



1 APPEARANCES:

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1 San Diego, California, Friday, February 8, 2019,

2 AM Session

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4 THE COURT: Finally, calling Items 7  
5 through 12, Geraci versus Cotton, Case Number ending  
6 10073.

7 MR. WEINSTEIN: Good morning, Your Honor.  
8 Michael Weinstein for the plaintiff and cross-defendant  
9 Larry Geraci and cross-defendant Rebecca Berry.

10 MR. AUSTIN: Good morning, Your Honor.  
11 Jacob Austin on behalf of the defendant and  
12 cross-complainant Darryl Cotton.

13 MR. FLORES: And Andrew Flores also on his  
14 behalf, Your Honor.

15 THE COURT: All right. Good to see all three  
16 of you.

17 All right. Let me get the Court's tentative  
18 ruling.

19 Let me see. These are the defendant's  
20 motions.

21 Counsel, did you get the Court's tentative?

22 MR. AUSTIN: We did, Your Honor.

23 THE COURT: Counsel, did you get the Court's  
24 tentative.

25 MR. WEINSTEIN: We did, Your Honor.

1           THE COURT: All right. I guess let's take  
2 them in the order that the Court found them. I mean,  
3 counsel, this is rapidly becoming one of the more  
4 heavily litigated cases that the Court has in this  
5 department.

6           Believe it or not, the most heavily litigated  
7 one has now exceeded 2,000 ROAs. You're not quite at  
8 500, but at least you weren't when I last saw it; but  
9 there's a lot of filings that the Court has to make its  
10 way through just to figure out what the motion is.

11           So what I did was I worked them up in the  
12 order in which I discovered them. And it may appear as  
13 if I went backwards, but don't put any weight into the  
14 order in which they are reflected. It was just the  
15 order in which I managed to find them among all of the  
16 other matters that have been filed in this case. So  
17 let's start with the first of the matters.

18           Let me go to defense counsel. What do you  
19 think?

20           MR. FLORES: Your Honor, as a housekeeping  
21 matter we are prepared to submit on the Court's  
22 tentative with regards to the motions to compel for  
23 Rebecca Berry; so that would be Number 1, 2, and 3, on  
24 the Court's tentative.

25           THE COURT: All right. Just give me one

1 moment here.

2 And then am I correct that Motions 4, 5, and 6  
3 all relate to Mr. Geraci?

4 MR. FLORES: That's correct, Your Honor.

5 THE COURT: All right. So let's just focus on  
6 1, 2, and 3.

7 Let me go to the plaintiff's counsel. Did you  
8 want to be heard on 1, 2, or 3?

9 MR. WEINSTEIN: We would submit on 1, 2, and 3  
10 as well.

11 You had a note, in response to Number 3, about  
12 whether -- you know, you wanted to have a discussion  
13 about this election to assert the privilege and how it  
14 might affect the scope of testimony at trial.

15 THE COURT: Oh, okay.

16 MR. WEINSTEIN: And I can address that if  
17 the Court wants to address that.

18 THE COURT: Let me just make a parenthetical  
19 comment, and it's not intended to be critical of either  
20 side; but there are cases, and this may fall into that,  
21 where there is so much law and motion that it becomes  
22 difficult for the Court to keep in mind, if it ever has  
23 been made clear to the Court, what your respective  
24 theories of the case are.

25 I mean I know each side have taken turns

1 expressing disappointment at the Court's rulings, but --  
2 and the reason I say that, again, I'm not intending to  
3 be critical to either one of you, but -- so the focus of  
4 the third motion is the Court wasn't entirely clear on  
5 how relevant if at all -- I think it's relevant -- the  
6 so-called disavowment allegation is that was the focus  
7 of this part of the discovery. So it seems to me that  
8 presuming it's relevant, if in this case -- is it  
9 Ms. Berry?

