

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

RUPA MARYA,)
)
)
PLAINTIFF,) CV 13-4460-GHK(MRW)
)
V.) LOS ANGELES, CALIFORNIA
) JUNE 6, 2014
)
WARNER CHAPPELL MUSIC, INC.,)
) (2:01 P.M. TO 2:37 P.M.)
)
DEFENDANT.)
)
)

TELEPHONIC HEARING

BEFORE THE HONORABLE MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: SEE NEXT PAGE

COURT REPORTER: RECORDED; COURT SMART

COURTROOM DEPUTY: VERONICA MC KAMIE

TRANSCRIBER: DOROTHY BABYKIN
COURTHOUSE SERVICES
1218 VALEBROOK PLACE
GLEN DORA, CALIFORNIA 91740
(626) 963-0566

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:
FOR THE PLAINTIFF:

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ
BY: BETSY C. MANIFOLD
ATTORNEY AT LAW
750 B STREET
SUITE 2770
SAN DIEGO, CALIFORNIA 92101

FOR THE DEFENDANT:

MUNGER TOLLES & OLSON LLP
BY: ADAM I. KAPLAN
MELINDA E. LE MOINE
ATTORNEYS AT LAW
355 SOUTH GRAND AVENUE
35TH FLOOR
LOS ANGELES, CALIFORNIA 90071

I N D E X

CV 13-4460-GHK (MRWX)

JUNE 6, 2014

PROCEEDINGS: TELEPHONE CONFERENCE RE DISCOVERY MOTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 LOS ANGELES, CALIFORNIA; FRIDAY, JUNE 6, 2014; 2:01 P.M.

2 THE COURT: ALL RIGHT. GOOD AFTERNOON EVERYBODY.
3 THIS IS JUDGE WILNER IN LOS ANGELES.

4 WE'RE ON THE RECORD IN MARYA OR -- WELL, LET'S CALL
5 IT GOOD MORNING TO YOU VERSUS WARNER CHAPPELL MUSIC,
6 CV 13-4460-GHK(MRWX).

7 COULD I HAVE APPEARANCES FOR THE PLAINTIFF, PLEASE.

8 MS. MANIFOLD: GOOD AFTERNOON, YOUR HONOR.

9 BETSY MANIFOLD, WOLF HALDENSTEIN, ON BEHALF OF THE
10 PLAINTIFFS.

11 THE COURT: GOOD AFTERNOON.

12 AND FOR THE DEFENSE.

13 MS. LE MOINE: GOOD AFTERNOON, YOUR HONOR.

14 THIS IS MELINDA LE MOINE ON BEHALF OF THE
15 DEFENDANTS FROM MUNGER TOLLES & OLSON. AND WITH ME IS ADAM
16 KAPLAN, ALSO FROM MUNGER TOLLES & OLSON.

17 THE COURT: ALL RIGHT. GOOD AFTERNOON TO BOTH OF
18 YOU.

19 I WANTED TO GET YOU FOLKS ON THE PHONE TO DISCUSS
20 THE MOTION THAT I RECEIVED EARLIER THIS WEEK.

21 I WORK VERY HARD TO TAKE A LOOK AT EVERY PIECE OF
22 PAPER THAT COMES THROUGH MY CHAMBERS IN MY CIVIL CASES, IN MY
23 CRIMINAL CASES, IN MY CASES ON APPEAL FROM STATE COURT AND
24 ADMINISTRATIVE AGENCIES JUST TO SORT OF SEE -- SEE WHAT'S
25 GOING ON.

1 AND WHEN I GET A DISCOVERY MOTION IN OUR COURT'S
2 JOINT FORMAT I LIKE TO SPEND A LITTLE BIT OF TIME GOING
3 THROUGH -- GOING THROUGH THE PAPERS -- EVEN THOUGH THEY'RE
4 NOTICED FOR A HEARING SEVERAL WEEKS FROM NOW -- JUST TO TAKE
5 A LOOK AT IT AND SEE WHAT'S REALLY GOING ON AND TO SEE
6 WHETHER IT MAKES SENSE TO GET INVOLVED A LITTLE BIT EARLIER.

7 SOMETIMES I PICK UP THE PAPERS AND I SEE SOMETHING
8 KIND OF GLARING. I SEE SOME CONDUCT THAT IS REALLY
9 PROBLEMATIC AND IT WARRANTS GETTING INVOLVED QUICKLY. AND I
10 TEND TO HAVE PRETTY GOOD SUCCESS IN RESOLVING THOSE KINDS OF
11 MOTIONS SHORT OF A HEARING.

12 IN THIS CASE WHEN I LOOKED AT YOUR PAPERS I DID NOT
13 HAVE ANYTHING OF REMOTE CONCERN ABOUT HOW THE MATTER HAS BEEN
14 HANDLED. TO THE CONTRARY, IT'S A VERY PROFESSIONAL SET OF
15 PAPERS AND SOME REALLY INTERESTING AND LEGITIMATE ARGUMENTS
16 ON BOTH SIDES.

17 BUT I STILL FELT IT MIGHT BE APPROPRIATE GIVEN THE
18 CIRCUMSTANCES HERE TO REACH OUT -- NOT TO GIVE YOU A RULING
19 TODAY AND NOT NECESSARILY TO SOLICIT ARGUMENT FROM YOU TODAY.
20 BUT, QUITE FRANKLY, SINCE YOU TOOK THE TIME AND TROUBLE AND
21 CLIENT FUNDS TO PUT THESE PAPERS TOGETHER FOR THE PURPOSE OF
22 HAVING ME RULE ON IT OR AT LEAST GIVE YOU MY THOUGHTS, IT MAY
23 MAKE SENSE TO GIVE YOU MY PRELIMINARY THOUGHTS HERE
24 PARTICULARLY GIVEN THE KIND OF UNIQUE TIMING HERE ON THE
25 CASE.

1 IN ADDITION TO LOOKING AT YOUR PAPERS, I'VE LOOKED
2 AT THE DOCKET. I'M AWARE THAT WE'RE ON OUR FOURTH AMENDED
3 COMPLAINT, THAT THERE WAS SOME MOTION PRACTICE IN FRONT OF
4 CHIEF JUDGE KING.

5 I SPOKE BRIEFLY WITH CHIEF JUDGE KING THE OTHER
6 DAY. I GOT TO CONFESS. I STARTED THE CONVERSATION BY SAYING
7 HAPPY BIRTHDAY TO HIM. I HOPE THAT DOESN'T GET ME IN TROUBLE
8 WITH ANYBODY.

9 BUT HE TOLD ME ABOUT -- SORT OF THE TIMING OF THE
10 CASE AND THE FACT THAT YOU FOLKS HAD ASKED FOR KIND OF AN
11 EXPEDITED DISCOVERY DATE FOR WHAT YOU'RE CALLING THE FIRST
12 PHASE OF THIS CASE. AND THAT GIVES ME A COUPLE OF THOUGHTS
13 WITH RESPECT TO THE TIMING AND PROGRESS OF THE DISCOVERY
14 HERE.

15 BUT I KNOW YOU FEEL LIKE YOU'RE UNDER THE GUN IN
16 TERMS OF THE TIMING THAT YOU'VE IMPOSED ON YOURSELVES. AND,
17 SO, I WANTED TO -- WANTED TO GIVE YOU MY THOUGHTS ON THAT AS
18 WELL AND TO SEE IF THERE IS A WAY FORWARD.

19 THE END RESULT OF OUR DISCUSSION HERE TODAY -- AND
20 IT MAY JUST BE A ONE-SIDED DISCUSSION FOR ME HERE. LIKE I
21 SAID, YOU'RE NOT REQUIRED TO ARGUE HERE TODAY. AND YOU MAY
22 BE MORE INTERESTED IN THINKING ABOUT WHAT I HAVE TO SAY AND
23 FIGURING OUT WHAT YOU WANT TO DO.

