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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE ANTHONY J. BATTAGLIA, JUDGE PRESIDING

)	CASE NO. 13-MD-02452-AJB
IN RE INCRETIN-BASED THERAPIES)	
PRODUCTS LIABILITY LITIGATION)	
)	
)	
)	SAN DIEGO, CALIFORNIA
-----)	10:42 A.M.
)	
THIS DOCUMENT RELATES TO ALL CASES))	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:	HUNTER J. SHKOLNIK, ESQ. NAPOLI, BERN, RIPKA & SHKOLNIK 350 FIFTH AVENUE NEW YORK, NEW YORK 10018
	RYAN L. THOMPSON, ESQ. WATS GUERRA LLP 5250 PRUE ROAD, STE 525 SAN ANTONIO, TEXAS 78240
	TOR HOERMAN, ESQ. TOR HOERMAN LAW, LLC 101 W. VANDALIA STREET, SUITE 350 EDWARDSVILLE, ILLINOIS 62025

1 FOR THE DEFENDANT: NINA M. GUSSACK, ESQ.
2 PEPPER HAMILTON LLP
3 3000 TWO LOGAN SQUARE
EIGHTEENTH AND ARCH STREETS
4 PHILADELPHIA, PENNSYLVANIA 19103-2799

5 DOUGLAS MARVIN, ESQ.
6 WILLIAMS & CONNOLLY LLP
7 725 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20005

8 OFFICIAL REPORTER: JEANNETTE N. HILL, C.S.R.
9 (619) 702-3905

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1 SAN DIEGO, CALIFORNIA; THURSDAY, OCTOBER 17, 2013; 10:42 A.M.

2 **DEPUTY CLERK:** CASE NO. 13-MD-2452, IN RE INCRETIN
3 MIMETICS PRODUCTS LIABILITY LITIGATION.

4 **THE COURT:** SO WE ARE ON THE RECORD IN THIS CASE, THE
5 STATUS CONFERENCE HAVING BEEN SET FOR TODAY. AND THERE IS A
6 LARGE GROUP OF FOLKS PRESENT, WHOSE NAMES HAVE BEEN IDENTIFIED.
7 WE HAVE A GROUP ON THE PHONE, AS WELL.

8 THOSE OF YOU ON THE PHONE, CAN YOU HEAR US?
9 (COUNSEL CONCUR)

10 AND THE PHONE PARTICIPANTS INCLUDE JUDGE HIGHBERGER,
11 WHO HAS THE CALIFORNIA CASES. AND WHAT I'M GOING TO DO IN THE
12 INTEREST OF EXPEDIENCY IS INDICATE THAT WE HAVE THE APPEARANCES
13 OF ALL, AND THAT WILL BE REFLECTED IN THE MINUTES AS APPEARING.

14 I MET, AS WAS PROPOSED BY THE PUTATIVE LEAD COUNSEL,
15 IN CHAMBERS, ALONG WITH JUDGE HIGHBERGER TELEPHONICALLY
16 PARTICIPATING, TO DISCUSS THINGS IN A VERY GENERAL, INFORMAL
17 WAY. AND WE'LL GO FORWARD AT THIS POINT TO REPORT THE OUTCOME
18 OF THAT MEETING.

19 THE FIRST STEP OF WHICH WAS I HAVE APPROVED THE JOINT
20 PROPOSAL FOR THE CREATION OF THE PLAINTIFFS' STEERING
21 COMMITTEE, LEAD COUNSEL, LOCAL LIAISON, ETC., AS PROPOSED. SO
22 THAT REQUEST IS GRANTED AND COUNSEL NOW HAVE THE REPRESENTED
23 CAPACITIES AS PROPOSED.

24 AND I HAVE ALSO GRANTED THE REQUEST OF THE DEFENSE
25 WHO HAVE IDENTIFIED A DEFENDANTS' STEERING COMMITTEE.

1 THE CHAMBERS CONFERENCE DID INDEED HAVE THE
2 PLAINTIFFS' CO-LEAD COUNSEL ALL PRESENT, AS WELL AS THE DEFENSE
3 STEERING COMMITTEE.