10 MR. WEINSTEIN: Ms. Berry.

11 THE COURT: All right.

12 MR. WEINSTEIN: And I can -- I think I can  
13 short circuit it.

14 THE COURT: All right.

15 MR. WEINSTEIN: Ms. Berry had some disavowment  
16 allegation defined as Mr. Cotton sent an email to  
17 Mr. Geraci on November 2nd after they signed a written  
18 document. Mr. Geraci responded back.

19 And Mr. Geraci says he was responding back to  
20 the first sentence in that email.

21 And then the next day they had a telephone  
22 conversation in which they discussed the rest of the  
23 email.

24 And he denied that his email sent the night  
25 before was an agreement with what was in the rest of the

1 email. And they had a discussion about it the next day  
2 and discussed it and there was no agreement.

3 Ms. Berry has no personal knowledge of that  
4 telephone conversation or the emails and she's not been  
5 told anything about it by any nonprivileged source. So  
6 there is no testimony that's going to be offered by her  
7 regarding what they have defined as the disavowment  
8 allegation.

9 So it might be relevant if she had knowledge,  
10 but she doesn't.

11 THE COURT: Thank you.

12 Let me go back to the defense side.

13 And thank you for reminding me that there was  
14 a sliver of the third motion that I wanted to hear from  
15 counsel.

16 I don't know whether Ms. Berry does or does  
17 not know anything about this allegation or whether there  
18 may be a credibility evaluation. I have no clue. But I  
19 am satisfied that she is entitled to assert a privilege  
20 if the source of her information is based upon a  
21 communication with counsel.

22 So what I am inclined to do is to confirm  
23 the Court's tentative as modified. As modified, to the  
24 extent that Ms. Berry has chosen to assert a privilege  
25 on any issue, in this case it happens to be the

1 so-called disavowment allegation in discovery, she will  
2 be prohibited from testifying to that at trial.

3 Now, that's not to suggest in this case that  
4 the defense can't inquire. I'm not suggesting that you  
5 can't conduct a wide ranging cross-examination. But you  
6 won't be -- you will not be at risk that Ms. Berry may  
7 be able to change what she says in discovery and all of  
8 a sudden you're being confronted with her saying  
9 something about her knowledge of this so-called  
10 disavowment allegation. Unless you choose to go into  
11 that area, she would be barred from testifying about it.

12 That should be reflected, by the way, in the  
13 Court's tentative ruling.

14 So the Court confirms the Court's tentative  
15 rulings as to Motions 1, 2, and 3 involving Ms. Berry as  
16 is to Number 1, as is to Number 2, and as modified to  
17 Number 3.

18 And I am going to direct counsel for the  
19 moving party to serve notice of the Court's ruling.

20 All right. Let's go to the fourth, fifth and  
21 sixth motions.

22 And again, let me go to defense counsel.  
23 Which ones, if any, would you like to be heard on?

24 MR. FLORES: Your Honor, I think 16 and 31 on  
25 the special interrogatories for Mr. Geraci is the ones



1 that we would like to address.

2 THE COURT: Okay. So we are focusing on the  
3 fourth motion?

4 MR. FLORES: Yes, Your Honor.

5 THE COURT: Okay. And 16 and 31 --

6 MR. FLORES: And I think the Court sustained  
7 those objections.

8 THE COURT: Right. Let me get the separate  
9 statement, counsel.

10 MR. FLORES: Sure.

11 THE COURT: By the way, if I didn't indicate  
12 at first, thanks for being so patient. It took me  
13 almost an hour to get you up here.

14 All right. That's ROA 386. All right. It  
15 looks like the separate statement is 390. Yeah, that's  
16 it.

17 So you want me to look at 16.

18 MR. FLORES: And also Number 31, Your Honor.

19 THE COURT: Right.

20 Let's take 16. All documents relating to the  
21 6176 CUP application reviewed by Jim Bartell.

22 MR. FLORES: Yes, Your Honor.

23 Jim Bartell is an agent of Mr. Geraci. He's a  
24 lobbyist that has worked for Mr. Geraci in the CUP  
25 application on the subject property. And I think the

1 objection was that he has no personal knowledge of what  
2 Mr. Jim Bartell had actually reviewed.

