of the hardships would really probably apply here.
7 But even if that was the analysis the Court adopted, taking
8 down these websites would have taken -- these posts would have
9 taken seconds.

10 Even if other people choose to file lawsuits and get
11 judgments, there's no hardship to *RipoffReports* to take down
12 statements when someone has presented them with a court
13 judgment that a statement is false. That is the approach every
14 other business in this field has adopted: If you show us a
15 judgment or if it's clearly a threat of violence or something
16 like that, it's gone. No questions asked.

17 So there's no hardship to them to following that.
18 It's not going to open any floodgates or -- that we can see.

19 The client -- or, I'm sorry, *RipoffReports* has had
20 its opportunity, to the extent they were making sort of a due
21 process argument, to present its case. The whole reason we
22 didn't come in and say this is a motion for contempt is because
23 we believe this is some sort of a plenary power issue, and we
24 believe that there might be a circumstance where they could say
25 some due process issues. They should have a chance to say, "I

1 can't take it down because it's burdensome," or, "I can't take
2 it down because there is something you don't know about,
3 Judge." They should have the opportunity to say that, but they
4 have had that opportunity. They had the opportunity last week,
5 and they have it now. They've had their day in court. If they
6 wanted to present witnesses, they could have brought them. We
7 would have been prepared to cross-examine them.

8 THE COURT: Well --

9 MR. NELSON: We were ready to do that, and --

10 THE COURT: -- going back to my question -- and you
11 have gone back into argument -- what is it about Mr. Magedson's
12 affidavit or declaration that you dispute?

13 MR. NELSON: The disputed issues were the stuff about
14 identity.

15 THE COURT: Well, no, no, not the stuff about --

16 MR. NELSON: And --

17 THE COURT: Just point to me the paragraph. He has
18 very neatly paragraphed and enumerated the paragraphs, so just
19 point me to the paragraph on a particular page and say --

20 MR. NELSON: The statement --

21 THE COURT: -- "I dispute this."

22 MR. NELSON: The statement in paragraph 5, where it
23 says --

24 THE COURT: Okay.

25 MR. NELSON: -- *RipoffReport* has never charged any

1 money, nor has it attempted to charge any money to anyone" --

2 THE COURT: Wait a minute. You mean paragraph 5?

3 MR. NELSON: Sorry.

4 THE COURT: Okay. The *RipoffReport*. I see. Okay.

5 MR. NELSON: I think Ms. Speth's argument on that
6 issue I think accurately states it a little more clearly than
7 this paragraph does. They do charge and accept money. I agree
8 that it's not --

9 THE COURT: So that should be modified to say that:
10 The *RipoffReport* has never charged any money to people in the
11 position of the plaintiffs, nor has it attempted to charge any
12 money to anyone in such a position seeking to respond to
13 reports?

14 MR. NELSON: That probably would be accurate, yes.

15 THE COURT: Okay.

16 MR. NELSON: And then we address the identity issues.
17 And the server log, we just don't -- you said let's move on on
18 that issue, so we'll move on on that issue. But that starts at
19 paragraph --

20 MR. O'SHEA: 8.

21 MR. NELSON: -- 8, and it goes on a little bit after
22 that.

23 THE COURT: Okay. Anything else?

24 MR. NELSON: Our other issues for cross-examination
25 were more to point out things that he left out, not necessarily

1 things that he'd misstated.

2 THE COURT: Well, what did he leave out?

3 MR. NELSON: Well, the post -- first of all, nobody
4 discusses in their brief or in his declaration the 2009 posts.
5 There's all these arguments about statute of limitations.
6 There are posts purely created in 2009.

7 THE COURT: What was the 2009, March 11, 2009 post
8 that's apparently referred to, and there's an arrow pointing at
9 least to the line above it on page 4 of Mr. Magedson's
10 declaration?

11 MR. NELSON: That's not -- that's a modified
12 document. He's pointing to show that he's changed the word
13 "modified." I have an original copy here.