24 BUT THE END RESULT TODAY IS YOU MAY WANT TO TAKE
25 ANOTHER RUN AT SITTING DOWN IN LIGHT OF MY THOUGHTS AND

1 SEEING IF THERE'S SOMETHING TO BE WORKED OUT OR,
2 ALTERNATIVELY, WHETHER YOU CAN FOCUS ON A MORE DISCRETE ISSUE
3 OR SET OF ISSUES HERE AND PROVIDE ME WITH SUPPLEMENTAL BRIEFS
4 THAT MAY BE A LITTLE BIT MORE FOCUSED ON THE ISSUES THAT I
5 THINK ARE AT PLAY HERE.

6 MY UNDERSTANDING IS THAT THIS IS A CASE INVOLVING
7 THE RIGHTS TO HAPPY BIRTHDAY TO YOU, A CASE THAT WAS -- OR A
8 SONG THAT WAS ORIGINALLY COPYRIGHTED IN THE 19TH CENTURY.
9 THERE ARE ISSUES REGARDING THE VALIDITY OF THE COPYRIGHT AND
10 ITS EXTENSION, ALLEGATIONS OF INFRINGEMENT AND SO FORTH.

11 AND, THEN, THE DISCOVERY REQUESTS THAT PLAINTIFF
12 SERVED FOR WHATEVER THOSE RECORDS WERE MET WITH INVOCATION OF
13 PRIVILEGE AND EVENTUALLY THE PRODUCTION OF A PRIVILEGE LOG
14 AND THEN A SECOND PRIVILEGE LOG WHICH MR. KAPLAN FORWARDED TO
15 THE COURT SEPARATELY THE OTHER DAY WHEN I NOTICED THAT IT HAD
16 BEEN INADVERTENTLY --

17 DON'T WORRY ABOUT IT.

18 -- BUT IT HAD NOT BEEN ATTACHED TO THE MOVING
19 PAPERS.

20 I UNDERSTAND AND I TAKE SERIOUSLY PLAINTIFF'S CLAIM
21 THAT THE PRIVILEGE LOG WAS PRODUCED AFTER EITHER THE DEADLINE
22 SET FORTH IN RULE 30 -- OH, I ALWAYS GET CONFUSED -- 33 OR
23 34, WHICHEVER ONE IT IS AND, PERHAPS, AFTER A TIME WHEN THERE
24 WAS AN AGREED-UPON EXTENSION.

25 AND THE BURLINGTON NORTHERN ARGUMENT THAT PRIVILEGE

1 IS WAIVED IF IT'S INVOKED IMPROPERLY OR BELATEDLY IS AN
2 ARGUMENT THAT I'M FAMILIAR WITH. I SEE IT, YOU KNOW, FROM
3 TIME TO TIME. AND I'M WELL AWARE OF THE FACTORS THAT THE
4 CIRCUIT HAS IDENTIFIED IN MAKING THAT DETERMINATION AS TO
5 WHETHER PRIVILEGE HAS BEEN WAIVED AND, NOTWITHSTANDING THE
6 PRODUCTION OF A LOG, DOCUMENTS MUST BE PRODUCED.

7 I WILL -- AND, THEN, THERE WERE OTHER ARGUMENTS
8 THAT WERE PRESENTED IN THE PAPERS REGARDING THE MANNER IN
9 WHICH THE LOG WAS PREPARED AND WHETHER THERE WERE AMBIGUOUS
10 PHRASES USED AND WHETHER THE PRIVILEGE WAS APPROPRIATELY
11 BEING RAISED AND WHETHER SUFFICIENT INFORMATION WAS BEING
12 PROVIDED TO THE PLAINTIFF SO THAT THE PLAINTIFF AND/OR THE
13 COURT COULD TEST THE VALIDITY OF THE INVOCATION OF THE
14 PRIVILEGE.

15 AND, THEN, YOU GET INTO ISSUES THAT ARE A LITTLE
16 BIT MORE UNIQUE, WHICH IS THE ISSUE OF WAIVER AND THIRD
17 PARTIES AND JOINT -- JOINT OR COMMON INTEREST IN THE EXERCISE
18 OF THE RIGHTS HERE AND WHETHER PRIVILEGE APPLIES TO SOME OF
19 THE MATERIALS THAT ARE AT ISSUE HERE.

20 LET ME JUST TAKE A PAUSE.

21 MS. MANIFOLD, RECOGNIZING I MAY HAVE GLIDED THROUGH
22 SOME OTHER THINGS HERE, AM I GENERALLY IN THE BALLPARK HERE?

23 MS. MANIFOLD: YOUR HONOR, I BELIEVE YOU'RE SPOT
24 ON.

25 THE COURT: OKAY. THAT'S NICE.

1 MS. LE MOINE.

2 MS. LE MOINE: THAT SOUNDS LIKE THE THREE CLAIMS
3 THAT ARE MADE, YES.

4 THE COURT: OKAY.

5 ALL RIGHT. WELL, I APPRECIATE THAT. LIKE I SAID,
6 I HAVEN'T WORKED IT UP IN FULL, BUT I SPENT, YOU KNOW, A GOOD
7 PART OF TIME THIS WEEK ON IT BECAUSE IT'S AN INTERESTING
8 ISSUE AND IT'S AN IMPORTANT CASE. AND I WANT TO MAKE SURE I
9 GET -- I GET SOME OF THESE ISSUES RIGHT.

10 I MEAN, I'LL TELL YOU -- I'LL TELL YOU RIGHT NOW.
11 I DON'T SEE THE BURLINGTON NORTHERN ISSUE AS BEING A WINNER
12 HERE. I'M WELL AWARE THAT THERE ARE CIRCUMSTANCES WHERE BIG
13 FIRMS AND BIG COMPANIES LIKE TO BIG FIRM AND BIG COMPANY
14 ANOTHER LITIGANT. AND I UNDERSTAND VERY, VERY WELL
15 THE CONCEPT OF BEING SLOW-PLAYED IN DISCOVERY AND BEING
16 DELAYED AND -- YOU KNOW, PARTICULARLY IN A CASE WHERE THE
17 PARTIES HAVE AGREED -- AGREED JOINTLY -- TO SHORT DEADLINES,
18 I AM VERY AWARE OF THE POTENTIAL OF PREJUDICE HERE WITH
19 RESPECT TO THE LATE ROLL-OUT OF THINGS.

20 I REALLY DON'T WANT TO HAVE TO SPEND A LOT OF TIME
21 ON WHAT YOUR DISCUSSIONS WERE, OR WHAT YOUR CONFIRMATION
22 LETTERS WERE, OR WHAT YOUR COUNTER-CONFIRMATIONS EMAILS WERE.
23 ACTUALLY, I'M BLESSED THAT YOU DIDN'T SUBMIT TO ME A TON OF
24 THOSE MATERIALS. USUALLY LAWYERS WANT ME TO KNOW EXACTLY
25 WHAT THEIR LETTERS SAY, AND I HAVE ENDLESS DECLARATIONS ABOUT

1 THAT.

2 IF YOU REALLY WANT ME TO FIGURE OUT WHETHER THERE
3 WAS AN EXTENSION OFFERED AND TAKEN AND WHETHER IT WAS RENEWED
4 AND ALL THAT, I'M HAPPY TO BRING YOU UP TO FEDERAL COURT AND
5 PUT YOU ON THE STAND, SWEAR YOU IN, AND UNDER PENALTY OF
6 PERJURY I'LL ASK YOU MYSELF. MAYBE WE DON'T NEED TO GO THAT
7 WAY.

8 I ALSO THINK THAT GIVEN THE NATURE OF THE CASE HERE
9 AND THE HISTORIC NATURE OF THESE DOCUMENTS, SOME OF WHICH GO
10 BACK A FAIRLY LONG TIME, THEY MAY HAVE BEEN PRODUCED IN OTHER
11 LITIGATION. THEY MAY -- IT MAY OR MAY NOT HAVE BEEN A BIG
12 BURDEN TO ASSEMBLE THEM. BUT I GOT TO SAY THAT FOR DISCOVERY
13 THAT WAS SERVED IN FEBRUARY AFTER FOUR ITERATIONS OF A
14 COMPLAINT AND, YOU KNOW, FOR RESPONSES THAT WERE ORIGINALLY
15 DUE IN MARCH AND PERHAPS EXTENDED INTO APRIL, THE PRODUCTION
16 OF A LOG IN MAY DOESN'T STRIKE ME AS THE MOST NEFARIOUS OF
17 CONDUCT HERE.

