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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: FACEBOOK) C-12-2314-EJD
)
INTERNET TRACKING) JUNE 29, 2012
)
LITIGATION.)
)
-----) PAGES 1 - 16

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT

JUDGE EDWARD J. DAVILA

A P P E A R A N C E S :

FOR THE PLAINTIFFS: KIESEL, BOUCHER & LARSON
BY: PAUL R. KIESEL
8648 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA
90211

BARTIMUS, FRICKELTON,
ROBERTSON & GORNY
BY: THOMAS FRICKELTON
11150 OVERBROOK ROAD
SUITE 200
LEAWOOD, KANSAS 66211

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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

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

FOR THE PLAINTIFFS:

BERGMANIS LAW FIRM
BY: ANDREW S. LYSKOWSKI
380 W. U.S. HIGHWAY 54
SUITE 201
P.O. BOX 229
CAMDENTON, MISSOURI 65020

MURPHY, FALCON, KUYKENDALL,
RAVENELL & MURPHY
BY: WILLIAM H. MURPHY, JR.
ONE SOUTH STREET
23RD FLOOR
BALTIMORE, MARYLAND 21202

STEWARTS LAW US LLP
BY: DAVID A. STRAITE
535 FIFTH AVENUE
4TH FLOOR
NEW YORK, NEW YORK 10017

FOR DEFENDANT FACEBOOK:

COOLEY, GODWARD & KRONISH
BY: MATTHEW D. BROWN
101 CALIFORNIA STREET
5TH FLOOR
SAN FRANCISCO, CALIFORNIA
94111

SAN JOSE, CALIFORNIA

JUNE 30, 2012

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

(WHEREUPON, COURT CONVENEED AND THE FOLLOWING PROCEEDINGS WERE HELD:)

01:48PM 6 THE CLERK: CALLING MDL ACTION 12-2314,
01:48PM 7 IN RE: FACEBOOK INTERNET TRACKING LITIGATION.
01:48PM 8 ON FOR CASE MANAGEMENT CONFERENCE.

02:08PM 9 COUNSEL, PLEASE COME FORWARD AND STATE
02:08PM 10 YOUR APPEARANCES.

02:08PM 11 MR. BROWN: MATTHEW BROWN FOR DEFENDANT
02:08PM 12 FACEBOOK. THANK YOU.

02:08PM 13 THE COURT: THANK YOU. GOOD AFTERNOON.

02:08PM 14 MR. FRICKLETON: JAMES FRICKLETON FOR THE
02:08PM 15 PLAINTIFFS.

02:08PM 16 THE COURT: GOOD AFTERNOON.

02:08PM 17 MR. STRAITE: DAVID STRAITE FOR THE
02:08PM 18 PLAINTIFFS. GOOD AFTERNOON, YOUR HONOR.

02:08PM 19 THE COURT: THANK YOU. GOOD AFTERNOON.

02:08PM 20 MR. MURPHY: GOOD AFTERNOON, YOUR HONOR.
02:08PM 21 WILLIAM MURPHY FOR THE PLAINTIFFS.

02:08PM 22 THE COURT: GOOD AFTERNOON.

02:08PM 23 MR. KIESEL: AND, YOUR HONOR, GOOD
02:08PM 24 AFTERNOON. PAUL KIESEL FOR THE PLAINTIFFS AS WELL.

02:08PM 25 THE COURT: THANK YOU. GOOD AFTERNOON.

02:08PM 1 MR. KIESEL: AND TO YOU, YOUR HONOR.

02:08PM 2 THE COURT: WE HAVE A LITTLE MORE ROOM IN
02:08PM 3 THE COURTROOM THAN THE LAST TIME. SO THANK YOU ALL
02:08PM 4 FOR BEING HERE. THANK YOU FOR YOUR JOINT CASE
02:09PM 5 MANAGEMENT STATEMENT. I APPRECIATE THAT.