3 The problem, the deficiency here, Your Honor,  
4 is that under California Code of Civil Procedure  
5 2030.220(c) there's no statement with regards to a  
6 reasonable good faith effort to make themselves -- to  
7 obtain this knowledge from their agent. Right? So --

8 THE COURT: Well, when you say -- first of  
9 all, Mr. Geraci has been named -- or is an individual  
10 litigant?

11 MR. FLORES: That's correct.

12 THE COURT: There are limits to what you can  
13 impose upon an individual litigant to search in order to  
14 respond to a discovery request.

15 MR. FLORES: And that we understand,  
16 Your Honor.

17 The problem that we have with the response is  
18 that there's no -- I mean, literally the Code of Civil  
19 Procedure says that it shall state, make a reasonable  
20 good faith effort to inquire as to this thing that they  
21 have no knowledge of.

22 And I point out that the Court overruled a  
23 similar objection with regards to the plaintiff's  
24 personal knowledge of what their attorney reviewed prior  
25 to the submission as well.

1           All we want is an identification of what may  
2 or may not have been reviewed.

3           Now, as far as their supplemental response,  
4 they go on to say even though they have no personal  
5 knowledge, that they also refer to there may be  
6 thousands of documents.

7           Well, you know, they're, in essence, trying to  
8 force us to do what may be, you know, an unfruitful  
9 deposition of Mr. Jim Bartell. This is our very first  
10 volley of information seeking in this particular  
11 instance.

12           THE COURT: All right. Just let me look at  
13 31. Okay.

14           Counsel, I know you spent a lot of time  
15 waiting in court to be heard and so I don't want to be  
16 short with anybody.

17           I could ask opposing counsel to respond to 16  
18 and 31.

19           And, by the way, I looked at these. I worked  
20 them up. I didn't have somebody else help work these  
21 up, so this is the Court's work product truly. And I am  
22 just not persuaded -- well, I'm comfortable that the  
23 nature and scope of the request is objectionable.

24           Quite frankly, there may have been other  
25 objections that the other side, I guess Mr. Geraci,

1 could have interposed.

2 I'm not inclined to change the Court's  
3 tentative on 16 and 31.

4 MR. FLORES: Your Honor, if I might just  
5 address the relevancy of 31 because the Court sustained  
6 the objection with regards to relevancy.

7 In essence, what we are asking for Mr. Geraci  
8 to do is to identify any other transactions where he  
9 used a non standard real estate contract, which is  
10 exactly what's going on here, Your Honor. They used a  
11 three sentence document to initiate a sale -- for the  
12 purchase and sale of property. So we're trying to  
13 establish what exactly -- if that's common practice,  
14 that's something that he does, and that may tend to  
15 show, you know, a fraud did occur.

16 THE COURT: Here's how I evaluate -- first of  
17 all, let me back up.

18 Relevancy is a very difficult objection to  
19 stand on in discovery. So what I am imagining is  
20 Mr. Geraci is on the witness stand. And one of you two,  
21 and I'm looking at defense counsel, are putting a  
22 question to him to this effect, and opposing counsel  
23 were to leap to his feet and say objection, relevancy, I  
24 mean, as it's currently framed, without any context, I  
25 would sustain that objection.

1           It's possible that Mr. Geraci has used this  
2 one-page type document a whole bunch of times in the  
3 past or he may not have done it at all, but in order to  
4 evaluate that relevancy we would have to find out or  
5 start looking at all of those other pieces of paper as  
6 well as the underlying transactions to see how similar,  
7 if at all, they were to the facts of this case. And,  
8 folks, we're not going to spend the time doing that.

9           I don't know if this is an aberration or a  
10 common practice by Mr. Geraci, but there's only so much  
11 time that we have to allocate to the trial of the case.  
12 So I just found myself questioning the relevancy.

13           So again, counsel, I am not arguing with you,  
14 but I did go through that exercise, I can assure you. I  
15 just didn't sustain it without giving it any thought  
16 whatsoever. So I'm going to confirm that portion of  
17 the Court's tentative as well.

