

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO

3 Civil Action No. 06-cv-02528

4 CHRIS BRAY, et al.,

5 Plaintiffs,

6 vs.

7 QFA ROYALTIES LLC,

8 Defendant.

ORIGINAL

9 REPORTER'S TRANSCRIPT
10 (Motion for Protective Order)

11
12 Proceedings before the HONORABLE JOHN L.
13 KANE, JR., Senior Judge, Alfred A. Arraj United States
14 Courthouse for the District of Colorado, commencing at
15 1:59 p.m. on Thursday, February 8, 2007, in Courtroom
16 A802, Denver, Colorado.

17 A P P E A R A N C E S

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5 Computer-Aided Transcription

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

7 (In open court at 9:00 a.m.)

8 THE COURT: All right. The record
9 should reflect that this is Civil Action No. 06-02528,
10 Christopher Bray, et al. v. QFA Royalties LLC,
11 Defendant.

12 There has been a motion by the Plaintiff
13 Jihad Majed for a Protective Order, and there's a
14 Response to the Motion for Protective Order which was
15 filed today. The motion was filed yesterday
16 afternoon.

17 So for the record, let's start with the
18 plaintiffs. And over the telephone, there's a court
19 reporter present and the courtroom deputy who is
20 taking a record of this proceeding. So I'd like the
21 plaintiffs' counsel to begin with entering your
22 appearances and then defense counsel to then enter
23 your appearance for today's hearing.

24 MR. KLINE: Good afternoon, your Honor.
25 This is Justin Kline, Marks & Kline LLP, on behalf of
all of the plaintiffs and Mr. Majed.

MR. MacPhee: And good afternoon, your

1 Honor. Lynn MacPhee with Perkins Coie here in Denver,
2 and also on the phone with me is Rick Cohen in Chicago
3 on behalf of the defendant.

4 MR. COHEN: Good afternoon, your Honor.

5 THE COURT: All right. I've read both
6 of these motions, but let me hear whatever the
7 plaintiff wants to say, and then I'll hear from
8 defense and then from plaintiff again.

9 MR. KLINE: Your Honor, this is Justin
10 Kline. Thank you.

11 First of all, we apologize for having to
12 file the motion, but the procedure and what happened
13 was Mr. Majed was scheduled to be deposed several
14 weeks ago following defendant's Motion for Expedited
15 Discovery, and after some productive conversations
16 between Mr. Cohen and myself, we were able to settle
17 out some of the claims of the plaintiffs, which part
18 of the resolution of those claims was that the
19 settling plaintiffs would not be required to appear
20 for deposition.

21 Some five weeks later we were served
22 with a Notice of Deposition, which is reflected in the
23 papers, and in response to that notice, which we deem
24 upon unreasonable notice, defendants presumed to
25 desire to take Mr. Majed's deposition, regardless of

1 the agreement that we had made previously, based on
2 some information that they said they had recently
3 discovered. And we feel that there is no reason to
4 take Mr. Majed's deposition. In fact, the purpose of
5 the hearing in this upcoming week is simply to
6 determine whether or not an injunction is appropriate
7 as to preserve the status quo pending the merits of
8 the remaining plaintiffs' cases and whether or not
9 they will be irreparably harmed if an injunction is
10 not entered.

11 Mr. Majed has settled his claims.
12 Therefore, any information he would have to provide
13 would be irrelevant to the scope of the hearing next
14 week, and it's our position that this is simply
15 harassing and vexing and unnecessary.

16 The information that I've learned now in
17 defendant's response as to the purpose of taking Mr.
18 Majed's deposition to, quote, "authenticate the
19 e-mails," referring to e-mails sent to or from Mr.
20 Bray or Mr. Majed, the timing of the e-mails, and to
21 confirm Mr. Majed's statements. Mr. Majed has already
22 testified. His statements are his statements.

23 Moreover, Mr. Majed, at the request of
24 the defendants, stipulated to the accuracy of the
25 e-mails that he provided in discovery. Therefore,

1 there's no reason to cause him to appear for a
2 deposition, much less on two day's notice, three
3 business days before the hearing, when his attorneys
4 would have to prep him and of course not be able to
5 appear, as he's based in Michigan, and the defendants
6 know that.

7 The purpose for filing the motion was
8 that we requested that they -- we objected to the
9 taking of the deposition. Defendants refused to
10 withdraw the Notice -- or I don't know if that's
11 necessarily an accurate statement. I don't know if I
12 asked them to withdraw the Notice. I objected to the
13 Notice, and they continued to pursue the deposition,
14 and rather than face some objectionable actions on our
15 part, we filed the Motion for Protective Order as the
16 Notice is unreasonable and inappropriate for the
17 purposes of the hearing next week.

