

1

2

DISCLAIMER

3

4

PURSUANT TO 273(B) OF THE CODE OF CIVIL PROCEDURE, THIS REALTIME TEXT IS NOT CERTIFIED AND SHALL NOT BE USED, CITED, OR TRANSCRIBED AS THE OFFICIAL CERTIFIED TRANSCRIPT OF THE PROCEEDINGS. IT SHALL NOT BE CITED OR USED IN ANYWAY OR AT ANY TIME TO REBUT OR CONTRADICT THE OFFICIAL CERTIFIED TRANSCRIPT OF THE PROCEEDINGS AS PROVIDED BY THE OFFICIAL REPORTER PRO TEMPORE.

7

8

THE REALTIME TEXT IS UNEDITED, NOT CERTIFIED AND MAY CONTAIN UNTRANSLATED STENOGRAPHIC SYMBOLS, OCCASIONAL REPORTER NOTES, MISSPELLED PROPER NAMES, AND/OR NONSENSICAL WORK COMBINATIONS. ALL SUCH ENTRIES WILL BE CORRECTED ON THE OFFICIAL CERTIFIED TRANSCRIPT.

10

11

12

13

14

15

16

THE COURT: NOW LET'S CALL THE WEST VALLEY MATTER, ITEM NO. 2 ON THE COURT'S CALENDAR.

18

LOOKS LIKE WE HAVE A FULL HOUSE ON THAT ONE.

19

20

MS. MEDINA: GOOD MORNING, YOUR HONOR, MARIBEL MEDINA FOR THE WEST VALLEY WATER DISTRICT REAL PARTY IN INTEREST.

21

22

THE COURT: DO YOU HAVE A MINUTE ORDER FOR THE COURT REPORTER?

23

24

MS. MEDINA: I'M SORRY?

25

26

THE COURT: DO YOU HAVE A MINUTE ORDER FOR THE COURT REPORTER? I JUST DIDN'T SEE ANYTHING THAT NEEDED TO BE SIGNED.

27

28

LET'S GO AHEAD AND MAYBE YOU CAN MAKE YOUR

1 APPEARANCES.

2 MS. MEDINA: MARIBEL MEDINA FOR REAL PARTY IN
3 INTEREST WEST VALLEY WATER DISTRICT.

4 MS. SKELTON: SAVANNAH SKELTON FOR REAL PARTY IN
5 INTEREST WEST VALLEY WATER DISTRICT.

6 MS. Fiset: RACHEL Fiset ON BEHALF OF QUI TAM
7 PLAINTIFFS.

8 MS. COLEMAN: ERIN COLEMAN ON BEHALF OF QUI TAM
9 PLAINTIFFS.

10 MR. WATKINS: ASHTON WATKINS ON BEHALF OF ROBERT
11 TAFOYA AND TAFOYA & GARCIA.

12 MR. GRACE: MATTHEW GRACE ON BEHALF OF ALBRIGHT,
13 YEE, AND SCHMIT AND CLIFTON ALBRIGHT.

14 MR. COHEN: GOOD MORNING, YOUR HONOR, JASON COHEN
15 ON BEHALF OF THE KAUFMAN DEFENDANTS.

16 THE COURT: ALL SIDES READY TO PROCEED?

17 IN UNISON: YES, YOUR HONOR.

18 THE COURT: THE COURT DID PUBLISH ITS TENTATIVE ONE
19 AS TO THE MOTION TO DISQUALIFY AND THE OTHER AS TO THE
20 MOTION TO DISMISS.

21 THE COURT'S INCLINATION IS TO GO TO THE MOTION TO
22 DISQUALIFY FIRST.

23 SO WHO WISHES TO BE HEARD.

24 MS. Fiset: YOUR HONOR, ON THE MOTION TO DISQUALIFY
25 THERE WERE ACTUALLY TWO MOTIONS TO DISQUALIFY SUBMITTED TO
26 THE COURT. WE DON'T SEE A TENTATIVE ON THE MOTION TO
27 DISQUALIFY LEAL TREJO WHICH WE ASK TO BE HEARD PRIOR TO THE
28 MOTION TO DISMISS IN WHATEVER ORDER YOU'D LIKE TO DO.

1 MS. MEDINA: I DO HAVE THAT THE COURT DID RULE QUI
2 TAM PLAINTIFFS LACK STANDING TO CHALLENGE LEAL TREJO'S
3 REPRESENTATION TO THE DISTRICT.

4 IF I COULD, YOUR HONOR, WE COULD --

5 THE COURT: BOTH MOTIONS TO DISQUALIFY ARE DENIED
6 SO LET ME START WITH THAT, INCLUDING THE ONE ORALLY, TREJO.
7 I CAN POST IT FOR YOU THE TENTATIVE AS TO TREJO THAT IS THE
8 COURT'S RULING AS TO THE DISQUALIFICATION ON ZWEIBACK AND
9 THAT MOTION ALSO IS TO DENY.

10 AND THE COURT GRANTED THE MOTIONS FOR JOINDER AT
11 LEAST AS RELATED TO THE ALBRIGHT, YEE & SCHMIT DEFENDANT
12 MR. KAUFMAN AND THE TAFOYA DEFENDANTS THAT WAS GRANTED SO
13 YOU CAN START THERE.

14 MS. Fiset: YES, YOUR HONOR, I WOULD LIKE TO BE
15 HEARD ON THE MOTION TO DISQUALIFY LEAL TREJO. I WOULD LIKE
16 TO ADDRESS THE LINE THAT I HAVE READ REGARDING THE STANDING
17 ISSUE IF THAT IS THIS COURT'S BASIS FOR ITS ORDER.

18 THE COURT: YES, GO AHEAD.

19 MS. Fiset: SO MAYBE START THERE?

20 THE COURT: START THERE.

21 MS. Fiset: SO, YOUR HONOR, THE MOTION TO
22 DISQUALIFY LEAL TREJO IN GENERAL WAS BASED ON WHAT WE
23 BELIEVE --

24 THE COURT: TO BE AN ALLEGED CONFLICT. YOU THOUGHT
25 IT WAS A CONFLICT, CORRECT?

26 MS. Fiset: IS A BREACH OF ETHICAL DUTIES BY LEAL
27 TREJO IN SEVERAL WAYS. BUT ACTUALLY THERE IS A CONFLICT
28 AND A BREACH OF ETHICAL DUTIES. THEY DO GO TOGETHER.

1 ALSO THEY HAVE NO AUTHORITY ON BEHALF OF THE
2 DISTRICT. SO THEY ARE WORKING WITHOUT A CONTRACT ON BEHALF
3 OF A PUBLIC ENTITY. AND YOUR HONOR, WE DON'T SEE A
4 STANDING ARGUMENT THERE. THEY ARE OPPOSING COUNSEL. YOU
5 MAY DISQUALIFY OPPOSING COUNSEL ON A BREACH OF ETHICAL
6 DUTY. AND IN THIS CASE WE FIND IT EGREGIOUS.

7 LEAL TREJO'S ACTIONS ON BEHALF OF THE DISTRICT ARE
8 WITHOUT PROPER AUTHORITY. AND THIS IS EVIDENCED BY WHAT
9 HAS HAPPENED AS AN IMMEDIATE DISMISSAL OF THIS CASE.

10 THEY WERE HIRED BY DEFENDANTS TO COME IN AND
11 DISMISS THE CASE. THIS IS A WHISTLEBLOWER CASE DESIGNED TO
12 STOP THAT EXACT CORRUPTION THAT IS GOING ON IN THIS
13 DISTRICT.

14 SO THE WHISTLEBLOWERS ARE STEPPING INTO THE SHOES
15 OF THE WATER DISTRICT, AND THEY ARE COMING IN TO SAY, HEY,
16 THERE IS A LOT OF -- NOW IT'S BEEN WELL DOCUMENTED, A LOT
17 OF CORRUPTION, A LOT OF MONEY SPENT, A LOT OF UNAUTHORIZED
18 CONTRACTS. A LOT OF PUBLIC ENTITY MONEY GOING OUT THE DOOR
19 FOR A FRAUDULENT PURPOSE.

20 THE COURT: ARE YOU ARGUING THE MOTION TO DISMISS
21 NOW? OR ARE YOU ARGUING THE MOTION TO DISQUALIFY?

22 MS. Fiset: YOUR HONOR, THEY GO TOGETHER. THIS
23 FRANKLY IS PART OF THE SCHEME.

24 THE MOTION TO DISMISS IS BASED ON THIS EXACT
25 BEHAVIOR. THEY BRING IN ENTITIES THAT EITHER DON'T HAVE
26 AUTHORITY OR FOR WHOM THEY HAVE RECEIVED A KICKBACK FROM TO
27 EITHER DO WORK OR NOT DO WORK BUT TO RECEIVE GOVERNMENT
28 MONEY.

1 THIS IS THE SAME EXACT THING THE DEFENDANTS HAVE
2 DONE HERE. THEY HAVE BROUGHT IN LEAL TREJO WITHOUT
3 AUTHORITY, WITHOUT A CONTRACT, WITHOUT A BOARD VOTE, TO
4 COME IN AND DISMISS THE CASE SO THAT NO ONE HAS TO
5 INVESTIGATE THE FRAUD THAT DATES BACK ON ALL OF THE OTHER
6 CONTRACTS --

7 THE COURT: WASN'T THERE A PREEEXISTING CONTRACT
8 WITH MR. TREJO FROM MAY OF 2018.

9 MS. Fiset: THERE WAS A PREEEXISTING CONTRACT --

10 THE COURT: IS THAT A YES.

11 SPEAKER3: THAT WAS BASED.

12 THE COURT: IS THAT A YES.

13 MS. Fiset: FOR A SPECIFIC PURPOSE OF ANOTHER CASE.

14 THE COURT: THERE WAS A PRE-EXISTING CONTRACT.

15 MS. Fiset: YES FOR ANOTHER CASE. AS I'M SURE YOU
16 KNOW, ENTITIES NEED A BOARD APPROVAL EVERY TIME THEY OPEN A
17 NEW MATTER.

18 SO HERE THEY DID NOT GET BOARD APPROVAL FOR A NEW
19 MATTER. INSTEAD THE GENERAL COUNSEL TAFOYA WHO IS A
20 DEFENDANT IN THE MATTER AND A MAIN -- THE MAIN PART OF THIS
21 CONSPIRACY SAID, HEY, COME ON IN, CAN YOU REPRESENT US AS
22 THE DISTRICT UNDER YOUR -- I THINK THE OLD CONTRACT WAS AN
23 AFTERTHOUGHT.

24 BUT CAN YOU PLEASE COME IN AND REPRESENT US ON THIS
25 NEW MATTER AND GET RID OF IT. GET RID OF IT IMMEDIATELY.

26 THE COURT: WHAT ABOUT --

27 MS. Fiset: THAT WAY THERE CAN BE NO INVESTIGATION
28 INTO ALL OF THE FRAUD THAT IS BEING INVESTIGATED NOW BY THE

1 PUBLIC AUDIT, BY THE STATE AUDIT.

2 THE COURT: WHAT ABOUT THE JUNE 7, 2019, CLOSED
3 SESSION.

4 MS. Fiset: THAT WAS GUIDED BY TAFOYA WHO IS A
5 DEFENDANT. HE'S A DEFENDANT.

6 THE COURT: CURE THE ALLEGATIONS.

7 MS. Fiset: ABSOLUTELY NOT THAT ADDS TO THE
8 ALLEGATIONS, YOUR HONOR. THIS IS THE SEVERE ETHICAL BREACH
9 THAT --

10 THE COURT: DID TAFOYA VOTE AT THAT MEETING?

11 MS. Fiset: I'M SORRY?

12 THE COURT: DID TAFOYA HAVE ANY VOTE AT THAT
13 MEETING?

14 DID HE RECUSE HIMSELF?

15 MS. Fiset: NO.

16 THE COURT: HE DID NOT.

17 MS. Fiset: HE WENT IN AND GUIDED THE VOTE. AND
18 THAT VOTE WAS NOT TO DISMISS THE CASE --

19 THE COURT: WHAT ABOUT THE TAYLOR DECLARATION
20 PARAGRAPH 3, DOESN'T IT DISCUSS THAT.

21 MS. Fiset: HERE IS THE PROBLEM WITH THE TAYLOR
22 DECLARATION.

23 EITHER TAFOYA WAS IN THE MEETING AND GUIDED THE
24 VOTE OR HE WASN'T IN THE MEETING AND IT SHOULDN'T HAVE BEEN
25 CLOSED.