02:09PM 6 IT SEEMS THAT THE ISSUES THAT ARE
02:09PM 7 PRESENTED THEY ARE ONE OF WHAT SHOULD WE DO ABOUT
02:09PM 8 DISCOVERY? AND WHAT SHOULD WE DO ABOUT GOING
02:09PM 9 FORWARD WITH -- MY CONCERN IS YOUR 26 CONFERENCE,
02:09PM 10 RULE 26 CONFERENCE.

02:09PM 11 MY THOUGHT, WHEN I READ YOUR STATEMENT,
02:09PM 12 IS THAT IT APPEARED TO ME THAT, PERHAPS, THERE WAS
02:09PM 13 A LACK OF CLARITY IN THE PHASES I SUGGESTED THAT WE
02:09PM 14 GO FORWARD IN.

02:09PM 15 AND I THINK THERE WAS SOME QUESTION ABOUT
02:09PM 16 WHICH PHASE WE'RE ON NOW AND YOU WANTED SOME
02:09PM 17 GUIDANCE, AND I APPRECIATE THAT.

02:09PM 18 WHAT I WANTED TO INDICATE TO YOU IS THAT
02:09PM 19 MY THOUGHTS ARE THAT YOU SHOULD ENGAGE IN YOUR RULE
02:09PM 20 26 CONFERENCE. I'D LIKE YOU TO DO THAT WITHIN
02:09PM 21 2 WEEKS, 14 DAYS, GET THAT GOING AND THEN WHAT I
02:09PM 22 WOULD LIKE AND PROPOSE FOR YOU TO DO IS TO SUBMIT
02:10PM 23 YOUR PROPOSED SCHEDULE TO ME PERHAPS 14 DAYS
02:10PM 24 THEREAFTER.

02:10PM 25 AND THEN I CAN LOOK AT THAT AND TWEAK IT

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OR MODIFY IT IF I THINK IT IS NECESSARY.

I THINK THERE WAS ANOTHER COMMENT INDICATING THAT AT LEAST ONE OF THE PARTIES FELT THAT, I THINK IT WAS YOU, MR. BROWN, THAT THERE BE A STAY ON DISCOVERY PENDING ANY FURTHER PROCEEDING.

I'M HAPPY TO HEAR FROM YOU IF YOU WANT TO GO FORWARD ON THAT.

MR. BROWN: YEAH. I MEAN, MY THINKING ON IT, AND THIS MAY NOT SURPRISE YOU, WOULD BE, YOU KNOW, ASIDE FROM WHEN WE ACTUALLY DO THE 26(F) CONFERENCE, BECAUSE OBVIOUSLY THERE ARE A NUMBER OF ISSUES THAT GET DISCUSSED IN THOSE CONFERENCES AND NOT ALL OF THEM TIE DIRECTLY TO DISCOVERY, BUT MY THINKING WAS SIMPLY THAT WE HAVE A COMPLAINT HERE THAT HAS GOT, I THINK, 11 CAUSES OF ACTION AND WE'RE FILING OUR MOTION TO DISMISS THAT IS COMING MONDAY AND THERE'S A BRIEFING SCHEDULE NOW SET OUT BY THE AGREEMENT OF THE PARTIES AND ORDER OF THE COURT FOR THAT.

AND IT STRIKES ME THAT THE APPROACH THAT WE WOULD LIKE TO SEE WOULD BE TO RESOLVE WHAT THE SCOPE OF THE COMPLAINT, SOME OF THESE CLAIMS ARE GOING TO GO THROUGH AND OTHERS ARE NOT, ARE WE GOING TO BE ABLE TO GET LEAVE TO AMEND WHICH, OF COURSE, CHANGES THE ALLEGATIONS.