18           MR. FLORES: Fair enough, Your Honor.

19           THE COURT: And again, we could spend time a  
20 hearing from opposing counsel, but I'm just -- you all  
21 don't need to hear that right now.

22           MR. FLORES: Fair enough.

23           THE COURT: With all due with respect to  
24 opposing counsel.

25           MR. WEINSTEIN: Understood, Your Honor.

1 THE COURT: So that's Motion Number 4.

2 Are those the two items that you wanted to be  
3 heard on, on that portion?

4 MR. FLORES: On that portion, yes.

5 THE COURT: Let me go to opposing counsel.  
6 What do you think?

7 MR. WEINSTEIN: We would submit on 4.

8 THE COURT: All right. So the Court then  
9 confirms it's ruling on the fourth motion involving  
10 Mr. Geraci and the special interrogatories and directs  
11 that counsel for the moving party serve notice of that  
12 one as well.

13 Let's go on to the fifth motion. Counsel?

14 MR. FLORES: Yes, Your Honor, that was the  
15 request for admissions. There's two that we can take  
16 together, Your Honor, because I think the objection was  
17 sustained as to compound for 29 and 30.

18 THE COURT: All right. Let me get to the  
19 separate statement, please.

20 MR. WEINSTEIN: So Number 5 is actually the  
21 request for production, not the request for admissions.

22 MR. FLORES: My apologies, Your Honor. That's  
23 true.

24 THE COURT: I gotcha.

25 Let me just find it real quick.

1 MR. WEINSTEIN: So 5, Your Honor, had the same  
2 issue of privilege being asserted and what would be able  
3 to be permitted at trial regarding the disavowment  
4 allegation by Mr. Geraci.

5 THE COURT: Right. Now, 30 I overruled.  
6 You said 29 and 30?

7 MR. WEINSTEIN: He was talking about --

8 MR. FLORES: I'm sorry. My apologies,  
9 Your Honor. I had them out of order.

10 THE COURT: Okay. So are we still on 5?

11 MR. FLORES: Yeah, we are.

12 THE COURT: All right. So we are just  
13 focusing on 29?

14 MR. FLORES: Sorry, Your Honor. On Number 5  
15 we're actually going to submit.

16 The only thing that I would point out,  
17 Your Honor, as a housekeeping matter with regards to the  
18 disavowment allegation is that we do have -- we have  
19 calendared a motion to bind in regards --

20 THE COURT: A motion for what?

21 MR. FLORES: A motion to bind.

22 THE COURT: What is --

23 MR. FLORES: And if I may, Your Honor, the  
24 motion we have calendared is to bind Mr. Geraci's  
25 response to a previous response that he had given

1 regarding the disavowment allegation.

2 When we first -- when Mr. Cotton first  
3 provided Mr. Geraci with form interrogatories, one of  
4 the form interrogatories specifically mentioned whether  
5 or not there were any amendments. You know, it's  
6 basically 50.1, et seq, with regards to the contract.

7 In those responses he basically said there was  
8 no response, you know, there were no modifications.

9 Now, almost a year later they bring up this  
10 disavowment allegation. They respond to it in their  
11 interrogatories and other requests for productions. So  
12 I guess whatever ruling the Court makes, I would ask for  
13 it to hold off on substantively this issue until it's  
14 able to hear our motion.

15 MR. WEINSTEIN: Would the Court like me to  
16 address that, Your Honor? Because I have anticipated  
17 the motion because they have told us that they were  
18 going to bring it.

19 Fine, they can file a motion. We will seek  
20 sanctions.

21 A motion to bind means that you have served  
22 responses to discovery requests and then you served an  
23 amended response and the amended response changes the  
24 original response and you want to bind them to the  
25 original response.



1           In this case, there is no -- what they are  
2 referring to is not an interrogatory response that was  
3 amended, so there's nothing to bind. The motion is not  
4 even applicable.

