

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  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: GOOGLE REFERRER HEADER CASE NO. CV-10-4809-EJD  
PRIVACY LITIGATION.

SAN JOSE, CALIFORNIA

AUGUST 23, 2013

PAGES 1 - 49

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFFS: NASSIRI & JUNG  
BY: KASSRA P. NASSIRI  
47 KEARNEY STREET, SUITE 700  
SAN FRANCISCO, CALIFORNIA 94108

ASCHENBRENER LAW, P.C.  
BY: MICHAEL ASCHENBRENER  
795 FOLSOM STREET, FIRST FLOOR  
SAN FRANCISCO, CALIFORNIA 94107

PROGRESSIVE LAW GROUP  
BY: ILAN CHOROWSKY  
1 N. LASALLE STREET, SUITE 2255  
CHICAGO, ILLINOIS 60602

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,  
TRANSCRIPT PRODUCED WITH COMPUTER.

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

A P P E A R A N C E S: (CONT'D)

FOR THE DEFENDANTS:

MAYER BROWN  
BY: EDWARD D. JOHNSON  
TWO PALO ALTO SQUARE, SUITE 300  
PALO ALTO, CALIFORNIA 94306

O'MELVENY & MYERS  
BY: RANDALL W. EDWARDS  
28TH FLOOR  
TWO EMBARCADERO CENTER  
SAN FRANCISCO, CALIFORNIA 94111

1 SAN JOSE, CALIFORNIA

AUGUST 23, 2013

2 P R O C E E D I N G S

3 (COURT CONVENEED.)

4 THE CLERK: CALLING CASE NUMBER 10-4809, IN RE:  
5 GOOGLE REFERRER HEADER PRIVACY LITIGATION. ON FOR MOTION FOR  
6 PRELIMINARY APPROVAL.

7 COUNSEL, COME FORWARD AND STATE YOUR APPEARANCES.

8 MR. JOHNSON: GOOD MORNING, YOUR HONOR. EDWARD  
9 JOHNSON FROM MAYER BROWN FOR GOOGLE.

10 MR. EDWARDS: GOOD MORNING, YOUR HONOR. RANDALL  
11 EDWARDS FROM O'MELVENY & MYERS ALSO FOR GOOGLE.

12 MR. ASCHENBRENER: GOOD MORNING, YOUR HONOR.  
13 MICHAEL ASCHENBRENER ON BEHALF OF PLAINTIFFS AND THE PUNITIVE  
14 CLASS.

15 THE COURT: THANK YOU. GOOD MORNING.

16 MR. NASSIRI: GOOD MORNING, YOUR HONOR. KASSRA  
17 NASSIRI FOR NASSIRI & JUNG ON BEHALF OF THE PLAINTIFFS.

18 THE COURT: THANK YOU.

19 MR. CHOROWSKY: GOOD MORNING, YOUR HONOR. ILAN  
20 CHOROWSKY FOR PROGRESSIVE LAW GROUP FOR PLAINTIFFS.

21 THE COURT: THANK YOU. GOOD MORNING. PLEASE BE  
22 SEATED. THANK YOU.

23 WELL, I HAVE YOUR DOCUMENTS HERE REGARDING THIS  
24 PRELIMINARY APPROVAL, AND I DO HAVE SOME QUESTIONS I WANTED TO  
25 ASK YOU.

1 FIRST OF ALL, LET ME THANK YOU FOR YOUR EFFORTS IN PUTTING  
2 THIS TOGETHER. THIS IS AN INTERESTING LAWSUIT. AND IT SOUNDS  
3 LIKE, MR. NASSIRI, I DON'T KNOW HOW YOU WOULD FIT ALL OF YOUR  
4 CLIENTS IN YOUR OFFICE. YOU MIGHT HAVE TO RENT A FEW STADIUMS  
5 TO ACCOMPLISH THAT. IT SOUNDS LIKE THAT'S THE SIZE OF THE --

6 MR. NASSIRI: IT'S ENORMOUS, YOUR HONOR.

7 THE COURT: SO I WANTED TO GO THROUGH SOME OF THE  
8 ASPECTS OF THIS SETTLEMENT HERE. AND I GUESS IT LOOKS LIKE  
9 THIS IS AN OVERVIEW, AND I'LL INVITE COUNSEL TO TELL ME ABOUT  
10 THIS IN A COUPLE OF MINUTES. IT SOUNDS LIKE BECAUSE OF THE  
11 SIZE OF THE CLASS ACTUAL REMUNERATION, IF YOU WILL, TO AN  
12 INDIVIDUAL CLASS MEMBER IS VIRTUALLY IMPOSSIBLE. IT CAN'T  
13 HAPPEN EVEN IF YOU SENT THEM ONE CENT, A PENNY. THE COST OF  
14 ADMINISTRATION OF THAT WOULD DWARF ANY POSSIBLE SETTLEMENT.

15 AND I GUESS WHAT WE'RE SEEING IS THESE LARGE CLASSES AND  
16 HOW TO RESOLVE THEM IN SUCH A WAY THAT THERE'S SOME BENEFIT TO  
17 THE CLASS MEMBERS, OR AS IN THIS CASE IS SUGGESTED A PURE  
18 CY PRES RESOLUTION, THAT THERE'S SOME BENEFIT TO THE CLASS THAT  
19 IS SOMEWHAT RELATED TO THE ISSUES IN THE LAWSUIT. AND I'D LIKE  
20 TO FOCUS ON SOME OF THOSE ISSUES INITIALLY.

21 SO, MR. NASSIRI, WHY DON'T I GIVE YOU TWO MINUTES TO GIVE  
22 ME A SYNOPSIS OF THIS LAWSUIT AND WHAT IT IS ABOUT AND WHY YOU  
23 FEEL THAT THIS RESOLUTION IS APPROPRIATE.

24 MR. NASSIRI: WOULD YOU LIKE ME TO STEP UP, YOUR  
25 HONOR?

1 THE COURT: I WOULD, YES. THANK YOU.

2 MR. NASSIRI: THANK YOU FOR THE OPPORTUNITY. THIS  
3 IS, AS YOUR HONOR NOTED, AN INTERESTING LAWSUIT AND IT SEEMS TO  
4 BE KIND OF SUBJECT MATTER THAT IS OF GREATER AND GREATER  
5 INTEREST.

6 THE LAWSUIT IS -- TECHNICALLY IT'S ABOUT THE DISCLOSURE OF  
7 SEARCH QUERIES TO THIRD PARTIES.

8 MORE BROADLY SPEAKING IT'S KIND OF ABOUT SOME OF THE  
9 PRIVACY CONCERNS IN GENERAL AND THE INNOVATIONS IN TECHNOLOGY  
10 THAT HAVE BEEN OCCURRING AT A TREMENDOUS PACE THAT MAKES THINGS  
11 THAT JUST FIVE YEARS AGO DISCLOSURES OF INFORMATION AND DATA  
12 THAT JUST FIVE YEARS AGO SEEMED PRETTY INNOCUOUS LIKE IT IS  
13 ANONYMIZED HAS TURNED IT INTO SOMETHING ELSE COMPLETELY AND IT  
14 HAS BEEN REIDENTIFIED AND BECAUSE OF ADVANCES IN COMPUTER  
15 SCIENCE AND ALL OF THE MONEY AND ATTENTION THAT HAS BEEN GIVEN  
16 TO THESE EFFORTS PRIVACY IS REALLY AT ISSUE NOW IN ALMOST  
17 EVERYTHING WE DO ON LINE.

18 THE COURT: THAT'S WHY YOU FILED THIS LAWSUIT ON  
19 BEHALF OF YOUR CLIENTS I PRESUME BECAUSE YOU FELT THERE WAS AN  
20 INVASION OF THEIR PRIVACY, THEY FELT THERE WAS AN INVASION OF  
21 THEIR PRIVACY AND THEY SEEK REMEDIES IN THE COURT. THAT'S WHAT  
22 IT WAS ABOUT, RIGHT?

23 MR. NASSIRI: THAT'S RIGHT, YOUR HONOR.

24 THE COURT: OKAY.

25 MR. NASSIRI: AND EVERY TIME THE NATURE OF THE

1 SCIENCE IS THAT ANY PIECE OF INFORMATION, WHETHER IT SEEMS  
2 ANONYMOUS OR NOT ON ITS OWN, WHEN YOU START AGGREGATING DATA IT  
3 GETS POSSIBLE TO REIDENTIFY INFORMATION AND TO CREATE PRETTY  
4 DETAILED PROFILES. THE INFORMATION NEVER GOES AWAY. THE  
5 STORAGE IS PRACTICALLY FREE, AND YOU HAVE THIS GIANT DATABASE  
6 IN THE SKY.

7 AND I HAVE TO SAY, YOUR HONOR, WHEN WE FILED THIS CASE AND  
8 I WOULD TALK TO PEOPLE ABOUT IT, THEY WOULD LOOK AT ME LIKE  
9 WHERE IS YOUR TINFOIL HAT TO PREVENT THE RAYS, YOU KNOW,  
10 THEY'RE HACKING INTO YOUR BRAIN.

11 BUT I THINK NOW PEOPLE ARE STARTING TO REALIZE THAT THIS  
12 IS REAL STUFF. AND EVERY LITTLE BIT OF DATA THAT IS RELEASED  
13 ABOUT PEOPLE AND IS ASSOCIATED WITH PEOPLE, WHETHER IS SEEMS  
14 ANONYMOUS OR NOT, WHETHER IT'S ASSOCIATED WITH AN IP ADDRESS OR  
15 ASSOCIATED WITH AN ISP SERVER, IF THERE'S ANY INFORMATION IN  
16 THE SEARCH QUERY AT ALL, IT CAN BE CONNECTED TO SOMETHING ELSE  
17 THAT WILL EVENTUALLY LEAD YOU BACK TO THE INDIVIDUAL PERSON.

18 SO THAT WAS KIND OF THE BASIS AND IN A VERY GENERAL WAY  
19 FOR WHY WE FILED THE LAWSUIT.

20 THE COURT: AND YOU FELT THAT, AND YOU TELL ME IF  
21 I'M WRONG HERE, BUT YOU FELT, AS YOUR CLIENTS FELT, THAT THIS  
22 WAS WRONG, AND IT NEEDED TO BE CORRECTED?

23 MR. NASSIRI: THAT'S RIGHT, YOUR HONOR. IT NEEDED  
24 TO BE ADDRESSED PARTICULARLY AT THE TIME AND STILL TODAY.

25 THE COURT: THERE'S A DIFFERENCE BETWEEN ADDRESSING

1 IT AND CORRECTING IT.

2 MR. NASSIRI: AND IT NEEDED TO BE CORRECTED. AND  
3 ONE OF THE -- AND PARTICULARLY WHAT WE FOCUSED ON IN THE  
4 LAWSUIT AND IN OUR CLAIMS AND IN PARTICULAR THAT 2702 CLAIM  
5 UNDER THE STORED COMMUNICATIONS ACT WAS THIS IDEA OF CONSENT,  
6 THAT PEOPLE NEEDED TO KNOW -- IT'S NOT NECESSARILY ILLEGAL OR  
7 WRONG FOR GOOGLE OR ANYBODY ELSE TO DO WHAT THEY DO WITH  
8 PEOPLE'S DATA. AND THERE ARE CERTAINLY A LOT OF BENEFITS TO  
9 THE WORK THAT THEY'RE DOING.

10 BUT WHAT WE FELT WAS WRONG AND NEEDED TO BE ADDRESSED WAS  
11 THAT PEOPLE NEEDED TO KNOW, AND THEY NEEDED TO OPT IN. THEY  
12 NEEDED TO UNDERSTAND, HEY, WHEN I USE GOOGLE AND I TYPE MY NAME  
13 OR ANYTHING INTO A SEARCH QUERY BOX, THERE'S A GOOD CHANCE THAT  
14 SOMEBODY IS GOING TO KNOW IT WAS ME THAT DID THAT AND AM I OKAY  
15 WITH THAT OR NOT?

16 AND SO THIS ISSUE OF CONSENT AND INFORMED CONSENT IS ONE  
17 THAT WE BELIEVE IS VERY IMPORTANT.

18 THIS SHOULDN'T BE TAKING PLACE KIND OF WITHOUT THE  
19 KNOWLEDGE OF THE PEOPLE WHO ARE USING THE SERVICES.

20 AND PART OF OUR EFFORTS IN STRUCTURING THE SETTLEMENT TO  
21 CREATE REAL VALUE AND BENEFIT FOR THE CLASS WAS AIMED AT THAT  
22 KIND OF AN ISSUE, EDUCATION, TRANSPARENCY, ACCOUNTABILITY, AND  
23 MAKING SURE THAT PEOPLE HAVE AN IDEA THAT WHEN THEY USE THESE  
24 KINDS OF SERVICES AND THEY SUBMIT THEIR PERSONAL INFORMATION,  
25 WHETHER THEY THINK IT'S ANONYMOUS OR NOT, THAT, HEY, THERE'S A

1 GOOD CHANCE THAT THIS IS GOING TO BE ATTACHED TO ME DOWN THE  
2 ROAD.

3 THE COURT: SO THE LAWSUIT WAS NOT DESIGNED TO STOP  
4 THE PRACTICE BECAUSE THE SETTLEMENT DOESN'T.

5 MR. NASSIRI: IT IS NOT DESIGNED TO STOP THE  
6 PRACTICE, YOUR HONOR.

7 THE COURT: THE SETTLEMENT SAYS THEY CAN KEEP GOING  
8 AND THEY ARE GOING TO KEEP DOING WHAT THEY'RE DOING, BUT AS I  
9 STAND HERE AS CHAMPION OF MY CLIENTS, WHAT WE HAVE DONE FOR  
10 YOU, AS YOU SPEAK TO THOSE STADIUMS UP AND DOWN THE BAY AREA  
11 WHERE YOUR CLIENTS ARE SITUATED IN LOUD SPEAKERS SUFFICIENT SO  
12 THEY CAN ALL HEAR YOU, WHAT WE HAVE DONE FOR YOU IS WE HAVE  
13 BEEN ABLE -- YOU NOW KNOW THAT THIS IS WHAT GOOGLE DOES AND  
14 THIS IS WHAT WE HAVE DONE FOR YOU IN THIS LAWSUIT.