02:11PM 1 AND BEFORE WE LAUNCH INTO DISCOVERY IT
02:11PM 2 WOULD BE BETTER TO JUST UNDERSTAND WHETHER THE
02:11PM 3 COMPLAINT IS GOING TO GO FORWARD, AND, IF SO, WHAT
02:11PM 4 THE CONTOURS OF THE COMPLAINT ARE GOING TO BE.

02:11PM 5 THE COURT: SURE.

02:11PM 6 MR. FRICKLETON: YOUR HONOR, ON BEHALF OF
02:11PM 7 PLAINTIFFS, I THINK IT IS WISE TO GO FORWARD WITH A
02:11PM 8 RULE 26 CONFERENCE BECAUSE IT MAY BE THAT WE CAN
02:11PM 9 RESOLVE SOME OF OUR ISSUES REGARDING DISCOVERY AT
02:11PM 10 THAT TIME AND THEREAFTER TO SUBMIT A PROPOSED
02:11PM 11 SCHEDULE THAT WILL HAVE, I'M SURE SOME ITEMS AGREED
02:11PM 12 TO AND PERHAPS SOME ITEMS NOT AGREED TO, AND THEN
02:11PM 13 YOU CAN MAKE THAT DECISION.

02:11PM 14 I THINK THERE ARE -- THIS IS NOT UNLIKE
02:12PM 15 ANY OTHER CASE IN THAT THERE MAY BE SITUATIONS
02:12PM 16 WHERE A MOTION TO DISMISS IS FILED, AND WE BELIEVE
02:12PM 17 THE RULES ARE STRAIGHTFORWARD THAT IT SHOULD GO
02:12PM 18 FORWARD AND WE BELIEVE THERE'S NO --

02:12PM 19 MR. BROWN: AND A COUPLE OF PRACTICAL
02:12PM 20 THINGS WITH MY EXPERIENCE, I UNDERSTAND THAT WE
02:12PM 21 COULD HAVE A 26(F) AND GIVE YOU A PROPOSED
02:12PM 22 SCHEDULE, BUT THE 26(F) IS THE TRIGGER UNDER THE
02:12PM 23 RULES TO START, AND MY EXPERIENCE HAS BEEN THAT WE
02:12PM 24 OFTEN GET ALL KINDS OF DISCOVERY THE DAY AFTER THE
02:12PM 25 26(F) CONFERENCE AND YOU'RE GOING TO SEE HOW YOU'RE

02:12PM 1 GOING TO GET THIS STAYED AND HOW YOU'RE GOING TO
02:12PM 2 RESPOND.

02:12PM 3 THE COURT: SO YOU HAVE GREAT EXPERIENCE
02:12PM 4 IN THIS?

02:12PM 5 MR. BROWN: IT HAS HAPPENED A FEW TIMES,
02:12PM 6 UNFORTUNATELY, BUT, YOU KNOW, I UNDERSTAND THE
02:12PM 7 FEDERAL RULES ARE SET OUT WITH CERTAIN TIMING IN
02:12PM 8 MIND BUT CASES ARE DIFFERENT AND NOT ALL CASES ARE
02:13PM 9 LIKE THIS ONE.

02:13PM 10 AND WHAT I DON'T WANT TO SEE HAPPEN ON
02:13PM 11 BEHALF OF THE CLIENT, FRANKLY, IS TO SEE US SPEND A
02:13PM 12 COUPLE OF HUNDRED THOUSAND DOLLARS ON DISCOVERY
02:13PM 13 WHILE OUR MOTION TO DISMISS IS PENDING, AND THAT'S
02:13PM 14 NOT REALLY AN EXAGGERATION. I MEAN, IT ADDS UP
02:13PM 15 VERY QUICKLY.

02:13PM 16 THE COURT: WELL, I APPRECIATE THAT
02:13PM 17 CONCERN, I DO, IT'S A REALISTIC ONE.