4 AND THAT MATTER BEING IN PLACE, WE DISCUSSED THE
5 CASES NOW PENDING IN A GENERIC FASHION. COUNSEL ARE WORKING ON
6 A MASTER CONSOLIDATED COMPLAINT THAT WILL BE THEN ADDRESSED BY
7 A MASTER ANSWER.

8 AND THE MASTER COMPLAINT ITSELF IS GOING TO HAVE A
9 WORKING DUE DATE OF NOVEMBER 18TH OF 2013, BY WHICH POINT IT
10 WILL BE PRODUCED TO THE DEFENDANTS AND WILL HOPEFULLY BECOME
11 THE OPERATIVE DOCUMENT. THERE WILL BE A 30-DAY PERIOD TO
12 FOLLOW FOR THE DEFENSE TO THEN SUBMIT ITS MASTER ANSWER.

13 AND ON THAT NOTE, DOES ANYONE FROM EITHER THE
14 PLAINTIFFS' COMMITTEE OR THE DEFENSE COMMITTEE HAVE ANYTHING
15 THEY WANT TO ADD? IF NOT, WE'LL JUST KEEP MOVING.

16 **MR. SHKOLNICK:** NO, YOUR HONOR.

17 **THE COURT:** SO THAT'S THE PLAN ON THAT.

18 COUNSEL HAVE AGREED, AND THE COURT IS OF A MIND TO
19 GRANT ANY REQUEST FOR DIRECT FILING OF CASES IN THE MDL. THE
20 PARTIES HAVE COME UP WITH A JOINT MOTION THAT WILL BE SUBMITTED
21 SHORTLY AND WILL BE SIGNED, TO ALLOW THAT TO OCCUR.

22 AND IT WILL CONTEMPLATE THE INCLUSION OF THE THYROID
23 CASES, AS I UNDERSTAND IT, WITH SOME PROVISIONS TO PRESERVE
24 CERTAIN RIGHTS AND WHATNOT, AS APPROPRIATE.

25 AND FROM THE DEFENSE STANDPOINT, IS THAT ACCURATE,

OCTOBER 17, 2013

1 FOLKS? MS. GUSSACK?

2 **MS. GUSSACK:** YES.

3 **THE COURT:** YOU ARE NODDING YOUR HEAD OKAY.

4 AND FROM THE PLAINTIFFS' STANDPOINT, THAT'S CORRECT?

5 **MR. THOMPSON:** YES, YOUR HONOR.

6 **THE COURT:** NOW, THE PLAINTIFFS' FACT SHEETS AND
7 AUTHORIZATIONS HAVE BEEN AGREED TO. THEY ARE ABOUT 40 PAGES, I
8 UNDERSTAND. THEY ARE BEING FILED AS REQUIRED BY THE AGREEMENT,
9 AND NEW CASES ARE BEING ADDED AT APPROXIMATELY 20 OR SO A
10 MONTH, AS DICTATED BY PLAINTIFFS' ABILITY TO BE READY TO COMPLY
11 WITH THE FACT SHEET AND AUTHORIZATIONS AND MEDICAL RECORDS.

12 COUNSEL MAY HAVE AN INTEREST IN COMING UP WITH
13 PERHAPS A MORE STREAMLINED FACT SHEET -- OR AT LEAST A
14 PRELIMINARY FACT SHEET -- TO EXPEDITE THE ENTRY OF NEW CASES TO
15 JOIN, AND THEY ARE GOING TO CONFER ON THAT.

16 AND JUDGE DEMBIN WILL BE AVAILABLE TO ASSIST IN TERMS
17 OF ANY DISPUTES IN COMING UP WITH OR WHETHER OR NOT TO PROCEED
18 WITH THE FACT SHEET.

19 JUDGE DEMBIN, AS SET OUT IN THE LOCAL RULES, AND BY
20 OUR CUSTOM AND PRACTICE, IS HANDLING ALL OF THE DISCOVERY, ANY
21 SETTLEMENT -- GENERALLY SPEAKING OR SPECIFICALLY SPEAKING --
22 ISSUES, AND ALL SCHEDULING WITH REGARD TO DISCOVERY MATTERS.

23 FOR COUNSEL THAT DON'T KNOW JUDGE DEMBIN, HE IS OVER
24 HERE NEXT TO THE YOUNG LADY. AND HE IS THE GO-TO PERSON ON ALL
25 THINGS DISCOVERY.