15 IS THAT IN ESSENCE WHAT IS HAPPENING HERE?

16 MR. NASSIRI: THAT'S NOT THE EXTENT OF IT. THAT'S A  
17 MAJOR PIECE OF IT BECAUSE, AS YOU POINTED OUT, YOUR HONOR, THIS  
18 IS NOT SOMETHING -- ONLY CONGRESS COULD LEGISLATE TO STOP THE  
19 PRACTICE AND SAY CONSENT OR NO CONSENT, GOOGLE, YOU CANNOT DO  
20 THIS.

21 THAT'S NOT FOR US. FOR US WE BELIEVE THAT WE CAN AND DO  
22 HAVE THE TOOLS AND HAVE THE DESIRE TO MAKE SURE THAT PEOPLE  
23 CONSENTED BECAUSE THAT IS THE LAW UNDER THE STORED  
24 COMMUNICATIONS ACT.

25 THESE THINGS CANNOT BE DISCLOSED WITHOUT CONSENT. CONSENT



1 WAS LACKING.

2 THE COURT: SO CONSENT IS PROVIDING INFORMATION TO  
3 YOUR CLIENTS, TO THE PUBLIC?

4 MR. NASSIRI: YES.

5 THE COURT: IF THERE IS ANY PUBLICITY ABOUT THIS  
6 LAWSUIT, I DON'T KNOW IF THERE IS OR NOT, BUT PEOPLE WHO ARE  
7 INVOLVED IN TECHNOLOGY SEEM TO FOLLOW THOSE THINGS, MY SENSE IS  
8 THAT THE WORD IS ALREADY OUT, ISN'T IT?

9 MR. NASSIRI: THE WORD IS OUT, YOUR HONOR. AND  
10 YOU'LL SEE AND YOU'LL HEAR FROM US, IF YOU WOULD LIKE TO AND  
11 IT'S IN OUR PAPERS, THAT THE PUBLICATION PLAN THAT WE HAVE WILL  
12 HIT EVERYBODY. EVERYBODY WHO IS ON LINE IS GOING TO SEE NOTICE  
13 OF THIS AND JUST BY SEEING NOTICE OF THIS AND KIND OF ASKING  
14 WHAT THE CASE IS ABOUT I THINK, YOU KNOW, PEOPLE WILL START TO  
15 SAY, OH, THAT WILL INTEREST ME, I WANT TO KNOW AND WHAT IS  
16 GOING ON WITH MY DATA.

17 SO THAT IS A BIG PART OF WHAT WE ARE DOING. I THINK, YOU  
18 KNOW, THIS IS ONE OF THOSE INTERESTING CASES WHERE, WHERE THE  
19 NOTICE PLAN ITSELF IS GOING TO DO A LOT OF GOOD. THE NOTICE  
20 PLAN BY ITSELF IS A GREAT BENEFIT BECAUSE IT BRINGS ATTENTION  
21 TO WHAT IS GOING ON AND IT'S ALMOST IN A SENSE A WAY OF TELLING  
22 PEOPLE, HEY, WAKE UP AND SEE WHAT IS HAPPENING WITH YOUR DATA,  
23 WHEN YOU USE GOOGLE UNDER THESE CIRCUMSTANCES, YOUR SEARCH  
24 QUERIES WILL BE TRANSMITTED TO THIRD PARTIES.

25 THE COURT: IS THAT KNOWLEDGE PRETTY MUCH COMMON

1 KNOWLEDGE IN THE INTERNET NOW?

2 MR. NASSIRI: NO.

3 THE COURT: YOU HEAR ABOUT AND WE READ ABOUT  
4 ARTICLES AND ABOUT THERE IS NO PRIVACY ANY MORE, THE LOSS OF  
5 PRIVACY AND THIS META DATA AND ALL OF THESE THINGS. ISN'T THAT  
6 BECOMING COMMON KNOWLEDGE THAT PARENTS TELL THEIR FIVE-YEAR-OLD  
7 KIDS, WHEN YOU DO SEARCHES, YOU WILL BE DISCOVERED AND ALL OF  
8 THESE THINGS? ISN'T IT COMMON KNOWLEDGE NOW?

9 MR. NASSIRI: I WOULD SAY SINCE THE EDWARD SNOWDEN  
10 AFFAIR IT'S MORE PREVALENT. PEOPLE TALK ABOUT IT AND I THINK  
11 THEY PAY LIP SERVICE TO IT, BUT EVEN THE PEOPLE IN THIS ROOM  
12 WHO HAVE STUDIED IT, I WOULD SAY THE EXTENT TO WHAT IS GOING  
13 ON, THE DEVIL IS IN THE DETAILS HERE, IT REALLY IS. AND MOST  
14 PEOPLE I TALK TO KIND OF REALLY DON'T UNDERSTAND THE MECHANISMS  
15 FOR IT AND THE CONSEQUENCES.

16 AND IN PARTICULAR THE QUESTION THAT YOU ASK THAT IS  
17 DIRECTLY RELEVANT HERE IS DO PEOPLE KNOW THAT WHEN THEY TYPE  
18 THEIR SEARCH QUERIES INTO GOOGLE, THAT THOSE SEARCH QUERIES MAY  
19 END UP BEING ASSOCIATED WITH THEM IN THE FUTURE? I WOULD SAY  
20 ANECDOTALLY PROBABLY NOT FOR MOST PEOPLE.

21 THE COURT: AND YOU THINK THAT THIS LAWSUIT WOULD  
22 CURE THAT LACK OF KNOWLEDGE?

23 MR. NASSIRI: I WISH I COULD BE --

24 THE COURT: YOUR COLLEAGUE IS NODDING HIS HEAD UP  
25 AND DOWN WHICH IS A UNIVERSAL SIGN FOR AGREEMENT I THINK.

1 MR. NASSIRI: YES. WELL, YOUR HONOR, THAT CERTAINLY  
2 IS THE GOAL AND I THINK WE ARE PUTTING TOGETHER A REALLY GOOD  
3 PROGRAM TO DO THAT, AND I THINK WE'RE GOING TO GO A LONG WAYS  
4 IN DOING THAT.

5 THE COURT: AND THE PIECE THAT ACCOMPLISHES THAT, I  
6 GUESS IT'S SPECIFIC TO GOOGLE IS THE FAQ THAT THEY'RE GOING TO  
7 ADD, I SUPPOSE?

8 MR. NASSIRI: SPECIFIC TO GOOGLE, YOUR HONOR, YES,  
9 IN TERMS OF THE BUSINESS PRACTICE CHANGE.

10 AS WE ALREADY DISCUSSED, THEY'RE NOT GOING TO CHANGE THEIR  
11 PRACTICES PER SE, AND WE DON'T BELIEVE THAT THAT WOULD BE  
12 APPROPRIATE FROM THE SCOPE OF THE CLAIMS THAT WE BROUGHT.

13 BUT THEY ARE GOING TO MAKE THEIR DISCLOSURES MORE ROBUST  
14 AND MORE PROMINENT AND THAT IN CONJUNCTION WITH THE NOTICE  
15 PROGRAM AND THE CY PRES EFFORTS AND GENERALLY THE CLIMATE IN  
16 THE MEDIA THESE DAYS I THINK WILL GO A LONG WAY IN KIND OF  
17 REALLY QUALITATIVELY INCREASING THE PUBLIC'S AWARENESS.

18 THE COURT: WHAT DO THE STUDIES TELL US AND THE  
19 RESEARCH TELL US ABOUT LEADERSHIP OF FAQ'S?

20 MR. NASSIRI: WELL, THAT'S A GOOD QUESTION, YOUR  
21 HONOR.

22 THE COURT: THANK YOU.

23 MR. NASSIRI: THAT'S WHY YOU SIT THERE. I DON'T  
24 HAVE SPECIFIC NUMBERS FOR YOU. I KNOW THAT THERE ARE A LOT OF  
25 COMMENTATORS OUT THERE AND CRITIQUES WHO SAY IT'S PRACTICALLY

1 NIL AND IT'S NOT GOING TO DO ANYTHING.

2 THE COURT: WHAT DO YOU THINK?

3 MR. NASSIRI: I THINK IT'S A MIXED BAG, AND I DON'T  
4 THINK THAT THAT BY ITSELF WOULD BE SUFFICIENT TO MAKE SURE THAT  
5 PEOPLE HAVE INFORMED CONSENT AND THAT THEY KNOW WHAT THEY'RE  
6 DOING WHEN THEY ENTER SEARCH QUERIES.

7 THE COURT: WHAT WOULD BE THE BEST WAY TO ACCOMPLISH  
8 THAT? THAT'S THE GOAL OF THE LAWSUIT. WHAT IS THE BEST WAY TO  
9 ACCOMPLISH THAT?

10 MR. NASSIRI: HYPOTHETICALLY SPEAKING? YOU KNOW,  
11 GOOGLE IS VERY, VERY, VERY PROTECTIVE OF THE REAL STATE ON ITS  
12 SEARCH PAGE. IT HAS BEEN FOR A LONG TIME. IT'S VERY BLANK.  
13 THERE'S NOT MUCH THERE.

14 IF WE HAD REALLY, REALLY BIG FLASHING NEON WORDS THAT SAID  
15 YOUR DISCLOSURES MAY BE TRANSMITTED, YOUR SEARCH QUERIES MAY BE  
16 TRANSMITTED, THAT WOULD PROBABLY BE THE BEST RIGHT THERE AT THE  
17 TIME THE PEOPLE ARE GOING TO MAKE THIS DECISION, DO I WANT TO  
18 PUT THIS IN THE SEARCH BOX, THAT WOULD BE THE BEST.

19 I DON'T THINK THAT WE CAN --

20 THE COURT: I'LL ASK MR. JOHNSON ABOUT GIVING HIM A  
21 PREVIEW OF WHAT IS TO COME HERE. IT'S LIKE THE PITCHER TELLING  
22 YOU I'M GOING TO THROW YOU A FAST BALL AND IT'S A CURVE BALL  
23 AND SO YOU'LL HAVE THE BENEFIT OF THE STRIKE ZONE.

24 MR. NASSIRI: WELL, YOUR HONOR, YOU KNOW, WE DO HAVE  
25 THE SECOND BEST. GOOGLE DOES HAVE ON ITS SEARCH PAGE A LINK TO

1 THE PRIVACY POLICY AND WITH THE ROBUST PUBLICATION AND NOTICE  
2 PLAN ALONG WITH THE EDUCATION AND THE OUTREACH --

3 THE COURT: I WANT TO TALK TO YOU ABOUT THAT IN A  
4 MINUTE, TOO.

5 MR. NASSIRI: OKAY. -- WE EXPECT THAT A LOT MORE  
6 PEOPLE WILL CLICK ON THE PRIVACY POLICY AND WHEN THEY DO THAT,  
7 IT WILL BE A LOT EASIER FOR THEM TO FIND THE FAQ'S AND SEE  
8 EXACTLY WHAT IT IS THAT GOOGLE DOES WITH SEARCH QUERIES.

9 THE COURT: OKAY. YOU KNOW, THE EDUCATIONAL  
10 PROGRAMS, WE SEE THESE A LOT IN THESE CASES -- NOT A LOT BUT  
11 IT'S BECOMING WITH MORE FREQUENCY THAT RESOLUTIONS IN CASES  
12 RESULT IN CY PRES TO VARIOUS ORGANIZATIONS AND THINK TANKS AND  
13 STUFF LIKE THAT, THAT SUPPORT GREATER INFORMATION FOR CONSUMERS  
14 FOR THE PUBLIC.

15 AND I'M CURIOUS, IT SEEMS LIKE THE STUDENTS SHOULD BE THE  
16 RECIPIENT OF THAT INFORMATION. SHOULDN'T THAT BE THE CORPORATE  
17 WORLD? SHOULDN'T YOU BE EDUCATING THEM AS TO WHAT THEY  
18 SHOULDN'T DO? I MEAN, YOUR CLIENTS PART COMPANY WITH THIS  
19 PRIVACY LAW AND SHOULDN'T THERE BE AN EDUCATION FOR THE  
20 CORPORATE WORLD AS TO WHAT THEY'RE DOING?