02:13PM 18 I WAS CURIOUS, YOU TOUCHED ON, AS DID
02:13PM 19 YOUR COLLEAGUE OPPOSITE, ABOUT SHOULD WE TREAT THIS
02:13PM 20 CASE DIFFERENTLY THAN ANY OTHER CASE? IS IT AN
02:13PM 21 OUTLIER TO THE FEDERAL RULES? AND I WHY SHOULD IT
02:13PM 22 BE TREATED ANY DIFFERENT?

02:13PM 23 AND I THOUGHT ABOUT THAT, AND I GUESS THE
02:13PM 24 ANSWER I CAME UP WITH IS, NO, IT SHOULD GO FORWARD
02:13PM 25 JUST AS ANY OTHER CASE. NOT TO DISPARAGE THE CASE

02:13PM 1 OR ANYTHING, BUT I DON'T SEE ANY REASON TO DEPART
02:13PM 2 FROM THE RULES.

02:13PM 3 SO IT WOULD BE MY THOUGHT IS THAT IF
02:14PM 4 THERE'S A REQUEST TO STAY DISCOVERY PENDING
02:14PM 5 WHATEVER, I WOULD RESPECTFULLY DECLINE THAT
02:14PM 6 INVITATION, AND I THINK DISCOVERY SHOULD GO FORWARD
02:14PM 7 AS IN ANY OTHER CASE.

02:14PM 8 AND AS YOU SUGGEST, THE 26(F) TRIGGERS
02:14PM 9 THAT AND WHAT I'D LIKE YOU TO DO IS TO HAVE YOUR
02:14PM 10 CONFERENCE, AS I SAID, WITHIN TWO WEEKS OF TODAY'S
02:14PM 11 DATE AND THEN TWO WEEKS AFTER THAT I APPRECIATE A
02:14PM 12 PROPOSED SCHEDULE FROM YOU AND I'LL LOOK AT IT AND
02:14PM 13 TWEAK IT OR LET YOU KNOW MY THOUGHTS ON IT AND GET
02:14PM 14 IT BACK TO YOU SHORTLY THEREAFTER.

02:14PM 15 I'M NOT GOING TO SUSPEND THE STAY OF
02:14PM 16 DISCOVERY AT THIS POINT. I THINK THAT CAN GO
02:14PM 17 FORWARD AND HOPEFULLY IT WON'T BE TREMENDOUSLY
02:14PM 18 EXPENSIVE. I UNDERSTAND IN A CASE LIKE THIS THAT
02:14PM 19 YOU'RE PROBABLY RENTING THE TRUCKS TO GET THEM UP
02:15PM 20 TO THE DOCKS.

02:15PM 21 BUT YOU DO HAVE THE SCHEDULE FROM THE
02:15PM 22 PRIOR MEETING ABOUT THE MOTION PRACTICE, AND I
02:15PM 23 THINK YOU HAVE THOSE DATES.

02:15PM 24 MR. FRICKLETON: THAT'S CORRECT.

02:15PM 25 MR. BROWN: THAT'S CORRECT, YOUR HONOR.

02:15PM 1 THE COURT: TERRIFIC. I'M HAPPY TO
02:15PM 2 ANSWER ANY OTHER QUESTIONS YOU MIGHT HAVE.

02:15PM 3 MR. BROWN: I GUESS ONE --

02:15PM 4 MR. FRICKLETON: I HAVE, BUT GO RIGHT ON
02:15PM 5 AHEAD.

02:15PM 6 MR. BROWN: I GUESS ONE OTHER ISSUE, AND
02:15PM 7 WE CAN TALK ABOUT THIS NOW OR IT CAN ALSO GET TEED
02:15PM 8 UP WHEN WE PROPOSE A SCHEDULE, DEPENDING ON WHETHER
02:15PM 9 THE PARTIES SEE EYE TO EYE OR ON PROPOSING
02:15PM 10 COMPETING SCHEDULES BUT IS EXACTLY, THE SCOPE OF
02:15PM 11 DISCOVERY, YOU KNOW, WE OFTEN PROPOSE THAT
02:15PM 12 DISCOVERY BE BIFURCATED BETWEEN CLASSIFICATION
02:15PM 13 RELATED DISCOVERY AND MERITS DISCOVERY.