5           What they are saying is, in his form  
6 interrogatory response, is Mr. Geraci said the agreement  
7 wasn't amended.

8           The disavowment allegation says that -- it  
9 doesn't say anything about there being an amendment. It  
10 talks about discussing the email. And then Mr. Geraci's  
11 declaration, which is not a discovery response, goes on  
12 to talk about attempts to renegotiate the contract that  
13 were never ever consummated. And so the form  
14 interrogatory responses and the declaration aren't even  
15 inconsistent. But when they're talking about a motion  
16 to bind, that's what they're talking about.

17           They haven't filed it yet. But I am advising  
18 the Court our position is going to be that it's not even  
19 a motion that the statute applies to.

20           THE COURT: All right. Now you haven't drawn  
21 a judge who discourages parties from filing motions. I  
22 have never heard -- and I'm not being flip, I truly have  
23 not heard of a motion to bind.

24           But if I understand the underlying dispute,  
25 what the defense is saying is Mr. Geraci said something

1 at one time and then amended it to say something  
2 differently at another time and you want to hold him,  
3 if you will, to his original answer.

4 MR. FLORES: To his original answer.

5 THE COURT: All right.

6 Now the way that I imagine it would play out  
7 and the way that I see it play out in just about every  
8 single case and every single trial is at some point in  
9 time, I guess on this side, the defense can present to  
10 the jury Mr. Geraci's original response, and I guess you  
11 could choose to also present the amended response,  
12 that's up to you; but how I see it is one side presents  
13 an original response, the other side presents an amended  
14 response and the jury decides which one is more credible  
15 than the other.

16 MR. WEINSTEIN: Sure.

17 THE COURT: But I am not inclined to say that  
18 either side -- and this could hold as true for  
19 Mr. Cotton as Mr. Geraci, can't file amended response.  
20 Now, again, ultimately it becomes a credibility  
21 determination by the jury, not by me.

22 MR. FLORES: And that we understand,  
23 Your Honor.

24 THE COURT: Just food for thought, counsel.

25 MR. FLORES: That we understand, Your Honor.

1           The only issue that we have is that now we're  
2 put in a position where we have to defend against  
3 basically a frivolous allegation that's being made up.

4           THE COURT: Well, but that's credibility. And  
5 you're not going to get me -- in discovery, you're not  
6 going to get me weighing in on that.

7           The Court's job is to make sure that responses  
8 are served, credible or not, and then ultimately you  
9 make your pitch to the jury and they decide credibility.  
10 Again, if it's of any assistance to you.

11           MR. FLORES: Right.

12           And, Your Honor -- actually, one thing I want  
13 to mention, Your Honor, I do have a CMC in Department 65  
14 that's supposed to start right now.

15           THE COURT: It's 65?

16           MR. AUSTIN: Yes. With Judge Frazier.

17           THE COURT: All right. Well, let's get you  
18 out of here so you can get down there.

19           Now, I have looked back again at 29. The only  
20 question that I have is have you gotten the documents or  
21 any documents?

22           MR. FLORES: No, Your Honor. And that's why  
23 we would -- as long as the Court is consistent with what  
24 the Court decided with the Berry responses as far as  
25 them not beating able to testify to the disavowment

1 allegation if they do choose to --

2 THE COURT: Well, this is Mr. Geraci now, not  
3 Ms. Berry. I mean the analysis is the same.

4 But let me go back to counsel. Will you be  
5 producing or have you produced any documents involving  
6 this allegation by Mr. Geraci?

7 MR. WEINSTEIN: Yes. As reflected in our  
8 written response, which is -- and the only documents  
9 that we have to directly address this are telephone  
10 records. So we have actually produced their telephone  
11 bill that they gave us earlier in the case and we have a  
12 telephone bill that Mr. Geraci has that reflects the  
13 same call as on their client's bill. And I'll double  
14 check to make sure that's been produced, but that's it.  
15 Otherwise, anything that directly talks about what they  
16 term the disavowment allegation, that was verbal.