21 MR. NASSIRI: CAN YOU -- I'M NOT SURE I UNDERSTAND  
22 THE IMPORT OF THE QUESTION.

23 THE COURT: YES, SURE. YOU KNOW, THESE PROGRAMS,  
24 THESE INITIATIVES, THESE INDIVIDUALS THAT YOU HAVE IDENTIFIED  
25 HERE, THEY'RE GOING TO CREATE, I GUESS, RESEARCH AND EDUCATE

1 THE PUBLIC.

2 MR. NASSIRI: AND SOME TECHNOLOGY AS WELL, YOUR  
3 HONOR.

4 THE COURT: AND THE THOUGHT OCCURS TO ME, WELL,  
5 OKAY, BUT DON'T WE REALLY NEED TO EDUCATE THE CORPORATE WORLD  
6 OF GOOGLES AND WHOEVER DOES THIS THAT THIS IS WRONG? ISN'T  
7 THAT WHAT YOUR PREMISE IS?

8 MR. NASSIRI: WELL, THAT'S A LOADED QUESTION.

9 THE COURT: THAT'S WHY I ASKED IT.

10 MR. NASSIRI: WE WANTED TO STAY WITHIN THE CONFINES  
11 OF THE LAWSUIT. AND, I MEAN, THERE ARE A LOT OF ANSWERS TO  
12 THAT, AND I'M NOT SURE EXACTLY HOW TO STRUCTURE MY RESPONSE.

13 BUT ONE IS THAT THAT SEEMS A LITTLE BIT BEYOND THE SCOPE  
14 OF WHAT WE'RE DOING HERE. AGAIN, OUR PRIMARY CONCERN IS MAKING  
15 SURE THAT PEOPLE ARE INFORMED AND GIVE INFORMED CONSENT.

16 ALSO THAT IS -- BY THE WAY, YOUR HONOR, I THINK ONE OF  
17 THE -- MAY I BRIEFLY EXPLAIN WHAT WE'RE DOING WITH CY PRES SO  
18 THAT --

19 THE COURT: SURE, SURE.

20 MR. NASSIRI: IT'S RELEVANT TO YOUR QUESTION.

21 THE COURT: PLEASE. THANK YOU.

22 MR. NASSIRI: I BELIEVE WE'RE DOING SOMETHING NEW  
23 HERE AND SOME OF THE CRITIQUES ARE MISINFORMED ABOUT WHAT WE'RE  
24 DOING.

25 WE ARE RAISING THE BAR, AND I THINK RAISING THE BAR FOR

1 ALL CY PRES SETTLEMENTS LIKE THIS TO FOLLOW.

2 WE'RE TREATING THE CY PRES ALLOCATION MORE LIKE A GRANT  
3 MAKING ORGANIZATION WOULD TREAT GRANT -- PROSPECTIVE GRANT  
4 RECIPIENTS.

5 THE COURT: ISN'T THAT WHAT THEY TRIED TO DO IN  
6 LANE?

7 MR. NASSIRI: IT'S WHAT THEY TRIED TO DO, BUT I  
8 THINK WE'RE TAKING IT FURTHER.

9 AND SO -- AND I DON'T WANT TO MAKE -- OR I DON'T WANT TO  
10 HAVE MY MOUTH WRITE CHECKS THAT WE CAN'T CASH ULTIMATELY, BUT I  
11 THINK WE'LL GET THERE.

12 THE MONEY WILL TO SPECIFIC PROJECTS. THIS MONEY THAT GOES  
13 TO CY PRES RECIPIENTS IS NOT GOING TO DISAPPEAR INTO THEIR  
14 GENERAL OVERHEAD. AND NOT ONLY WILL THE MONEY GO TO SPECIFIC  
15 PROJECTS, THOSE PROJECTS ARE BEING VETTED BY US VERY CAREFULLY  
16 BEFORE WE EVEN PRESENT THEM TO THE COURT AND THE CLASS TO MAKE  
17 SURE THAT THEY KIND OF ARE WITHIN THE CONFINES OF THE LAWSUIT  
18 AND MEET SOME OF THE OBJECTIVES THAT WE HAVE FRAMED BY THE  
19 LAWSUIT.

20 ONE OF THEM THAT MAY OR MAY NOT END UP BEFORE YOU, YOUR  
21 HONOR, IS AN INITIATIVE BY THE BERKMAN CENTER AT HARVARD LAW  
22 SCHOOL TO BRING TOGETHER --

23 THE COURT: IT'S YOUR ALMA MATER.

24 MR. NASSIRI: IT IS MY ALMA MATER AND SOME PEOPLE  
25 HAVE RAISED AN OBJECTION TO THAT, AND I'M HAPPY TO DISCUSS

1 THAT.

2 BUT WHAT ONE OF THE PROPOSALS THAT THEY HAVE BROUGHT TO  
3 THE TABLE DOES HAVE A CORPORATE ANGLE TO IT, A  
4 CORPORATE EDUCATION ANGLE. AN EDUCATION, BY THE WAY, NOBODY  
5 KNOWS MORE ABOUT THIS THAN GOOGLE SO THEY SHOULD BE EDUCATING  
6 US NOT VICE VERSA.

7 SO -- BUT THIS KIND OF MULTIDISCIPLINARY DIALOGUE I THINK  
8 IS IMPORTANT, AND IT'S SOMETHING THAT WE HOPE TO COVER AMONG  
9 THE PROJECTS THAT WE'RE LOOKING AT FOR CY PRES WHERE YOU WOULD  
10 BRING TOGETHER LEADERS FROM INDUSTRY LIKE GOOGLE, YOU WOULD  
11 BRING TOGETHER PRIVACY ADVOCATES, AND LEGAL PROFESSIONALS AND  
12 ENFORCEMENT, REGULATORY PEOPLE, AND SIT THEM DOWN IN A ROOM AND  
13 GET EVERYBODY'S INPUT INTO WHAT IS GOING ON BECAUSE, AGAIN,  
14 IT'S NOT A SIMPLE QUESTION TO JUST SAY, WELL, GOOGLE, YOU HAVE  
15 TO STOP DOING THIS BECAUSE THERE'S A LOT OF BENEFIT TO WHAT  
16 THEY'RE DOING.

17 ANOTHER PROJECT THAT WE'RE LOOKING AT --

18 THE COURT: SO THAT MIGHT ALSO -- I COULD ENVISION A  
19 CONFERENCE WHERE A CLASS ACTION, PLAINTIFF'S CLASS ACTION  
20 LAWYERS MEET WITH CORPORATE EXECUTIVES OF GOOGLE AND WHOEVER  
21 ELSE, YAHOO AND THESE FOLKS, AND YOU TALK ABOUT THIS IS WHY WE  
22 SUE YOU AND THESE ARE THE ISSUES THAT WE SEE OUR CLIENTS BRING  
23 TO US, WE WANT TO BRING THIS TO YOUR ATTENTION AND HAVE THIS  
24 KIND OF CONVERSATION IN SOME CONFERENCE LEVEL.

25 IS THAT WHAT YOU'RE SUGGESTING?



1 MR. NASSIRI: YOU KNOW WHAT, WE'RE NOT GOING TO  
2 ALLOW ANY CLASS ACTION LAWYERS WITHIN MILES OF THAT ROOM. I  
3 DON'T THINK THEY'RE THE RIGHT KIND OF PEOPLE TO HAVE INVOLVED  
4 IN THESE KINDS OF DISCUSSIONS.

5 NOW, THERE ARE A LOT OF PRIVACY ADVOCATES WHO SHARE THE  
6 SAME KINDS OF INTERESTS THAT LAWYERS DO WHO BRING CASES LIKE  
7 THIS, LIKE ME, AND I WOULDN'T CALL MYSELF A CLASS ACTION LAWYER  
8 OR ANYTHING, THAT PUTS ME IN A BOX.

9 BUT, YOU KNOW, THIS IS NOT ABOUT LAWSUITS FROM MY  
10 PERSPECTIVE OR FROM OUR PERSPECTIVE. THIS IS MORE ABOUT  
11 SOLVING A VERY COMPLICATED PROBLEM.

12 YOU KNOW, ANOTHER INITIATIVE WE ARE LOOKING AT IS --  
13 BECAUSE THESE DATA SETS, HAVING UNRESTRICTED ACCESS TO DATA  
14 SETS IS REALLY IMPORTANT FOR RESEARCH AND ADVANCING TECHNOLOGY  
15 AND DEVELOPING THINGS THAT BENEFIT ALL OF US. SO THERE'S A  
16 BALANCING THAT NEEDS TO TAKE PLACE.

17 HOW DO YOU USE THIS STUFF AND PROTECT PEOPLE'S PRIVACY AT  
18 THE SAME TIME? SO THAT'S ONE INITIATIVE THAT WE'RE LOOKING AT.

19 ANOTHER ONE IS A TECHNOLOGY BASE. SO THAT WOULD BE MORE  
20 POLICY, YOU KNOW, POLICY ORIENTED.

21 ANOTHER INITIATIVE WE'RE CONSIDERING IS TECHNOLOGICAL AS  
22 WELL, YOUR HONOR. BUT THIS ONE IN PARTICULAR WOULD SAY THERE'S  
23 A PROGRAM WHERE YOU HAVE HEALTH DATA, WHICH IS EXTREMELY  
24 SENSITIVE, YOU HAVE THESE HUGE DATA SETS ON PEOPLE'S HEALTH  
25 RECORDS AND HISTORY AND HOW DO YOU MAKE THAT DATA AVAILABLE TO

1 PUBLIC HEALTH AND MEDICAL PROFESSIONALS IN A WAY THAT DOESN'T  
2 VIOLATE PEOPLE'S PRIVACY WHERE NO ONE WOULD DOUBT THAT THOSE  
3 ARE REALLY SENSITIVE DATA POINTS.

4 THE COURT: AND THANK YOU FOR SHARING THOSE IDEAS  
5 WITH ME. AND THESE ARE IDEAS THAT YOU AND YOUR COLLEAGUES HAVE  
6 THOUGHT OF?

7 MR. NASSIRI: WE ARE WORKING COLLABORATIVELY TO  
8 DESIGN PROGRAMS THAT WE THINK ARE GOING TO BE KIND OF RIGHT  
9 SQUARELY ON POINT HERE FOR THIS LAWSUIT, BUT CERTAINLY THE  
10 PEOPLE WE'RE TALKING TO ARE MUCH SMARTER THAN WE ARE AND KNOW A  
11 LOT MORE ABOUT THIS STUFF.

12 THE COURT: SO THAT WAS THE NEXT AREA OF INQUIRY I  
13 HAVE.

14 DO YOU HAVE A WHITE BOOK OF PEOPLE THAT YOU WOULD LIKE TO  
15 CONSULT OR CY PRES RECIPIENTS THAT YOU LOOK TO FOR THESE  
16 ISSUES?

17 MR. NASSIRI: IN THIS CASE IN PARTICULAR, YOUR  
18 HONOR?

19 THE COURT: YES.

20 MR. NASSIRI: WELL -- SO IN THIS CASE IN PARTICULAR  
21 WE DID -- SO CHRIS SOGHOIAN WHO PROVIDED A LOT OF THE  
22 INFORMATION FOR THE COMPLAINT, HE'S A WELL-KNOWN PRIVACY  
23 ADVOCATE WHO WORKS WITH A LOT OF THE INSTITUTIONS THAT  
24 TYPICALLY RECEIVE CY PRES FUNDING, HE WEIGHED IN ON THIS AND HE  
25 TALKED ABOUT KIND OF SOME OF THE PEOPLE THAT HE THOUGHT WOULD

1 BE REALLY USEFUL FOR US TO SPEAK WITH AND THE UNIVERSE OF KIND  
2 OF KNOWN INSTITUTIONS WHO DO THIS KIND OF WORK IS NOT THAT  
3 LARGE.

4 SO WE HAD A KIND OF UNIVERSE, A WHITE BOOK, IF YOU WILL,  
5 YOUR HONOR, BUT ALSO THIS WAS -- THERE WAS A NEGOTIATING ASPECT  
6 TO THIS. WE HAD TO REACH AGREEMENT BETWEEN ALL PARTIES,  
7 BETWEEN THE PLAINTIFFS AND GOOGLE.

8 THE COURT: WITH THE RECIPIENTS OR AS TO THE  
9 RECIPIENTS?

10 MR. NASSIRI: ABOUT, ABOUT -- THAT'S RIGHT. NOW, I  
11 WANT TO BE CLEAR, YOUR HONOR, WHILE GOOGLE DID -- WE DID HAVE  
12 TO AGREE ON THE POTENTIAL POOL OF RECIPIENTS, GOOGLE'S  
13 INVOLVEMENT GOES NO FURTHER THAN THAT.

14 SO THERE'S NO SITUATION HERE IN WHICH, YOU KNOW, LIKE IN  
15 SOME OF THE PRIOR CLASS ACTIONS, CY PRES SETTLEMENTS WHERE  
16 PEOPLE WILL CRITICIZE THEM BECAUSE THE DEFENDANTS KIND OF SAT  
17 ON THE BOARDS OR WERE SOMEHOW CLOSELY AFFILIATED WITH THE  
18 RECEIVING INSTITUTIONS.

19 THAT'S NOT THE CASE HERE, YOUR HONOR.

20 THE COURT: OKAY. SO THANK YOU, THANK YOU FOR THAT.

21 SO I'M CURIOUS ALSO, THE THOUGHT OCCURS TO ME, ARE WE  
22 LOOKING AT YOU INDICATED INDIVIDUALS WHO TYPICALLY RECEIVE  
23 CY PRES I THINK WERE THE WORDS YOU USED.