18 THE COURT: Let me hear from defense
19 now, please.

20 MR. COHEN: Your Honor, this is Rick
21 Cohen. I will go directly to the purpose for which we
22 wish to take Mr. Majed's deposition, and it has little
23 to do with Mr. Majed.

24 We served document requests and
25 interrogatories on a next best basis to each of the

1 named, I think, eight named plaintiffs and also sent
2 deposition notices. Shortly thereafter, as Mr. Kline
3 points out, we were able to enter into resolutions
4 with five of the eight, leaving three plaintiffs for
5 purposes of the Preliminary Injunction motion that's
6 set to begin on Monday.

7 We received Interrogatory Responses from
8 each of those three. We received documents from two
9 of them, no documents whatsoever relating to e-mail
10 communications or anything else relating to the
11 website of the posting of the suicide note from Mr.
12 Bray in advance of his deposition. Mr. Majed did
13 provide certain documents, including e-mails between
14 he and Mr. Bray, and as we've learned through
15 discovery now, he and Mr. Bray -- Mr. Majed and Mr.
16 Bray were the persons principally involved in the
17 posting of the suicide note on the website.

18 At his deposition, at Mr. Bray's deposition,
19 I presented Mr. Bray with several of these e-mails
20 which we had received from Mr. Majed's production.
21 And I asked him about them, and I asked him apart from
22 about their content, I asked him why he had not
23 produced any of these documents, as we point out in
24 the footnote in our response to the motion. He
25 testified that he had -- and bear in mind, your Honor,

1 we're talking about e-mails that are being sent back
2 and forth in late November and early December, a month
3 and a half ago, roughly two months ago. He said he
4 had not only deleted them from the e-mail, but he was
5 just a busy e-mailer that he had then gone into his
6 deleted box and deleted them there as well. I asked
7 him whether or not he's ever been admonished not to --
8 to preserve evidence relating to the law suit. He
9 acknowledged that he had been by Mr. Kline, and was
10 unable to testify when it was he destroyed or deleted
11 these e-mails. We're not just talking about e-mails,
12 we're also talking about other documents relating
13 directly to the communications mostly of pay members
14 specifically concerning the posting of the suicide
15 note on the website.

16 Another example, your Honor, is Ms.
17 Abid, one of the plaintiffs who has not settled and
18 against whom we'll go forward on Monday, claimed that
19 upon learning of the posting she sent a note to Mr.
20 Bray demanding that he take the suicide note down
21 right away. There's a question about the timing of
22 Ms. Abid's sending of that note, and in order to
23 confirm it we needed a copy of the note that Mr. Bray
24 had received from her. That's another document that
25 Mr. Bray apparently destroyed. So we're not able to

1 test Ms. Abid's testimony, either.

2 In the wake of Mr. Bray's -- one other
3 point, your Honor. Not only did Mr. Bray say that he
4 had destroyed all of these e-mails, when I asked him
5 questions about the timing of his receipt and the
6 timing of his response and showed, and was able to
7 show at his deposition that he and Mr. Majed were
8 opportunistically seeking to take advantage of Mr.
9 Baber's suicide to advance the -- I won't characterize
10 them -- but the purpose of the TSFA, he backtracked
11 and said no, I can't acknowledge that because I can't
12 tell you for certain that the date and the time on
13 this e-mail is correct because there was a problem
14 with the timing and the dating on my computer which I
15 only found out about later and subsequently had
16 fixed.

17 So basically, what we've got is a
18 witness against whom we're going forward who's going
19 to give testimony inconsistent with certain documents,
20 which we will use the documents to impeach, but then
21 we've got an obligation to prove up the impeachment.
22 That's the reason why we want to take Mr. Majed's
23 deposition. We've been asking for it since the day
24 after Mr. Bray's deposition, which was the middle of
25 next week. We've offered every accommodation to go to

1 Detroit, to take it by phone, to do anything else.
2 And I would point out one other thing, your Honor. I
3 think we mentioned it in the response.

4 As a part of the Settlement Agreement
5 which we have sent to the settling plaintiffs and
6 which up to this moment has still not been signed by
7 any of them, and I'll note that Mr. Majed still is a
8 party, has not filed a voluntary dismissal or other
9 notice of dismissal, has not signed the Settlement
10 Agreement.