02:15PM 14 I ACKNOWLEDGE THAT THE LINE IS NOT ALWAYS
02:15PM 15 CRYSTAL CLEAR, AND I WOULDN'T TRY TO TAKE A
02:15PM 16 POSITION TO THE CONTRARY.

02:15PM 17 AT THE SAME TIME OFTENTIMES THE PARTIES
02:16PM 18 CAN AGREE THAT THERE'S AT LEAST SOME BALANCE TO
02:16PM 19 WHAT WE BELIEVE IS A CLASS CERTIFICATION ISSUE AND
02:16PM 20 IT CAN OFTEN BE VERY HELPFUL TO A DEFENDANT LIKE
02:16PM 21 FACEBOOK TO HAVE SOME LIMITATIONS PUT ON THAT
02:16PM 22 BECAUSE IF THE CASE IS NOT GOING TO GET PAST A
02:16PM 23 MOTION TO DISMISS, IT'S NOT GOING TO GET PAST A
02:16PM 24 MOTION FOR CLASS CERTIFICATION TO THEN ENGAGE IN
02:16PM 25 WIDE OPEN, FULL ON MERITS DISCOVERY CAN BE VERY,

02:16PM 1 VERY BURDENSOME TO THE COMPANY.

02:16PM 2 I'M NOT TALKING ABOUT JUST COST, I'M
02:16PM 3 TALKING ABOUT BURDEN TO THE COMPANY AS WELL AS
02:16PM 4 COST. AND SO THAT'S SOMETHING THAT I JUST WANT TO
02:16PM 5 PUT ON THE TABLE AND WE WOULD LIKE TO HAVE
02:16PM 6 BIFURCATION.

02:16PM 7 THE COURT: THANK YOU FOR THAT. AND DO
02:16PM 8 YOU WANT TO COMMENT ON THAT?

02:16PM 9 MR. FRICKLETON: I WOULD SUGGEST THAT
02:16PM 10 THAT IS A VERY GOOD SUBJECT FOR OUR RULE 26(F)
02:16PM 11 MEETING. I UNDERSTAND THE ISSUE AND IT'S A
02:16PM 12 LEGITIMATE ISSUE, AND WE NEED TO TALK ABOUT HOW TO
02:16PM 13 APPROACH THAT AND I THINK THAT SHOULD BE THE FIRST
02:16PM 14 ORDER OF BUSINESS IN WHAT WE DO.

02:16PM 15 PERHAPS IF IT'S ACCEPTABLE TO YOUR HONOR,
02:17PM 16 AFTER WE HAVE THAT MEETING AND MAYBE HOPEFULLY
02:17PM 17 NARROW THAT ISSUE, IF IT'S NECESSARY TO HAVE SOME
02:17PM 18 COMMUNICATION WITH THE COURT, IF WE CAN MAYBE DO
02:17PM 19 THAT IN SOME FASHION, THAT MIGHT BE HELPFUL.

02:17PM 20 THE COURT: LET ME JUST EXPRESS, I'M
02:17PM 21 HAPPY TO MAKE MYSELF AVAILABLE TO YOU ACCORDING TO
02:17PM 22 OUR COURT SCHEDULE, BUT I WOULD LIKE TO ALLOW YOU,
02:17PM 23 I MEAN, YOU'RE BOTH EXPERIENCED COUNSEL AND YOU
02:17PM 24 KNOW THE ISSUES THAT COME UP FROM DISCOVERY AND HOW
02:17PM 25 IT CAN BE BURDENSOME AND SOMETIMES COURTS SEE IT AS

02:17PM 1 -- VIEW IT FROM THE PLAINTIFF'S SIDE, WELL, THIS IS
02:17PM 2 JUST THEIR OPPORTUNITY TO GET AS MUCH AS THEY CAN
02:17PM 3 AS QUICKLY AS THEY CAN AND IT'S REALLY NOT GERMANE
02:17PM 4 TO THE COURT AT THIS TIME, AND I'M COGNIZANT OF
02:17PM 5 THAT ARGUMENT, AND I'LL LOOK AT THAT.