24 AND SO ARE WE LOOKING AT THE USUAL SUSPECTS THEN?

25 MR. NASSIRI: I THINK EVERYONE ON OUR LIST HAS, HAS

1 BEEN A RECIPIENT.

2 THE COURT: I'M SURE SOMEONE KEEPS RECORDS AND  
3 SOMEONE KEEP NOTES ABOUT WHAT INSTITUTION RECEIVES WHAT AND  
4 WHAT THEY HAVE DONE WITH THOSE MONIES.

5 MR. NASSIRI: WELL, IN THE CLASS ACTION CONTEXT  
6 CERTAINLY, YOUR HONOR, IT'S ALL A MATTER OF RECORD BECAUSE  
7 THEY'RE CLASS ACTIONS.

8 AND TO THE EXTENT THAT THERE IS KIND OF LESS PUBLIC  
9 FUNDING GOING ON WITH THESE INSTITUTIONS, WE ARE REQUIRING THEM  
10 TO PROVIDE US WITH THAT INFORMATION SO WE CAN PRESENT TO THE  
11 COURT AND THE CLASS SO THAT YOUR HONOR AND THE CLASS CAN MAKE  
12 THEIR OWN JUDGMENT ABOUT WHETHER THESE ARE INDEPENDENT  
13 INSTITUTIONS THAT CAN BE RELIED UPON TO USE THE MONEY  
14 OBJECTIVELY.

15 THE COURT: YOU KNOW, THE THOUGHT -- THANK YOU. THE  
16 THOUGHT OCCURRED TO ME ALSO THAT THERE MAY BE SOME -- AND I  
17 DON'T KNOW, I DON'T HAVE ANY PARTISAN FOR ANY SCHOOL. I'LL  
18 JUST MENTION A SMALL SCHOOL, THE UNIVERSITY OF VERMONT, LET'S  
19 SAY, OR SOME SMALL SCHOOL, THAT IS -- HAS STUDENTS AND HAS  
20 PROFESSORS WHO ARE JUST REALLY INCHING TO START -- THEY'RE  
21 EAGER TO GO, THEY HAVE GOT STUDENTS WHO ARE WILLING TO DEVOTE  
22 RESEARCH, TIME, AND PROFESSORS, BUT THEY JUST DON'T HAVE THE  
23 FUNDING.

24 HAVE YOU LOOKED OUT FOR THOSE TYPE OF SCHOOLS OR  
25 INSTITUTION TO SAY, GEE, MAYBE WE SHOULD -- WE'RE IN SILICON

1 VALLEY AND MAYBE WE SHOULD ACT AS ANGELS HERE AND MAYBE WE  
2 SHOULD CEDE SOME OF THOSE PROGRAMS?

3 MR. NASSIRI: WE TOOK A BROAD LOOK, YOUR HONOR,  
4 INCLUDING AT SOME OF KIND OF UPSTARTS, UNKNOWN STARTUPS IF YOU  
5 WILL IN THE SPACE, AND A COUPLE OF THE POTENTIAL PROPOSED  
6 RECIPIENTS I WOULD SAY RELATIVELY SPEAKING WOULD FALL INTO THAT  
7 CATEGORY.

8 THE COURT: THESE THAT YOU HAVE ON THE LIST HERE?

9 MR. NASSIRI: YEAH. I MEAN, I WOULDN'T CALL THEM  
10 UNKNOWNNS BUT THEY'RE RELATIVELY COMPARED TO AARP OR THE BERKMAN  
11 CENTER, THEY'RE KIND OF NEWER PLAYERS.

12 THE COURT: I HAVE TO CONFESS, AARP, I HAVE NEVER  
13 SEEN AN AARP IDENTIFIED AS A RECIPIENT IN ONE OF THESE  
14 LAWSUITS. SO THAT WAS VERY INNOVATIVE.

15 MR. NASSIRI: I BELIEVE THEY HAVE BEEN RECIPIENTS  
16 BEFORE, BUT I DON'T HAVE THAT SPECIFIC INFORMATION AT MY  
17 FINGERTIPS.

18 BUT WE FOCUSSED ON -- WE BELIEVE THE CASE LAW AND COURTS  
19 BEFORE THIS HAVE WANTED SOME KIND OF REPUTATION AND TRACK  
20 RECORD TO HELP KIND OF JUDGE WHETHER OR NOT.

21 THE COURT: RIGHT.

22 MR. NASSIRI: BUT BEYOND THAT, THESE -- THE ENTITIES  
23 THAT WE'VE SELECTED AND MORE WELL-KNOWN ESTABLISHED ENTITIES,  
24 THEY CAN DO MORE NOT JUST BECAUSE OF THE MONEY BUT BECAUSE OF  
25 THEIR EXPERIENCE, THEIR CONNECTIONS, THEIR TRACK RECORD.

1 THE COURT: NO DOUBT ABOUT IT. I UNDERSTAND.

2 MR. NASSIRI: AND EVEN, YOU KNOW, FOR EXAMPLE,  
3 HAVING STANFORD CIS ON THE LIST, YOU KNOW, THOSE PEOPLE ARE  
4 VERY WELL CONNECTED AND ARE -- I THINK THAT THEY STAND A BETTER  
5 CHANCE, WITHIN THE TECH WORLD, AND -- BUT THEY STILL HAVE --  
6 THEIR INTERESTS ARE IN THE RIGHT PLACE AND THEIR MISSION.

7 THE COURT: I APPRECIATE THAT. AND I GUESS WHAT I  
8 WAS SUGGESTING IS WHAT ABOUT THE LITTLE GUY?

9 MR. NASSIRI: YOU KNOW, WE HAVE A COUPLE OF LITTLE  
10 GUYS ON THE LIST, AND THEY'LL PROBABLY RECEIVE LESS MONEY THAN  
11 THE OTHERS BECAUSE THEY HAVEN'T PROVEN THEMSELVES TO THE EXTENT  
12 THAT SOME OF THE OTHERS HAVE.

13 THE COURT: AND THE OBSERVATION I'M LOOKING AT IT  
14 FROM 30,000 FEET, HOW DO YOU GET STARTED?

15 MR. NASSIRI: YEAH.

16 THE COURT: YOU CAN'T EXPECT SOMEBODY FROM THE SMALL  
17 SCHOOL WHO HAS ALL OF THE ENERGY OF STUDENTS AND PROFESSORS,  
18 YOU CAN'T EXPECT THEM TO PRODUCE LIKE A STANFORD OR SOMEBODY  
19 ELSE, BUT YOU HAVE TO GIVE THEM A CHANCE.

20 MR. NASSIRI: TO BE SURE, YOUR HONOR, EVERYTHING  
21 YOU'RE SAYING RESONATES WITH ME, AND I HAVE A LOT I WOULD DO IF  
22 I HAD THE BILL GATES FOUNDATION KIND OF MONEY UNDER MY FINGERS.  
23 BUT HERE --

24 THE COURT: WELL, THIS IS A GOOD START. THIS IS A  
25 SETTLEMENT.

1 MR. NASSIRI: WELL, HERE WE FEEL LIKE WE HAVE A  
2 RESPONSIBILITY TO THE CLASS. WE HAVE TO STICK WITHIN  
3 APPLICABLE NINTH CIRCUIT PRECEDENT, AND I THINK THAT, YOU KNOW,  
4 WE CAN'T GO OUT AND DO ALL OF THE THINGS THAT WE WOULD LIKE TO  
5 DO. IT WOULDN'T BE APPROPRIATE.

6 THE COURT: OF COURSE, OF COURSE. I UNDERSTAND  
7 THAT.

8 BUT IT'S A SIGNIFICANT AMOUNT OF MONEY COMING FROM A  
9 PUBLIC EMPLOYEE. THIS IS A LOT OF MONEY.

10 MR. NASSIRI: I AGREE, YOUR HONOR, THIS IS A LOT OF  
11 MONEY, AND WE'RE EXCITED ABOUT IT. I CAN'T WAIT TO PRESENT TO  
12 YOU THE PROPOSAL AND TO THE PUBLIC. AND I THINK IT'S GOING TO  
13 BE A QUANTUM LEAP FROM WHAT HAS BEEN DONE IN THE PAST.

14 THE COURT: SO LET ME -- THANK YOU FOR THAT. I  
15 APPRECIATE THAT. I APPRECIATE THE COLLOQUY HERE AND THAT HELPS  
16 ME AS FAR AS THE CY PRES ISSUES.

17 THERE ARE SOME OTHER THINGS THAT I WOULD LIKE TO GO  
18 THROUGH THE DOCUMENT WITH YOU. I KNOW YOUR COLLEAGUE OPPOSITE  
19 IS DYING TO GET UP HERE AND TALK TO ME ABOUT HIS COMMENTS TO  
20 THIS, BUT LET ME GO THROUGH SOME OF THESE ITEMS THAT I HAVE  
21 IDENTIFIED IF I MAY, PLEASE.

22 I'M LOOKING AT THE SETTLEMENT AGREEMENT. I'M LOOKING  
23 AT -- YES, 3.1 IS THE RELIEF PARAGRAPH, PAGES 6 AND 7. AND I'M  
24 JUST LOOKING AT MY NOTES. I THINK YOU HAVE ANSWERED THE  
25 QUESTION HERE AND MY NOTES ASK MYSELF, DOES THIS MEAN -- I'M

1           LOOKING ON PAGE 7, THE LAST SENTENCE -- THIS TELLS US THEN THAT  
2           THIS POLICY, THIS PRACTICE WILL NOT CHANGE, THE CURRENT  
3           PRACTICE WILL NOT CHANGE; IS THAT RIGHT?

4                   MR. NASSIRI: IN TERMS OF WHAT GOOGLE DECIDES TO DO  
5           WITH SEARCH QUERIES, THAT'S RIGHT. NOW, TO GIVE IT SOME  
6           CONTEXT, YOUR HONOR, I DON'T REMEMBER THE EXACT DATE NOW, BUT  
7           RIGHT AROUND THE TIME THAT THE SECOND MOTION TO DISMISS WAS  
8           FILED IN THIS CASE GOOGLE DID MAKE SOME CHANGES, IMPORTANT  
9           CHANGES. WHETHER OR NOT OUR LAWSUIT HAD ANYTHING TO DO WITH  
10          IT, I DON'T KNOW.

11                   BUT GOOGLE CHANGED ITS POLICY ON DISCLOSING SEARCH QUERIES  
12          SO THAT FOR GOOGLE ACCOUNTHOLDERS WHO ARE SIGNED IN AND DO  
13          SEARCHES, SO LONG AS THEY DON'T CLICK ON PAID ADVERTISEMENTS,  
14          THEIR SEARCH QUERIES ARE NO LONGER DISCLOSED.

15                   THE COURT: AND HOW DO THEY KNOW THAT? HOW DO  
16          CONSUMERS KNOW THAT? IS THAT ON THE FAQ PAGE?

17                   MR. NASSIRI: IT IS, YOUR HONOR. I BELIEVE THERE  
18          WAS A BLOG POST THAT GOT A LOT OF PRESS AT LEAST IN THE TECH  
19          COMMUNITY THAT REPORTED THIS CHANGE.

20                   THE COURT: IS THERE A -- CAN YOU TELL ME, IN THE  
21          INTERNET SPHERE, IS THERE A CERTAIN OR IDENTIFIABLE PAGES THAT  
22          PEOPLE GO TO REGARDING PRIVACY ISSUES?

23                   MR. NASSIRI: THERE ARE. SOME OF -- SO TECHCRUNCH  
24          DOES A LOT OF REPORTING ON PRIVACY ISSUES. REDDIT, WHICH IS A  
25          HUGE SITE, ALSO DOES A LOT OF REPORTING AND THERE ARE OTHERS.



1 THE COURT: SO THIS INFORMATION HAS PROBABLY BEEN  
2 POSTED ON THOSE SITES?

3 MR. NASSIRI: ABSOLUTELY, ABSOLUTELY. ERIC  
4 GOLDMAN -- YOU'RE PROBABLY FAMILIAR WITH ERIC GOLDMAN. THERE  
5 ARE A LOT OF PEOPLE WHO ARE WELL PUBLISHED ON THE INTERNET, AND  
6 THEY'RE REPUBLISHED AND THEIR STORIES ARE PICKED UP AND THIS  
7 WAS ONE OF THEIR STORIES.

8 THE COURT: THIS GETS BACK TO MY POINT, MAYBE IF NOT  
9 COMMON KNOWLEDGE, IT AT LEAST HAS GREATER KNOWLEDGE NOW ABOUT,  
10 THE PUBLIC HAS GREATER KNOWLEDGE ABOUT THIS ISSUE AND ABOUT  
11 WHAT GOOGLE DOES AND DOESN'T DO.

12 MR. NASSIRI: WELL, YES AND NO, YOUR HONOR. I  
13 BELIEVE THAT THAT UNIVERSE IS KIND OF A SUBUNIVERSE OF KIND OF  
14 TECHY GEEK ORIENTED PEOPLE. MY WIFE, FOR EXAMPLE, WOULD HAVE  
15 NEVER SEEN THAT STORY.