11 In that Settlement Agreement, one of the
12 conditions of each of the settling plaintiffs is that
13 they give us full disclosure of their own individual
14 involvement in the decision to post the suicide note
15 on the website and their own involvement in the
16 execution of that decision. Mr. Majed agreed to do
17 that, and there's absolutely no reason why,
18 particularly since he's still a party, and all things
19 considered, why he can't give us that full disclosure
20 with a court reporter sitting right next to him.
21 We'll arrange it. It can be in Detroit, it can be
22 over the phone. The inconvenience would be minimal,
23 if any, to him, and he will simply be fulfilling what
24 Mr. Kline himself acknowledges is a commitment he's
25 undertaken in the Settlement Agreement. And without

1 this testimony, we're put in a position of not being
2 able to prove up the impeachment, which we feel will
3 be extraordinarily compelling at the hearing
4 commencing Monday.

5 THE COURT: Okay. Back to you, Mr.
6 Kline.

7 MR. KLINE: Thank you, your Honor.
8 Just a couple of points.

9 First of all, Mr. Cohen spent the
10 majority of his time talking about Mr. Bray and
11 certain documents that he might or might not have.
12 This is totally unrelated to Mr. Majed and the
13 necessity to take his deposition. Any letters that
14 Mr. Bray might or might not have received from Ms.
15 Abid has nothing to do with Mr. Majed.

16 Moreover, and despite Mr. Cohen's use of
17 rhetoric and his client's position in the hearing,
18 Mr. Majed already stipulated to the accuracy of the
19 documents that Mr. Cohen now wants to depose him
20 about. I don't know what more he needs to say, and
21 the purpose of the deposition is a fishing expedition,
22 which Mr. Cohen just described, to impeach Mr. Bray.
23 If he wants to impeach Mr. Bray with the documents
24 that he has and the deposition testimony that Mr. Bray
25 already gave, that is irrespective of Mr. Majed's

1 necessity to give a deposition on information that
2 he's already stipulated to.

3 The only other thing that I would add,
4 as I go through my notes, if you'll give me a second,
5 is that it's not whether or not Mr. Cohen and Mr.
6 MacPhee and the defendants are accommodating Mr. Majed.
7 The rules, the local rules in Colorado say that you
8 have to give 11 days for notice for the deposition,
9 and clearly, the Notice on this is unreasonable. Not
10 for accommodating Mr. Majed, but also to accommodate
11 his attorneys and the ability to prep Mr. Majed and to
12 properly prepare him for any deposition or any
13 deposition testimony.

14 That being said, I understand we are on
15 an expedited schedule. Two days is still unreasonable.
16 And that being said, this was Defendant's Motion for
17 Expedited Discovery. If they wanted to take Mr.
18 Majed's deposition, they had plenty of opportunity
19 to.

20 That's all I have, your Honor.

21 THE COURT: Thank you. I'm going to
22 permit a deposition of Mr. Majed to be taken by
23 telephone only, and for not more than two hours, and
24 it will have to be done on this Friday, February 9,
25 and it will be limited to the matters raised in

1 paragraph 8 of the Response to the Motion for
2 Protective Order in Document No. 34 filed today. The
3 defendant's response to Motion for Protective Order
4 and paragraph 8 relates to the matters of Mr. Bray
5 refusing to acknowledge the accuracy of e-mails
6 between Mr. Majed and himself that had been produced
7 by Mr. Majed, the footnote as well that is dumping of
8 the e-mails or deleting them, I guess, is it correct
9 word, and the other matters set forth in paragraph 8.

10 Now, if there is a settlement with any
11 of these people, the settlement documents must be
12 filed not later than 9 a.m. on Monday, February 12, or
13 the parties will still be bound by my ruling on the
14 Preliminary Injunction. They will still be considered
15 to be active parties in the case until such time as
16 there is an order dismissing based upon settlement.
17 That's the way we're going to proceed.

18 I have one other suggestion for you, and
19 that's if some of these people can settle, it seems to
20 me like all of you should, but if not, we'll see you
21 in court at 9 a.m. on Monday, the 12th.

22 MR. KLINE: Thank you very much, your
23 Honor.

24 MR. MacPHEE: Thank you.

25 THE COURT: Thank you. We'll be in

1 recess.

2 (Court recessed at 2:18 p.m.)

3 * * * * *

4 REPORTER'S CERTIFICATE

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6 I, ADRIENNE WHITLOW, Certified Shorthand

7 Reporter in and for the State of Colorado, do hereby

8 certify that the foregoing is a true and correct

9 transcript of the proceedings had in the within

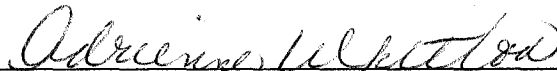
10 entitled and numbered cause on the date hereinbefore

11 set forth.

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ADRIENNE WHITLOW, CSR

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Certified Shorthand Reporter

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