17 THE COURT: I gotcha.

18 Now, let me ask this. Have these documents  
19 that one side or the other have produced been Bates  
20 stamped?

21 MR. WEINSTEIN: Absolutely. So, for example,  
22 the phone bill, their own phone bill, Mr. Cotton's own  
23 phone bill was Bates numbered Geraci and the last three  
24 digits are 207.

25 THE COURT: All right. So here's what I am

1 inclined to do. Again, I am inclined to sustain  
2 Mr. Geraci's right to assert the privilege, as I would  
3 Mr. Cotton. But there is a price to be paid; he can't  
4 go back and reopen that area once you have narrowed the  
5 scope by asserting the privilege.

6           However, what I am going to do is confirm as  
7 modified this tentative. As modified, the Court will  
8 direct Mr. Geraci to serve a further response on the  
9 subject of the Request for Production Number 29 to  
10 identify the Bates stamp numbers of the documents that  
11 you have produced.

12           MR. WEINSTEIN: Okay.

13           THE COURT: So that in this case the defense  
14 side now understands the narrow scope of the  
15 nonprivileged documents that are in play in response to  
16 this discovery request.

17           MR. WEINSTEIN: Very good, Your Honor.

18           THE COURT: All right. And then I'm going to  
19 direct counsel for the moving party to serve notice.

20           That leaves us with the sixth motion.

21           Counsel, anything that you want to argue on  
22 that one?

23           MR. FLORES: Yes, Your Honor. I started to,  
24 but I had them out order.

25           Basically, 29 and 30, the Court sustained the

1 compound objection on that one. And then 33 as well.

2 THE COURT: All right. Let me -- I think I  
3 recall them, but before I say anything -- what time is  
4 your CMC scheduled?

5 MR. AUSTIN: 10:15, Your Honor.

6 THE COURT: All right. Well, did you ask them  
7 to trail you?

8 MR. FLORES: I did not.

9 THE COURT: All right. What is your case?

10 MR. FLORES: It is Vidal versus Pick Ax  
11 (phonetic).

12 THE COURT: Could you call that department and  
13 say we'll send him down real soon.

14 THE CLERK: Which department was it, again?

15 THE COURT: Is it 65?

16 MR. FLORES: I thought it was 65.

17 THE COURT: 65. All right.

18 So let's get this -- let me pull up the  
19 separate statement real quick.

20 All right. Request for admissions. And  
21 it's -- I'm sorry -- 29, 30, and 33?

22 MR. FLORES: Yes, Your Honor.

23 THE COURT: All right.

24 MR. FLORES: We can take 29 and 30 together,  
25 though, Your Honor. It is the same objection. The

1 questions are very similar.

2 THE COURT: All right. Let me just retrieve  
3 it really quick.

4 All right, 29. Okay. You know, there's only  
5 so much that you can expect -- and, by the way, again,  
6 we'd be having the exact same discussion if you were on  
7 the receiving end of this request for admission, I'm  
8 confident that I would be looking at it the same way.

9 But you have asked the other side to admit a  
10 fact based upon a timeline that is what? -- nine or ten  
11 months broad, encompasses a whole bunch of exhibits.

12 I mean, there may be a sliver among all of  
13 that information that they might admit. There may be a  
14 bunch that they might not admit. You're just asking  
15 more than any reasonable receiving party should be  
16 expected to respond to. It was the breath, among other  
17 things.

18 MR. FLORES: In that vein, Your Honor, I  
19 think, though it may be poorly written, I think the  
20 subject matter is very simple.

21 THE COURT: Well, I'm not questioning  
22 relevancy, but there's -- generally speaking, requests  
23 for admissions should be more narrowly tailored.

24 If there's a specific fact encompassed within  
25 all of that information that you want the other side to

1 admit, give them that one fact and then admit or deny.  
2 I'm confident the other side would respond accordingly.  
3 But I struggle -- so that is why the Court sustained the  
4 objection to 29.