02:17PM 6 ON THE OTHER HAND, PLAINTIFFS NEED SOME
02:17PM 7 DISCOVERY OF SOME SORT, AND I'M SURE YOU'RE WILLING
02:17PM 8 TO GIVE THEM WHAT YOU CAN AND A REASONABLE REQUEST.

02:17PM 9 SO I'LL GIVE YOU BOTH AN OPPORTUNITY TO
02:17PM 10 HASH OUT THOSE ISSUES HOPE. HOPEFULLY, AS YOU SAY,
02:18PM 11 YOU CAN FOCUS DOWN ON WHAT IS REALLY NECESSARY AND
02:18PM 12 THEN WE CAN LOOK AT WHETHER OR NOT WE NEED TO
02:18PM 13 ACTUALLY BIFURCATE AND HOW MUCH BIFURCATION IS
02:18PM 14 NEEDED IF YOU CAN'T DO THAT BETWEEN AND AMONGST
02:18PM 15 YOURSELVES.

02:18PM 16 MR. FRICKLETON: WE HAVE TO MEASURE THE
02:18PM 17 EXPENSE IN A SIMILAR FASHION.

02:18PM 18 THE COURT: ABSOLUTELY. IT'S NOT
02:18PM 19 INEXPENSIVE AND NOT WITHOUT ITS BURDENS ON BOTH
02:18PM 20 SIDES, BUT I UNDERSTAND THE EMPLOYEES OF THE
02:18PM 21 COMPANY COULD BE BURDENED BY STAFF HOURS DEVOTED TO
02:18PM 22 COLLECTING INFORMATION.

02:18PM 23 MR. BROWN: AND ONE MERE MATERIAL
02:18PM 24 PRACTICAL THING, I SUSPECT THAT THIS IS SOMETHING
02:18PM 25 THAT WE CAN WORK OUT, BUT I JUST WANT TO PUT IT OUT

02:18PM 1 THERE BECAUSE UNFORTUNATELY IN THE LAST COUPLE OF
02:18PM 2 YEARS THIS HAS HAPPENED SEVERAL TIMES, IF WE GET
02:18PM 3 HIT WITH VERY BROAD DISCOVERY, AND A LOT OF TIMES
02:18PM 4 THAT'S KIND OF WHAT HAPPENS, YOU GET VERY BROAD
02:18PM 5 DISCOVERY REQUESTS AND MAYBE THEY GET SCALED BACK
02:18PM 6 AT SOME POINT BUT IF WE'RE GOING TO HAVE THE 26(F)
02:19PM 7 14 DAYS LATER WE SUBMIT A PROPOSED SCHEDULE, WE
02:19PM 8 EITHER MAY OR MAY NOT AGREE ON WHETHER THERE SHOULD
02:19PM 9 BE BIFURCATION OR TO WHAT DEGREE.

02:19PM 10 AND, AGAIN, WE COULD BE IN A SITUATION
02:19PM 11 WHERE WE'RE GETTING VERY CLOSE TO OUR 30-DAY TIME
02:19PM 12 TO RESPOND. AND IF WE HAVE NOT RESOLVED THAT
02:19PM 13 ISSUE, WE MAY END UP INCURRING THE VERY EXPENSE OR
02:19PM 14 BURDEN THAT I WAS TRYING TO AVOID --

02:19PM 15 THE COURT: SURE.

02:19PM 16 MR. BROWN: -- THAT COULD EITHER BE
02:19PM 17 RESOLVED, POTENTIALLY, IF WE SEE EYE TO EYE IN
02:19PM 18 BIFURCATION OF THE 26(F).