18 I RECOGNIZE, AND I WANT TO GIVE SOME REAL THOUGHT
19 TO THE FACT THAT THAT LOG WAS SUPPLEMENTED IN JUNE, KIND OF
20 AS THE PARTIES WERE GEARING UP FOR THIS. AND, YOU KNOW, I
21 UNDERSTAND THE CONCEPT THAT YOU PUSH THE MOTION TO TRY AND
22 GET A RESULT.

23 I DON'T THINK WE GET INTO THE RULE OF -- RULE 37
24 WHERE SOMEONE IS A PREVAILING PARTY IF DISCOVERY IS PRODUCED
25 AFTER THE MOTION HAS BEEN FILED, YOU KNOW, THEREBY MOOTING

1 THE MOTION. THAT'S A TACTIC THAT I DON'T HAVE ANY TIME FOR
2 AND THE RULES DON'T HAVE ANY TIME FOR. BUT I DON'T -- I
3 DON'T HAVE ANY REASON TO BELIEVE THAT THAT OCCURRED HERE.

4 YEAH, THERE WAS A SUPPLEMENTAL LOG THAT CAME OUT.
5 BUT THE SUPPLEMENTAL LOG WENT A LONG WAY TO ALLEVIATING SOME
6 OF THE ISSUES THAT WERE RAISED IN SORT OF POINT 2 OF THE
7 MOTION, WHICH IS, GEE, I REALLY DON'T KNOW WHAT CONCERNING
8 MEANS OR, YOU KNOW, HOW THESE DOCUMENTS ARE BEING DESCRIBED.

9 I SAT THERE AND KIND OF DID A RUDIMENTARY SIDE BY
10 SIDE OF THE MAY LOG AND THE JUNE LOG. AND MY FIRST TAKE WAS
11 THAT THE JUNE LOG WAS BETTER. THE JUNE LOG WAS MORE
12 DETAILED. THE JUNE LOG WAS MORE RESPONSIVE TO THE CONCERNS
13 THAT MS. MANIFOLD AND HER TEAM HAD RAISED.

14 AND, YOU KNOW, NOT GREAT THAT IT CAME IN THIS
15 SEQUENCE OF EVENTS. BUT, AGAIN, IT WAS REASONABLY PROMPT.
16 AND GIVEN SOME OF THE CIRCUMSTANCES AND THE UNIQUE NATURE OF
17 SOME OF THESE ISSUES, AND FOREIGN COMPANIES AND FIGURING OUT
18 WHO IS WHO, AGAIN, I GOT TO SAY I'M NOT THE MOST MORTALLY
19 OFFENDED BY WHAT I SAW. ALTHOUGH I'M NOT INTENDING TO
20 PRECLUDE THE PLAINTIFFS FROM IDENTIFYING SOME MORE
21 DEFICIENCIES HERE. BUT WHAT I THOUGHT HAD BEEN PRETTY GOOD
22 ORIGINALLY, ALTHOUGH PERHAPS LATE, SEEMED TO GET BETTER,
23 ALBEIT EVEN LATER.

24 AND WE CAN TALK ABOUT DATES BECAUSE I DON'T WANT TO
25 HAVE -- I DON'T WANT TO BASE A RULING OR CAUSE THE PARTIES TO

1 INCUR COSTS OR TAKE POSITIONS BASED ON TIMING. IF I
2 RECOMMEND A CHANGE IN THE DATES HERE TO CHIEF JUDGE KING TO
3 GIVE SOMEONE RELIEF HERE, THAT MAY BE THE RELIEF YOU REALLY
4 WANT ON THESE ISSUES.

5 THEN, WE GET INTO THIS ISSUE OF THE THIRD PARTY AND
6 THE JOINT INTEREST OR THE COMMON INTERESTS. AND I DON'T MEAN
7 TO GET TURNED AROUND ON THIS, IS THIS THE WAIVER, THIS IS THE
8 EXCEPTION TO THE WAIVER. YOU CAN HELP ME OUT IF I NEED TO BE
9 HELPED OUT ON THIS.

10 BUT THE ISSUE IS THAT THERE IS A CLAIM OF PRIVILEGE
11 EXTENDING -- WE'RE NOT TALKING ABOUT THE ROLE OF NON-LAWYERS
12 OR INDEPENDENT CONTRACTORS OR SORT OF LOCAL AGENTS WHO MAY
13 FALL WITHIN THE SCOPE OF THE PRIVILEGE. BUT THIS IS SORT OF
14 THE NIDEC ISSUE THAT WAS RAISED HERE, WHICH HAS TO DO WITH
15 GOING SORT OF WELL BEYOND WHAT COULD BE THE EMPLOYER-EMPLOYEE
16 RELATIONSHIP OR THE EMPLOYER-INDEPENDENT CONTRACTOR
17 RELATIONSHIP.

18 AND THAT GETS INTO THIS -- OH, HERE IT IS -- "THE
19 COMMON INTEREST EXCEPTION TO THE RULE WAIVING PRIVILEGE."
20 GOOD. I GOT IT NOW.

21 AND I READ -- I READ THE PARTIES' CASES HERE. I
22 MEAN, THE MGA CASE IS A CASE FROM THIS DISTRICT. IT'S CHIEF
23 JUDGE SEGAL, AND I READ THAT QUITE CLOSELY. NIDEC FROM JUDGE
24 CHEN UP IN THE NORTHERN DISTRICT. THE PATENT CASES I FOUND
25 TO BE OF INTEREST, NOT JUST THE FEDERAL CIRCUIT'S DECISION

1 THAT WAS CITED IN YOUR PAPERS BUT, ALSO, AS TO THE MORE
2 RECENT ONE IN THE GENENTECH CASE BY JUDGE GREWAL INVOLVING
3 PATENT LITIGATION UP IN THE NORTHERN DISTRICT.

4 I MEAN, THERE'S DEFINITELY -- DEFINITELY AN
5 INTERESTING ISSUE HERE, WHICH RAISES SOME LEGAL QUESTIONS.
6 IT ALSO RAISES SOME INTERESTING FACTUAL QUESTIONS. AND THIS
7 MAY BE WHERE I NEED TO GET SOME MORE DEVELOPMENT.

8 MY UNDERSTANDING -- AND, AGAIN, THERE'S GOING TO BE
9 SOME DETAILS HERE THAT I JUST CAN'T GET RIGHT BECAUSE I'M
10 NOWHERE NEAR AS FAMILIAR WITH ALL THIS STUFF AS YOU FOLKS
11 ARE. BUT WHEN WARNER -- I'M GOING TO CALL IT WARNER FOR
12 SHORTHAND. WHEN WARNER OR WARNER'S LEGAL STAFF WAS DEALING
13 WITH THE LICENSING ENTITIES IN THE U.K., IN FRANCE AND,
14 PERHAPS, ELSEWHERE, AND IN COMMUNICATIONS THAT THOSE ENTITIES
15 APPEARED TO HAVE HAD WITH PERHAPS THEIR LAWYERS, THERE IS AN
16 ASSERTION THAT THERE IS THIS COMMONALITY WHICH BRINGS THOSE
17 COMMUNICATIONS WITHIN THE PRIVILEGE.