5 The same with 30.

6 Let me go to 33. I'm sure there was something  
7 about that that I thought was -- well, again, you're  
8 asking them to look at a declaration of attorney David  
9 S. Dimion (phonetic) --

10 MR. WEINSTEIN: Their former attorney.

11 THE COURT: All right.

12 MR. WEINSTEIN: Mr. Cotton's former attorney.

13 THE COURT: Once again, counsel --

14 MR. FLORES: Once again, as we explained in  
15 our meet and confer, the question can be read without  
16 that information, Your Honor.

17 The underlying facts are what we're worried  
18 about. We're not asking them -- it's for their own  
19 edification. It has nothing to do with specifically  
20 identifying this document X, Y, Z, is did you or did you  
21 not agree to stipulate.

22 Now, for the Court's reference, if the Court  
23 recalls, Mr. Cotton was here before the Court with a  
24 motion for a receiver based on the CUP application that  
25 he believed would be sabotaged by the other side and



1 that there was another competing CUP being sought and  
2 that did occur, that did happen, Your Honor.

3 THE COURT: All right. Well, again.  
4 The Court's intention is not to be critical, but there  
5 may be a more narrowly tailored fact that you could  
6 propound to the other side.

7 But as soon as I saw the reference to "as more  
8 fully outlined in the declaration of," again, it becomes  
9 -- it does become compound; but the breadth of which I  
10 also -- it also strikes me as unreasonable.

11 MR. FLORES: So is it a compound objection the  
12 Court is sustaining? Or relevancy?

13 THE COURT: Well, I'm not -- oh, I see what  
14 you are saying. All right.

15 Well, I was not focusing so much on relevancy,  
16 counsel. It really was the more the compound,  
17 conjunctive, disjunctive, the breadth. I mean, I was  
18 looking at all them in their totality.

19 And I'm not suggesting that this might not be  
20 a relevant line of inquiry by your side, but as framed,  
21 I remain comfortable that one or more of the objections  
22 are well taken.

23 MR. FLORES: Okay.

24 THE COURT: All right. So the Court -- well,  
25 anything else, counsel?

1           MR. FLORES: I just had some housekeeping  
2 matters, Your Honor.

3           THE COURT: All right. Well, but on this  
4 motion, anything else, counsel?

5           MR. FLORES: No.

6           MR. WEINSTEIN: No, Your Honor.

7           THE COURT: All right. The Court confirms its  
8 tentative on Motion Number 6, and then directs the  
9 defense counsel to serve notice of the Court's ruling on  
10 all of them.

11           All right. All right. Let's go to  
12 housekeeping. May 31, 2019, I'm looking forward to  
13 seeing everybody in this trial department. If not this  
14 department, I'll have one, I hope, lined up for you. So  
15 everything is heading in the right direction.

16           Counsel, did you have something you wanted to  
17 say?

18           MR. FLORES: Yes, Your Honor.

19           We're up against a deadline right now to file  
20 our motion for summary judgment, which is going to be on  
21 the 13th, Your Honor.

22           Our client would be highly prejudiced if we're  
23 not able to include the supplemental responses to that  
24 motion, Your Honor. So we may -- and we've set the  
25 hearing date, unfortunately, for the very last day

1 that's possible.

2 THE COURT: All right.

3 MR. FLORES: So we either have to continue the  
4 day or we come in on an ex parte basis for the Court.  
5 But if the opposing side is willing to stipulate to  
6 change the dates.

7 THE COURT: So I think I said to the extent  
8 that additional responses are due -- oh, I said ten  
9 days?

10 MR. WEINSTEIN: Their summary judgment motion,  
11 Your Honor, would be due to be personally served today.

12 THE COURT: Oh. Well, I hear this --

13 MR. WEINSTEIN: I don't have a problem with  
14 backing up and avoiding the 30 day. You know, there is  
15 a 30 day before trial limitation, which the Court can  
16 hear a motion less than 30 days before trial on good  
17 cause, I'm okay with that. I just don't want to be  
18 shortened on my time to respond.