26 THE COURT: SO IT'S AN ALTERNATIVE ARGUMENT.

27 MS. Fiset: WELL THAT CAME MUCH LATER AND IT
28 CONFLICTS WITH THE GREG YOUNG DECLARATION. BUT IT'S BOTH

1 BOARD MEMBERS RIGHT.

2 SO WHO KNOWS EXACTLY WHAT HAPPENED WHEN, BUT THAT
3 VOTE WAS ALSO WHEN THEY CAME OUT OF PUBLIC SESSION OR
4 CLOSED SESSION WHICH WAS COMPLETELY ILLEGAL IF IT WAS RUN
5 BY A DEFENDANT OF THE CASE.

6 THIS IS EITHER THE CLOSED SESSION SHOULDN'T HAVE
7 BEEN CLOSED BECAUSE IT HAD NO LAWYER AND SO THAT SHOULD BE
8 OPEN TO THE PUBLIC.

9 OR IT HAD A LAWYER AND THAT LAWYER WAS A DEFENDANT
10 AND IT'S A CONFLICT OF INTEREST VIOLATION. EITHER WAY THAT
11 VOTE IS ILLEGITIMATE.

12 THE COURT: I UNDERSTAND YOUR ARGUMENT.

13 MS. Fiset: AND THAT VOTE WE DON'T UNDERSTAND WAS
14 TO RETAIN LEAL TREJO. THAT VOTE AS WE UNDERSTAND IT WAS
15 SIMPLY TO INTERVENE. IT WASN'T TO DISMISS. IT WASN'T TO
16 GET LEAL TREJO. IT WAS TO INTERVENE IN THE CASE. THAT IS
17 WHAT THEY CAME OUT OF CLOSED SESSION AND ANNOUNCED.

18 THE COURT: I NEED TO HEAR FROM THE REAL PARTY IN
19 INTEREST.

20 MS. Fiset: YOUR HONOR, I'M NOT DONE WITH MY
21 ARGUMENTS IF I MAY JUST CONTINUE DOWN.

22 THE COURT: ARE YOU JUST LIMITING YOURSELF TO THE
23 DISQUALIFICATION OF MR. TREJO BECAUSE THAT IS WHAT YOU
24 WANTED TO START WITH.

25 MS. Fiset: I AM.

26 THE COURT: ALL RIGHT. ARE YOU GOING BEYOND THAT
27 NOW.

28 MS. Fiset: NO, YOUR HONOR. THERE ARE SO MANY

1 REASONS THEY SHOULD BEING DISQUALIFIED.

2 THE COURT: I'M FAMILIAR WITH THE BACKGROUND.

3 MS. Fiset: SO OUR ISSUE IS THIS. IF THE QUI TAM
4 PLAINTIFFS CANNOT STOP THE OVERARCHING AND EXTREME AND
5 BLATANT CORRUPTION --

6 THE COURT: SEE NOW THAT IS WHEN YOU START TO GET
7 INTO THE MOTION TO DISMISS. I WANT TO GET INTO THE MOTION
8 TO DISMISS IN GREATER DETAIL THAT IS WHY I'M PARCELING THIS
9 OUT VERY CAREFULLY.

10 MS. Fiset: I UNDERSTAND, BUT I THINK THEY ARE SO
11 TIED TOGETHER.

12 THE COURT: I AGREE THEY ARE TIED TOGETHER.

13 THE WITNESS: LEAL TREJO IS THE VEHICLE THAT THE
14 DEFENDANTS HAVE HIRED TO COME AND DEFEND BASED ON THE EXACT
15 SAME SCHEME.

16 THE COURT: BUT WE NEED TO ADDRESS THE ISSUE OF
17 STANDING.

18 MS. Fiset: I UNDERSTAND. YES YOUR HONOR.

19 THE COURT: SO A LITTLE BIT AT A TIME. WHAT I
20 WOULD LIKE TO DO IS PARCEL THIS OUT MOTION BY MOTION.

21 MS. Fiset: LET ME JUST ADDRESS THEIR STANDING
22 ARGUMENT.

23 THE COURT: THANK YOU.

24 MS. Fiset: SO THEY ARE ARGUING THAT BECAUSE THE
25 QUI TAM PLAINTIFFS WERE NOT A PARTY TO THE INITIAL 2018
26 CONTRACT THAT IS --

27 THE COURT: THE MAY, 2018, CONTRACT.

28 MS. Fiset: THE MAY 2018 CONTRACT BETWEEN THE WATER

1 DISTRICT AND LEAL TREJO BECAUSE THE QUI TAM PLAINTIFFS WERE
2 NOT A PARTY. THEY DON'T HAVE STANDING TO CONTEST THAT
3 CONTRACT. I THINK THAT ARGUMENT DOES NOT WORK.

4 THE REASON I THINK THAT ARGUMENT DOES NOT WORK IS
5 ONE, YOU DON'T NEED IT UNDER DISQUALIFICATION LAW YOU DON'T
6 NEED IT.

7 THE COURT: I'M FAMILIAR WITH THAT ARGUMENT. I
8 WANT TO HEAR FROM THE REAL PARTY OF INTEREST ON THAT TOPIC.

9 MS. Fiset: AND TWO.

10 THE COURT: JUST TO BE CLEAR, BECAUSE I DON'T HAVE
11 ALL MORNING TO ARGUE THIS BECAUSE I HAVE A TRIAL STARTING
12 AT 11 THAT IS WHY I'M TRYING TO SHORT CIRCUIT TO GET
13 EVERYONE FOCUSED ON THE BOTTOM LINE. BECAUSE THE REAL
14 ISSUE HERE IS THE MOTION TO DISMISS.

15 MS. Fiset: YOUR HONOR I UNDERSTAND. I JUST WANT
16 TO SUGGEST THE QUI TAM PLAINTIFFS ARE STEPPING INTO THE
17 SHOES THAT IS WHAT QUI TAM PLAINTIFFS DO --

18 THE COURT: I'M FAMILIAR --

19 MS. Fiset: OF THE WATER VALLEY DISTRICT --

20 THE COURT: -- AND I'M FAMILIAR WITH THE GOAL --

21 MS. Fiset: -- IN THAT CONTRACT BY CHALLENGING THAT
22 CONTRACT. SO IF THERE IS A NECESSARY STANDING ARGUMENT
23 SUCH THAT THEY WERE A PARTY TO THAT CONTRACT THEY ARE A
24 PARTY TO THAT CONTRACT UNDER QUI TAM LAW THEY ARE STEPPING
25 INTO THOSE SHOES.

26 MS. MEDINA: YOUR HONOR, MARIBEL MEDINA FROM REAL
27 PARTY IN INTEREST WEST VALLEY WATER DISTRICT.

28 THE COURT: YES.

1 MS. MEDINA: THE FALSE CLAIM ACT IS ACTUALLY A VERY
2 VERY NARROW SPECIFIC STATUTE AND IT DEALS ONLY AND
3 EXCLUSIVELY WITH DETECTING FRAUD. IT'S NOT A WILD CARD TO
4 BRING A BROWN ACT CONFLICT CORRUPTION AND EVERYTHING ELSE.
5 THAT BEING SAID, QUI TAM PLAINTIFFS HAVE ALLEGED THAT LEAL
6 TREJO HAS NOT BEEN AUTHORIZED BY THE BOARD BECAUSE A VOTE
7 DID NOT TAKE PLACE. THAT IS WRONG.

8 BUT TO REMEDY THAT ARGUMENT OR TO ELIMINATE THE
9 DISTRACTION OF THAT ARGUMENT, LAST THURSDAY AT A DULY
10 NOTICED MEETING THE BOARD WITH A BRAND NEW BOARD PRESIDENT
11 WHO WAS JUST RECENTLY ELECTED IS NOT NAMED IN ANYWAY
12 AUTHORIZED THE PAYMENT OF ALL OUTSTANDING INVOICES RELATED
13 TO THE QUI TAM ACTION AND MADE A STATEMENT ON THE RECORD
14 THIS WAS TO PAY FOR LEGAL FEES RELATED TO THE DISTRICT'S
15 DEFENSE IN THIS QUI TAM ACTION.

16 WE PRINTED THE AGENDA AND TRANSCRIBED THE MOTION.
17 AND IT PASSED BY MAJORITY VOTE OF THE DULY ELECTED
18 GOVERNING BOARD. SO THE BOARD HAS TAKEN AN AFFIRMATIVE
19 VOTE AGAIN VALIDATING WHAT HAS BEEN HAPPENING WHICH IS THAT
20 LEAL TREJO WAS AUTHORIZED TO REPRESENT THE DISTRICT.

21 THE LEGAL SERVICES AGREEMENT CONTRARY TO WHAT HAS
22 BEEN REPRESENTED IT'S VERY VERY COMMON FOR PUBLIC ENTITIES
23 TO HAVE WHAT IS KNOWN AS A LEGAL BENCH. THEY HAVE ONE
24 CONTRACT WITH A NUMBER OF LAW FIRMS THAT INCLUDES THE
25 LANGUAGE THAT IS INCLUDED IN THE LEAL TREJO CONTRACT WHICH
26 IS YOU'RE HIRED TO HANDLE THIS MATTER AND OTHER MATTERS AS
27 ASSIGNED BY THE DISTRICT.

28 THE QUI TAM PLAINTIFFS ALLEGE THEY HAVE STANDING TO

1 CHALLENGE THE INTERPRETATION OF THE LANGUAGE. WE PROVIDED
2 IN OUR OPPOSITION THE LEGAL AUTHORITY THAT STATES IF THERE
3 ARE TWO PARTIES TO A CONTRACT THOSE PARTIES DECIDE WHAT THE
4 PROPER INTERPRETATION OF THE CONTRACT IS.

5 THE DECLARATIONS BY THE GENERAL MANAGER AND BY THE
6 BOARD PRESIDENT VERIFY AND CONFIRM THAT THE DISTRICT AND
7 THE LAW FIRM AGREE THAT THIS LANGUAGE IS SUFFICIENT AND
8 THIS CONTRACT IS VALID SO THE TWO PARTIES.

9 QUI TAM PLAINTIFFS HAVE ALLEGED THERE IS A 1090
10 ISSUE WITH OUR LEGAL SERVICES AGREEMENT. ON DECEMBER 26,
11 JUST A MONTH AGO, THE CALIFORNIA SUPREME COURT DEALT WITH
12 WHETHER A PRIVATE PARTY HAS THE RIGHT TO CHALLENGE THE
13 VALIDITY OF A CONTRACT BASED ON 1090. AND THE CALIFORNIA
14 SUPREME COURT JUST RECENTLY RULED HOT OFF THE PRESS WE
15 CITED TO THIS CASE IN OUR OPPOSITION TO THEIR MOTION TO
16 DISMISS LEAL TREJO HELD THAT A PRIVATE PARTY DOES NOT.

17 NOW WHETHER THE PRIVATE PARTY'S NAME IS JOE SMITH
18 OR QUI TAM PLAINTIFF THEY ARE NOT A PARTY TO THE CONTRACT
19 AND THEREFORE THEY WOULD NOT HAVE STANDING.

20 SO THE BOARD HAS VOTED. THERE IS AN EXISTING LEGAL
21 SERVICES AGREEMENT. AND THERE IS NO CONFLICT OF INTEREST
22 IF ONE DID EXIST UNDER 1090 QUI TAM PLAINTIFFS WOULD NOT
23 HAVE STANDING TO BRING THAT BASED ON THE CLEAR AND RECENT
24 RULING OF THE CALIFORNIA SUPREME COURT.