18 I DON'T KNOW. AND I -- AND I DON'T KNOW BECAUSE I
19 DON'T KNOW THAT I KNOW ENOUGH FACTUALLY ABOUT WHO THESE
20 ENTITIES ARE, THE NATURE OF THEIR RELATIONSHIP WITH WARNER.
21 YOU KNOW, THE ISSUE IN NIDEC HAD TO DO WITH WE'VE GOT PATENT
22 LITIGATION OR WE'VE GOT LITIGATION I GUESS IT IS. AND WE
23 WANT TO DISCLOSE SOME OF THAT TO A POTENTIAL PURCHASER FOR
24 ISSUES THAT ARE UNRELATED TO THE ACTUAL PROSECUTION OF THOSE
25 CASES OR PROTECTION OF RIGHTS. BUT THAT WAS VALUATION OF A

1 BUSINESS IN THE CONTEXT OF A TAKE-OVER.

2 AND THE NIDEC COURT -- AND I UNDERSTAND THAT THE
3 NIDEC HOLDING IS THAT JUST BECAUSE YOU'RE DISCLOSING THESE
4 CONFIDENTIAL ISSUES IN A CONFIDENTIAL MANNER, THAT DOESN'T --
5 THAT DOESN'T SEEM TO FALL WITHIN THE PRIVILEGE BECAUSE THAT'S
6 COMMONALITY OF A FINANCIAL INTEREST OR A BUSINESS INTEREST AS
7 OPPOSED TO A LEGAL INTEREST.

8 AND THE PATENTEE LICENSEE CASES SEEM TO BE A BIT
9 DIFFERENT. AND THE NATURE OF WHAT'S GOING ON HERE GIVEN THAT
10 THESE ARE LICENSING ENTITIES AND AGENCIES THAT ARE OPERATING
11 THE COPYRIGHTS AND THEY HAVE REQUIREMENTS TO MAINTAIN THE
12 INTEGRITY OF THOSE RIGHTS GIVES ME SOME REASON TO PAUSE
13 WHETHER IT DOES OR DOES NOT FALL INTO THE COMMON INTEREST
14 RULE HERE.

15 AND, SO, MAYBE THAT'S A GOOD PLACE FOR ME TO PAUSE
16 AND SEE WHETHER -- WHETHER ANYBODY WANTS TO BE HEARD HERE.
17 BECAUSE THIS IS AN AREA WHERE FRANKLY WE CAN GO A NUMBER OF
18 DIFFERENT DIRECTIONS. YOU FOLKS COULD, AND PERHAPS SHOULD,
19 MAYBE TAKE ANOTHER RUN AT SITTING DOWN AND FIGURING OUT
20 WHETHER YOU NEED SOME MORE INFORMATION ON THIS ISSUE TO
21 DETERMINE WHETHER THIS IS A LEGITIMATE INVOCATION OF
22 PRIVILEGE.

23 YOU FOLKS --

24 MS. MANIFOLD: YOUR HONOR, IF I COULD BE HEARD
25 FIRST SINCE IT IS MY MOTION.

1 THE COURT: GO AHEAD.

2 MS. MANIFOLD: I JUST -- I WANTED TO MAKE JUST A
3 COUPLE OF OBSERVATIONS --

4 THE COURT: GO AHEAD.

5 MS. MANIFOLD: -- BASED ON THE COURT'S COMMENTS TO
6 US.

7 AND I APPRECIATE THE COURT'S VIEW WITH REGARD TO
8 THE NATURE OF THE DELAY IN THE BURLINGTON NORTHERN WAIVER.
9 AND I THINK THAT THE PARTIES HAVE THROUGHOUT THIS LITIGATION
10 -- AND I THINK THE COURT HAS MADE THAT OBSERVATION AND HAS
11 DEALT WITH EACH OTHER WITH COURTESY AND COOPERATION. AND I'M
12 VERY PLEASED THAT -- AND I'M SURE MY -- DEFENDANT'S COUNSEL
13 WILL JOIN ME IN THIS IN SAYING THAT WE'RE PLEASED THAT THE
14 COURT HAS NOTED THAT IN OUR PAPERS.

15 THE COURT: YES.

16 MS. MANIFOLD: AND I CERTAINLY -- WE DON'T DISPUTE
17 THAT AN EXTENSION WAS GIVEN TO -- FOR THE PRODUCTION OF
18 DOCUMENTS OR FOR THE PRODUCTION OF OBJECTIONS.

19 SO, IF THE COURT IS BASED ON THE COMMENTS SOMEWHAT
20 SINGULARLY UNIMPRESSED BY THE DELAY THAT WE POINTED OUT IN
21 THE PRODUCTION LOG, THEN, I CERTAINLY WILL TAKE THAT INTO
22 CONSIDERATION WITH REGARD TO ANY SUPPLEMENTAL BRIEFING AND
23 WHERE THE PLAINTIFFS PLAN TO FOCUS THE FURTHER DEVELOPMENT OF
24 THEIR ISSUES.

25 AND I KNOW THAT THE COURT RAISED THE ISSUE OF THE

1 POTENTIAL FOR RULE 37 FINES. I DON'T THINK EITHER PARTY HAS
2 ANY INTEREST IN THAT. I THINK WE WOULD JUST PREFER TO FOCUS
3 ON THE LEGAL ISSUES AND GET A RESOLUTION IN THE MOST
4 PRACTICAL AND EFFICIENT WAY. AND IF THAT MEANS THE COURT HAS
5 TO DO IT, OR WE CAN FURTHER MEET AND CONFER, I THINK WE'RE
6 CAPABLE OF DOING EITHER.

7 THE COURT: AHH, BUT YOU SEE -- YOU HAVE THE
8 PROBLEM THERE THOUGH. RULE 37 IS MANDATORY.

9 MS. MANIFOLD: OKAY.

10 THE COURT: RULE -- RULE 37(A)(5) SAYS THAT IF A
11 MOTION IS GRANTED FOR -- TO COMPEL PRODUCTION, THE COURT MUST
12 AFTER GIVING AN OPPORTUNITY TO BE HEARD REQUIRE THE PARTY
13 WHOSE CONDUCT NECESSITATED THE MOTION OR THEIR ATTORNEY TO
14 PAY EXPENSES.

15 THERE ARE EXCEPTIONS TO IT, BUT IF THE MOTION IS
16 DENIED, THEN, I MUST -- AGAIN, THIS IS 37(A)(5)(B), I MUST
17 TAKE UP THE ISSUE OF ATTORNEY'S FEES.

18 SO, YOU KNOW, AGAIN, ONCE YOU FOLKS LAUNCHED THE
19 MOTION, THINGS COME INTO PLAY, NOT THE LEAST OF WHICH MY
20 OBLIGATION TO AT LEAST TAKE THIS UP OR REQUIRE YOU TO ADDRESS
21 IT, WHICH MAY ALSO BE SOMETHING YOU WANT TO TAKE INTO YOUR
22 CALCULUS AS YOU MOVE FORWARD.

23 MS. MANIFOLD: I UNDERSTAND, YOUR HONOR.

24 AND I -- AND GETTING TO THE NEXT POINT WAS THAT I
25 THINK ONE OF THE KEY FOCUSED -- AND WHAT PLAINTIFFS HAD

1 PLANNED TO FOCUS MORE CLEARLY ON IN THEIR SUPPLEMENTAL
2 MEMORANDUM WAS THE COMMON INTEREST, WHICH I THINK IS WHAT THE
3 COURT HAS BEEN MOST FOCUSED ON. AND I THINK THAT THAT'S
4 WHERE THERE ARE SEVERAL DOCUMENTS THAT BASED ON THE ARGUMENTS
5 IN OUR BRIEFING DON'T COME WITHIN THE COMMON INTEREST. AND I
6 THINK THAT THAT'S THE CLEAREST AND THE MOST FOCUSED ARGUMENT
7 THAT THE PLAINTIFFS HAD PLANNED TO MAKE IN THE SUPPLEMENTAL
8 BRIEFING.

9 THE COURT: OKAY. WELL, I MEAN, LOOK, ONE THING WE
10 CAN DO IS SUPPLEMENTAL BRIEFS. YOU KNOW, I DO HAVE TO SAY
11 THAT YOU MAY -- YOU MAY WANT TO EMPHASIZE THAT BECAUSE I
12 THOUGHT YOUR PAPERS WERE THINNEST IN THAT AREA, EVEN THOUGH
13 YOU WERE AWARE THAT THE ISSUE WAS THERE. I MEAN, IT SEEMS
14 LIKE YOU SPENT MOST OF YOUR TIME ON THE OTHER POINTS AND KIND
15 OF THREW THIS IN AT THE END.