14 THE COURT: No. I am --

15 MR. NELSON: Okay. The post --

16 THE COURT: I am not asking about -- what was the
17 posting on March 11, 2009?

18 MS. SPETH: I can answer that, Your Honor. It was a
19 -- if somebody posted a newspaper article about when Megan
20 Blockowicz was put in jail --

21 THE COURT: Okay.

22 MS. SPETH: -- or so -- or one of Megan Blockowicz's
23 cohorts. It wasn't about Lisa. It wasn't about any of the
24 plaintiffs.

25 MR. NELSON: And we would point out simply that if

1 you look just a little above that arrow, you see the words:
2 "Update. Employee inside information" --

3 THE COURT: Gosh, I don't -- oh, yes, over on the
4 left-hand side after an asterisk?

5 MR. NELSON: Yes.

6 THE COURT: Yes, uh-huh.

7 MR. NELSON: On all of their posts, whenever -- on
8 all of the *RipoffReport* reports, that appears there. So every
9 time someone makes a post, this -- a title like that appears.
10 In all the exhibits we've submitted to the Court, there's a
11 title like that.

12 THE COURT: Okay.

13 MR. NELSON: So in -- and we would point that out as
14 part of our argument. There are substantive changes to these
15 posts at constituted republication. They change the titles.
16 It said -- it used to say -- they've changed it now, but it
17 used to say: "Modified: 3/11, 2009," which would indicate to
18 a consumer that they have agreed that that's confusing. It
19 indicates that it's -- something about the post has been
20 modified. In addition --

21 THE COURT: So they have now changed it to "last
22 posting."

23 MR. NELSON: Yes. That's the new, the new version.

24 THE COURT: Okay. So --

25 MR. NELSON: But it -- this also relates to --

1 related to the statute --

2 THE COURT: What do you want me to stop them about
3 that?

4 MR. NELSON: I don't want you to --

5 THE COURT: There's nothing --

6 MR. NELSON: No, no.

7 THE COURT: -- wrong with that?

8 MR. NELSON: No, no. That was stuff we would have
9 highlighted on -- that we had intended to highlight on
10 cross-examination for purposes of addressing this, the statute
11 of limitations argument, the things that are actually updated
12 here.

13 And the whole web page, this is all on one page. The
14 whole page is updated. It's not an update of some other page
15 of the website unrelated to the original comment. Someone
16 posts, and when you -- when a person is posting, they have the
17 -- they can identify themselves, for example, some employee
18 insider. Now, if that's the case, they throw in a new heading
19 and it's a new page to the world. There's a whole new content
20 added to the bottom.

21 Even if the newspaper article is not a defamatory
22 content, that's still a new page intended to reach a new
23 audience and intended to increase relevance in the eyes of
24 search engines.

25 THE COURT: So you are basically calling that a

1 repeated statement? It's repeated?

2 MR. NELSON: It's republication in our view.

3 THE COURT: Okay. Is that it out of the declaration?

4 MR. NELSON: The other thing we were going to bring
5 out on cross-examination -- you haven't seen this, but new
6 websites are now linking to the *RipoffReports*. That's a new
7 development the Court wasn't aware of.

8 THE COURT: What --

9 MR. NELSON: There's a --

10 THE COURT: So there's somebody else?

11 MR. NELSON: Yes.

12 THE COURT: Who's really a non-party?

13 MR. NELSON: Yes.

14 THE COURT: Who then puts a link?

15 MR. NELSON: To --

16 THE COURT: So like the webmaster of the United
17 States District Court for the Northern District of Illinois
18 could put a link on the Northern District of Illinois website
19 to *Ripoff* --

20 MR. NELSON: Yes. The particular --

21 THE COURT: -- *Report.com*?

22 MR. NELSON: Yes. And the website is called
23 *ScamFound.com*. It purports to list scams that appear as some
24 sort of bought -- that combs *RipoffReports*, and now we're --
25 well, all it's doing is increasing the audience now, because

1 now it's being published again to this new audience, to this
2 new website. It says: "New scam about Lisa Blockowicz," shows
3 the link, and brings the user back to their site.