25 THE COURT: LET'S MOVE THEN TO THE MOTION TO
26 DISQUALIFY THE ZWEIBACK MATTER.

27 MS. MEDINA: YOUR HONOR, IN YOUR TENTATIVE, YOU
28 INDICATED, AND I'M GOING TO READ THIS PART "IF THE COURT

1 WERE TO ADOPT THE DISTRICT'S POSITION THAT QUI TAM
2 PLAINTIFFS WOULD BE BARRED FROM USING ANY OF THE DISTRICT'S
3 CONFIDENTIAL AND PRIVILEGED DOCUMENTS TO SUPPORT THEIR CASE
4 THE DISTRICT WOULD EFFECTIVELY BE IMMUNE FROM THE SUIT
5 UNDER THE FALSE CLAIMS ACT."

6 IF THAT WERE TO BE THE HOLDING, THAT EXEMPTION
7 EXCEPTION WOULD SWALLOW THE RULE UNDER THE RULES OF
8 PROFESSIONAL CONDUCT THAT PROHIBIT AN ATTORNEY FROM
9 REVIEWING THE ATTORNEY-CLIENT PRIVILEGED DOCUMENTS.

10 WE HAVE REQUESTED THESE DOCUMENTS AND THE COURT
11 INDICATED THAT OUR REQUEST IN DECEMBER WOULD NOT HAVE BEEN
12 SUFFICIENT TIME FOR THE QUI TAM PLAINTIFFS TO RETURN THE
13 DOCUMENTS.

14 WE ARE NOW IN FEBRUARY AND THE DOCUMENTS STILL HAVE
15 BEEN RETURNED. WE'RE COMFORTABLE --

16 THE COURT: BUT DIDN'T THE DOCUMENTS ACTUALLY GO TO
17 THE CLIENT FIRST? THEY DIDN'T GO DIRECTLY TO THE LAW FIRM.

18 MS. MEDINA: WHAT HAPPENED HERE --

19 THE COURT: AND EVEN THE SUBSTANCE OF THE DOCUMENTS
20 WE'RE TALKING ABOUT THERE IS ONLY A FEW. I LOOKED AT THE
21 LIST, THERE IS ONE, TWO FILES ENTITLED LEGAL. ONE OF WHICH
22 WAS AN INTERVIEW WITH AN EMPLOYEE WHO FILED A COMPLAINT
23 AGAINST DR. YOUNG.

24 CERTAINLY A PROTECTIVE ORDER MAY BE AWAITING TO
25 PRESERVE AND PROTECT THAT BECAUSE THE COURT DOES HAVE TO
26 ENGAGE IN SOME BALANCING.

27 YOU HAVE NUMEROUS ATTORNEY-CLIENT PRIVILEGED
28 DOCUMENTS, BUT IT'S UNCLEAR WHAT EXACTLY THOSE

1 ATTORNEY-CLIENT PRIVILEGED DOCUMENTS WERE.

2 YOU HAVE A CONFIDENTIAL PERSONNEL MEMO THEN YOU
3 HAVE A LIST OF EMPLOYEES AND THEIR SALARIES AND THEN
4 EXECUTED DRAFT CONTRACTS.

5 SO TRYING TO DETERMINE AND MUCH OF THIS APPARENTLY
6 AROSE IN THE CONTEXT OF THE REVIEW OF THE CONTRACTS AND THE
7 PURCHASE ORDERS AND THE LIKE. SO ONE YOU HAVE GOT THAT
8 PURPORTEDLY SOME OF THESE DOCUMENTS COME FROM A CLIENT AND
9 THEN THEY ARE TRANSFERRED TO THE ATTORNEY.

10 AND I'M JUST NOT CERTAIN THIS WAS THE NON LAWYER
11 WHISTLE-BLOWER WHO HAD ACCESS TO THE DOCUMENTS AND THEN
12 THEY TRANSMITTED THEM TO THEIR RETAINED LAWYER. I THINK
13 THAT BREAKS THE POTENTIAL FOR DISQUALIFICATION THAT IS MY
14 VIEW OF IT, BUT TELL ME MORE.

15 MS. MEDINA: THE CASES THAT WERE CITED HERE, THAT
16 IN FACT WERE VERY STRICT IN TERMS OF WHAT COULD BE REVIEWED
17 IN AN ATTORNEY PRIVILEGED DOCUMENT WHICH IS JUST ENOUGH FOR
18 VIEW TO DETERMINE IT'S PRIVILEGE.

19 THE COURT: BUT IS INADVERTENT EXPOSURE ALONE
20 JUSTIFIES THE QUALIFICATION? THAT SEEMS TO BE WHAT YOU ARE
21 ARGUING NOT NECESSARILY THAT THERE WAS SOME INADVERTENCE
22 PER SE.

23 MS. MEDINA: THERE WAS NO INADVERTENCE YOUR HONOR.
24 THIS WAS INTENTIONAL. WHAT WE ARE ARGUING IS THAT THE
25 CONDUCT OF LEGAL COUNSEL SHOULDN'T WARRANT
26 DISQUALIFICATION.

27 THEY WERE VERY WELL AWARE THAT THEIR CLIENT THEIR
28 CLIENTS ARE NOT THE HOLDER OF THE PRIVILEGE. THEY WERE

1 EMPLOYEES WHO WERE GETTING PAID A SALARY TO PROCESS THESE
2 CONTRACTS. THEY WERE EMPLOYEES WHO WERE GIVEN THE RIGHT TO
3 CONSULT WITH THE DISTRICT'S GENERAL COUNSEL, BUT IT IS THE
4 GOVERNING BOARD THAT HOLDS THE PRIVILEGE.

5 SO THE EMPLOYEES DID IN FACT TAKE THESE DOCUMENTS
6 AND THEIR CONDUCT IS TROUBLING, BUT WHAT IS MOST TROUBLING
7 AND THE REASON WE'RE SUGGESTING THAT THE ATTORNEYS CONDUCT
8 WARRANTS DISQUALIFICATION IS THAT AT THE POINT THAT THESE
9 ATTORNEYS WERE RECEIVING FORWARDED EMAILS FROM THEIR
10 CLIENTS THAT HAD THE GENERAL COUNSEL'S NAME PROVIDING LEGAL
11 ADVICE, THEY HAD AN ETHICAL AND LEGAL DUTY TO DIRECT THEIR
12 CLIENT ONE TO STOP SENDING THOSE ATTORNEY-CLIENT PRIVILEGED
13 DOCUMENTS AND TWO TO RETURN THOSE TO THE DISTRICT.

14 THEY HAVE REFUSED TO DO EITHER. WE HAVE REDACTED
15 SOME OF THE INFORMATION BECAUSE WE DO NOT HAVE THE RIGHT
16 AND WE CAN CERTAINLY GET A WAIVER TO PROVIDE THE DOCUMENTS.
17 BUT ALTHOUGH THERE WERE FOUR IDENTIFIED CATEGORIES, WE DID
18 DETERMINE IN OUR FORENSIC AUDIT THAT FILES WERE DOWNLOADED
19 AND COPIED ONTO A THUMB DRIVE.

20 THE INFORMATION RELATED TO THE EMPLOYEES --

21 THE COURT: WHAT FILES? MANY OF THESE FILES WERE
22 ALREADY PART AND IN THE PUBLIC DOMAIN WERE THEY NOT.

23 MS. MEDINA: THEY WERE NOT.

24 THE COURT: WHICH ONES?

25 MS. MEDINA: THE ATTORNEY-CLIENT PRIVILEGED EMAILS
26 ABSOLUTELY WERE NOT PART OF THE PUBLIC DOMAIN.

27 THE COURT: WERE THEY ATTORNEY-CLIENT PRIVILEGED
28 EMAILS PER SE? DID THEY CONTAIN CONFIDENTIAL INFORMATION?

1 MS. MEDINA: THEY DID. THEY CONTAINED LEGAL ADVICE
2 RELATED TO PUBLIC RECORDS REQUESTS. THEY CONTAINED LEGAL
3 ADVICE RELATED TO CONTRACTS. THEY CONTAINED LEGAL ADVICE
4 BUT THE CASES WE CITED IN OUR OPPOSITION ALSO HOLD THAT
5 WHETHER OR NOT THE CONTENT OF ANY DOCUMENT IS IN FACT
6 PRIVILEGED, THE FACT THAT IT IS FROM A CLIENT AND THEIR
7 ATTORNEY IS SUFFICIENT TO GIVE NOTICE TO THE OPPOSING
8 COUNSEL NOT TO REVIEW THEM.

9 HERE, IT IS WITH COMPLETE DISREGARD THEY
10 ACKNOWLEDGE THEY RECEIVED THESE DOCUMENTS, THEY REVIEWED
11 THEM, FOR THE PURPOSE OF THIS LAWSUIT.

12 THE COURT: MAY I HEAR FROM THE ZWEIBACK FIRM. WHO
13 IS REPRESENTING ZWEIBACK.

14 MS. Fiset: I AM, YOUR HONOR.

15 SO THIS ARGUMENT MADE BY LEAL TREJO AND THE ALLEGED
16 DISTRICT IS HONESTLY SIMPLY FURTHER EVIDENCE OF THE
17 COVERUP. THEY DO NOT WANT DOCUMENTS OUT IN THE PUBLIC
18 DOMAIN.

19 I THINK WE HAVE ONE EMAIL THAT RELATES TO AN
20 ATTORNEY-CLIENT COMMUNICATION TO THE BOARD MEMBERS AND THE
21 REST SHOULD BE PUBLIC DOCUMENTS. AND THERE ARE MULTIPLE
22 PRA REQUESTS --

23 THE COURT: WHAT IS THE DOCUMENT THAT YOU CONTEND
24 IS WITHIN THE ATTORNEY-CLIENT PRIVILEGE?

25 MS. Fiset: IT'S RELATING TO AN ILLEGAL BOARD
26 SESSION.

27 THE COURT: WHAT --

28 MS. Fiset: AN UNAUTHORIZED BOARD SESSION FROM

1 TRAFUYA TO THE BOARD.

2 THE COURT: WHICH DOCUMENT IS THAT ATTACHED TO
3 WHOSE DECLARATION.

4 MS. FISET: IT'S NOT ATTACHED. WE DIDN'T USE IT.
5 IT'S UNRELATED. AND WE'VE IN NO WAY USED ANYTHING
6 CONFIDENTIAL.

7 WHAT THEY ARE WORRIED ARE DOCUMENTS GETTING INTO
8 THE PUBLIC DOMAIN, AND THEY ARE -- ALL OF THIS COULD BE
9 ACQUIRED THROUGH A PRA REQUEST.

10 AND YOU'RE VERY RIGHT. EVERYTHING CAME FROM OUR
11 CLIENTS TO US AND IT SHOULD ALL -- THIS IS A PUBLIC ENTITY
12 THAT TIME AND TIME AGAIN REFUSES TO PROVIDE DOCUMENTS THAT
13 IT IS REQUIRED TO PROVIDE. THEY ARE IN A LAWSUIT OVER A
14 PRA REQUEST RIGHT NOW. AND THERE ARE MULTIPLE OUTSTANDING
15 PRA REQUESTS THAT THEY SIMPLY WILL NOT RESPOND TO. AND
16 THIS IS JUST MORE OF THE COVERUP.

17 AND THERE IS NOTHING SANCTIONABLE WE'VE DONE.
18 THERE IS NOTHING UNDER THE FALSE CLAIMS ACT THAT SHOULD NOT
19 BE -- WE HAVE USED NOTHING RELATING TO THIS CASE. IF THERE
20 WAS EVER A SANCTION ON AN ATTORNEY RELATING TO
21 ATTORNEY-CLIENT PRIVILEGED DOCUMENTS, IT'S FOR
22 ATTORNEY-CLIENT PRIVILEGED DOCUMENTS THAT RELATES TO THE
23 STRATEGY OF THE CASE AT HAND. THERE IS NOT A SINGLE
24 DOCUMENT THAT RELATES TO THE STRATEGY OF THE CASE AT HAND.