19 THE COURT: Right.

20 So the hearing date on your motion for summary  
21 judgment is April 26th. So you're saying you would be  
22 willing to stipulate to have that heard 30 days before  
23 trial?

24 MR. WEINSTEIN: Well, yes. I'm thinking on  
25 the -- I think the TRC is the 17th, right?

1           THE COURT: Well, why don't -- and, folks, I  
2 know I am pushing you hard to get to trial date, but  
3 what I am thinking is for a very limited period of time,  
4 no more than 30 days, let's extend those last three  
5 dates, the trial call, the TRC, and the law and motion  
6 and discovery date.

7           And as it is, counsel, I only gave you ten  
8 days. That's not a lot of time, but you're not  
9 complaining about that.

10           But if the Court were to extend the dates by  
11 30, that would allow you to get your hearing date 30  
12 days later than currently and still have time to  
13 incorporate the supplemental responses into your moving  
14 papers.

15           Can you live with that?

16           MR. FLORES: We can, Your Honor.

17           THE COURT: All right. And so --

18           MR. WEINSTEIN: One caveat, Your Honor.

19           THE COURT: Yes.

20           MR. WEINSTEIN: I don't have my calendar so I  
21 don't know my client's schedule for trial yet, but I am  
22 willing to have you select one and then I'd have to let  
23 the Court know if it's an issue, but I'm hoping it  
24 won't.

25           THE COURT: Come on in here. You know where

1 to find me.

2 MR. WEINSTEIN: Okay.

3 THE COURT: All right. So here's what  
4 the Court is going to do. The Court is going to  
5 continue the last three dates as follows: Your trial  
6 call will now be June 28th at 8:30 a.m., your trial  
7 readiness conference is two weeks before on June 14th at  
8 10:45 a.m., your law and motion and discovery cutoff  
9 date including the completion of expert discovery is  
10 May 31st.

11 And the Court is going to direct that the  
12 defense serve notice of that as well.

13 All right. Any other clean-up items from the  
14 defense side?

15 MR. FLORES: No, Your Honor.

16 THE COURT: Let me go to the plaintiff's side.  
17 Are there any other issues?

18 MR. WEINSTEIN: No.

19 But just so there's clarity, you have moved  
20 the motion cutoff date to May 31st, which means probably  
21 that the summary judgment motion would have to be heard  
22 May 24th to be more than 30 days before trial, which is  
23 still nearly 30 days from when it would be heard now,  
24 which is fine. But do they need to calendar a hearing  
25 date for May 24th.

1 THE COURT: Well, all right. Let me to this.  
2 Do you object if a hearing on the motion for  
3 summary judgment is heard as late or as close to the  
4 trial as May 31st?

5 MR. WEINSTEIN: I do not.

6 THE COURT: All right. So all motions  
7 including a motion for summary judgment filed by either  
8 side can be heard within less than 30 days before trial,  
9 namely, as late as May 31st.

10 And that also should be reflected in your  
11 notice of ruling.

12 MR. WEINSTEIN: Fair enough.

13 THE COURT: All right. Counsel, that takes  
14 care of everything.

15 Thank you all very much.

16 MR. FLORES: Thank you, Your Honor.

17 MR. AUSTIN: Thank you, Your Honor.

18 MR. WEINSTEIN: Thank you, Your Honor.

19

20 (Proceedings adjourned at 10:28 a.m.)

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## 1 CERTIFICATE

2 State of California )

3 County of San Diego )  
4

5 I, Lois Mason Thompson, CSR No. 3685, a pro tem  
6 reporter in the Superior Court of the State of  
7 California, in and for the County of San Diego, hereby  
8 certify that I reported in machine shorthand the  
9 proceedings held on February 8, 2019, that my notes were  
10 transcribed into typewriting under my direction, that  
11 the foregoing transcript, pages 1 through 31 is a full,  
12 true, and correct transcript of the said proceedings.

13 Dated at San Diego, California, February 18, 2019  
1415  
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17 Lois Mason Thompson18 CSR No. 3685  
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