4 THE COURT: Well, I understand, but what control does
5 Mr. Magedson have over that?

6 MR. NELSON: Well, if he had taken it down, he would
7 have control over that, but that's the extent of his --

8 THE COURT: I see. If he would have taken it down --

9 MR. NELSON: That would --

10 THE COURT: -- they couldn't link to it because it
11 wouldn't show up --

12 MR. NELSON: Yes.

13 THE COURT: -- when they linked to it? Okay. All
14 right. I get it.

15 Ms. Speth, anything further you want to say?

16 MS. SPETH: Just --

17 THE COURT: I think I would like a reply, just
18 because I want to -- I am not going to rule from the bench
19 today. I apologize, but I am not.

20 MR. NELSON: Okay.

21 THE COURT: I think it's too important of an issue,
22 and it's too unique of an issue.

23 MS. SPETH: Your Honor, just on the timing of the
24 reports, there are three reports that were posted. Two of them
25 were in 2003. One was in 2009. To argue that the 2003

1 postings were republished because somebody published something
2 else is a little nonsensical, and it's directly contrary to the
3 case law that we cited in our brief.

4 The fact that someone else posted something that
5 said, "I agree with you," or, "I disagree with you," does not
6 constitute a republication.

7 I will say, though, Your Honor, sort of to help you
8 narrow the issues, that the 2009 report clearly is within the
9 statute of limitations and clearly did relate to Lisa
10 Blockowicz. It did not say anything negative about David or
11 Mary Blockowicz, but it did say something negative about Lisa
12 Blockowicz.

13 So, Your Honor, I would not raise my statute of
14 limitations argument with respect to that report and that
15 plaintiff. I do believe the other two plaintiffs' claims are
16 barred by the statute of limitations. And as to the other
17 reports, they were barred by the statute of limitations. But
18 that -- I just wanted to address that.

19 THE COURT: Okay. Help me out on this page 4 of Mr.
20 Magedson's declaration. The "asterisk update employee, dot,
21 dot, inside information, colon, dot, dot, dot" --

22 MS. SPETH: Yes.

23 THE COURT: -- what does that mean?

24 MS. SPETH: Sure. In fact, it's kind of fascinating,
25 and it really -- I probably should have mentioned it to Your

1 Honor because it's a really good example of how the
2 *RipoffReports* sometimes often has very important information.

3 So back in October of 2003, someone posted a report
4 that said that Megan Blockowicz -- that they claim to be a
5 social worker, a CPS worker, and they said that Megan was kind
6 of messed up, and that she wasn't taking good care of her
7 children -- or her child, and that her husband, David, had
8 custody. And this CPS worker talked about how it was a good
9 thing that the kid was in the custody of David, who is the
10 defendant in this case, by the way.

11 That spurred a whole host of comments back and forth
12 on the debate over confidentiality that a CPS worker should
13 have compared to safety of children and how it's important for
14 people to know.

15 And so the employee update was somebody who claimed
16 to have an inside take on it because they worked with Megan --

17 THE COURT: Oh.

18 MS. SPETH: -- at a fitness thing. So they were
19 calling themselves an employee in the sense that -- oh, you
20 were thinking "employee" like my client? No.

21 THE COURT: Like your client, right.

22 MS. SPETH: They call themselves an employee because
23 they worked with Megan. But it was an interesting -- it's a
24 fascinating debate over whether this CPS worker had a right to
25 disclose the information that she disclosed, and then other

1 people saying, "Well, safety is more important than
2 confidentiality," and some people saying, "I don't think you're
3 really a CPS worker, because if you were, you wouldn't have
4 done that."