25 THE COURT: DOES ANYONE ELSE WISH TO BE HEARD ON
26 THE MOTION TO DISQUALIFY THE ZWEIBACK FIRM.

27 MR. COHEN: JUST ONE POINT OR TWO POINTS AS THE
28 CASE MAY BE. ONE OF THE TROUBLING ISSUES FROM THE KAUFMAN

1 DEFENDANTS POINT OF VIEW IS NOT ONE OF THESE DOCUMENTS HAVE
2 BEEN AUTHENTICATED. THE QUI TAM PLAINTIFFS HAVE YET TO
3 SUBMIT A DECLARATION AUTHENTICATING ANY OF THESE DOCUMENTS.
4 AND I'LL CERTAINLY TAKE ISSUE WITH SOME OF THE DOCUMENTS
5 THAT WERE DISCLOSED IN PARTICULAR MY CLIENT'S RETAINER
6 AGREEMENT WHICH WAS UNSIGNED WHICH SHOULD NOT HAVE BEEN
7 DISCLOSED BECAUSE THERE IS A FULLY EXECUTED RETAINER
8 AGREEMENT.

9 SECOND, IF YOU LOOK AT THE DOCUMENT WHICH IS
10 ACTUALLY EXHIBIT NO. 12 TO THEIR DISCLOSURES TO THE AG. I
11 CAN'T IMAGINE THAT A DOCUMENT WHICH DISCLOSES EVERY SINGLE
12 EMPLOYEE'S PERSONAL SALARY RECORDS, HOW LONG THEY HAVE BEEN
13 THERE, WHERE THEIR STEP ARE. IT HAS NO RELEVANCE TO THIS
14 CASE WHATSOEVER. AND IT CERTAINLY WOULD RISE TO PRIVACY
15 RIGHTS OF THIRD PARTIES. THAT IS NOT IN THE PUBLIC DOMAIN
16 AND THAT IS NOT A PUBLICLY DISSEMINATED DOCUMENT BECAUSE
17 THEIR PRIVACY RIGHTS ARE THERE.

18 IN THE FACE OF NO AUTHENTICATION AND I'M TROUBLED
19 BY THE FACT WE'RE NOW A YEAR INTO THIS AND THE ONLY THIRD
20 PARTY THAT HAS SUBMITTED A DECLARATION IN THIS CASE ON
21 BEHALF OF THE QUI TAM PLAINTIFFS IS ANOTHER BOARD MEMBER
22 WHO SEEMS TO BE COMPLICIT WITH THE QUI TAM PLAINTIFFS.

23 THE QUI TAM PLAINTIFFS THEMSELVES HAVE NEVER
24 CORROBORATED AN ALLEGATION OR A REPRESENTATION OR
25 AUTHENTICATED A DOCUMENT. SO TO SAY THAT WE RECEIVED SOME
26 BEGS TO QUESTION AS TO WHAT THEY RECEIVED AND WHAT THEY
27 HAVE NOT YET DISCLOSED SO THERE IS CERTAINLY A LOT OF MERIT
28 IN THE DISTRICT'S ARGUMENT HERE.

1 THE DISTRICT IS ONLY ARGUING AS TO WHAT THEY HAVE
2 RECEIVED. THEY DON'T KNOW WHAT THEY HAVEN'T RECEIVED. IN
3 THE FACE OF AUTHENTICATING ANY OF THESE DOCUMENTS, IT WOULD
4 SEEM TO ME NONE OF THESE DOCUMENTS ARE EVEN ADMISSIBLE
5 ANYWAYS.

6 MS. MEDINA: IF YOU'RE INCLINED, WE BELIEVE THAT
7 THE CONDUCT IS EGREGIOUS AND WE DON'T BELIEVE A FALSE CLAIM
8 ACT OR SELF-HELP WOULD OBLITERATE THE ATTORNEY-CLIENT
9 PRIVILEGED RESTRICTIONS. NONETHELESS, IF THE COURT IS
10 INCLINED TO NOT MOVE FORWARD WITH THE DISQUALIFICATION OF
11 ZWEIBACK, WE'D LIKE TO REQUEST AN ORDER THAT ALL OF THE
12 DOCUMENTS THAT ZWEIBACK HAS IN THEIR POSSESSION THAT WERE
13 GIVEN TO THEM FROM THE DISTRICT WITHOUT AUTHORIZATION BE
14 RETURNED TO THE DISTRICT.

15 THE COURT: RESPONSE.

16 MS. Fiset: YOUR HONOR, WE HAVE GONE THROUGH ALL OF
17 THE DOCUMENTS WITH THEM. WE HAVE WHAT WE HAVE SHOULD BE IN
18 THE PUBLIC DOMAIN. AGAIN THEY ARE FIGHTING PROVIDING A
19 SINGLE PIECE OF PAPER OR A SINGLE DOCUMENT BECAUSE THEY ARE
20 CONTINUING TO COVER UP THE BASIS OF THESE CONTRACTS, THE
21 WORK THAT IS DONE, THE BRIBES THAT WERE TAKEN.

22 IT IS A VERY LARGE SCALE COVERUP WHERE THEY WILL
23 NOT DISSEMINATE INTO THE PUBLIC DOMAIN WHAT IS RIGHTFULLY
24 AND SHOULD BE IN THE PUBLIC DOMAIN THAT IS WHY WE'RE HERE,
25 YOUR HONOR.

26 THE COURT: ON THE DISQUALIFICATION AT THIS POINT,
27 THE COURT ON BOTH MATTERS WOULD ADOPT ITS TENTATIVE.

28 LET'S TALK ABOUT THE MOTION TO DISMISS. WHO WISHES

1 TO BE HEARD?

2 MS. MEDINA: YOUR HONOR, IF I MAY START.

3 AT THE CASE MANAGEMENT CONFERENCE THAT WE HAD WITH
4 YOU HERE, WE -- THE COURT ORDERED THAT THE OPERATIVE
5 COMPLAINT IS THE ORIGINAL COMPLAINT. THE MOTION -- THE
6 NOTICE OF THE MOTION AND THE MINUTE ORDER THAT WE
7 CIRCULATED TO ALL THE PARTIES GAVE NOTICE OF THE COURT'S
8 DIRECTIVE THAT THE OPERATIVE COMPLAINT IS NOT THE FIRST
9 AMENDED COMPLAINT. IT IS THE ORIGINAL COMPLAINT AND THAT
10 WAS CONSISTENT WITHIN OUR CASE MANAGEMENT CONFERENCE.

11 WE PROVIDED THE COURT A COPY OF THE LETTER FROM THE
12 ATTORNEY GENERAL --

13 THE COURT: WHEN WAS THE CASE MANAGEMENT CONFERENCE
14 HELD?

15 MS. Fiset: YOUR HONOR, IT WAS IN OCTOBER I BELIEVE
16 OCTOBER 8 OR THEREABOUTS.

17 THE COURT: AND IT WAS AFTER THE FIRST AMENDED
18 COMPLAINT WAS FILED?

19 MS. Fiset: YES.

20 MS. MEDINA: YES, SIGNIFICANT. AND THE REASON THE
21 COURT AGREED WITH US IS THE ATTORNEY GENERALLY MADE IT VERY
22 CLEAR IF AN AMENDED COMPLAINT IS FILED THAT DIFFERS AND
23 THIS IS IN THE COURT DOCUMENTS. IT'S AN EXHIBIT FROM QUI
24 TAM PLAINTIFFS. IT'S EXHIBIT C. "IF AN AMENDED COMPLAINT
25 IS FILED THAT DIFFERS SUBSTANTIVELY FROM THE ORIGINAL
26 COMPLAINT INCLUDES NEW ALLEGATIONS OF FRAUD OR ADDS NEW
27 DEFENDANTS, IT SHOULD BE FILED UNDER SEAL AND SERVED ON THE
28 DEFENDANTS PURSUANT TO THE FALSE CLAIMS ACT GOVERNMENT CODE

1 SECTION."

2 THE COURT: NO SUCH FIRST AMENDED COMPLAINT WAS
3 FILED UNDER SEAL.

4 MS. MEDINA: EXACTLY. THAT IS WHY THIS COURT
5 ORDERED THAT THE --

6 THE COURT: THE COURT ACCEPTED THE FIRST AMENDED
7 COMPLAINT AT SOME POINT.

8 MS. MEDINA: DID NOT.

9 THE COURT: WHAT IS THE STATUS BECAUSE I SAW IN THE
10 DOCKET THAT THE FIRST AMENDED WAS IN FACT FILED.

11 MS. MEDINA: IT WAS FILED.

12 THE COURT: WAS IT FILED PURSUANT TO COURT ORDER OR
13 STIPULATION?

14 MS. MEDINA: NO. IT WAS FILED IN DIRECT BREACH OF
15 THE ATTORNEY GENERAL'S DIRECTIVE AND --

16 THE COURT: COURT ADVANCED AND VACATED THE FILING?

17 MS. MEDINA: BECAUSE IT WAS A COMPLEX CASE
18 DESIGNATION THIS COURT, YOU RULED --

19 THE COURT: I JUST DON'T REMEMBER. DO YOU HAVE A
20 COPY OF THE ORDER?

21 CAN YOU LOOK UP THE ORDER FOR ME.

22 MS. MEDINA: OR WE CAN EMAIL IT. WE HAVE IT HERE,
23 AND WE CAN EMAIL IT TO YOUR CLERK IF YOU'D LIKE TO GET A
24 PRINTOUT.

25 THE COURT: THE COURT'S DOCKET IS WHAT WOULD BE THE
26 OFFICIAL. THE COURT WOULD RELY ON ITS OWN RECORDS.

27 THE CLERK: WHAT DATE WAS THE ORDER SIGNED?

28 MS. MEDINA: THIS WAS OCTOBER 22.

1 THE COURT: I WANT TO SEE THE ORDER.

2 MS. MEDINA: I'M SORRY.

3 THE COURT: I WANT IT SEE THE ORDER BUT I'VE LOOKED
4 AT BOTH ALLEGATIONS, OPERATIVE ALLEGATIONS IN EACH OF THE
5 COMPLAINTS AS I INDICATED IN THE TENTATIVE AND BOTH
6 VERSIONS HAVE PROBLEMS TO SAY THE LEAST.

7 BUT I DO WANT TO SEE WHAT THE ORDER HELD BECAUSE IT
8 IS CRITICAL AS TO WHAT IS THE OPERATIVE COMPLAINT. EITHER
9 WAY, THE ALLEGATIONS THAT ARE CRITICAL BOTH HAVE BEEN
10 REVIEWED BY THE COURT AND I STILL THINK THERE IS SOME
11 DEFECT EVEN IN THE FIRST AMENDED COMPLAINT OR IN THE
12 ORIGINAL COMPLAINT. THE DEFECTS REMAIN THE SAME.

13 I APPRECIATE THE PROCEDURAL GYMNASTICS, BUT AT THE
14 END OF THE DAY, THE QUESTION IS CAN YOU ADEQUATELY REMEDY
15 THE FRAUD PARTICULARITY ASPECT OF THIS CASE. I DETAIL THAT
16 IN GREAT DETAIL, AND WE NEED TO FOCUS ON THOSE ALLEGATIONS.

17 QUITE FRANKLY IN REVIEWING THEM, THEY ARE BARE
18 BONES AND NOT SUFFICIENT AND THAT IS WHAT IS DRIVING THE
19 COURT'S TENTATIVE. SO I APPRECIATE THE PROCEDURAL
20 BACKGROUND, BUT I THINK WHETHER IT'S THE FIRST AMENDED
21 COMPLAINT OR THE ORIGINAL COMPLAINT, IF YOU DIG INTO THE
22 SUBSTANTIVE ALLEGATIONS THEY HAVE THE SAME DEFECT THAT IS
23 WHY I DO WANT TO GO DOWN THE PATH CONFIRMING WHAT IS THE
24 OPERATIVE COMPLAINT.