16 I WILL SAY THAT I'M NOT -- I'M NOT AVERSE TO IN
17 CAMERA INSPECTION OF SOMETHING THAT'S LIMITED. AND, YOU
18 KNOW, I HAVE NO WAY OF KNOWING THAT A 137 DOCUMENTS WITH 300
19 PAGES OUT OF 2,000 -- BLAH, BLAH, BLAH, BLAH -- I HAVE NO WAY
20 OF KNOWING WHETHER THAT IS A REASON -- IT'S GOING TO BE
21 REALLY BURDENSOME ON THE COURT TO DO THIS.

22 I DON'T KNOW THAT I'LL HAVE ENOUGH INFORMATION TO
23 DO AN INTELLIGENT REVIEW OF PRIVILEGE. SO, I THINK I NEED TO
24 SEE -- I NEED TO SEE SOME MORE GUIDANCE FROM YOU FOLKS AHEAD
25 OF TIME ON THE ISSUE, RECOGNIZING THAT THE PLAINTIFFS ARE

1 KIND OF BLIND BECAUSE THE WHOLE POINT IS THAT THEY'RE NOT
2 GOING TO SEE THESE RECORDS.

3 BUT IF I'M DOING AN IN CAMERA REVIEW, AND PUTTING
4 MY OTHER CASES ON HOLD, YOU KNOW, RULE 37 MOST DEFINITELY
5 COMES INTO PLAY THEN. BECAUSE THAT'S ME INTERVENING IN A WAY
6 IN A DISCOVERY DISPUTE THAT IS FAIRLY EXTRAORDINARY.

7 NOW, IF WE'RE TALKING ABOUT A DOZEN PIECES OF
8 PAPER, IT MAY NOT BE AS MUCH AS OTHERWISE THREATENED, BUT,
9 YOU KNOW, IT'S OF SIGNIFICANCE, AND IT SHOULD NOT BE IN THE
10 ORDINARY COURSE. SO, I WANTED TO LET YOU KNOW ABOUT THAT.

11 I TAKE SERIOUSLY THE DEFENSE'S POSITION THAT, YOU
12 KNOW, THEY DON'T WANT TO HAVE TO SUBMIT EVERYTHING AND HAVE
13 ME DO THIS WORK. THE WHOLE POINT OF THE PRIVILEGE LOG IS NOT
14 THAT SOMEBODY PREPARES A PRIVILEGE LOG AND THEN THE OTHER
15 SIDE SAYS I DON'T BELIEVE IT. JUDGE, YOU LOOK AT IT. IT'S
16 THE OPPOSITE. IT'S -- THE PRIVILEGE LOG IS PRESUMPTIVELY
17 VALID UNLESS WE'VE GOT A PROBLEM OR SOMETHING UNIQUE AND
18 DEFINABLE.

19 THIS MAY -- MAY BE UNIQUE AND DEFINABLE. BUT IN
20 ORDER TO DEMONSTRATE THE UNIQUENESS AND TO GIVE ME THAT
21 DEFINITION AS TO WHAT I SHOULD BE LOOKING FOR, I THINK I MAY
22 NEED MORE ON THE LAW BUT, PERHAPS MORE IMPORTANTLY, SORT OF
23 THE NATURE OF WHAT I MIGHT BE LOOKING AT AND THE NATURE OF
24 THESE PARTIES. I HAVE SOME RUDIMENTARY UNDERSTANDING OF
25 LICENSING AGENTS. YOU KNOW, THESE WERE EQUATED TO ASCAP AND

1 BMI EXCEPT MAYBE OVERSEAS. BUT, YOU KNOW, I'M NOT SURE I
2 UNDERSTAND. I'M NOT SURE THAT I KNOW WHAT I'D BE LOOKING FOR
3 IN ORDER TO MAKE THE INTELLIGENT DECISION THAT I'M EXPECTED
4 TO MAKE.

5 MS. MANIFOLD: YOUR HONOR, BETSY MANIFOLD FOR THE
6 PLAINTIFFS.

7 AND I -- IF I MAY -- AND I APOLOGIZE IF THIS WOULD
8 BE IMPROPER IN THIS CONTEXT, BUT I WOULD LIKE TO THROW OUT
9 THE QUESTION TO DEFENDANT'S COUNSEL TO SEE IF --

10 THE COURT: GO AHEAD.

11 MS. MANIFOLD: -- THERE'S A WILLINGNESS BASED ON THE
12 COURT'S WILLINGNESS FOR US TO PERHAPS CONTINUE THE
13 MEET-AND-CONFER PROCESS FOR A DISCRETE PERIOD OF TIME AND
14 THEN PERHAPS RESUBMIT A MORE -- BASED ON -- BECAUSE
15 UNFORTUNATELY WE GOT THE AMENDED PRIVILEGE LOG AT THE SAME
16 TIME WE -- OUR PAPERS WERE ALREADY FILED. SO, IT WAS VERY
17 DIFFICULT. WE BASICALLY COULDN'T TAKE INTO CONSIDERATION ANY
18 OF THE CHANGES IN THE PRIVILEGE LOG. AND I THINK THAT THERE
19 COULD BE MORE FACTUAL DETAIL PROVIDED BY THE DEFENDANTS THAT
20 COULD ANSWER SOME OF THE QUESTIONS BOTH THAT ARE RAISED BY
21 THE PRIVILEGE LOG AND THAT THE COURT RAISED.

22 THE COURT: WELL, THE ANSWER --

23 MS. MANIFOLD: AND I DON'T KNOW IF THAT'S A PROCESS
24 THAT WOULD BE APPROPRIATE TO RAISE AT THIS POINT OR --

25 THE COURT: NO.

1 MS. MANIFOLD: -- IF WE SHOULD JUST PROCEED TO
2 SUPPLEMENTAL BRIEFING.

3 THE COURT: NO. THE -- NO. THE ANSWER IS IT'S
4 ABSOLUTELY APPROPRIATE.

5 LOOK, I'M GOING TO BE -- BECAUSE YOU -- BECAUSE --
6 LIKE I SAID, YOU FOLKS HAVE DONE -- HAVE DONE FINE HERE.
7 THIS IS NOT THE KIND OF CASE WHERE I FEEL LIKE I HAVE TO
8 BRING THE HAMMER ON LAWYERS. TO THE CONTRARY, I WILL SPEAK
9 FREELY. ANYTHING THAT YOU CAN AGREE UPON WILL BE BETTER FROM
10 YOUR PERSPECTIVES THAN ANYTHING THAT I CAN IMPOSE UPON YOU.
11 OKAY. I SAY THAT BECAUSE YOU ARE MORE FAMILIAR WITH THE
12 ISSUES HERE. YOU ARE MORE FAMILIAR WITH WHAT YOU NEED. YOU
13 ARE MORE FAMILIAR WITH, PERHAPS, WHAT YOU CAN GIVE UP IN --
14 YOU KNOW, ZEALOUSLY REPRESENTING YOUR CLIENTS BUT ALSO
15 PRACTICALLY REPRESENTING YOUR CLIENTS AND PUTTING IT IN THE
16 HANDS OF SOMEONE ELSE -- BE IT A FEDERAL JUDGE OR DISCOVERY
17 MASTER OR SOME GUY OFF THE STREET -- LIKELY IS NOT IN YOUR
18 CLIENT'S INTERESTS.