02:19PM 19 THE OTHER WAY IT CAN BE RESOLVED IS US
02:19PM 20 REACHING SOME AGREEMENT AS TO EXTENDING THE
02:19PM 21 DISCOVERY RESPONSE DEADLINE SO THAT WE CAN GET THE
02:19PM 22 ISSUE WORKED OUT.

02:19PM 23 MR. FRICKLETON: AND WE'LL ALWAYS BE
02:19PM 24 REASONABLE ON THAT.

02:19PM 25 THE COURT: YOU KNOW, I SEE GOOD FACES IN

02:19PM 1 THIS CASE AND PERHAPS THAT'S SOMETHING THAT COULD
02:19PM 2 CARRY OVER TO YOUR DISCOVERY DISCUSSION AS WELL.

02:19PM 3 YOU WANTED TO RAISE ANOTHER ISSUE?

02:19PM 4 MR. FRICKLETON: YES, YOUR HONOR. THE
02:19PM 5 HEARING ON THE ANTICIPATED MOTIONS IS ALREADY
02:20PM 6 SCHEDULED ON SEPTEMBER 21ST. MY PARTNER, CHIP
02:20PM 7 ROBERTSON, AGREED TO THAT WITHOUT CONSULTING HIS
02:20PM 8 CALENDAR VERY CLOSELY. OUR FIRM HAS GOT A FIRM
02:20PM 9 RETREAT WHICH IS GOING TO TAKE ALL OF US OUT OF THE
02:20PM 10 OFFICE.

02:20PM 11 THE COURT: IS IT A LOVELY LOCATION?
02:20PM 12 SHOULD I ENTERTAIN A CHANGE OF VENUE MOTION?

02:20PM 13 MR. FRICKLETON: IT'S IN NORTH CAROLINA
02:20PM 14 SO THAT RANGES FROM THE RIDICULOUS TO THE SUBLIME.

02:20PM 15 AND I TALKED WITH MR. BROWN ABOUT THIS
02:20PM 16 BEFOREHAND. HE HAS OBVIOUSLY HIS OWN SCHEDULING
02:20PM 17 ISSUES, BUT IF THERE'S A POSSIBILITY OF MAYBE
02:20PM 18 MOVING THAT DATE, IT WOULD GREATLY HELP US.

02:20PM 19 THE COURT: IS IT THAT ENTIRE WEEK?

02:20PM 20 MR. FRICKLETON: WE HAD -- WE'RE OUT WE
02:20PM 21 HAD THURSDAY, FRIDAY.

02:20PM 22 THE COURT: I SEE. LET ME ASK OUR
02:20PM 23 COURTROOM DEPUTY, MS. GARCIA, TO LOOK AT THAT.

02:20PM 24 AND, MR. BROWN, IF YOU WANT TO COMMENT,
02:20PM 25 WE'LL LOOK INTO THIS.

02:20PM 1 MR. BROWN: I WOULD REALLY LIKE TO RUN
02:20PM 2 THAT BY -- I MEAN, I CAN LOOK AT MY SCHEDULE HERE,
02:21PM 3 BUT I WOULD LIKE TO RUN THAT BY OTHER PEOPLE AT
02:21PM 4 COOLEY IF I COULD BEFORE WE AGREE ON A DATE.

02:21PM 5 THE COURT: WELL, LET'S -- WE'LL LOOK AT
02:21PM 6 OUR CALENDAR HERE AND WE'LL OFFER YOU SOME PROPOSED
02:21PM 7 DATES AND MAYBE IT'S TOO MUCH TO ASK YOU DURING
02:21PM 8 YOUR CONFERENCE. YOU PROBABLY NEED AN ANSWER
02:21PM 9 BEFORE THEN? MAYBE? I DON'T KNOW.