25 BUT AT THE END OF THE DAY, IT MAY BE A DISTINCTION
26 WITHOUT A DIFFERENCE IS WHERE I'M GOING WITH THAT.

27 MS. MEDINA: I APPRECIATE THAT.

28 THE COURT: WHILE I HAVE MY COURT CLERK, JA,

1 FINDING THE ORDER THAT YOU'VE REQUESTED, LET'S TALK ABOUT
2 THE UNDERLYING ALLEGATIONS.

3 THE CLERK: I NEED THE TITLE OF THE ORDER, YOUR
4 HONOR. THERE IS A MINUTE ORDER AND THERE WAS AN ORDER --

5 MS. MEDINA: IS IT OKAY IF SHE APPROACHES YOU AND
6 SHOWS YOU THE DATE SO MAYBE --

7 THE COURT: WHILE YOU'RE DOING THAT LET'S DRILL
8 DOWN INTO THE SUBSTANCE OF THE COMPLAINT.

9 BASICALLY WHAT THE COURT'S TENTATIVE IS I'VE GONE
10 THROUGH AN ANALYSIS OF BOTH WHAT IS REFERRED TO AS THE
11 PUBLIC DISCLOSURE BAR, THE ORIGINAL SOURCE BAR, THE PRIOR
12 INVESTIGATION ALLEGATIONS. IT'S THE FRAUD WITH
13 PARTICULARITY FROM THE COURT'S PERSPECTIVE THAT IS DRIVING
14 ITS TENTATIVE.

15 AND BY THAT I MEAN THAT THE ALLEGATIONS MERELY
16 ALLEGE, FOR EXAMPLE, WE HAVE THESE INVOICES, THEY WERE FOR
17 TRAINING TIMES, THEY WERE BASED ON ILLEGAL KICKBACKS AND
18 BRIBES. AND AS A RESULT THEY WERE PAID. THERE IS NO
19 SPECIFICITY IN THESE ALLEGATIONS.

20 THERE IS GENERAL DISCUSSIONS ABOUT CAMPAIGN
21 CONTRIBUTIONS. THERE IS GENERAL DISCUSSIONS ABOUT EXPENSE
22 PAYMENTS. BUT AGAIN THERE IS ALSO BEEN INVESTIGATIONS HERE
23 WITH RESPECT TO DISCLOSURES FROM THE FAIR EMPLOYMENT
24 PRACTICE COMMISSION AND THE LIKE. THE BOTTOM LINE IS IT
25 LOOKS LIKE WE DON'T HAVE ENOUGH INFORMATION TO ASSERT A
26 FALSE CLAIMS ACT CLAIM THAT IS THE BOTTOM LINE AS TO WHERE
27 THE COURT IS.

28 I'VE LOOKED AT THESE ALLEGATIONS CAREFULLY AND THEY

1 ARE NOT THE TYPE OF ALLEGATIONS THAT WOULD SUBSTANTIATE OR
2 GET PAST A MOTION TO DISMISS PARTICULARLY IN A FRAUD CLAIMS
3 ACT -- FALSE CLAIMS ACT ALLEGATION.

4 MS. MEDINA: WE SUBMIT TO THE COURT'S TENTATIVE IN
5 THAT REGARD. WE COMPLETELY AGREE THAT A FALSE CLAIM FRAUD
6 HAS NOT BEEN PLED AT ALL, LET ALONE WITH SPECIFICITY.

7 THE COURT: YOU JUST HAVE ALLEGATIONS. IS IT A
8 RESULT OF ILLEGAL KICKBACKS AND BRIBES. AND THERE IS A
9 DISCUSSION ABOUT FOOTBALL GAMES AND EXPENSES, BUT THAT IS
10 NOT WITH THE REQUISITE PARTICULARITY.

11 MS. MEDINA: WE AGREE WITH YOU.

12 THE COURT: THAT IS THE PROBLEM I SEE IN THE
13 COMPLAINT.

14 MS. Fiset: YOUR HONOR, WE CAN AMEND AND WE CAN ADD
15 MORE PARTICULARITY AS DETAILS AND INVESTIGATIONS RELATING
16 TO STATE AUDITS AND OTHER INFORMATION.

17 THE COURT: FOR EXAMPLE, THERE IS NO CLEAR
18 ALLEGATION OF WHAT WAS OVER BILLING AT ANY, WHETHER OR NOT
19 THERE WERE SERVICES PROVIDED OR NOT, THERE IS NO ALLEGATION
20 AS TO WHETHER OR NOT THE COSTS WERE FRAUDULENT OR INFLATED.

21 WHEN YOU START TALKING ABOUT THE EXPENSES, THERE IS
22 NO CLEAR INDICATION AS TO WHETHER OR NOT THERE IS A
23 SUGGESTION THAT THE INVOICES WERE TIED TO PAYING FOR
24 EXPENSES, BUT THERE IS NO REAL EXPRESSED ALLEGATION.

25 SO IT DOES NOT MEET THE REQUISITE PARTICULARITY.

26 MS. Fiset: YOUR HONOR, IF WE MAY BE GIVEN LEAVE TO
27 AMEND.

28 THE COURT: I WOULD DO THAT. AT THIS POINT I THINK

1 YOU NEED TO GET INTO THE SPECIFICITY OF THE DATES OF THE
2 ALLEGED FALSE CLAIMS, THE SPECIFIC DOLLAR AMOUNTS FOR EACH
3 FALSE CLAIM, WHETHER OR NOT IT WAS OVER BILLING OR NO
4 SERVICE PROVIDED, WHETHER OR NOT IT WAS IN THE CONTENT OF
5 COSTS AND WHAT THOSE COSTS WERE, WHETHER THEY WERE INFLATED
6 OR NOT AND BY WHOM, ALSO EXPENSES WHETHER OR NOT EXPENSES
7 WERE SHIFTED FROM WHAT YOU'RE CONTENDING WERE BRIBES AND
8 KICKBACKS. NONE OF THAT OTHER THAN JUST A GENERAL, THE
9 EQUIVALENT OF A SMEAR OF ALLEGING SOMEONE STOLE SOMETHING
10 OR DID SOMETHING. YOU HAVE TO DO MORE WHEN YOU'RE TALKING
11 ABOUT FRAUD.

12 MS. Fiset: YOUR HONOR, WHAT I WOULD LIKE TO
13 ADDRESS THE COURT ON IS THE ISSUE THAT THE INVOICE -- THE
14 INVOICE AS TO PART OF THIS, THE INVOICE AND THE WORK
15 PERFORMED MAY EXIST, BUT IF THAT VENDOR, IF THAT LAW FIRM
16 OR VENDOR WAS HIRED, BASED ON A KICKBACK OR A BRIBE, EVEN
17 IF THE INVOICE IS ACCURATE IT IS BASED ON FRAUDULENT
18 ACTIVITY AND IT IS A FALSE CLAIM.

19 THE COURT: IF YOU WANT TO GET PAST THE PLEADING
20 STAGE YOU HAVE TO LAY OUT THE FACTS THAT SUPPORT IT.

21 MS. Fiset: AND THE TRIPS TO MEXICO FROM TAFOYA TO
22 CROWTHER PRIOR TO A VOTE OR A PAYMENT IS EVIDENCE OF THE
23 FRAUDULENT ACTIVITY. THE TRIPS TO MIAMI OVER AND OVER
24 AGAIN TO CROWTHER IS EVIDENCE --

25 THE COURT: EXCUSE ME ONE MOMENT.

26 MS. Fiset: -- OF A BENEFIT CONFERRED FOR
27 GOVERNMENT MONEY.

28 THE COURT: I APPRECIATE THAT IN YOUR ALLEGATIONS,

1 BUT AT THIS STAGE YOU HAVE TO GO FURTHER, AND YOU ALSO HAVE
2 A GOVERNMENT CODE THAT REALLY REQUIRES AND DOES SOME BURDEN
3 SHIFTING IN TERMS OF PRODUCING EVIDENCE.

4 WE ARE AT A PHASE THIS IS NOT EVEN LIKE A STANDARD
5 DEMURRER THAT IS WHY I USED THE TERM MOTION TO DISMISS
6 BECAUSE THERE IS A SPECIFIC STATUTE THAT BASICALLY
7 ESTABLISHES YOU SHOW GOOD CAUSE SHIFTS THE BURDEN OF
8 PRODUCTION.

9 AGAIN, GIVE YOU AN OPPORTUNITY TO TRY AND REMEDY
10 IT, BUT I DON'T THINK WE'RE THERE YET.

11 MS. MEDINA: YOUR HONOR --

12 THE COURT: JUST ONE SECOND. DID WE EVER TIE DOWN
13 THAT RULING?

14 MS. SKELTON: WE ARE WORKING ON IT.

15 THE CLERK: I DON'T FIND AN ORDER FROM OCTOBER 22
16 OTHER THAN THE MINUTE ORDER, BUT WE ARE LOOKING THROUGH
17 ECOURT TO SEE --

18 THE COURT: DID YOU HAVE A TRANSCRIPT --

19 MS. MEDINA: WE DO. AND WE HAVE THE NOTICE EVERY
20 SINGLE LAWYER WAS HERE.

21 THE COURT: EVERY SINGLE LAWYER'S MEMORY MAY NOT
22 NECESSARILY BE SUFFICIENT THAT IS PART OF THE PROBLEM --

23 MS. MEDINA: WE HAVE A COURT --

24 THE COURT: -- ABOUT WHAT OCCURRED WITHOUT
25 ASSERTING THE FACTS, WE NEED THE FACTS.

26 MS. MEDINA: WE'LL CONFIRM WHETHER A COURT CLERK
27 WAS HERE.

28 THE COURT: A REPORTER, YOU MEAN.

1 MS. MEDINA: A REPORTER WAS HERE. WE WILL ALSO
2 PROVIDE THE COURT A COPY OF THE NOTICE OF THE MOTION THAT
3 WE GAVE THAT WAS FILED WITH THE COURT IMMEDIATELY.

4 THE COURT: NOW IS THE TIME. I'M MAKING MY RULING
5 NOW. MAYBE IF YOU WANT TO REVISIT THIS.

6 MS. MEDINA: WE CAN READ, I WAS READING IT RIGHT
7 THERE. THE COURT RULED THAT THE OPERATIVE COMPLAINT IS THE
8 ORIGINAL COMPLAINT.

9 THE COURT: I REALLY NEED TO SEE THAT IF THAT IS
10 YOUR POSITION.

11 MS. MEDINA: CAN YOU PRINT THE NOTICE THAT WAS
12 FILED WITH CASE ANYWHERE ON THE DATE IT WAS FILED.

13 WE'RE HAVING SOMEBODY AGREE TO RUN TO OUR OFFICE
14 AND BRING IT RIGHT BACK, YOUR HONOR, BUT THAT WAS FILED
15 WITH THE COURT.

16 THE COURT: I DON'T KNOW THAT MAKES MUCH OF A
17 DIFFERENCE, BUT I'M GOING TO GIVE YOU THE RESPECT SAYING
18 INDEED THAT WAS THE COURT'S ORDER.

19 MS. MEDINA: I KNOW THE COURT'S TIME --

20 THE COURT: I HAVE ANOTHER MATTER THAT IS HERE FOR
21 TRIAL AND THEY HAVE AN EXPERT AND THEY ARE READY TO GO AT
22 11:00 O'CLOCK.

23 MS. MEDINA: THAT IS WHY I WANTED TO. MAY I
24 APPROACH.

25 THE COURT: I'VE BEEN HANDED, AND ARE YOU
26 REQUESTING THE COURT TO TAKE JUDICIAL NOTICE OF THE
27 OCTOBER 25, 2019, NOTICE OF ORDER FROM THE INITIAL STATUS
28 CONFERENCE.

1 MS. MEDINA: YES. THERE IS A SHEET YOUR CLERK HAS
2 THE --

3 THE COURT: PAGE 2, LINES 4 THROUGH 5 YOU QUOTE
4 "THE COURT RULED THAT THE OPERATIVE COMPLAINT IS THE
5 ORIGINAL COMPLAINT FILED BY QUI TAM PLAINTIFFS."