16 THE COURT: SURE. SO SOMEBODY'S 72 YOUNG GREAT AUNT  
17 WHO LIVES IN GRINNELL, IOWA IN A LOVELY RANCH HOUSE AND SHE  
18 GETS INTERNET FOR THE FIRST TIME AND SHE HAS THIS LOVELY 486  
19 COMPUTER THAT HER GRANDSON, PERHAPS, GAVE HER AND SAID, NO, NO,  
20 LET ME UPDATE YOU AND LET ME GET YOU SOMETHING NEW AND ALL YOU  
21 HAVE TO DO IS PUSH THE BUTTON AND SHE GETS THIS AND CLICKS ON  
22 IT, SHE'S NOT GOING TO GO TO AN FAQ.

23 MR. NASSIRI: SHE MIGHT NOT, YOUR HONOR. BUT,  
24 AGAIN, SOME OF THE PROPOSALS WE'RE LOOKING AT WILL TARGET  
25 PEOPLE WHO ARE LESS LIKELY TO RECEIVE THE MESSAGE THROUGH OTHER

1 CHANNELS. SO YOUNG PEOPLE AND OLDER PEOPLE IS WHO I'M  
2 REFERRING TO.

3 THE COURT: AARP, THAT'S WHY AARP IS IN THERE.

4 MR. NASSIRI: I'M NOT ACTUALLY NOT TALKING TO AARP.  
5 WE'VE KIND OF DIVIDED. SO I'M NOT SURE OF ALL OF THE PROPOSALS  
6 THAT THEY HAVE PUT ON THE TABLE.

7 BUT, YEAH, EVEN HARVARD OR THE BERKMAN CENTER HAS DONE  
8 SOME WORK THAT IS AIMED AT THOSE DEMOGRAPHICS.

9 THE COURT: SO LET ME -- THANK YOU. SO LET ME TURN  
10 TO THE CLASS NOTICE FOR A MOMENT. AND JUST GOING THROUGH THIS,  
11 I'M AT PAGE 3 AND AT THE BOTTOM IT'S UNDER THE BASIC  
12 INFORMATION TITLE, I THINK, AND THE LAST SENTENCE AND IT TALKS  
13 ABOUT MORE INFORMATION. THERE'S REFERENCE TO ABOUT THESE  
14 REFERRER HEADERS.

15 AGAIN, YOU REFER THE INDIVIDUAL TO THE FAQ AND KEY TERM  
16 PAGES, I GUESS, IS THAT -- WHAT IS THE PURPOSE OF HAVING THIS  
17 HERE?

18 MR. NASSIRI: WELL, ANY OPPORTUNITY TO GIVE PEOPLE  
19 INFORMATION BECAUSE, ADMITTEDLY, I MEAN, REALLY WHEN YOU USE  
20 THE TERM "REFERRER HEADERS," EVEN MORE PEOPLE ARE GOING TO TUNE  
21 OUT. THEY'RE NOT GOING TO KNOW WHAT THAT IS.

22 SO BECAUSE "REFERRER HEADER" IS A TECHNICAL TERM THAT  
23 APPEARS THROUGHOUT THE COMPLAINT AND HERE IN THE NOTICE WE  
24 WANTED TO GIVE PEOPLE AN OPPORTUNITY WHO ARE INTERESTED AT THIS  
25 STAGE TO GET MORE INFORMATION ABOUT IT.

1 THE COURT: OKAY. THANK YOU. AND I'M TURNING TO  
2 PAGE 4 UNDER PARAGRAPH 3, WHY IS THERE A SETTLEMENT?

3 MR. NASSIRI: UH-HUH.

4 THE COURT: THE LAST SENTENCE THERE DESCRIBES COSTS,  
5 I GUESS. THAT WAY THEY AVOID THE COSTS AND RISKS OF A TRIAL  
6 AND THE CLASS WILL RECEIVE RELIEF WHEN THE SETTLEMENT IS FINAL  
7 RATHER THAN YEARS FROM NOW, IF AT ALL.

8 IS THAT KIND OF MISLEADING?

9 MR. NASSIRI: NO.

10 THE COURT: "THE CLASS WILL RECEIVE RELIEF," I READ  
11 THAT AND AT FIRST BLUSH I THOUGHT, AND I'M TRYING TO PUT MYSELF  
12 LIKE A GREAT AUNT WHO LIVES IN GRINNELL OR SOMETHING LIKE THAT.

13 WELL, AM I GOING TO GET RELIEF FROM THIS? IS THERE  
14 SOMETHING IN THE AGREEMENT THAT SAYS YOU WILL NOT RECEIVE  
15 ANYTHING, BUT WHAT YOU WILL RECEIVE IS ACCESS TO AN ENHANCED  
16 FAQ? NOT IN THAT LANGUAGE I'M CERTAIN BUT --

17 MR. NASSIRI: WELL, YOUR HONOR, SO THERE'S NOTHING  
18 IN HERE THAT SAYS THAT YOU WILL NOT RECEIVE DIRECT  
19 REMUNERATION.

20 THE COURT: IS THAT SOMETHING THAT YOU THINK THE  
21 CLASS SHOULD KNOW?

22 MR. NASSIRI: YES, IT IS.

23 THE COURT: I THOUGHT SO. IT SEEMED TO ME THAT TO  
24 BE A FULL NOTICE, MAYBE A CLASS MEMBER SHOULD KNOW THAT I'M NOT  
25 GOING TO RECEIVE ANYTHING AS A CLASS MEMBER. HOWEVER, FOR THE

1 GREATER GOOD, THE CY PRES IS RECEIVING THIS AMOUNT AND THIS IS  
2 WHAT IS HOPEFULLY WILL HAPPEN FROM THOSE RECIPIENTS.

3 BUT AS AN INDIVIDUAL MEMBER, AS AN INDIVIDUAL PLAINTIFF  
4 I'M NOT GOING TO RECEIVE ANYTHING. I WON'T GET REMUNERATION,  
5 AND UNLESS, AND I'LL HEAR FROM MR. JOHNSON ABOUT THIS, UNLESS  
6 PERHAPS ONE OF THE MEASURES OF SETTLEMENT IS THAT GOOGLE HAS AN  
7 EPIPHANY AND SAID YOU KNOW WHAT, WE'RE GOING TO EITHER STOP  
8 DOING THIS OR WE'LL STOP DOING THIS FOR SIX MONTHS. AND THAT'S  
9 THE NEXT SETTLEMENT AGREEMENT.

10 I'M NOT TRYING TO MESS WITH YOUR DEAL. I'M JUST TRYING TO  
11 SUGGEST THAT THAT IS SOMETHING ELSE THAT MIGHT COME UP.

12 BUT THEY SHOULD KNOW, SHOULDN'T THEY?

13 MR. NASSIRI: I CAN THINK OF A LOT OF THINGS THAT I  
14 WOULD LIKE THEM TO DO.

15 THE COURT: I'M TALKING ABOUT YOUR CLIENTS,  
16 SHOULDN'T THEY KNOW THAT THEY'RE NOT GOING TO RECEIVE ANYTHING  
17 SPECIFICALLY?

18 MR. NASSIRI: WELL, IT'S HERE BECAUSE THE -- WHERE  
19 THAT IS DISCLOSED IS IN THE NEXT SECTION OF THE SETTLEMENT  
20 BENEFITS.

21 THE COURT: RIGHT.

22 MR. NASSIRI: SO I BELIEVE WHAT YOU'RE SAYING, YOUR  
23 HONOR, IS THAT IT SHOULD BE KIND OF SIMPLER AND KIND OF STATED  
24 MORE DIRECTLY.

25 THE COURT: I THINK SO, I THINK SO. JUST IN, YOU

1 KNOW, KIND OF LANGUAGE THAT A LAYPERSON MIGHT GRASP.

2 AND I AGREE WITH YOU, IT IS CAPTURED, ON PAGE 4, THE NEXT  
3 BOLD TITLE IS THE SETTLEMENT OF BENEFITS AND WHAT DOES THIS  
4 SETTLEMENT PROVIDE AND YOU START OFF WITH THE EIGHT AND A HALF  
5 MILLION DOLLARS.

6 AND IF SOMEONE, YOU KNOW, READS THAT, THEY THINK, WOW, YOU  
7 KNOW, I'M GOING TO ORDER THE MASERATI RIGHT NOW.

8 MR. NASSIRI: AND THEN THEY REALIZE THAT THERE'S  
9 ABOUT 300 OTHER MILLION PEOPLE THAT THEY ARE GOING TO SHARE?

10 THE COURT: THAT'S RIGHT.

11 MR. NASSIRI: AND, OH, MAYBE I SHOULD PUT THAT ORDER  
12 ON HOLD.

13 THE COURT: THAT'S RIGHT. I'M SUGGESTING THAT IS,  
14 YOU KNOW, SOME -- AND WE'RE NOT GOING TO WORD SMITH IT NOW, BUT  
15 I'M SUGGESTING THAT MAYBE SOMETHING COULD BE INSERTED THAT  
16 LET'S THE INDIVIDUAL CLASS MEMBER KNOW THAT YOU WILL NOT BE  
17 RECEIVING OR YOUR SHARE OF THIS BECAUSE OF THE SIZE OF THE  
18 CLASS, I DON'T WANT TO WORD SMITH AND TELL YOU WHAT TO DO, BUT  
19 SOME INFORMATION THAT LET'S THEM KNOW THAT THERE IS NOT GOING  
20 TO BE, THERE'S NOT AN EXPECTATION OF REMUNERATION, PERSONAL  
21 REMUNERATION.

22 MR. NASSIRI: I UNDERSTAND THAT, YOUR HONOR.

23 THE COURT: AND YOU DO CAPTURE THAT IN WHAT I TURN  
24 INTO A BULLET POINT IN MY NOTES, TO PROMOTE PUBLIC AWARENESS,  
25 ET CETERA. BUT I THINK A NEXUS, JUST TO LET THE INDIVIDUALS

1 KNOW.

2 I THINK IN YOUR SUPPLEMENTAL THAT YOU ANSWERED THE OTHER  
3 QUESTION I HAD WHICH WAS NUMBER 12, PARAGRAPH 12, UNDER LAWYERS  
4 REPRESENTING YOU AND THE TRIPLE X FOR THE FEES AND THINGS,  
5 YOU'LL INSERT THAT APPROPRIATELY.

6 MR. NASSIRI: YES, YOUR HONOR.

7 THE COURT: THE NEXT ITEM THAT I HAD WAS THE NOTICE  
8 AND SPECIFICALLY THE OBJECTING, ANY OBJECTORS.

9 YOU'RE GOING TO PROVIDE, I THINK, DOCUMENTS FOR PLAINTIFFS  
10 TO, OR CLASS MEMBERS TO SIGN AND JOIN THE CLASS, I THINK. IS  
11 THAT RIGHT? IS THERE PREPRINTED FORMS OR SOMETHING?

12 MR. NASSIRI: DID YOU SAY TO JOIN THE CLASS?

13 THE COURT: YES, TO BECOME MEMBERS OR NOT TO OPT  
14 OUT? EXCUSE ME.

15 MR. NASSIRI: WELL, THIS IS NOT AN OPT IN. TO  
16 OPT OUT, YES, YOUR HONOR.

17 THE COURT: RIGHT.

18 MR. NASSIRI: YES, WE WILL PROVIDE THAT ON THE  
19 WEBSITE.

20 THE COURT: AND THE THOUGHT OCCURRED TO ME THAT WHAT  
21 MIGHT BE HELPFUL IS THAT IF THERE ARE THOSE OPT OUT FORMS, AND  
22 THEN AS TO OBJECTORS, ARE YOU GOING TO PROVIDE A FORM FOR  
23 OBJECTORS TO FILL OUT AND PREPARE?

24 MR. NASSIRI: I DON'T BELIEVE WE PLANNED ON THAT,  
25 YOUR HONOR.

1 THE COURT: AND I WAS THINKING, JUST BECAUSE OF THE  
2 SIZE OF THE CLASS, BUT IT MIGHT BE HELPFUL TO THE COURT, AND I  
3 HOPE IT WOULD BE HELPFUL TO THE PARTIES, THAT IF THOSE  
4 OBJECTIONS WERE RECEIVED, IF THEY WERE IN SOME KIND OF A  
5 UNIFORM TYPE OF FORMAT, PARDON ME, AND IF THAT COULD BE  
6 PREPARED AND PROVIDED FOR OBJECTOR'S USE, IF THERE ARE ANY, I  
7 THINK THAT'S BETTER THAN RECEIVING THREE-BY-FIVE CARDS THAT ARE  
8 IN HANDWRITTEN AND IN SMALL, SMALL TYPE -- THAT WOULD BE  
9 HELPFUL TO ME SHOULD THAT --

10 MR. NASSIRI: I DON'T ANTICIPATE ANY OBJECTIONS BUT,  
11 YES, YOUR HONOR.

12 THE COURT: ALL RIGHT. GREAT.

13 MR. NASSIRI: ONE QUESTION ABOUT THAT, YOUR HONOR.  
14 SO THE FORM, DID YOU ENVISION THAT IT WOULD BE MANDATORY OR  
15 OPTIONAL?

16 THE COURT: FOR AN OBJECTION?

17 MR. NASSIRI: TO USE THE OBJECTION FORM?

18 THE COURT: I THINK MANDATORY. I WOULD LIKE  
19 OBJECTIONS TO BE PROVIDED IN A FORM THAT IS PROVIDED BY YOU.

20 NOW, IF THERE ARE OBJECTORS, WE KNOW WE WILL RECEIVE  
21 LETTERS OUTSIDE OF THIS, AND THAT'S JUST NORMAL, BUT I'D LIKE  
22 AT LEAST THE ATTEMPT TO BE MADE SO THAT WE CAN KIND OF PROVIDE  
23 SOME TYPE OF A UNIVERSAL, UNIVERSAL FORM, IF YOU WILL.