02:21PM 10 MR. FRICKLETON: I THINK IF WE CAN GET
02:21PM 11 SOME PROPOSED DATES OR MAYBE CHECK WITH EVERYONE'S
02:21PM 12 CALENDARS IN THE NEXT WEEK OR TWO IF WE CAN GET
02:21PM 13 SOMETHING LOCKED IN.

02:21PM 14 THE COURT: OKAY.

02:21PM 15 (PAUSE IN PROCEEDINGS.)

02:21PM 16 THE COURT: MS. GARCIA TELLS ME THAT WE
02:21PM 17 CAN GO TO, WITHOUT ANY DIFFICULTY, THE 28TH OF
02:21PM 18 SEPTEMBER, AND OCTOBER THE 5TH, OR 12TH, WITHOUT
02:22PM 19 ANY DIFFICULTY, KEEPING IT ON OUR REGULAR FRIDAY
02:22PM 20 LAW AND MOTION CALENDAR. AND THAT WOULD TYPICALLY
02:22PM 21 BE AT 9:00 O'CLOCK.

02:22PM 22 WE MIGHT HAVE SOME FLEXIBILITY,
02:22PM 23 MS. GARCIA, DO WE, THOSE AFTERNOONS OR LATER IN THE
02:22PM 24 MORNING?

02:22PM 25 MR. FRICKLETON: I'M OKAY WITH EITHER OF

02:22PM 1 THOSE.

02:22PM 2 THE CLERK: THE AFTERNOON IS FINE.

02:22PM 3 THE COURT: SO WE COULD USE AN AFTERNOON
02:22PM 4 IF WE NEEDED TO IF THAT FITS YOUR SCHEDULE OR IF
02:22PM 5 YOU THINK IT'S GOING TO TAKE ALL MORNING AND SOME
02:22PM 6 TIME IN THE AFTERNOON, WE COULD HAVE THE AFTERNOON.

02:22PM 7 MR. FRICKLETON: IF WE CAN DO OUR
02:22PM 8 CHECKING AND GET BACK WITH MS. GARCIA NEXT WEEK?

02:22PM 9 THE COURT: THAT WOULD BE GREAT. OKAY.

02:22PM 10 MR. BROWN: ALL RIGHT. THANK YOU.

02:22PM 11 THE COURT: ANYTHING ELSE?

02:23PM 12 MR. KIESEL: YOUR HONOR, PAUL KIESEL.
02:23PM 13 JUST TO REPORT AS LIAISON COUNSEL, AS OF YESTERDAY
02:23PM 14 I'M PLEASED TO REPORT THAT ALL COUNSEL ARE NOW ON
02:23PM 15 THE ECF OR GOING TO BE REMOVED FROM ECF SO THE
02:23PM 16 BURDEN ON THE COURT TO DO ANY PERSONAL SERVICE ARE
02:23PM 17 NOW ENDED.

02:23PM 18 THE COURT: THANK YOU.

02:23PM 19 MR. KIESEL: AND THANKS TO MY STAFF WHO
02:23PM 20 ACTUALLY DID IT BEHIND ME.

02:23PM 21 MR. BROWN: THIS MAY BE THE WRONG DAY TO
02:23PM 22 TALK ABOUT ECF.

02:23PM 23 THE COURT: WE'RE HAVING A LITTLE
02:23PM 24 PROBLEMS WITH ECF JUST NOW. YES, WE ARE.
02:23PM 25 HOPEFULLY IT WILL BE THERE ON MONDAY.

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ALL RIGHT. THANK YOU VERY MUCH. HAVE A
GOOD WEEKEND AND A GOOD HOLIDAY.

MR. FRICKLETON: THANK YOU, YOUR HONOR.

MR. BROWN: THANK YOU, YOUR HONOR.

(WHEREUPON, THE PROCEEDINGS IN THIS
MATTER WERE CONCLUDED.)

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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, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

/s/

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

DATED: JULY 18, 2012