1 THE PARTIES ARE IN THE PROCESS OF WORKING UP A
2 DEFENSE FACT SHEET TO FACILITATE MOVING FORWARD. AND THE DUE
3 DATE FOR THAT NOW, AT THE COMPLETION OF THE MEET AND CONFER AND
4 YOUR ABILITY TO AGREE, WILL BE NOVEMBER 18TH, AS WELL.

5 A PROTECTIVE ORDER ON FILE IN THE CASE IS GOING TO BE
6 RESUBMITTED FOR PURPOSES OF APPLICATION TO ALL CASES ASSOCIATED
7 WITH MEMBER-RELATED AND SO FORTH IN THE MDL PROCEEDING, IN THE
8 VERY NEAR FUTURE.

9 COUNSEL AND THE COURT HAVE DISCUSSED THE DEPOSITIONS
10 OF THOSE DEFENDANTS IN EXTREMIS. A PROTOCOL HAS BEEN DEVELOPED
11 AND WILL BE FILED SHORTLY TO ADDRESS HOW THOSE MATTERS ARE TO
12 PROCEED SO THAT THOSE COULD BE ATTENDED TO QUICKLY.

13 THE GENERAL DEPOSITION PROTOCOL IS STILL IN THE
14 PROCESS AND WILL BE SUBMITTED BY NOVEMBER 18TH, ABSENT
15 DISPUTES, WHICH WILL THEN BE ADJUDICATED BY JUDGE DEMBIN,
16 ACCORDING TO A SCHEDULE HE WILL SET.

17 RULE 30(B)(6) DEPOSITIONS. THE PROTOCOL FOR THAT IS
18 IN THE MEET AND CONFER PROCESS AND WILL BE RESOLVED, HOPEFULLY,
19 BY NOVEMBER 18TH, AGAIN, WITH JUDGE DEMBIN AVAILABLE TO ASSIST
20 IN RESOLUTION OF DISPUTES.

21 DOCUMENT PRODUCTION WILL BE THE SUBJECT OF CONTINUED
22 MEET AND CONFER ISSUES AND WILL BE ASSISTED BY JUDGE DEMBIN AS
23 APPROPRIATE.

24 THE PARTIES ARE WORKING ON A SPECIFIC ESI PROTOCOL.
25 THAT PROTOCOL WILL HAVE A DUE DATE OF NOVEMBER 18TH -- OR A

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1 WORKING DEADLINE OF NOVEMBER 18TH, AGAIN, WITH JUDGE DEMBIN TO
2 ASSIST OR ADJUDICATE AS NECESSARY.

3 THE COURT AND COUNSEL DISCUSSED, VERY GENERALLY, A
4 GLOBAL DESIRE FOR A BELLWETHER TRIAL PROCESS. THE PROCESS
5 ITSELF WILL NEED TO BE DETERMINED AND WE'LL CONTINUE TO MONITOR
6 THAT, BUT IT WILL BE AFTER PLANS FOR BOTH SCIENCE DAYS, FUTURE
7 DISPOSITIVES AND DAUBERT MOTIONS. AND COUNSEL WILL CONTINUE TO
8 DISCUSS ANY AND ALL OF THAT AMONGST THEMSELVES AND WITH THE
9 COURTS, AS WE GO FORWARD.

10 A SCIENCE DAY HAS BEEN SCHEDULED FOR FEBRUARY 5TH AND
11 6TH, 2014, 9:00 HERE IN THIS COURT, WITH THE IDEA THAT
12 SCIENTIFIC ISSUES WILL BE DISPLAYED. COUNSEL NEED TO CONFER ON
13 A PLAN AND APPROACH AND THE NECESSARY DISCOVERY THAT NEEDS TO
14 BE COMPLETED IN ORDER TO PRESENT THE SCIENCE ISSUES TO THE
15 COURT. AND THESE SCIENCE ISSUES WILL BE PRELIMINARY TO AND
16 ULTIMATELY WILL LEAD TO THE COMPLETION OF THE SCIENCE
17 DISCOVERY, AND DAUBERT AND GENERAL CAUSATION DISPOSITIVE
18 MOTIONS.