19 SO, IN THE ORDINARY COURSE, ANYTHING THAT YOU CAN
20 AGREE UPON IS GOOD FOR YOU AND IS IN YOUR INTERESTS.

21 AND I'M HAPPY TO PUSH THE PAUSE BUTTON HERE. AND
22 THAT'S WHY I WANTED TO LET YOU KNOW THAT IF YOU FEEL LIKE
23 BECAUSE OF THE CHANGE IN THE CIRCUMSTANCE AND BECAUSE YOU NOW
24 HAVE, YOU KNOW, SOME OF THE INFORMATION YOU WERE SEEKING,
25 MS. MANIFOLD, FROM THE DEFENSE -- AND THEY'VE COMPLIED AND,

1 YOU KNOW, OR GETTING TOWARDS COMPLIANCE OR WHATEVER -- WE CAN
2 PUSH PAUSE. IF THE RELIEF YOU NEED IS A BRIEF CONTINUANCE OF
3 THE DISCOVERY CUT-OFF TO SORT OF MAINTAIN THE STATUS QUO AND
4 AVOID PREJUDICE, LIKE I SAID, I'LL PICK UP THE PHONE AND CALL
5 JUDGE KING -- CHIEF JUDGE KING AND SEE WHAT I CAN DO.

6 I'M HAPPY TO GET YOU FOLKS BACK ON THE PHONE TO
7 SORT OF SEE WHERE THINGS ARE AND TO TAKE YOUR TEMPERATURE.
8 UNFORTUNATELY, I DO HAVE SOME PERSONAL TRAVEL COMING UP THE
9 NEXT COUPLE OF WEEKS, BUT I CAN MAKE MYSELF AVAILABLE, AND I
10 WILL MAKE MYSELF AVAILABLE AS A SERVICE TO YOU FOLKS IF THAT
11 MAKES SENSE. IF YOU WANTED TO GET ON THE PHONE A WEEK FROM
12 NOW AND LET ME KNOW THAT YOU'VE WORKED IT OUT OR THAT YOU'VE
13 REDUCED THE SCOPE OF THINGS --

14 AND, MS. LE MOINE, I'M HAPPY TO HEAR FROM YOU AS
15 WELL ON THIS --

16 -- BUT IF THAT'S THE WAY FORWARD, THAT'S FINE WITH
17 ME. AND, THEN, THIS HAS BEEN A SUCCESS.

18 MS. LE MOINE: YOUR HONOR, I WILL CHIME IN HERE.
19 I'VE LEARNED A LESSON, WHICH IS WHEN YOU -- WHEN YOU DON'T
20 DISAGREE WITH ANYTHING, YOU DON'T SAY ANYTHING. BUT --

21 THE COURT: RIGHT ON.

22 MS. LE MOINE: SO -- AS I MAY BE MAKING A MISTAKE.
23 BUT I THINK YOU'RE ABSOLUTELY RIGHT, AND I APPRECIATE YOUR
24 HAVING TO LOOK AT IT QUICKLY SO THAT WE COULD SORT OF FOCUS
25 ON, YOU KNOW, WHERE THE -- THE INTERESTING ISSUE HERE. AND I

1 AGREE WITH YOU IT'S AN INTERESTING ONE, AN INTERESTING LEGAL
2 ISSUE.

3 I AM CONFIDENT THAT THE DOCUMENTS -- AND IT'S A
4 SUBSET OF THE WHOLE -- OF THE LOG -- THAT ARE EXCHANGED WITH
5 LICENSING AGENTS, ARE PRIVILEGED, AND THAT THEY ARE PROTECTED
6 AGAINST WAIVER BY THE COMMON INTEREST DOCTRINE.

7 I'M HAPPY TO SIT DOWN WITH PLAINTIFFS AGAIN AND
8 HAVE A CHAT ABOUT HOW TO KEEP THIS -- MAYBE TO FOCUS THIS AND
9 SEE WHERE THAT DISCUSSION GOES AND ALLEVIATE ANY BURDEN ON
10 THE COURT.

11 THE COURT: AND ONE THING -- AND I APPRECIATE THAT,
12 AND I APPRECIATE THE SPIRIT ON BOTH SIDES. I MEAN, ONE THING
13 YOU MAY WANT TO DO IS MAYBE A LITTLE BIT OF PEEK-A-BOO.
14 MAYBE DISCLOSE A LITTLE BIT MORE ABOUT WHAT YOU HAVE TO LET
15 HER MAKE AN INTELLIGENT DECISION. AND IF IT'S REALLY THAT
16 MUCH OF A LAY-DOWN FROM YOUR SIDE -- YOU KNOW, I'M NOT
17 TALKING ABOUT YOU WAIVING THE PRIVILEGE OR SHOWING HER THE
18 DOCUMENTS, BUT MAYBE YOU CAN BE A LITTLE BIT MORE EXPRESS IN
19 THIS AREA TO GIVE HER -- TO GIVE HER COMFORT THAT SHE'S NOT
20 JUST GIVING AWAY THE FARM.

21 I MEAN, PART OF WHAT I WAS THINKING ABOUT WAS, YOU
22 KNOW -- I'M NOT LOOKING TO PLAY GAMES OR ANYTHING, BUT MAYBE
23 WE HAVE TO DO A SAMPLE. AND MAYBE THE SAMPLING CAMERA IS
24 MUTUALLY AGREED-UPON DOCUMENTS, YOU KNOW, WHERE BOTH SIDES
25 FEEL VERY CONFIDENT THAT THESE ARE -- ARE OR ARE NOT

1 PRIVILEGED. AND I LOOK AT FIVE OF THEM. AND IF A MAJORITY
2 ARE PRIVILEGED AND PROPERLY PRIVILEGED, THEN, PLAINTIFF IS
3 GOING TO PAY SOME FEES. AND IF THE MAJORITY ARE NOT PROPERLY
4 PRIVILEGED, THEN, THE DEFENSE IS GOING TO PAY FEES. AND
5 YOU'LL PUT YOUR MONEY WHERE YOUR MOUTH IS. OR MAYBE THERE'S
6 SOME OTHER SANCTIONS OR CONSEQUENCES COMING IN THAT I HAVEN'T
7 PUT INTO FIRM THOUGHT.

8 BUT I WANT TO GIVE YOU FOLKS AN INCENTIVE TO
9 RESOLVE THIS. AND THE INCENTIVE IS NOT JUST ME RULING ON IT
10 BUT DOING IT IN A WAY THAT PROTECTS OUR RESOURCES HERE AND
11 KEEPS YOUR CASE MOVING. BECAUSE YOU'RE GOING TO SLOW DOWN IF
12 YOU HAVE TO HAVE ME LOOK AT IT. OKAY. YOU JUST ARE. AND
13 THAT'S NOT IN ANYBODY'S -- NOT IN ANYBODY'S INTERESTS.

14 SO, YEAH, IF YOU WANT TO SIT DOWN, SOMEBODY WANTS
15 TO BUY SOMEBODY A CUP OF COFFEE, ALTHOUGH --

16 YOU'RE DOWN IN SAN DIEGO, RIGHT, MS. MANIFOLD?

17 MS. MANIFOLD: I AM, YOUR HONOR.

18 THE COURT: ALL RIGHT. SOMEBODY DELIVERS HER A CUP
19 OF COFFEE.

20 (LAUGHTER.)

21 MS. MANIFOLD: RIGHT.

22 THE COURT: MAYBE YOU CAN FIGURE SOMETHING OUT OR
23 MAYBE FIGURE --

24 MS. MANIFOLD: MAYBE WE COULD BOTH BUY EACH OTHER A
25 CUP OF COFFEE --

1 MS. LE MOINE: I COULD FAX YOU A CUP OF COFFEE.

2 (LAUGHTER.)

3 THE COURT: YOU MEET IN IRVINE. IT'S HALFWAY. I
4 MEAN, FIGURE SOMETHING OUT. I MEAN, THE LAST THING I WANT IS
5 MORE EMAILS GOING BACK AND FORTH, MORE KIND OF SNITOGRAM
6 LETTERS GOING BACK AND FORTH. YOU KNOW, SOMEBODY PUT
7 SOMEBODY ON AN IPAD AND DO A FACE TIME DISCUSSION
8 FACE-TO-FACE. AND PUT SOME CARDS ON THE TABLE.