24 MR. NASSIRI: AND SHOULD THERE BE A RESTRICTION IN  
25 TERMS OF LENGTH? BECAUSE I WAS BEING A LITTLE FACETIOUS ABOUT

1 NOT EXPECTING ANY OBJECTORS WITH A CLASS THIS SIZE.

2 THE COURT: I KNEW THAT.

3 MR. NASSIRI: RIGHT. AND SO WOULD IT BE USEFUL TO  
4 THE COURT --

5 THE COURT: WELL, I DON'T THINK THAT WE SHOULD SAY  
6 IN 25 WORDS OR LESS.

7 MR. NASSIRI: ALL RIGHT, 30.

8 THE COURT: BUT YOU ARE TOO YOUNG TO KNOW, BUT THERE  
9 USED TO BE THESE CONTESTS ALL OF THE TIME AND THEY'D SAY IN  
10 25 WORDS OR LESS, TELL US WHY PROCTOR AND GAMBLE WOULD GIVE  
11 AWAY WASHING MACHINES, OR SOMETHING.

12 IN 25 WORDS OR LESS TELL US WHY YOU THINK -- WHO YOUR  
13 FAVORITE FIGURE IS ON MOUNT RUSHMORE AND WHY. AND PEOPLE ALL  
14 OVER THE COUNTRY WOULD SEND IN AND SOMEHOW THEY WOULD GIVE  
15 WASHERS AWAY THAT WAY.

16 NO, NO. I THINK THAT THE FORM CAN BE PRESENTED. YOU CAN  
17 -- I DON'T KNOW, IN AN 8-AND-A-HALF-BY-AN-11 PAGE ENTER YOUR  
18 COMMENTS HERE.

19 AND THEN THE NEXT QUESTION IS AT THE BOTTOM RIGHT-HAND  
20 CORNER, JUDGE, DO WE PUT IN -- ATTACH ADDITIONAL PAGES IF  
21 NECESSARY.

22 MR. NASSIRI: YOU READ MY MIND.

23 THE COURT: AND SHOULD THERE BE ADDITIONAL LANGUAGE  
24 THAT SAYS LIMITED TO INSERT NUMBER HERE?

25 MR. NASSIRI: RIGHT.



1 THE COURT: THERE PROBABLY SHOULD BE SOME  
2 LIMITATION, I SUPPOSE.

3 AND WE COULD LOOK TO THE LOCAL RULES OF COURT THAT LIMIT  
4 THE NUMBER OF PAGES FOR PLEADINGS. I SUPPOSE THAT'S A START  
5 AND FOR YOUR POSITION, I EXPECT YOU WOULD LIKE TO SAY YOU WOULD  
6 LIKE TO BACK OFF FROM THAT?

7 MR. NASSIRI: I DON'T WANT TO GET IN THE WAY OF DUE  
8 PROCESS, YOUR HONOR, AND THAT'S, YOU KNOW, I THINK IT'S  
9 PROBABLY A DECISION THAT I WOULD LIKE FOR THE COURT TO MAKE.

10 THE COURT: OKAY. BUT I'D LIKE IT TO BE KEPT IN  
11 SOME KIND OF A FORM LIKE THAT SO THAT WE CAN, WE CAN LOOK AT  
12 THAT AND THEN I'LL MAKE THAT DECISION. THANK YOU.

13 MR. NASSIRI: OKAY.

14 THE COURT: GOOD. ALL RIGHT. ALL RIGHT. WELL,  
15 THAT'S -- I THINK THAT WAS HELPFUL TO ME.

16 WHY DON'T I HEAR FROM MR. JOHNSON FOR JUST A MOMENT.

17 MR. NASSIRI: THANK YOU.

18 THE COURT: YOU'RE WELCOME. GOOD MORNING.

19 MR. JOHNSON: GOOD MORNING, YOUR HONOR.

20 THE COURT: WELL, ARE YOU READY TO HIT THE FAST BALL  
21 OR CURVE WHEN I TOLD YOU IT WAS COMING?

22 MR. JOHNSON: I HAVE BEEN HIM LIMBERING UP AT  
23 COUNSEL TABLE, YOUR HONOR.

24 THE COURT: SO LET'S TALK ABOUT THE NOTICE FIRST AND  
25 THE THOUGHT OCCURRED TO ME THAT THE BEST FORM OF NOTICE FOR

1 THIS, SHOULDN'T THAT BE FOR GOOGLE TO PUT IT ON THEIR, WHATEVER  
2 IT IS, THEIR HOME PAGE, CLICK HERE FOR INFORMATION ABOUT  
3 EXCITING LAWSUIT THAT YOU MAY BE A PARTY TO?

4 MR. JOHNSON: WELL, YOUR HONOR, I THINK THAT THERE  
5 ARE -- THERE WOULD BE MANY COMPETING, YOU KNOW, INTEREST GROUPS  
6 WHO WOULD LOVE TO DO THAT.

7 I THINK THAT THE QUESTION BEFORE THE COURT AND THAT THE  
8 QUESTION THAT THE PARTIES NEGOTIATED AT LEAST HOW CAN WE LET  
9 PEOPLE KNOW ABOUT THIS?

10 AND IT'S NOT JUST THE FAQ SECTION AND IT'S NOT JUST THE  
11 KEY TERM, BUT THERE'S AN ELABORATE ADVERTISING CAMPAIGN WITH  
12 BANNER ADS ON THE MOST POPULAR WEBSITES THAT ARE DESIGNED TO  
13 LET PEOPLE KNOW, AND EXACTLY THE WAY THAT THE PEOPLE ARE USING  
14 THE INTERNET AND SEARCHING THE INTERNET, WHERE ARE THEY LIKELY  
15 TO BE. AND IT WOULDN'T EVEN BE JUST GOOGLE, AND IT'S GOING TO  
16 BE ON A VARIETY, IF THEY'RE TAKING OUT ADVERTISING ON A VARIETY  
17 OF SITES, TO LET PEOPLE KNOW ABOUT THE SETTLEMENT.

18 AND WITH RESPECT TO THE PEOPLE WHO CARE ABOUT, YOU KNOW,  
19 THESE ISSUES IN PARTICULAR, THEY ARE FREQUENT VISITORS AND  
20 FREQUENT COMPARERS OF CHANGERS IN FACTS AND TERMS AND THOSE  
21 PEOPLE GET A LOT OF PUBLICITY AND THIS LAWSUIT HAS ALREADY  
22 GOTTEN A LOT OF PUBLICITY.

23 SO TO THE EXTENT THAT IT WAS THE GOAL OF PLAINTIFFS IN THE  
24 FIRST PLACE, YOU KNOW, IT'S A GOAL THAT HAS PARTLY BEEN  
25 ACCOMPLISHED BUT WILL BE FURTHER ACCOMPLISHED THROUGH THE, YOU

1 KNOW, PROVIDED AD CAMPAIGN WHICH IS DESIGNED TO CREATE I THINK  
2 200 MILLION IMPRESSIONS.

3 THE COURT: SO YOU THINK THAT THE -- WHAT YOU'RE  
4 TELLING US, MR. JOHNSON, WHAT YOU HAVE NEGOTIATED WITH COUNSEL  
5 IS FAIR NOTICE AND IT PROVIDES FAIR NOTICE AND CAPTURES THE  
6 WIDEST POSSIBLE UNIVERSES THAT YOU CAN?

7 MR. JOHNSON: YEAH, IT'S DESIGNED -- I MEAN, THE  
8 HEART OF THEIR LAWSUIT, YOUR HONOR, AND SINCE WE'RE HERE TO  
9 TALK ABOUT SETTLEMENT, I WON'T GO INTO THE MERITS, BUT THE  
10 HEART OF THEIR LAWSUIT IS THAT THESE REFERRER HEADERS, WHICH  
11 ARE VISIBLE, THE SEARCH QUERIES WHICH ARE VISIBLE AND THE TERMS  
12 ARE VISIBLE IN THE LITTLE WHITE LINE, YOU KNOW, THAT THAT  
13 WASN'T DISCLOSED, THAT PEOPLE DIDN'T KNOW THAT WHEN THEY WERE  
14 CLICKING THAT THE PAGE THAT THEY CLICKED TO COULD SEE IT.

15 THIS SETTLEMENT PROCESS, NOT TO MENTION ALL OF THE  
16 PUBLICITY ASSOCIATED WITH THE LAWSUIT, IS DESIGNED TO  
17 ACCOMPLISH THAT, TO LET PEOPLE KNOW.

18 THE COURT: SO IT'S A NOTICE LAWSUIT FROM YOUR  
19 PERSPECTIVE?

20 MR. JOHNSON: YES, YOUR HONOR.

21 THE COURT: THAT IS WHAT IT IS ABOUT?

22 MR. JOHNSON: AND THEY SAY THAT. YOU KNOW, ASIDE  
23 FROM, YOU KNOW, QUESTIONS OF HARM, I DON'T THINK ANYONE IS  
24 ALLEGING ECONOMIC HARM.

25 I THINK THE COURT FOUND IN ONE OF ITS OPINIONS IN GAOS

1 THAT THERE WAS NO IMMINENT THREAT TO PEOPLE. I MEAN, PARAGRAPH  
2 4 OF THE CONSOLIDATED COMPLAINT SAYS THAT, YOU KNOW, TYPICALLY  
3 THERE'S NOT A WAY OF SEEING WHO MADE THE SEARCH IN THE FIRST  
4 PLACE, HENCE A PRIVACY ISSUE.

5 I THINK THAT THE LAWSUIT AND THE NOTICE AND THE RELIEF  
6 PROVIDED FOR MORE THAN ACCOMPLISHES THE, THE GOAL THAT THE  
7 PLAINTIFFS HAD IN THE FIRST PLACE.

8 THE COURT: WHAT ABOUT THESE -- YOU HEARD ME SPEAK  
9 WITH YOUR COLLEAGUE OPPOSITE ABOUT THESE CHANGES AND AT LEAST  
10 OBSERVATIONS THAT I HAVE.

11 ANY COMMENT YOU WANT TO MAKE AS TO ANY OF THOSE?

12 MR. JOHNSON: WELL, YOUR HONOR, I THINK THAT JUST  
13 WITH RESPECT TO THE RELIEF REQUESTED, I THINK THOSE WOULD BE  
14 THINGS THAT WE WOULD BE, YOU KNOW, HAPPY TO DISCUSS AND COME UP  
15 WITH SOMETHING THAT FULLY SATISFIES THE COURT.

16 I THINK YOUR HONOR FOCUSED ON PARAGRAPH 3. PARAGRAPH 5  
17 OF THE NOTICE TALKS ABOUT WHAT THE RELIEF IS, AND I THINK THE  
18 COURT ALLUDED TO THAT A MOMENT AGO.

19 I THINK THAT WITH RESPECT TO THE FORM FOR OBJECTORS, I  
20 THINK THAT I WILL SAY, NOT HAVING HAD A CHANCE TO TALK WITH MY  
21 CLIENT, IT STRIKES ME AS CERTAINLY A PRACTICAL THING AND A  
22 THING THAT I WOULD UNDERSTAND THE COURT WOULD WANT.

23 THE ONLY QUESTION I WOULD RAISE ABOUT THAT IS, YOU KNOW,  
24 WOULD AN OBJECTOR USE IT AS A POSSIBLE APPEAL POINT THAT THE  
25 COURT LIMITED ME TO A FIVE PAGE, YOU KNOW? AS THE COURT KNOWS,

1 PEOPLE CAN BE VERY CREATIVE NOT JUST IN BRINGING LAWSUITS BUT  
2 IN OBJECTING TO SETTLEMENTS OF LAWSUITS.

3 THE COURT: WELL, THAT'S WHY I WAS SUGGESTING  
4 PERHAPS IF THERE'S A PAGE LIMIT, IF IT IS CREATED AND THERE IS  
5 A FORM.

6 AND MAYBE I'M GOING TO ASK YOU TO CREATE THE FORM, JUST SO  
7 THAT I CAN LOOK AT IT AND SEE AND THINK ABOUT IT IF THERE IS A  
8 PAGE LIMIT ON IT, MAYBE IT WOULD MEET THE LOCAL RULES FOR  
9 PLEADING PURPOSES AND YOU'RE RIGHT TO POINT OUT ANY DUE PROCESS  
10 ISSUES. I CERTAINLY DON'T WANT TO LIMIT PEOPLE TO THE 25 WORDS  
11 OR LESS.

12 MR. JOHNSON: I THINK THAT'S HOW THELMA RITTER MADE  
13 HER WAY TO HOLLYWOOD, YOUR HONOR, THE GREAT CHARACTER ACTOR,  
14 SHE WON ONE OF THOSE.

15 THE COURT: SOMEONE HAS GOT TO WIN. AND SOMEONE  
16 DOES ALWAYS.

17 THAT'S A GOOD SUGGESTION, AND I THINK I WOULD LIKE YOU TO  
18 CREATE THOSE FORMS SO WE CAN LOOK AT THEM AND SEE IF IT'S  
19 PRACTICAL TO ACTUALLY DO THAT.