5 So that particular posting from back in 2003 actually
6 has, I think, 15 rebuttals to it. Some of them are consumer
7 comments. Some of them are, you know, that employee comment.
8 But it's really like this public debate over confidentiality
9 versus safety, and it's kind of interesting to read.

10 MR. NELSON: We have a --

11 THE COURT: Is that an exhibit in the materials?

12 MR. NELSON: Yes.

13 THE COURT: Which --

14 MR. NELSON: It was attached to the preliminary
15 injunction motion. And I have extra copies.

16 THE COURT: Which exhibit is it?

17 MS. SPETH: And frankly, Your Honor, you have ordered
18 all of that to be taken down, because Mr. Nelson, you know,
19 represented to you that it was all defamatory when, in fact,
20 it's a lot of really important consumer comments.

21 THE COURT: Yes. I am --

22 MR. NELSON: Well, we've alleged --

23 THE COURT: -- just looking for the exhibit. You
24 said --

25 MR. NELSON: I have it here.

1 THE COURT: -- it was interesting, so --

2 MR. NELSON: I just have to put my hands on it, Your
3 Honor.

4 MS. SPETH: I have an extra copy. Do you want it?

5 THE COURT: Okay. I don't need an extra copy.

6 MS. SPETH: Okay.

7 THE COURT: I have it in the back.

8 MS. SPETH: I got, I got it. I'm sorry. Maybe
9 you --

10 THE COURT: I just wanted a reference so I can --

11 MS. SPETH: Right, so you know which exhibit it is.

12 MR. NELSON: Preliminary Injunction Exhibit F,
13 Exhibit F to the preliminary injunction motion.

14 THE COURT: Okay. Thank you. All right.

15 MR. NELSON: Just to know we allege in the complaint
16 that the so-called debate was between normal people and Mr.
17 Williams posing as other people. So on the one side, we have
18 third parties posting, "This sounds fishy," and Mr. Williams
19 posing as Scott and Reid and Unhappy Camper USA. We've alleged
20 that those are all him. I don't know that it's really a
21 healthy public debate. That's him defending his own post.

22 THE COURT: And he hasn't denied it --

23 MR. NELSON: Yes.

24 THE COURT: -- because he hasn't shown up in this
25 case.

1 MS. SPETH: Your Honor, that's an important point. I
2 think what I see happen here is that consumers who post, people
3 who post on *RipoffReport* don't have the financial resources --
4 and I'm not saying David Williams. I know nothing about David
5 Williams. But, in general, they don't have the financial
6 resources to fight a claim of defamation. And so what I see
7 over and over again is someone posts a report and says, "This
8 particular car company sold me a lemon." The car company sues
9 them for defamation. They don't show up. They can't afford to
10 defend it, and they do nothing, right? And then if you create
11 this precedent, then the car company comes after my client and
12 says, "Now, take it down, because I have a court order that
13 says it's false." Well, that's the floodgate that I was trying
14 to describe earlier.

15 Just because that individual didn't have the money or
16 the resources to fight it -- or maybe in this case he didn't
17 fight it because he knew it was true, I don't know, but often
18 it's because they can't fight it -- doesn't mean it wasn't true
19 and doesn't mean that the business -- in most cases, it's a
20 business on the other end of these -- the business isn't going
21 to use their financial resources to bully, first, the consumer
22 and to -- into chilling their free speech and then bully
23 *RipoffReport* into following the court order.

24 And if this precedent is set, I can't imagine that
25 Mr. Nelson can't admit that the floodgates would be open. It

1 would be the perfect way for everyone to shut up *RipoffReport*
2 and to shut up the people who are posting on *RipoffReport*. Go
3 against the consumer, get your court order against the
4 consumer, and then two-step it and come after Xcentric and get
5 Xcentric to take it down. It's dangerous, Your Honor.

6 MR. NELSON: That would cost a small fortune to go
7 after -- I mean, a company who has 50 complaints would have to
8 sue 50 consumers. Even at the discounted way we're handling
9 this case would cost far more than, say, paying Mr. Magedson
10 for his consumer advocacy program. There's no -- I don't
11 agree. I don't believe it's floodgates. I believe this is a
12 unique case and a unique situation.