9 YOU HAVE A PROTECTIVE ORDER IN THIS CASE, CORRECT?

10 MS. MANIFOLD: YES, YOUR HONOR.

11 MS. LE MOINE: WE DO, YOUR HONOR.

12 THE COURT: YES, I DID SIGN THAT. SO, THERE'S
13 DISCLOSURE ISSUES, YOU KNOW, YOU CAN WORK WITH THAT.

14 WHAT MAKES SENSE IS A WAY FORWARD HERE.

15 MS. MANIFOLD: MY SUGGESTION -- I THINK ONE OF THE
16 KEY MOTIVATING FACTORS FOR THE FILING AND THE ISSUES WITH THE
17 FILINGS THAT WE'VE HAD UP UNTIL NOW IS THAT WE'RE VERY
18 CONCERNED ABOUT THE DISCOVERY CUT-OFF. AND IT'S IMPORTANT TO
19 BOTH SIDES THAT WE MAINTAIN THAT PACE. AND IF WE'RE JUST
20 DOWN TO THIS ISSUE, IF WE COULD EXTEND OUT THE DISCOVERY
21 CUT-OFF FOR JUST THIS ISSUE SO THAT THE DEFENSE AND
22 PLAINTIFF'S COUNSEL COULD SIT DOWN AND HAVE SOME OF THE
23 DISCUSSIONS THAT THE COURT'S THINKING ABOUT, ESPECIALLY WITH
24 THE VIEWS THAT YOU'VE GIVEN US, WHICH I THINK HAVE BEEN VERY
25 HELPFUL, AND SEE IF WE CAN SIT DOWN AND EITHER WORK

1 EVERYTHING OUT OR ELSE, YOU KNOW, NARROW IT DOWN TO 10
2 DOCUMENTS MAYBE AS THE COURT SUGGESTS OR 5 -- WHERE BOTH
3 SIDES ARE JUST VERY CONFIDENT ON BOTH SIDES, AND THE COURT IS
4 GOING TO HAVE TO RESOLVE IT OR SEE IF WE CAN NEGOTIATE
5 SOMETHING.

6 SO, I DON'T KNOW QUITE HOW THE MECHANICS OF THAT
7 WOULD WORK. BUT AT THIS POINT WE UNFORTUNATELY CONCURRENTLY
8 HAVE THE COPY THAT'S ON FILE WITH THE COURT. AND THE
9 DEFENDANT'S REFORMATTING AND SIGNING THE FINAL VERSION
10 UNFORTUNATELY MESSED UP SOME OF THE PLAINTIFF'S TABLES ON
11 PAGE 20, WHICH DEFENDANT'S COUNSEL VERY KINDLY POINTED OUT TO
12 ME BEFORE THIS CALL. AND WE ARE ATTEMPTING TO FIX THAT AND
13 REFILE THE PAPERS.

14 BUT I'M WONDERING IF IT'S NECESSARY TO DO THAT IF
15 MAYBE IN --

16 THE COURT: NO.

17 MS. MANIFOLD: -- TWO WEEKS WE SHOULD SIMPLY REFILE
18 WHATEVER JOINT STIPULATION WE CAN AGREE ON AT THAT TIME AND
19 THEN GO FORWARD THAT WAY. I MEAN, I'M TRYING TO WORK OUT THE
20 MECHANICS --

21 MS. LE MOINE: RIGHT.

22 MS. MANIFOLD: -- AND I'M NOT QUITE SURE WHAT TO DO.

23 MS. LE MOINE: WELL, LET ME, IF I CAN LIKE MAYBE
24 JUST MAKE A SUGGESTION ON MECHANICS --

25 THE COURT: GO AHEAD.

1 MS. LE MOINE: -- PERHAPS WE JUST HAVE A STAY OF
2 THE PERIOD, OF THE DISCOVERY PERIOD WHICH ENDS ON THE 25TH --
3 MAYBE A STAY OF EVERYTHING FOR TWO WEEKS TO TRY TO RESOLVE
4 THIS ISSUE.

5 THE COURT: WELL --

6 MS. LE MOINE: AND ADDRESS THE POINTS THAT THE
7 COURT HAS RAISED AND SEE IF WE CAN COME BACK TO THE COURT.

8 SO, WE DON'T NECESSARILY MOVE THE DATES, BUT WE
9 KEEP IN MIND THAT WE'RE TAKING LIKE A -- THAT WE MIGHT MOVE
10 IT OUT TWO WEEKS BECAUSE WE'RE TAKING A TWO-WEEK STAY TO JUST
11 FOCUS AND RESOLVE THIS PRIVILEGE QUESTION.

12 THE COURT: HOW ABOUT THIS. HOW ABOUT WE HAVE A
13 CONFERENCE CALL A WEEK FROM TUESDAY. WE'LL SET IT FOR THE
14 17TH. AND WE WILL SEE WHERE THINGS ARE AND WHETHER THERE'S
15 GOING TO BE MORE FILING -- I MEAN, I DON'T WANT TO KILL A
16 TREE AND REFILE THE ORIGINAL MOTION. YOU FILED. YOU FILED
17 IN GENERAL. WE'RE NOT THAT FORMAL HERE.

18 IF THERE'S GOING TO BE SOMETHING ELSE FILED, YOU
19 KNOW, IT'S GOING TO BE FOCUSED AND IT'S GOING TO BE ON THE
20 ISSUES THAT REALLY MATTER. AND IF YOU HAVEN'T FIGURED IT OUT
21 BY THE 17TH, THEN, THINGS HAVE FALLEN APART.

22 I CAN EASILY RECOMMEND TO JUDGE KING -- AND I'LL
23 CALL HIM TODAY -- THAT THE CUT-OFF DATE AND OTHER LITIGATION
24 DATES -- I DON'T QUITE KNOW THE NUANCE OF YOUR SCHEDULING
25 ORDER, BUT JUST TO KICK EVERYTHING OUT TWO OR THREE WEEKS TO

1 ENABLE US TO EITHER RESOLVE THIS OR, YOU KNOW, NOBODY BE
2 PREJUDICED BY IT.

3 MS. MANIFOLD: THAT WOULD BE ACCEPTABLE TO
4 PLAINTIFF.

5 MS. LE MOINE: THAT'S FINE WITH DEFENDANTS AS WELL,
6 YOUR HONOR.

7 THE COURT: IS IT ALL DATES, OR IS IT JUST THE
8 DISCOVERY CUT-OFF ON THE FIRST PHASE?

9 MS. MANIFOLD: I THINK JUST THE DISCOVERY CUT-OFF
10 WOULD BE THE ONLY DATE THAT WOULD BE NECESSARILY KICKED OUT.

11 THE COURT: OKAY. I DON'T KNOW WHEN YOU WERE
12 SUPPOSED TO BE FILING YOUR FIRST MSJ. SO, IF IT'S JUST TWO
13 WEEKS ON THE DISCOVERY CUT-OFF DATE, AND THAT WE'RE GOING TO
14 GET BACK ON THE PHONE --

15 DOES THE 17TH APPEAR TO WORK FOR YOU FOLKS?

16 MS. MANIFOLD: YES, YOUR HONOR.

17 MS. LE MOINE: YES --

18 MS. MANIFOLD: -- THIS IS PLAINTIFF'S COUNSEL.

19 MS. LE MOINE: YES, THE 17TH WORKS FOR DEFENSE
20 COUNSEL ALSO, YOUR HONOR.

21 THE COURT: WHY DON'T WE TENTATIVELY DO THIS. I'M
22 GOING TO BE ON THE EAST COAST ON THAT DAY, BUT I WILL MAKE
23 ARRANGEMENTS TO GET ON THE PHONE WITH YOU ALL.

24 WE'LL SET IT FOR 9:00 A.M. PACIFIC TIME. THAT WILL
25 BE NOON ON THE EAST COAST.

1 HOWEVER -- AND I WANT TO BE REAL CLEAR -- IF YOU
2 FOLKS FIGURE IT OUT, IF YOU FOLKS RESOLVE THIS AND YOU DON'T
3 WANT TO SPEND ANY MORE TIME WITH ME, FEEL FREE NOT TO RUIN MY
4 VACATION.

5 (LAUGHTER.)