20 LET'S SEE, AND THE ESTIMATE FOR THIS NOTICE IS UP TO A  
21 MILLION DOLLARS; IS THAT RIGHT?

22 MR. JOHNSON: I BELIEVE THAT'S WHAT THE  
23 ADMINISTRATOR PROVIDED.

24 THE COURT: AND IS THAT A -- DO YOU KNOW ANYTHING  
25 ABOUT THAT FIGURE? IS THAT A HARD FIGURE OR IS THAT KIND OF A

1 MUSHY FIGURE? I MEAN, A MILLION DOLLARS FOR NOTICE?

2 MR. JOHNSON: IT WAS PREPARED BY PROFESSIONALS WHO  
3 WERE IN THE BUSINESS OF ENGAGING IN THESE KINDS OF NOTICES.

4 IT'S MY UNDERSTANDING THAT IT WAS A WELL VETTED FIGURE AND  
5 WE'LL ACCOMPLISH THEIR 200 MILLION IMPRESSIONS GOAL.

6 THE COURT: OKAY.

7 MR. EDWARDS: YOUR HONOR, I APOLOGIZE FOR  
8 INTERRUPTING BUT I JUST WANTED TO COMMENT.

9 THE COURT: NO PROBLEM AT ALL.

10 MR. EDWARDS: IN EXHIBIT 4(C) OF THE SUBMISSION THAT  
11 THE PLAINTIFFS MADE ON THE MOTION FOR A PRELIMINARY APPROVAL,  
12 THERE'S AN ITEMIZATION OF HOW THAT FIGURE IS DERIVED AND  
13 MR. ASCHENBRENER HAS HAD THE MOST CLOSE COMMUNICATIONS WITH THE  
14 NOTICE ADMINISTRATOR ABOUT THAT.

15 I BELIEVE THE MILLION DOLLAR FIGURE IN THE SETTLEMENT  
16 AGREEMENT ITSELF IS SORT OF AN INITIAL FUNDING BY GOOGLE  
17 BECAUSE IT WILL COVER THE PROJECTED COST OF NOTICE AND SOME  
18 OTHER ADMINISTRATIVE ISSUES.

19 AND SO WE JUST WANTED TO CLARIFY THAT POINT, THERE IS SOME  
20 BACKUP. AND TO THE EXTENT THAT THERE ARE REALLY DETAILED  
21 QUESTIONS, I THINK MR. ASCHENBRENER CAN PROBABLY ADDRESS THEM.

22 THE COURT: GREAT. OKAY. ALL RIGHT. THANK YOU.  
23 THANK YOU FOR THAT.

24 ANYTHING ELSE, MR. JOHNSON, YOU WOULD LIKE ME TO KNOW IN  
25 SUPPORT OF THIS?

1 MR. JOHNSON: NO, YOUR HONOR. I THINK OTHER THAN  
2 THE FACT THAT WE -- THAT IT WAS THE PRODUCT OF A HEAVILY  
3 NEGOTIATED SETTLEMENT WHICH WE HAD THE ASSISTANCE OF RANDY  
4 WOLF, WHO I BELIEVE THE COURT IS FAMILIAR WITH, WHO BELIEVED  
5 UNDER THE CIRCUMSTANCES THIS WAS THE FAIR PROPOSAL.

6 THE COURT: YES, I THINK -- AND I NEGLECTED TO  
7 MENTION THAT AT THE OUTSET HOW YOU GOT HERE.

8 AND THE LAWSUIT WAS FILED, AND I KNOW THERE WAS SOME  
9 MOTION PRACTICE, AND THEN AS YOU SUGGEST, YOU MET WITH A  
10 PROFESSIONAL MEDIATOR.

11 MR. JOHNSON: YES, YOUR HONOR. YES, YOUR HONOR.

12 THE COURT: AND YOU HASHED OUT THE ISSUES AND YOU  
13 HAVE COME TO THIS RESOLUTION AND WHAT YOU'RE ASKING THE COURT  
14 TO FIND AS FAIR, ADEQUATE, AND REASONABLE?

15 MR. JOHNSON: ABSOLUTELY, YOUR HONOR.

16 THE COURT: AND I THINK YOU INDICATED IN YOUR  
17 PLEADINGS THE RISK FOR BOTH SIDES AS TO THE LAWSUIT PROGRESSING  
18 AND GOING FORWARD AND MEMBERS OF THE COMMUNITY MIGHT GO ONE WAY  
19 OR THE OTHER AS THEY SAT AS A JURY AND LISTENED TO BOTH SIDES  
20 AND BOTH OF YOU FELT THAT IT WAS AND IN BOTH OF YOUR BEST  
21 INTERESTS TO RESOLVE THE CASE AS YOU HAVE BROUGHT TO THE COURT  
22 HERE THIS MORNING.

23 MR. JOHNSON: YES, YOUR HONOR, GIVEN THE  
24 UNCERTAINTIES AND THE ISSUES OF FIRST IMPRESSION THAT ARE  
25 MENTIONED IN THE PAPERS, YES, YOUR HONOR.

1 THE COURT: GREAT. THANK YOU VERY MUCH.

2 MR. JOHNSON: THANK YOU.

3 THE COURT: YOU'RE WELCOME. THANK YOU.

4 SO I DID HAVE SOME OTHER -- WE WERE TALKING, MR. NASSIRI,  
5 ABOUT THE POOL OF IDENTIFIED INDIVIDUALS, AND I APPRECIATE THAT  
6 COLLOQUY. AS I UNDERSTAND IT THE MACARTHUR FOUNDATION --

7 MR. NASSIRI: DO YOU WANT ME TO STEP UP?

8 THE COURT: YES, THANK YOU. THE MACARTHUR  
9 FOUNDATION HAS TAKEN THEMSELVES OUT OF THIS LIST?

10 MR. NASSIRI: THEY HAVE.

11 THE COURT: RIGHT. AND I DON'T KNOW IF YOU WERE --  
12 PARDON ME -- THINKING OF REPLACING THEM WITH SOMEONE ELSE, BUT  
13 I THINK IT'S -- WHAT I WOULD LIKE TO HAVE YOU DO IS GIVE ME --  
14 I'D LIKE YOU TO DO A LITTLE MORE WORK ON THIS. PARDON ME.

15 AND WHAT I'D LIKE YOU TO DO IS I'D LIKE SOME MORE  
16 INFORMATION ABOUT THE SELECTION PROCESS AND THE IDENTIFICATION  
17 OF THE POOL OF CY PRES RECIPIENTS.

18 AND WHAT IS IT SPECIFICALLY, AS SPECIFIC AS YOU CAN, CAN  
19 YOU TELL ME WHAT IS IT THAT THEY'RE GOING TO DO?

20 YOU'VE TALKED ABOUT THE DIFFERENT CONFERENCES, PERHAPS, OR  
21 WHATEVER THERE WAS GOING TO BE, MEETINGS WITH GROUPS.

22 IF YOU COULD BE MORE SPECIFIC FOR ME TO GIVE ME GUIDANCE  
23 AS TO WHAT THE PUBLIC AND I CAN EXPECT THE WORK PRODUCT TO BE.

24 AND, OF COURSE, IN THESE CASES WE CAN'T POLICE THEM AND I  
25 DON'T SIT HERE AS A PROFESSOR TO HAVE THEM COME IN HERE AND



1 GRADE THEIR WORK.

2 BUT I THINK IT IS APPROPRIATE FOR ME TO, WHEN I LOOK, OR  
3 WHEN I LOOK AT THIS SETTLEMENT, TO SPECIFICALLY LOOK AT THE  
4 TASK THAT THEY'RE GOING TO ACCOMPLISH, OR LOOK AT THE GOALS  
5 THAT THIS SETTLEMENT SETS FOR THEM. I THINK THAT'S APPROPRIATE  
6 FOR ME TO LOOK AT. I KNOW YOU PUT IT IN YOUR PLEADINGS.

7 MR. NASSIRI: WELL, I HAVE SOMETHING TO SAY ABOUT  
8 THAT NOW, YOUR HONOR.

9 THE COURT: OKAY.

10 MR. NASSIRI: A FEW THINGS. FIRST, WITH RESPECT TO  
11 GRADING THEM, I ACTUALLY THINK THAT WHAT WE'RE DOING WILL MOVE  
12 YOU A BIG STEP CLOSER, AND EVERYBODY ELSE, CLOSER TO GRADING  
13 THEM BOTH IN MAKING A DECISION ABOUT WHETHER OR NOT TO GIVE  
14 THEM THE MONEY AND THEN DOWN THE ROAD HOW THEY DID WITH IT.

15 I DON'T KNOW IF YOUR HONOR IS AWARE THAT LIKE MAYBE  
16 SIX MONTHS AGO THERE WAS A LOT OF PRESS ABOUT CERTAIN CHARITIES  
17 THAT WERE WASTING MONEY THAT WAS GIVEN TO THEM AND THERE  
18 WERE -- THERE WERE THESE CHARITY WATCHDOG FOUNDATIONS THAT  
19 PUBLISHED STATISTICS SAYING THAT CHARITY X FOR EVERY DOLLAR YOU  
20 GIVE THEM, ONLY SIX CENTS OF IT ACTUALLY GOES TO THE TARGET  
21 COMMUNITY.

22 SO STARTING ON THAT TRAIL I KIND OF TOOK A LOOK AT THOSE  
23 WATCHDOGS, AND THEY HAVE DONE SOME REALLY GOOD WORK IN COMING  
24 UP WITH CRITERIA FOR INCREASING TRANSPARENCY AND ACCOUNTABILITY  
25 WITH RESPECT TO CHARITIES. IT'S PERFECTLY APPLICABLE HERE. WE

1 HAVE SENT, AND I'LL BE HAPPY TO SHARE WITH THE COURT IN A  
2 SUPPLEMENTAL FILING, WE HAVE SENT KIND OF A TEMPLATE. IT'S NOT  
3 ACTUALLY A TEMPLATE.

4 BUT WE HAVE SENT OUR REQUIREMENTS TO ALL OF THE PROPOSED  
5 RECIPIENTS AND SAID WE WANT A WRITTEN PROPOSAL FROM YOU THAT  
6 ADDRESSES THESE POINTS. AND INCLUDED IN WHAT WE ARE EXPECTING  
7 TO GET BACK AND HAVE ALREADY STARTED TO GET BACK, YOUR HONOR,  
8 ARE DETAILED DESCRIPTIONS OF EXACTLY WHAT THEY'RE GOING TO DO,  
9 WHO IS ON STAFF, AND HOW THE BUDGET WILL BE ALLOCATED WITHIN  
10 THE PROJECT.

11 WE HAVE ALSO ASKED FOR THESE ENTITIES TO GIVE US A SET OF  
12 METRICS THAT THEY CAN USE TO MEASURE THE SUCCESS OF THE  
13 PROGRAM, AND WE ARE GOING TO REQUIRE THEM TO PUBLISH TO THE  
14 CLASS AND TO THE COURT DOWN THE ROAD THE RESULTS.

15 SO THIS IS KIND OF TRACKING PERFECTLY WHAT SOME OF THE  
16 FORWARD THINKERS IN THESE CHARITY WATCHDOGS ARE DOING.

17 SO THAT WILL BRING YOU A LOT CLOSER AND EVERYBODY ELSE TO  
18 ACTUALLY GRADING THEM.

19 AND IT WILL, KIND OF OVER THE BIGGER PICTURE, NOT JUST  
20 THIS LAWSUIT BUT FOR THE NEXT LAWSUIT, YOU'LL HAVE SOMETHING TO  
21 LOOK AT.

22 THE COURT: IS MORE COMING?

23 MR. NASSIRI: THERE'S PROBABLY MORE COMING. I DON'T  
24 THINK WE'RE READY TO RETIRE HERE YET AS A GROUP.

25 SO NEXT TIME YOU'LL HAVE A TRACK WORD. WELL, YOU WERE A

1 CY PRES RECIPIENT IN THE GAOS CASE AND THIS IS WHAT HAPPENED.

2 WITH RESPECT TO TIMING, WE HAVE PUT IN OUR CALENDAR, OUR  
3 PROPOSED CALENDAR, HERE A DATE FOR PROVIDING THAT INFORMATION,  
4 THE INITIAL PROPOSALS THAT INCLUDE THE METRICS AND THE PROPOSED  
5 ALLOCATION.

6 WE HAVE A DATE IN HERE THAT IS 60 DAYS, NOT BEING  
7 PRESUMPTIVE, FROM THE DATE THAT YOU APPROVE THE PRELIMINARY  
8 APPROVAL WHERE WE WOULD FILE IT WITH THE COURT AND PUBLISH IT  
9 ON THE WEBSITE.

10 AND THAT GIVES -- I DON'T HAVE THE EXACT NUMBER HERE, BUT  
11 THAT GIVES MONTHS, I BELIEVE, OF TIME FOR THE COURT TO CONSIDER  
12 IT AND FOR THE CLASS TO CONSIDER IT BEFORE THEY HAVE TO SUBMIT  
13 OBJECTIONS IF THEY SO CHOOSE.

14 SO IF WE WERE TO TRY AND DO ALL OF THAT PRIOR TO GETTING  
15 PRELIMINARY APPROVAL, I THINK THIS WOULD PUSH THIS OUT A LITTLE  
16 FAR BECAUSE WE WANT TO HAVE SOME BREATHING ROOM TO WORK THESE  
17 PROPOSALS UP AND THEN PRESENT THEM TO THE CLASS AND THEN KIND  
18 OF HAVE THEM JUDGED ON FINAL APPROVAL.