6 AND INDEED THAT IS NOT IN THE MINUTE ORDER. THERE
7 IS CASE LAW ON WHAT IS CONTROLLING. IT WOULD BE THE MINUTE
8 ORDER UNLESS THERE IS A SEPARATE ORDER EXECUTED BY THE
9 COURT. AND I CERTAINLY WILL ACCEPT A TRANSCRIPT, BUT I
10 DON'T HAVE ANY INDEPENDENT RECOLLECTION OF ASSERTING THAT
11 FACT. AND WITHOUT MORE, IT'S NOT IN THE MINUTE ORDER WHICH
12 IS THE OFFICIAL DOCUMENT THE COURT WOULD RELY UPON, ABSENT
13 A CERTIFIED TRANSCRIPT AS THE BASIS.

14 BUT REGARDLESS AND THE REASON I MADE CERTAIN TO
15 LOOK AT THE TWO IS BECAUSE IN FACT THAT WAS A QUESTION THAT
16 CAME UP IN MY ANALYSIS. AND I RAISED IT IN THE TENTATIVE,
17 SO I WANTED TO BE SURE TO LOOK AT BOTH. AND THE FIRST
18 AMENDED COMPLAINT APPEARS TO HAVE BEEN FILED. THE FIRST
19 AMENDED COMPLAINT IS IN THE DOCKET AS A FILED DOCKET.

20 I DON'T KNOW IF IT WAS FILED PURSUANT TO
21 STIPULATION, OR IT WAS JUST FILED OR THE COURT GRANTED
22 LEAVE TO AMEND, I DON'T KNOW. BUT THE BIGGER PROBLEM IS
23 THIS. REGARDLESS, I STILL DON'T THINK WE GET PAST THE
24 FRAUD WITH PARTICULARITY ARGUMENT.

25 MS. MEDINA: WE AGREE, YOUR HONOR. THE ONLY REASON
26 WE THINK IT'S IMPERATIVE TO CLARIFY THAT ISSUE NOW WHICH IS
27 WHY THE DISTRICT AND EVERY ATTORNEY THAT WAS HERE THAT DAY
28 RESPONDED TO THE ORIGINAL COMPLAINT NOT TO THE FIRST

1 AMENDED COMPLAINT BECAUSE THAT IS THE DIRECTION THE COURT
2 HAD GIVEN ON THAT DATE.

3 THE REASON WE THINK IT'S IMPORTANT IS YOU GRANTED
4 IN YOUR TENTATIVE, AND WE SUBMIT TO THAT, THAT FRAUD WAS
5 NOT PLEAD WITH PARTICULARITY AND YOU DID DISMISS THE TWO
6 CAUSES OF ACTION WHICH ARE THE ONLY CAUSES OF ACTION IN THE
7 ORIGINAL COMPLAINT.

8 BECAUSE THIS IS A FALSE CLAIM ACT AND S NOT A
9 DEMURRER, IT'S A MOTION TO DISMISS. THE GOVERNMENT'S ONLY
10 OBLIGATION IS TO PROVE TO THE COURT IT HAS A RATIONAL BASIS
11 FOR DISMISSING THIS.

12 THE COURT: GOOD CAUSE.

13 MS. MEDINA: AND THE GOOD CAUSE IS WASTE OF
14 TAXPAYER DOLLARS IN DEALING WITH THIS LITIGATION.

15 THE QUI TAM PLAINTIFFS --

16 THE COURT: THERE IS ALSO THE WHISTLE-BLOWER
17 STATUTE AND THE PUBLIC POLICY COMPONENT OF IT WHICH HAS TO
18 BE BALANCED BY THE COURT. I DON'T WANT TO SUGGEST THAT I'M
19 OBLIVIOUS TO THE PUBLIC POLICY COMPONENT OF THIS.

20 BUT THE BOTTOM LINE IS WITHOUT MORE TECHNICALLY IT
21 APPEARS INDEED THE FIRST AMENDED COMPLAINT WOULD BE THE
22 OPERATIVE COMPLAINT. I MAY HAVE COMMENTED THAT THE
23 OPERATIVE COMPLAINT IS THE ORIGINAL COMPLAINT, I DON'T KNOW
24 WITHOUT A TRANSCRIPT IN FRONT OF ME, BUT THAT IS NOT WHAT
25 THE MINUTE ORDER REFLECTS.

26 MS. MEDINA: AND WE WOULD HAVE PROVIDED THE
27 ATTORNEY GENERAL'S LETTER AND THE LANGUAGE DIRECTLY FROM
28 THE FALSE CLAIM ACT --

1 THE COURT: LET'S GET PRACTICAL BECAUSE I HAVE SOME
2 LAWYERS WITH VERY EXPENSIVE EXPERTS WAITING ONLINE. I HAVE
3 GIVEN DETAILED ANALYSIS OF THE COURT'S RULING ON BOTH THESE
4 MATTERS. I HAVE LISTENED TO THE PARTIES ARGUMENTS HERE.
5 WE CAN DO ONE OF TWO THINGS.

6 I WOULD GIVE AN OPPORTUNITY TO AMEND WHETHER IT'S
7 BASED ON THE FIRST AMENDED COMPLAINT OR THE ORIGINAL
8 COMPLAINT. THERE IS AN OPPORTUNITY TO AMEND.

9 THE FAILURE IN TERMS OF FAILING TO PLEAD WITH
10 PARTICULARITY REMAINS. AS TO -- SO IT MEANS THAT THE
11 MOTION TO DISMISS IS GRANTED WITH LEAVE TO AMEND. YOU CAN
12 AMEND WITH A THIRD CAUSE OF ACTION, AND WE CAN NAME IT THE
13 SECOND AMENDED COMPLAINT AUTHORIZED BY THE COURT, HOWEVER
14 YOU WISH TO DO IT.

15 BUT PROCEDURALLY WE DO NOT HAVE AN OPERATIVE
16 COMPLAINT AT THIS TIME BASED ON THE COURT'S RULING.

17 MS. MEDINA: AND WE WOULD JUST OUR --

18 THE COURT: IF THAT HELPS YOU, I DON'T WANT TO GET
19 LOST IN THE WEEDS HERE. THERE IS STILL A FUNDAMENTAL
20 PROBLEM WITH THE PARTICULARITY.

21 MS. MEDINA: OUR ONLY REQUEST IS THAT THE MOTION TO
22 DISMISS BE GRANTED AND THAT THE DISTRICT NOT BE FORCED TO
23 CONTINUE TO SPEND TAXPAYER DOLLARS BY ALLOWING THE QUI TAM
24 PLAINTIFFS TO AMEND A THIRD TIME.

25 SO WE WOULD REQUEST THAT THE MOTION TO AMEND -- THE
26 MOTION TO DENY BE GRANTED WITHOUT LEAVE TO AMEND.

27 MS. Fiset: YOUR HONOR, MAY I ADDRESS THE COURT. I
28 BELIEVE IT'S A LITTLE CONFUSING THAT WE'RE SITTING ON THE

1 SAME SIDE.

2 HER POSITION --

3 THE COURT: I UNDERSTAND.

4 MS. Fiset: -- IS THE SAME AS DEFENDANTS POSITION.

5 THE COURT: I GET THAT. THE OPTICS ARE NOT
6 CONFUSING THE COURT.

7 MS. Fiset: BUT IT IS CONFUSING NOT TO THE COURT,
8 BUT IT IS CONFUSING BECAUSE WE ARE IN MOST WHISTLE-BLOWER
9 CASES THERE IS AN ALIGNMENT BETWEEN THE ENTITY AND THE
10 WHISTLE-BLOWER AND THE OBLIGATION --

11 THE COURT: I GET WHAT IS GOING ON HERE. QUI TAM
12 BASICALLY MEANS YOU ARE DEPUTIZED TO PRESENT A PUBLIC
13 POLICY ARGUMENT ON BEHALF OF THE GENERAL PUBLIC. AND AS A
14 WHISTLE-BLOWER YOU ARE ENFORCING THE STATUTE THAT THE
15 LEGISLATURE HAS PASSED TO MAKE SURE THINGS ARE DONE OPENLY
16 AND ABOVEBOARD AND FAIRLY. I GET THAT ARGUMENT. OKAY.

17 I ALSO GET THE ARGUMENT THERE IS A SPECIAL STATUTE
18 THAT CERTAINLY CAN SHIFT ONCE THERE IS A BASIC SHOWING ON
19 THE PART OF THE PUBLIC ENTITY TO SAY, HEY, COME UP WITH THE
20 EVIDENCE YOU HAVE TO SUPPORT IT. AT THE END OF THE DAY THE
21 COURT'S RULING ON THE MOTION TO DISMISS GETS TO THE BOTTOM
22 LINE. COME UP WITH THE EVIDENCE THAT SUPPORTS THE
23 UNDERLYING OBLIGATION.

24 NOW WHILE THE DISTRICT CONTENDS, WELL, WHY GIVE
25 THEM ANOTHER OPPORTUNITY TO AMEND BECAUSE THAT IS A WASTE
26 OF TAXPAYER DOLLARS THAT IS A VERY COMPELLING ARGUMENT, BUT
27 THERE IS ALSO THE CONCERN THE COURT HAS TO HAVE IN THE
28 CONTEXT OF WHISTLE-BLOWER CLAIMS WHICH THE LEGISLATURE HAS

1 ELEVATED AS A SPECIAL CATEGORY AS TO HOW WE ADDRESS THIS TO
2 GIVE CERTAINLY THE QUI TAM PLAINTIFFS AN OPPORTUNITY IF
3 THEY HAD MORE TO PRESENT IT, BUT THAT IS IT.

4 MS. Fiset: YOUR HONOR, YOUR HONOR, THE DISTRICT
5 DOESN'T HAVE TO SPEND A DOLLAR.

6 THE COURT: I DON'T WANT TO GET INTO THIS.

7 MS. Fiset: BUT GENERALLY SPEAKING THE DISTRICT
8 DOESN'T HAVE TO SPEND ONE DOLLAR.

9 THE COURT: I'M ALREADY GOING TO GIVE YOU THE 30
10 DAYS SO I DON'T WANT TO WASTE TIME.

11 MS. MEDINA: EVEN THOUGH THEY HAVE HAD A YEAR TO
12 COME UP WITH A CLAIM --

13 THE COURT: YES.

14 MS. Fiset: NO. WE HAVEN'T HAD THE OPPORTUNITY.

15 THE COURT: 30 DAYS. I HAVE OTHER PEOPLE WHO NEED
16 THE COURT'S TIME AND I NEED TO RESPECT EVERYONE.

17 MR. COHEN: YOUR HONOR, MAY I ADDRESS ONE BIT OF
18 HOUSEKEEPING.

19 THE COURT: SURE.

20 MR. COHEN: AND AGAIN THIS IS IN LINE WITH
21 MS. MEDINA'S ARGUMENT, WE DID ACTUALLY FILE BEFORE WE
22 APPEARED HERE, AT LEAST THE KAUFMAN DEFENDANTS. WE FILED
23 AN ANTI-SLAPP MOTION BASED UPON THE FIRST AMENDED
24 COMPLAINT. YOU DID IN FACT STRIKE IT. I UNDERSTAND YOUR
25 NEED TO SEE THE RECORD. WE THEN TURNED AROUND AND FILED
26 NOT ONLY AN ANTI-SLAPP MOTION, BUT A DEMURRER, TO THE
27 OPERATIVE ORIGINAL COMPLAINT.

28 THIS IS NOW GOING TO REQUIRE US TO REFILE

1 EVERYTHING ALL OVER AGAIN WITHIN THE 30 DAYS SO EVERYTHING
2 WE FILED THAT IS PRESENTLY ON CALENDAR DOES IN FACT ADDRESS
3 THE OPERATIVE COMPLAINT. AND THE REASON BEING THE COURT
4 SAID THE COURT WANTED TO BRING EVERYTHING IN LINE AND HAVE
5 SOME ASSEMBLANCE ABOUT THIS BECAUSE IT SEEMED A BIT
6 MISCHMASCH.

7 AND THAT IS WHY THE COURT HAD STRUCK RIGHT FROM
8 GET-GO, STRUCK THE AMENDED COMPLAINT AND SAID IT WASN'T
9 FILED WITHIN THE PROCEDURES OF THE STATUTORY SCHEME. AND
10 IT WASN'T SENT TO THE AG. AND IT WAS FILED PART AND PARCEL
11 TO A MOTION TO DEEM THE CASE COMPLEX.