6 THE COURT: AND ALL YOU HAVE TO DO IS PICK UP THE
7 PHONE AND CALL MS. MC KAMIE, MY COURTROOM DEPUTY. SHE'S AT
8 894-5496. AND SHE WILL TAKE THE MATTER OFF IN ITS ENTIRETY
9 WITHOUT A FURTHER FILING IF YOU'VE REACHED AN AGREEMENT OR
10 SOME SORT OF COMPROMISE. SO, THAT'S SORT OF YOUR INCENTIVE
11 THERE.

12 SO, IF YOU DON'T NEED ME, YOU DON'T NEED TO GET ME
13 ON THE PHONE JUST TO SAY WE DON'T NEED YOU, JUDGE. YOU CAN
14 TAKE IT DOWN.

15 IF YOU DO NEED ME, THEN, WE WILL SET UP A BRIDGE
16 CALL ON JUNE 17TH AT 9:00, 9:00 IN THE MORNING, AND WE'LL
17 FIGURE OUT WHERE THINGS ARE.

18 YOU MAY NEED TO STAND BY BECAUSE IF FOR A PERSONAL
19 REASON I NEED TO CHANGE THAT TIME THE DAY BEFORE, WE'LL TRY
20 AND GET AN EMAIL NOTICE OUT TO ALL OF YOU.

21 MS. MANIFOLD: YOUR HONOR, AND WE'LL WELCOME TO USE
22 THE SAME CONFERENCE CALL AND NUMBERS.

23 AND JUST SO PLAINTIFFS ARE CLEAR, OUR SUPPLEMENTAL
24 BRIEF WOULD NOT BE DUE ON JUNE 11TH. WE'RE KICKING THOSE
25 DATES OUT. AND IF WE'RE BACK ON THE PHONE WITH THE COURT ON

1 THE 17TH, THEN, WE WILL IN ESSENCE RESET THE DATES FOR EITHER
2 A SUPPLEMENTAL FILING -- A SUPPLEMENTAL MEMO AND/OR AN ORAL
3 ARGUMENT.

4 IS THAT CORRECT?

5 THE COURT: THAT'S -- I HAVEN'T ORDERED AN
6 SUPPLEMENTAL BRIEF, AND I'M NOT GOING TO ACCEPT IT UNTIL I
7 KNOW THAT YOU FOLKS KNOW WHAT THE BRIEF IS ABOUT.

8 MS. MANIFOLD: OKAY. THANK YOU.

9 THE COURT: SO, YOU'RE NOT ENTITLED TO THAT AS OF
10 RIGHT UNDER OUR LOCAL RULE, AND I'M NOT ORDERING IT.

11 OKAY?

12 IF WE'RE GOING TO HAVE A HEARING ON THIS, THEN,
13 WE'RE GOING TO SET A NEW DATE. AND WE'RE GOING TO SET A NEW
14 DATE FOR THE HEARING. BUT I'D LIKE TO GIVE YOU FOLKS ANOTHER
15 SHOT AT WORKING THIS OUT. RECOGNIZING THAT THINGS HAVE MOVED
16 AND CHANGED, AND THAT YOU NOW HAVE THE BENEFIT OF, DUBIOUS AS
17 IT MAY BE, OF MY THOUGHTS ON THE MOTION.

18 MS. MANIFOLD: THANK YOU VERY MUCH, YOUR HONOR.
19 YOU'VE BEEN VERY HELPFUL.

20 THE COURT: OKAY.

21 MS. LE MOINE: THANK YOU.

22 THE COURT: ALL RIGHT. ANYTHING ELSE?

23 MS. MANIFOLD: AND FOR THE CORRECTED FILING, MAY WE
24 GO AHEAD AND JUST HAVE LEAVE TO FILE THE CORRECTED FILING SO
25 WE HAVE THE FORMATTING CORRECT ON WHAT'S BEFORE THE COURT?

1 OR SHOULD WE BOTHER?

2 THE COURT: I DON'T KNOW WHAT'S WRONG WITH IT.
3 WHAT'S WRONG WITH YOUR FILING?

4 MS. MANIFOLD: THERE WERE --

5 MS. LE MOINE: I CAN -- SINCE IT'S MY FAULT, I GET
6 -- THE CHART -- ONE OF THE CHART EXCERPTS OF THE PRIVILEGE
7 LOG THAT PLAINTIFFS INCLUDED IN THEIR SECTION STARTING ON
8 PAGE 20 --

9 THE COURT: YES.

10 MS. LE MOINE: -- DOESN'T -- THE NUMBERS ARE OFF.
11 IT'S NOT -- NOT ALL THE NUMBERS THAT THEY'RE CHALLENGING ARE
12 INCLUDED.

13 SO, IT'S ACTUALLY NOT A TERRIBLE ERROR BECAUSE YOU
14 CAN REFER TO THE ACTUAL LOG.

15 MS. MANIFOLD: YES.

16 THE COURT: YES. NO, THE LOG -- THE LOG ITSELF IS
17 --

18 MS. LE MOINE: SOMEHOW IN THE MYSTERIOUS FORMATTING
19 THAT GOES ON WITH MICROSOFT WORD THAT IS BEYOND MY
20 COMPREHENSION, THE LOGS GOT TO BE -- THE EXCERPTS IN THE
21 DRAFT GOT SCREWED UP.

22 THE COURT: I WASN'T LOOKING -- I WASN'T LOOKING AT
23 WHAT WAS IN -- WHAT I WAS LOOKING AT WAS EXHIBIT A, WHICH I
24 UNDERSTAND TO BE THE ACTUAL DOCUMENT.

25 MS. LE MOINE: RIGHT. YES.

1 THE COURT: IF THAT'S FINE, I DON'T CARE THAT A
2 COPY OF THE DOCUMENT IS NOT A COPY OF THE DOCUMENT. YOU'VE
3 MADE YOUR RECORD, LAWYERS, AND YOUR RECORD IS -- YOUR
4 LAWYERLY RECORD IS THAT EXHIBIT A IS THE FINE DOCUMENT.
5 THAT'S ALL I'LL LOOK AT.

6 MS. LE MOINE: AND EXHIBIT B IS THE REVISED AS FOR
7 JUNE 2ND.

8 MS. MANIFOLD: AND I AGREE ON BOTH.

9 THE COURT: OKAY.

10 WELL, EXHIBIT B AS IT'S NOW BEEN FILED, YES.

11 MS. MANIFOLD: YES.

12 THE COURT: THAT WAS A BIGGER ISSUE, BUT YOU FOLKS
13 HAVE RESOLVED IT. SO, THAT'S FINE.

14 MS. MANIFOLD: RIGHT.

15 THE COURT: OKAY. SO --

16 MS. MANIFOLD: THAT WAS MY FAULT.

17 (LAUGHTER.)

18 THE COURT: WE'RE NOT LOOKING BACK. WE'RE LOOKING
19 FORWARD, FOLKS.

20 MS. MANIFOLD: THANK YOU, YOUR HONOR.

21 THE COURT: IT'S NOT --

22 MS. LE MOINE: THANK YOU VERY MUCH, YOUR HONOR.
23 APPRECIATE IT.

24 THE COURT: NOT AT ALL.

25 ANYTHING ELSE WE NEED TO COVER?

1 MS. MANIFOLD: NOT ON THE PLAINTIFF'S SIDE. THANK
2 YOU.

3 MS. LE MOINE: NOT ON THE DEFENSE SIDE EITHER.
4 THANK YOU, YOUR HONOR.

5 THE COURT: ALL RIGHT. WE'LL SEND OUT A -- WE'LL
6 SEND OUT A QUICK ELECTRONIC ORDER ON THIS.

7 THANK YOU FOLKS FOR YOUR TIME TODAY. AND GOOD LUCK
8 IN YOUR DISCUSSIONS.

9 WE'RE DONE.

10 MS. MANIFOLD: THANK YOU.

11 MS. LE MOINE: THANK YOU, YOUR HONOR.

12 (PROCEEDINGS CONCLUDED 2:37 P.M.)
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

/S/ DOROTHY BABYKIN

6/9/14

FEDERALLY CERTIFIED TRANSCRIBER

DATED

DOROTHY BABYKIN