13 THE COURT: All right. Well, when would you like to
14 reply, Mr. Nelson?

15 MR. NELSON: We'll get it in the Court's hands no
16 later than Friday.

17 THE COURT: Okay. Friday, the 13th?

18 MR. NELSON: Yes.

19 THE COURT: Which we hope is a lucky day, one way or
20 the other.

21 MR. NELSON: I will be hoping it's a lucky day.

22 THE COURT: All right. Ms. Speth, even though it is
23 typically not called for in the briefing, and certainly the
24 plaintiffs have the burden of persuasion here, would you desire
25 to file a surreply or not? Or do you stand on the materials

1 and the arguments that you have made here?

2 MS. SPETH: At this point, I don't think so, Your
3 Honor. If Mr. Nelson raises something new, I would ask for
4 that opportunity. But if he's only addressing what I've
5 already done, then I don't think it's necessary.

6 THE COURT: All right. What I would like to do is
7 set a date for that decision to be made.

8 MS. SPETH: Okay.

9 THE COURT: What date would you like?

10 MS. SPETH: If he files by Friday, I can let you know
11 by Monday whether we think that he's raised something new that
12 would require a surreply.

13 THE COURT: All right. I will give you -- I mean,
14 you are halfway across the country.

15 MS. SPETH: Yes.

16 THE COURT: I know you are only in a one-hour time
17 zone different than ours, but Mesa, Arizona -- is that where
18 you are from?

19 MS. SPETH: Phoenix, Arizona.

20 THE COURT: Phoenix, Arizona is quite a ways. I will
21 give you until the close of business on Tuesday. So Tuesday,
22 the 17th at 5:00 p.m.

23 If you could just file one way or the other, just
24 saying, "I am not going to file a reply brief," or, "I would
25 like to file a reply brief by such-and-such a date," then I

1 would like to get this in, get the reply brief in, if you
2 decide to file one, no later than a week after Monday, which
3 would be the 23rd.

4 MS. SPETH: Okay.

5 THE COURT: Okay? All right.

6 MR. NELSON: We have asked for, Judge, and would like
7 to ask again that the statements be taken down while this is
8 being adjudicated.

9 THE COURT: All right. Ms. Speth, would you agree to
10 have the statements taken down while this is litigated?

11 MS. SPETH: My client will not agree, Your Honor.

12 THE COURT: Okay. Anything else from anybody?

13 MR. NELSON: In future court appearances, Lisa
14 Blockowicz has only been able to make it here on occasion.
15 She's a public school teacher which makes it a little harder
16 for her to take time off. If the Court would like the
17 plaintiffs here at any point in time, we would just ask that we
18 have a little notice of that.

19 THE COURT: Sure, I understand. I don't know that
20 one way or the other there will be a need for future court
21 appearances here. I mean, if you win, there is no need for
22 future court appearances here. If you lose, there is no need
23 for future court appearances here. So I don't know that there
24 will be any further inconvenience.

25 As I said, I have a lot of compassion for the

1 plaintiffs and their plight. This is a unique factual
2 situation. It's a developing area of the law. There are a lot
3 of issues and policies to be considered.

4 Anything else from counsel?

5 MS. SPETH: No, Your Honor.

6 MR. O'SHEA: No. Thank you, Your Honor.

7 MR. NELSON: Thank you for your time, Your Honor.

8 MS. SPETH: Thank you.

9 MR. CARTER: Thank you, Judge.

10 THE COURT: Thank you.

11 (Proceedings concluded.)

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C E R T I F I C A T E

I, Colleen M. Conway, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the HONORABLE JAMES F. HOLDERMAN, Chief Judge of said Court, at Chicago, Illinois, on November 10, 2009.

/s/ Colleen M. Conway, CSR, RMR, CRR

03/05/10

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date