12 SO THE COURT IMMEDIATELY STRUCK THE FIRST AMENDED
13 COMPLAINT, SAID THE ORIGINAL COMPLAINT WAS OPERATIVE, AND
14 AT LEAST FROM OUR PERSPECTIVE WE FILED TWO VOLUMINOUS
15 MOTIONS, ONE A DEMURRER THE OTHER AN ANTI-SLAPP MOTION
16 BASED ON THAT ORIGINAL COMPLAINT.

17 THE REASON WHY I'M SAYING THAT IS IF THE AMENDED
18 COMPLAINT IS OPERATIVE, IT CHANGES VIRTUALLY MAKES REAL
19 SUBSTANTIVE CHANGES TO BOTH OF OUR MOTIONS. SO WE ARE NOW
20 COMPELLED TO THEN GO BACK TO THE DRAWING BOARD ONLY ON THAT
21 THIRD CLAIM.

22 IF IT'S JUST THE FIRST TWO FALSE CLAIMS ACT CLAIMS
23 THEN WE CAN PART AND PARCEL WE CAN MOVE FORWARD WITH THAT.
24 BUT WITH THAT THIRD CLAIM IT DOES CHANGE THE TENOR OF BOTH
25 OF OUR MOTIONS.

26 THE COURT: AS TO THE THIRD CLAIM CERTAINLY IF THE
27 FIRST AMENDED COMPLAINT HAS ALREADY BEEN DEEMED NOT THE
28 CONTROLLING COMPLAINT, AND YOU HAVE THE OPERATIVE COMPLAINT

1 THEN THERE IS NO THIRD CAUSE OF ACTION.

2 MR. COHEN: THAT'S CORRECT.

3 THE COURT: BUT THERE IS A RIGHT TO AMEND THE
4 COMPLAINT AND YOU CAN ADD THE THIRD CAUSE OF ACTION. YOU
5 NOW HAVE THE BENEFIT OF THE COURT'S ANALYSIS.

6 MR. COHEN: AND IF SO THEY WOULD BE REQUIRED TO
7 THEN FILE WITH THE AG UNDER SEAL AND START THE PROCESS OVER
8 AGAIN.

9 THE COURT: THAT'S CORRECT.

10 MS. Fiset: YOUR HONOR, THE 1090 VIOLATION IS NOT A
11 FALSE CLAIMS VIOLATION. WE ARE NOT REQUIRED TO FILE
12 ANYTHING WITH THE AG ON THAT.

13 MR. COHEN: UNDER THE FALSE CLAIMS --

14 THE COURT: STOP EVERYONE.

15 IF ALL SIDES AGREE THAT THE OPERATIVE COMPLAINT IS
16 THE ORIGINAL COMPLAINT THEN THE ONLY DISTINCTION IS THAT
17 MEANS THE THIRD CAUSE OF ACTION NEEDS TO BE REPLED THAT IS
18 WHAT IT MEANS.

19 MR. COHEN: AND UNDER THE FALSE CLAIMS ACT ANY
20 CLAIM WHETHER IT'S A 1090 CLAIM, A FALSE CLAIM, BREACH OF
21 CONTRACT CLAIM, OR SPITTING ON THE SIDEWALK DOES IN FACT
22 HAVE TO BE REFILED WITH THE AG'S UNDER SEAL. I JUST WANT
23 TO MAKE THAT VERY CLEAR.

24 THE COURT: THAT IS NOT PRESENTLY BEFORE THE COURT.

25 MS. Fiset: YOUR HONOR, I FULLY DISAGREE WITH WHAT
26 HE'S SAYING.

27 THE COURT: IF IT'S NOT PRESENTLY BEFORE THE COURT
28 THEN SAVE THAT ARGUMENT FOR THE NEXT TIME YOU'RE BACK.

1 MS. MEDINA: YOUR HONOR, JUST TO CLARIFY, THE
2 OPERATIVE COMPLAINT IS THE ORIGINAL COMPLAINT, IS THAT
3 CORRECT?

4 THE COURT: WHICH HAS BEEN DISMISSED WITH LEAVE TO
5 AMEND.

6 MS. MEDINA: OKAY. THANK YOU.

7 THE COURT: DOES THAT ANSWER YOUR QUESTION? THE
8 SHORT ANSWER IS YES.

9 MS. MEDINA: THANK YOU.

10 MS. Fiset: SO, YOUR HONOR, IT'S NOT THE FIRST
11 AMENDED COMPLAINT?

12 THE COURT: DO YOU DISPUTE? I THOUGHT I HEARD THAT
13 THE PARTIES AGREED --

14 MS. Fiset: WE NEVER AGREED DO THAT, YOUR HONOR.

15 MR. COHEN: IT WAS THE COURT'S RULING. WE BASED
16 OUR MOTIONS ON THAT.

17 THE COURT: SLOW DOWN.

18 THEN I'M GOING TO MAKE MY TENTATIVE RULING SUBJECT
19 TO, AND YOU CAN SUBMIT IT INDEPENDENTLY. IF YOUR POSITION
20 IS THAT THE FIRST AMENDED COMPLAINT IS STILL THE OPERATIVE
21 COMPLAINT YOU NEED TO SUBMIT SOME EVIDENCE TO ESTABLISH
22 THAT AND THAT WOULD PRESERVE THE THIRD CAUSE OF ACTION.

23 IF IT IS NOT, WHO IS GOING TO SUBMIT THE PROPOSED
24 ORDER OR -- BECAUSE AS IT STANDS RIGHT NOW, I DON'T HAVE
25 ANY INDEPENDENT RECOLLECTION OF WHETHER IT'S THE ORIGINAL
26 COMPLAINT OR THE FIRST AMENDED COMPLAINT THAT IS THE
27 OPERATIVE COMPLAINT BECAUSE MY MEMORY OF THESE MATTERS IS
28 JUST NOT THAT GREAT.

1 MS. MEDINA: WE'LL SUBMIT IT, YOUR HONOR. I DO
2 WANT TO STATE FOR THE RECORD AND THIS IS AGAIN A
3 WHISTLE-BLOWER IS TO --

4 THE COURT: STOP. PLEASE. LET'S NOT WASTE ANYMORE
5 TIME.

6 WE HAVE FOLKS THAT ARE ENTITLED TO COURT TIME. THE
7 BOTTOM LINE IS WE DON'T HAVE AN OPERATIVE PLEADING RIGHT
8 NOW.

9 THE ISSUE IS WHETHER OR NOT THE FIRST AMENDED
10 COMPLAINT WAS RESCINDED FOR WHATEVER REASON OR NOT. IF
11 THE PARTIES POSITION IS IT WAS RESCINDED AND THE ORIGINAL
12 COMPLAINT WAS THE OPERATIVE COMPLAINT FOR THIS RULING THERE
13 IS NO THIRD CAUSE OF ACTION.

14 IF IT IS NOT, THERE IS A THIRD CAUSE OF ACTION THAT
15 WAS NOT DISMISSED AND THEN YOU CAN AMEND YOUR COMPLAINT
16 ACCORDINGLY.

17 HOW DO YOU WANT TO ADDRESS IT? I CAN HAVE A STATUS
18 CONFERENCE, OR YOU CAN SUBMIT THE ORDER THAT CONFIRMS IT.
19 WE ARE ALL ON THE SAME PAGE OR THAT WILL BE THE COURT'S
20 RULING AND YOU JUST SUBMIT A SECOND AMENDED COMPLAINT WITH
21 NEW CLAIMS.

22 HOW WOULD YOU LIKE TO PROCEED?

23 MS. MEDINA: WE CAN SUBMIT THE ORDER AND WE CAN
24 ALSO SUBMIT A DECLARATION FROM EVERY LAWYER THAT WAS HERE
25 UNDER PENALTY OF PERJURY THAT THEY HEARD SOMETHING OTHER
26 THAN THE ORIGINAL COMPLAINT WAS THE OPERATIVE COMPLAINT.
27 IT WOULD BE WONDERFUL TO HAVE THE LAWYERS ATTEST TO THAT
28 UNDER PENALTY OF PERJURY.

1 MS. Fiset: YOUR HONOR, WE'D LIKE TO REVIEW THE
2 TRANSCRIPT, AND WE'D ALSO LIKE GUIDANCE BECAUSE THE THIRD
3 CAUSE OF ACTION IT IS NOT NECESSARY TO GO TO THE AG. THOSE
4 PROCEDURES ARE WRONG. WE CAN FILE IT SEPARATELY.

5 THE COURT: HERE IS MY RULING.

6 MS. Fiset: WE CAN CONFER.

7 THE COURT: THE ORIGINAL COMPLAINT AND THE FIRST
8 APPLICANT AMENDED COMPLAINT ARE DISMISSED WITH RIGHT TO
9 AMEND. YOU JUST FIGURE OUT HOW YOU WANT TO AMEND IT.

10 MS. Fiset: THANK YOU, YOUR HONOR.

11 THE COURT: IF YOU WANT TO MAKE A RELATION BACK
12 ARGUMENT, YOU CAN DO IT THAT WAY.

13 ANYTHING FURTHER. DO WE NEED TO GO BACK OVER THE
14 RULINGS?

15 MS. MEDINA: YOU SAID AMENDED COMPLAINT WITHIN 30
16 DAYS, YOUR HONOR.

17 THE COURT: YES. DO YOU NEED TO GO BACK OVER THE
18 RULING?

19 AS TO THE MOTION FOR DISQUALIFICATION OF THE LEAL
20 TREJO FIRM, THAT IS DENIED.

21 THE COURT SUSTAINED THE OBJECTION TO THE
22 DECLARATION OF THE COLEMAN DECLARATION AND THE OBJECTION
23 NO. 9 IS SUSTAINED.

24 THE REMAINING OBJECTIONS TO THE COLEMAN DECLARATION
25 ARE OVERRULED.

26 AS TO THE MOTION TO DISMISS THE COURT IS ADOPTING
27 IT'S TENTATIVE. THE TENTATIVE WAS PROVIDED TO THE PARTIES
28 IN GREAT DETAIL.

1 AS TO THE MOTION TO DISQUALIFY THE ZWEIBACK FIRM,
2 THE COURT IS DENYING THAT MOTION BASED ON ITS TENTATIVE.

3 ANY QUESTIONS?

4 MR. COHEN: YOUR HONOR, JUST ONE LAST THING JUST SO
5 WE ARE CLEAR ON THE TENTATIVE FOR THE MOTION TO DISMISS
6 THAT THE COURT'S TENTATIVE ALSO INCLUDES THAT BOTH THE
7 AMENDED COMPLAINT AND THE OPERATIVE ORIGINAL COMPLAINT ARE
8 DISMISSED WITH LEAVE TO AMEND BECAUSE OF THAT THIRD CAUSE
9 OF ACTION IT DOES SAY DENIED WITH REGARD TO THAT THIRD
10 CAUSE OF ACTION. I JUST WANT TO BE VERY CLEAR ABOUT THE
11 RECORD.

12 THE COURT: WHETHER OR NOT YOU HAVE A RELATION BACK
13 ARGUMENT OR SOMETHING THAT NEEDS TO BE DONE FOR THE THIRD
14 CAUSE OF ACTION, I WOULD CONSIDER TO ESTABLISH ONE WAY OR
15 THE OTHER WHAT WAS THE OPERATIVE COMPLAINT, BUT AT THIS
16 POINT I REALLY THINK YOU PROBABLY CAN GET PAST THAT.

17 MR. COHEN: I THINK IN THE FACE OF ALL THREE OF THE
18 DEFENDANTS MOTIONS THAT ARE PRESENTLY ON CALENDAR THAT
19 SPEAK TO THE ORIGINAL COMPLAINT THAT MAY ALSO BE -- MAY
20 LEND SOME CLARIFICATION TO THE COURT AS WELL.