19 THE COURT: DO YOU HAVE A PROBLEM WITH THAT?

20 MR. NASSIRI: DO I HAVE A PROBLEM WITH TRYING TO GET  
21 IT DONE BEFORE PRELIMINARY APPROVAL?

22 THE COURT: RIGHT.

23 MR. NASSIRI: IT'S LOGISTICALLY DIFFICULT. IT WOULD  
24 PUSH THINGS OUT OR IT WOULD --

25 THE COURT: I GUESS THE QUESTION IS, IS THAT A

1 PROBLEM IF IT GETS PUSHED OUT AND, IF SO, WHOSE PROBLEM IS IT?

2 MR. NASSIRI: WELL, IT IS A PROBLEM GENERALLY IF WE  
3 WANT RELIEF SOONER RATHER THAN LATER. AND, YOU KNOW, THE  
4 STANDARDS FOR PRELIMINARY APPROVAL HERE ARE THAT, YOU KNOW,  
5 IT'S WITHIN THE SCOPE. AND HERE IT'S NOT SO MUCH THE  
6 IDENTITY -- WELL, I'LL JUST LEAVE IT AT THAT.

7 I HAVE DESCRIBED TO YOU WHAT THE PROCESS IS. I THINK IT  
8 GOES FAR BEYOND WHAT HAS EVER BEEN DONE BEFORE, AND WE'RE GOING  
9 TO PRESENT MORE INFORMATION TO THE COURT AND THE CLASS FOR  
10 FINAL APPROVAL THAT HAS EVER BEEN DONE BEFORE.

11 SO IN TERMS OF PRECEDENT, I THINK WE'RE WAY BEYOND WHAT WE  
12 NEED TO DO FOR PRELIMINARY APPROVAL.

13 THE COURT: WE HAD A CONVERSATION EARLIER ABOUT THE  
14 LITTLE GUY, I'LL CALL HIM, AND PARDON ME FOR BEING COLLOQUIAL,  
15 BUT DOES THAT GIVE YOU ANY THOUGHT THAT YOU MIGHT WANT TO  
16 REVISIT AND LOOK FOR THOSE TYPES OF ENTITIES THAT MIGHT RECEIVE  
17 ANGEL FUNDING FROM THIS LAWSUIT?

18 MR. NASSIRI: WELL, IT DOES GIVE ME A THOUGHT, YOUR  
19 HONOR. I DON'T THINK IT'S THE RIGHT WAY TO GO. HAVING -- I'VE  
20 BEEN THINKING ABOUT THIS SINCE WE HAVE FILED THE LAWSUIT. AND  
21 I HAVE BEEN VERY INVOLVED OVER THE PAST FEW YEARS, AND I  
22 BELIEVE THE ENTITIES THAT WE HAVE SELECTED ARE THE BEST TO  
23 ACHIEVE THE OBJECTIVES TO DO SOMETHING GOOD FOR THE CLASS ON  
24 THE SUBJECT MATTER.

25 YOU KNOW, GOING TO LITTLE GUYS I JUST DON'T -- THE BENEFIT

1           THERE WOULD BE THAT YOU HAVE GOT MORE PEOPLE WHO COULD GET  
2           THERE -- WHO CAN ESTABLISH A Foothold AND DO THIS KIND OF WORK  
3           AND THAT'S A REAL BENEFIT, YOUR HONOR, BUT I BELIEVE IT'S JUST  
4           ONE STEP REMOVED FROM WHAT WE'RE REQUIRED TO DO WITHIN THE  
5           CONTEXT OF A CY PRES SETTLEMENT IN A CLASS ACTION.

6                   I THINK IT'S A LITTLE TOO POLICY ORIENTED.

7                   THE COURT:   SO WHEN WE LOOK AT A PURE CY PRES, AND  
8           IF WE FOLLOW THAT LOGIC THEN, THERE WILL ALWAYS BE THE USUAL  
9           SUSPECTS.

10                   MR. NASSIRI:   WELL, NO, YOUR HONOR.   PEOPLE ARE  
11           ENTERING THE SPACE MORE AND MORE.   THERE IS MORE INTEREST IN  
12           FUNDING FOR IT.   AND WE HAVE A FEW NEW PLAYERS, LIKE I SAID,  
13           CHICAGO-KENT AND THE WORLD PRIVACY ORGANIZATION, THOSE ARE NEW  
14           PLAYERS.

15                   THE COURT:   DID YOU GIVE ME INFORMATION ABOUT THAT  
16           SELECTION PROCESS, WHY YOU IDENTIFIED THOSE INDIVIDUALS?   I  
17           GUESS WHAT I'M SAYING IS PERHAPS I WOULD LIKE TO -- AND I THINK  
18           YOU'RE VERY CLOSE, I AGREE WITH YOU, FOR PRELIMINARY APPROVAL.  
19           YOU'RE VERY CLOSE.   THESE ARE JUST SOME LITTLE MINUTIA, BUT I  
20           WOULD LIKE ADDITIONAL INFORMATION AS TO THAT THOUGHT PROCESS.

21                   YOU HAVE ARTICULATED IT VERY WELL THIS MORNING.   AND YOU  
22           HAVE GIVEN ME A LOT OF ANSWERS TO MY QUESTIONS, BUT I THINK I  
23           WOULD BENEFIT FROM THAT INFORMATION.

24                   YOUR COLLEAGUE IS STANDING BEHIND YOU.

25                   MR. ASCHENBRENER:   YOUR HONOR, MAY I BE HEARD ON

1 THAT ISSUE VERY BRIEFLY?

2 THE COURT: SURE.

3 MR. ASCHENBRENER: JUST TO RESPOND AND GIVE A LITTLE  
4 MORE COLOR TO MY COLLEAGUE'S THOUGHTFUL RESPONSE AS IT RELATES  
5 TO THE COURT'S INQUIRY REGARDING, QUOTE, "THE LITTLE GUY." WE  
6 CERTAINLY DID ACTUALLY GIVE THAT A LOT OF THOUGHT, AND I DON'T  
7 WANT TO SAY TOO MUCH WITHOUT CONSENT FROM GOOGLE ABOUT THE  
8 NEGOTIATION PROCESS AND THE MEDIATION PROCESS.

9 THE COURT: AND I SHOULDN'T KNOW ABOUT THAT.

10 MR. ASCHENBRENER: BUT WHAT I CAN TELL YOU I BELIEVE  
11 WITHOUT VIOLATING ANY CONFIDENCES THERE IS THAT A LOT OF  
12 ORGANIZATIONS WERE CONSIDERED WELL BEYOND THE USUAL SUSPECTS  
13 THAT ADDRESS THE -- THAT WOULD ADDRESS THE COURT'S LINE OF  
14 QUESTIONING HERE.

15 AND WHILE I CANNOT SPEAK FOR GOOGLE, I IMAGINE THAT THEY  
16 GAVE GREAT THOUGHT TO THAT AS WELL.

17 AND THE LIST PRESENTED TO THE COURT OF PROPOSED RECIPIENTS  
18 REFLECTS, AS WAS DISCUSSED EARLIER, A NEGOTIATED LIST, BUT IT  
19 DID INCLUDE, THROUGH THE NEGOTIATION AND MEDIATION PROCESS, A  
20 FULL LOOK AT A VARIETY OF RECIPIENTS BEYOND THE USUAL SUSPECTS.

21 SO I BELIEVE THAT THE LIST PROVIDED TO THE COURT HAS  
22 ALREADY TAKEN THAT INTO ACCOUNT.

23 IF THE COURT WISHES TO SEE MORE, OF COURSE, WE'LL BE HAPPY  
24 TO PROVIDE MORE, BUT I THINK IT'S IMPORTANT FOR THE COURT TO  
25 KNOW AT THIS TIME A LOT OF CONSIDERATION WAS GIVEN TO THAT

1 ALREADY AND THE LIST PROVIDED TO THE COURT REFLECTS THAT  
2 THINKING AND THAT PROCESS.

3 THE COURT: I GUESS -- AND THAT'S THE INFORMATION  
4 THAT I GUESS I WAS LOOKING FOR.

5 IF YOU COULD, IN AN ADDITIONAL PLEADING JUST, YOU KNOW,  
6 LET ME KNOW WHAT YOU DID IN THAT REGARD AND WHY THESE FOLKS  
7 WERE IDENTIFIED. I THINK SOME OF THESE ARE PERHAPS  
8 SELF-IDENTIFYING, YOU KNOW, AS YOU SAY.

9 MR. NASSIRI: THEY'RE SOMEWHAT OBVIOUS CHOICES.

10 THE COURT: THANK YOU.

11 MR. NASSIRI: AND I DON'T WANT TO OVERSTATE THE  
12 INNOVATION I THINK WE HAVE GOT HERE. THE FACT THAT ANY CONCERN  
13 THAT THESE ARE KIND OF, YOU KNOW, THE USUAL GUYS AND PEOPLE  
14 JUST THROW MONEY AT THEM AND MAYBE WE SHOULD BE MORE  
15 THOUGHTFUL, I REALLY BELIEVE THAT, ONE, THE FACT THAT WE'RE  
16 REQUIRING THEM TO SPEND THE MONEY ON SPECIFIC PROJECTS AND NOT  
17 LETTING THEM DECIDE AFTER THEY GET THE MONEY HOW THEY'RE GOING  
18 TO SPEND THE MONEY IS A BIG DIFFERENCE BETWEEN WHAT HAS BEEN  
19 DONE IN THE PAST AND WHAT IS GOING TO BE DONE NOW.

20 AND THAT BY ITSELF I THINK WOULD ALLEVIATE SOME CONCERNS  
21 ABOUT, HEY, YOU'RE JUST GIVING MONEY TO THE USUAL SUSPECTS.

22 THE COURT: NO. THIS IS A CREATIVE LOOK AT IT AND  
23 TREATMENT OF IT AND I APPRECIATE IT.

24 AND IN MY CONVERSATION, I SHOULD SAY THIS, I DON'T MEAN TO  
25 DISPARAGE ANY OF THESE INSTITUTIONS IN ANY WAY. I'M NOT

1 ATTEMPTING TO DO THAT. I'M NOT SUGGESTING THAT THEIR WORK IS  
2 LESS THAN SUCCESSFUL OR THOUGHTFUL AT ALL.

3 I'M NOT GRADING. I'M JUST ASKING THESE QUESTIONS AND IN  
4 AN EFFORT TO PERHAPS EXPAND THE POOL. THAT'S WHAT MY GOAL IS  
5 HERE. SO I WANT TO BE CLEAR ON THAT.

6 ALL RIGHT. WELL, THANK YOU VERY MUCH. WHAT I WOULD LIKE  
7 YOU TO DO THEN -- I THINK WE HAVE HAD A PRETTY THOROUGH  
8 CONVERSATION ABOUT YOUR GOOD WORK, BOTH SIDES GOOD WORKS THIS  
9 MORNING.

10 ANYTHING FURTHER, MR. JOHNSON?

11 MR. JOHNSON: NO, YOUR HONOR.

12 THE COURT: WELL, WHAT I WOULD LIKE TO DO, IF YOU  
13 COULD PLEASE PROVIDE FOR ME THESE FOLLOW UP, THE FORMS, THE OPT  
14 OUT -- THESE OTHER FORMS, SUGGESTED FORMS OF OBJECTORS. IF YOU  
15 CAN ALSO PROVIDE ME SOME INFORMATION REGARDING THE SELECTION  
16 PROCESS IN A PLEADING TYPE FORM, I THINK THAT WOULD BE HELPFUL  
17 TO ME ALSO, ANYTHING YOU WANT TO ADD AS TO THE GRADING PROCESS  
18 AS YOU HAVE DESCRIBED IT, THAT REVIEW PROCESS, THAT WOULD BE  
19 HELPFUL ALSO.

20 I THINK THE MORE, BECAUSE THIS IS INNOVATIVE AS YOU  
21 SUGGEST, SIR, I THINK THE MORE INFORMATION THAT IS PUT IN THE  
22 PLEADINGS AND IN THE ACTUAL SETTLEMENT ITSELF WOULD BE HELPFUL  
23 FOR THIS CASE AND ALSO AS YOU SUGGEST FOR FUTURE CASES FOR  
24 OTHER LITIGANTS TO LOOK AT FOR, PERHAPS, GUIDANCE.

25 MR. NASSIRI: I ACTUALLY LOOK FORWARD TO THE



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

OPPORTUNITY. I'M EXCITED ABOUT THIS.

THE COURT: RIGHT. GREAT, AS AM I.

SO CAN WE HAVE THIS INFORMATION -- LET'S SEE, WHAT DO YOU THINK, SEPTEMBER 6TH?

MR. NASSIRI: EASILY, YES.

MR. JOHNSON: YES, YOUR HONOR.

THE COURT: OKAY. GREAT. AND AT THAT TIME THE MATTER WILL BE DEEMED SUBMITTED.

THANK YOU VERY MUCH FOR THE CONVERSATION THIS MORNING.

MR. JOHNSON: THANK YOU, YOUR HONOR.

MR. NASSIRI: THANK YOU, YOUR HONOR.

THE COURT: AND WE'LL TAKE A RECESS.

(COURT CONCLUDED AT 10:50 A.M.)

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

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

\_\_\_\_\_  
IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8076

DATED: AUGUST 26, 2013