21 THE COURT: DO YOU HAVE ANOTHER HEARING DATE ON THE
22 ORIGINAL COMPLAINT?

23 MR. COHEN: YES, WE DO. OURS IS I BELIEVE EITHER
24 IN MARCH OR APRIL.

25 THE COURT: ISN'T THAT MOOTED NOW BY THE COURT'S
26 RULING?

27 MR. COHEN: THAT IS PRECISELY MY POINT.

28 THE COURT: THAT WOULD BE MY VIEW.

1 MR. COHEN: BUT THAT --

2 THE COURT: OTHER SIDE WISH TO HEARD ON THAT?

3 IF THERE IS NO LONGER AN ORIGINAL COMPLAINT UNDER
4 ANY SET OF CIRCUMSTANCE, IT'S BEEN DISMISSED, THEN WHY ARE
5 WE HAVING A CONVERSATION ABOUT IT? IT'S MOOTED OUT.

6 MR. COHEN: FAIR ENOUGH.

7 THE COURT: MAYBE NOT ON THAT GROUNDS, BUT THE
8 LEGAL EFFECT IS THAT YOU NEED TO FILE A SUBSEQUENT
9 COMPLAINT. AND TO BE FRANK WITH YOU SO WE AVOID A PROBLEM,
10 I THINK YOU JUST NAME IT SECOND AMENDED COMPLAINT.

11 IF THE ISSUE IS WHETHER THE THIRD CAUSE OF ACTION
12 FOR SOME REASON HAS SOME STATUTE OF LIMITATIONS PROBLEM OR
13 SOME NONCOMPLIANCE WITH THE CONDITION PRECEDENT YOU MAY BE
14 IN A POSITION TO MAKE A RELATION BACK ARGUMENT, I DON'T
15 KNOW, BUT THAT IS AS FAR AS I CAN GO WITH THAT.

16 MR. COHEN: FAIR ENOUGH, YOUR HONOR.

17 THE COURT: LET'S BE CLEAR. DO YOU HAVE ANY
18 FURTHER HEAR DATES IN THIS CASE?

19 MR. COHEN: THERE ARE SEVERAL.

20 THE COURT: WHAT ARE THE NEXT HEARING DATES?

21 MR. COHEN: MARCH AND APRIL THERE ARE A SET OF
22 DEMURRERS FROM THE DEFENDANTS AND --

23 THE COURT: IF THEY ARE DEMURRING TO COMPLAINTS
24 THAT HAVE ALREADY BEEN DISMISSED, ARE THEY NOT MOOTED OUT?

25 MR. COHEN: THEY WOULD BE, BUT IT WOULD ALSO -- THE
26 ISSUE IS IF THEY AMEND THEIR COMPLAINT AT THE THIRD CAUSE
27 OF ACTION, THEN THE THIRD CAUSE OF ACTION THERE WOULD BE AN
28 ARGUMENT TO BE MADE, AS WE HAD MADE EARLIER, THAT IT SHOULD

1 HAVE GONE TO THE AG, BUT I THINK YOU ADDRESSED THAT ISSUE.

2 MS. MEDINA: SO THE MOTION TO DISMISS IS GRANTED
3 WITH LEAVE TO AMEND.

4 THE COURT: 30 DAYS, YES.

5 NEXT APPEARANCE DATE, I WANT TO KEEP TRACK OF AND
6 MAKE SURE YOU HAVE SOME APPEARANCE DATES.

7 WHAT IS YOUR NEXT APPEARANCE?

8 THE CLERK: NEXT HEARING IS MARCH 3. IT'S A MOTION
9 TO STRIKE AND HAVE MARCH 17 WHICH IS A DEMURRER.

10 THE COURT: THOSE ARE ALL MOOTED. THEY ARE
11 ADVANCED AND VACATED. SO YOU DON'T HAVE ANY OTHER HEARING
12 DATES, DO YOU?

13 MR. GRACE: OTHER THAN THOSE, NO.

14 THE COURT: THEN I WOULD SET A FURTHER STATUS SO WE
15 CAN KEEP TRACK OF THIS.

16 THE CLERK: SO WE ARE VACATING ALL THESE DEMURRERS
17 AND MOTIONS TO STRIKE, YOUR HONOR?

18 THE COURT: WHO IS THE MOVING PARTY ON THE
19 DEMURRERS.

20 MR. GRACE: THE TAFOYA DEFENDANTS.

21 THE COURT: WOULD YOU AGREE THOSE ARE NOW MOOT?

22 MS. Fiset: YES YOUR HONOR.

23 MS. MEDINA: THE MOTION TO DISMISS WAS GRANTED AS
24 TO ANY COMPLAINT.

25 THE COURT: YOU WOULD AGREE THAT THE SUBSEQUENT
26 DEMURRERS ARE NOW MOOTED OUT.

27 MR. COHEN: YES, YOUR HONOR.

28 MS. Fiset: YES, YOUR HONOR.

1 THE COURT: ALL PARTIES AGREE. SO THOSE DATES ARE
2 ADVANCED AND VACATED, CORRECT.

3 MS. FISET: YES.

4 THE CLERK: WE HAVE ONE HEARING LEFT IT WOULD BE AN
5 APRIL 15 HEARING ON MOTION FOR SANCTIONS.

6 MS. FISET: I THINK IT'S ONE OF THEIR ANTI-SLAPPS.
7 THEY ALL FILED ONE.

8 MS. MEDINA: THAT WAS OURS, YOUR HONOR. WE HAD
9 SOUGHT SANCTIONS FOR FILING THE MOTION TO DISQUALIFY US.
10 WE ARE WILLING TO TAKE IT OFF CALENDAR GIVEN THE COURT'S
11 RULING.

12 THE COURT: SO THAT IS TAKEN OFF CALENDAR. SO YOU
13 HAVE NO HEARING DATES THEN.

14 IF YOU HAVE A FILE BY DATE FOR AN AMENDED PLEADING,
15 I WOULD AT LEAST WANT TO HAVE A NONAPPEARANCE DATE SO I CAN
16 KEEP TRACK OF THIS, SO I HAVE DATES ON THIS CASE.

17 MY INCLINATION WOULD BE TO SET THAT FOR 45 DAYS
18 FROM TODAY'S DATE WHICH WOULD BE MARCH 26, 2020. AND THAT
19 IS SIMPLY A NONAPPEARANCE STATUS REGARDING FILING OF AN
20 AMENDED COMPLAINT AND HOPEFULLY THAT CAN TRIGGER FURTHER
21 HEARINGS.

22 UNLESS YOU WANT ME TO SET A FURTHER STATUS
23 CONFERENCE? RIGHT NOW IT SEEMS LIKE THIS CASE HAS KIND OF
24 COME TO A HALT UNTIL YOU FIGURE OUT WHAT YOU'RE GOING TO
25 DO.

26 MS. FISET: YES, YOUR HONOR.

27 THE COURT: MAYBE MAKE THAT A STATUS CONFERENCE
28 INSTEAD OF A NONAPPEARANCE DATE?

1 MS. MEDINA: A STATUS CONFERENCE MAY MAKE MORE
2 SENSE, YOUR HONOR.

3 THE COURT: HERE IS WHAT I'M TRYING TO DO.

4 I DON'T KNOW WHAT YOUR AMENDED COMPLAINT IS GOING
5 TO LOOK LIKE, AND I DON'T KNOW HOW YOU'RE GOING TO RESPOND
6 TO THE AMENDED COMPLAINT.

7 AND YOU MAY WANT TO SET A HEARING DATE ON THAT.
8 TYPICALLY WHAT WE DO HERE IS TRY TO AVOID NEEDLESS FILINGS
9 IF WE CAN. SO PERHAPS WE SHOULD MAKE THE MARCH 26 DATE.

10 THE CLERK: YOU SAID 26TH YOUR HONOR.

11 THE COURT: OR IS 27TH A BETTER DATE.

12 THE CLERK: 26TH IS GOOD YOUR HONOR.

13 THE COURT: MARCH 26, 2020, AT 10:00 A.M. WILL BE
14 YOUR STATUS CONFERENCE.

15 MS. MEDINA: AND THEN MARCH 13 IS THE LAST DAY TO
16 FILE AN AMENDED COMPLAINT.

17 THE COURT: THAT IS RIGHT.

18 WHAT I WOULD LIKE TO DO IS HAVE A JOINT STATUS
19 CONFERENCE REPORT FILED BY THE PARTIES FIVE DAYS BEFORE
20 THAT NEXT HEARING DATE.

21 MS. Fiset: THANK YOU, YOUR HONOR.

22 THE COURT: GET AN IDEA WHERE WE ARE IN THIS CASE
23 AND WHAT REMAINS, OKAY.

24 ANYTHING FURTHER?

25 MS. MEDINA: THANK YOU, YOUR HONOR.

26 MS. Fiset: YOUR HONOR, MAY WE BEGIN DISCOVERY?

27 MS. MEDINA: YOUR HONOR, THE DISCOVERY WAS STAYED.

28 THE COURT: NOT REALLY AT ISSUE YET THAT IS THE

1 CONCERN.

2 MS. Fiset: YOUR HONOR, THE ISSUE IS THE NONE
3 RELEASE AS TO PUBLIC RECORDS.

4 MR. COHEN: YOUR HONOR, IN THE FACE OF ANTI-SLAPP.

5 THE COURT: EVERYONE CANNOT SPEAK AT THE SAME TIME.
6 LET ME HEAR FROM COUNSEL.

7 WHAT IS YOUR REQUEST?

8 MS. Fiset: MY REQUEST IS THAT WE BE ABLE TO
9 ACQUIRE SOME OF THE DOCUMENTS WE HAVE SOUGHT. AND WE'VE
10 RESPECTED THE COURT'S ORDER AS TO DISCOVERY.

11 THESE ARE PUBLIC RECORDS. THERE ARE OTHER CASES I
12 BELIEVE THERE IS A NEW CASE PENDING IN THIS COURTROOM THAT
13 IS RELATED. IT HAS TO DO WITH THE TERMINATION OF NAISHA
14 DAVIS FOR MAKING THE WHISTLE-BLOWER CLAIMS.

15 THE COURT: ALL OF THAT SHOULD BE TAKEN UP AT THE
16 JOINT STATUS CONFERENCE. WE DON'T EVEN HAVE AN OPERATIVE
17 PLEADING RIGHT NOW.

18 MS. MEDINA: IF THEY WOULD LIKE TO SUBMIT A PUBLIC
19 REGARDS REQUEST AND COMPLY WITH THE LAW THEY CAN DO THAT.
20 THEY CAN'T DO EVERY PUBLIC RECORDS REQUEST BROWN ACT UNDER
21 THIS. THEY CAN SUBMIT A PUBLIC RECORDS REQUEST AND FILE A
22 LAWSUIT ACCORDING TO THAT STATUTE.

23 MS. Fiset: WE WOULD HAVE TO FILE A LAWSUIT IS THE
24 PROBLEM. THEY WILL NOT RESPOND TO PUBLIC RECORDS REQUESTS.

25 MS. MEDINA: THEY HAVE NOT SUBMITTED ANY, YOUR
26 HONOR.

27 THE COURT: EXCUSE ME. THEN I THINK WE NEED TO
28 TAKE THIS UP AT OUR NEXT STATUS CONFERENCE AS AN ISSUE IN

1 TERMS OF HOW DO ADDRESS DISCOVERY.

2 I'M RELUCTANT TO ALLOW DISCOVERY WHEN WE ARE NOT
3 EVEN AT ISSUE YET THAT IS MY CONCERN.

4 MS. MEDINA: THANK YOU, YOUR HONOR.

5 MS. Fiset: THANK YOU, YOUR HONOR.

6 THE COURT: WHO IS GOING TO GIVE NOTICE?

7 MS. MEDINA: I WILL. THE REAL PARTY IN INTEREST,
8 WEST VALLEY WATER DISTRICT WILL GIVE NOTICE.

9 THE COURT: ANYTHING FURTHER?

10 MR. GRACE: NO YOUR HONOR.

11 MS. Fiset: THANK YOU.

12 THE COURT: VERY COMPLEX CASE, AND I APPRECIATE THE
13 ARGUMENT.

14

15 (END OF PROCEEDING.)

16

17

18

19

20

21

22

23

24

25

26

27

28