19 MOVING FURTHER FORWARD, THE COURT AND COUNSEL
20 DISCUSSED -- IT WAS LISTED AS ISSUE NUMBER NINE -- THE
21 INSURANCE COVERAGE ISSUES. AND THAT'S A MATTER THAT WE'LL
22 CONTINUE TO DISCUSS AND TAKE TO JUDGE DEMBIN AS AN ISSUE
23 RELATED TO DISCOVERY.

24 AS TO STATUS OF FILINGS, IT'S ANTICIPATED THERE MAY
25 BE AS MANY AS 2,000 MORE CASES FILED. WE HAVE ALSO DETERMINED

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1 THAT THERE ARE CASES IN COOK COUNTY, IN NEW JERSEY, ALABAMA,
2 AND OKLAHOMA, THAT MAY OR MAY NOT BE BROUGHT IN OR COORDINATED.
3 I THINK THAT'S A MATTER TO BE DISCUSSED. AND THE ABILITY TO
4 FILE THOSE ADDITIONAL CASES WILL BE THE SUBJECT OF THE DIRECT
5 FILING ORDER.

6 WE WILL INCLUDE IN THE JOINT MOTION TO BE SUBMITTED
7 BY NOVEMBER 18TH, THE THYROID CASES, WITH THE NECESSARY
8 RESERVATIONS, WHICH I THINK I'VE ALREADY STATED.

9 AND SO THAT IN SUM AND SUBSTANCE IS EVERYTHING BUT
10 THE STATUS OF THE LOS ANGELES COUNTY JCCP CASES.

11 AND, JUDGE HIGHBERGER, I WOULD CERTAINLY WELCOME YOUR
12 COMMENTS FOR THE BENEFIT OF A CROWD OF 50-SOME-ODD FOLKS HERE,
13 IF YOU WOULD LIKE TO DISCUSS THOSE FURTHER.

14 **JUDGE HIGHBERGER:** CERTAINLY. EXHIBITS B AND D OF
15 THE JOINT STATUS REPORT OFFERED IN FEDERAL COURT TODAY LISTS
16 THE OVERLAPPING, OR MORE PARTICULARLY, THE CANCER CASES PENDING
17 IN THE LOS ANGELES SUPERIOR COURT AS PART OF THE COORDINATION,
18 MANY OF WHICH ARE PANCREATIC CANCER, SOME OF WHICH ARE OTHER
19 CANCERS, SUCH AS THYROID.

20 SOME OF THOSE CASES IN LOS ANGELES DOCKET NUMBER
21 DT415326 WERE FILED IN JUNE OF 2009. AND UNDER THE FIVE-YEAR
22 RULE APPLICABLE TO BRINGING THE CASES TO TRIAL IN CALIFORNIA
23 STATE COURTS, SO THAT PLAINTIFFS DON'T LOSE THEIR CLAIMS. AT
24 LEAST AT FIRST BLUSH IT APPEARS THAT THERE IS SOME PRESSURE TO
25 GET THOSE CASES SET FOR TRIAL AS EARLY AS JUNE 2014, UNLESS

1 THERE IS AN AGREEMENT BETWEEN COUNSEL FOR BOTH SIDES TO WAIVE
2 THE DEFENDANTS' RIGHTS UNDER THE FIVE-YEAR RULE, WHICH
3 PRESUMABLY IS ALSO THE PLAINTIFFS' AGREEMENT TO ACCEPT SUCH A
4 WAIVER.

5 OUR COUNSEL ARE AWARE OF THAT ISSUE AND, HOPEFULLY,
6 THERE WILL BE NO NEED TO SET ANY CANCER CASES FOR TRIAL IN THE
7 SUPERIOR COURT IN ADVANCE OF WHEN THE FEDERAL MDL WOULD EXPECT
8 TO GET ITS FIRST CASE UP TO TRIAL.

9 THE COORDINATION OF DISCOVERY BETWEEN THE TWO CASES
10 NEEDS CLOSE COORDINATION BETWEEN MAGISTRATE JUDGE DEMBIN AND
11 JUDGE BATTAGLIA AND MYSELF, OR ELSE THERE IS A SERIOUS
12 POSSIBILITY THAT THE TWO DIFFERENT COURTS WOULD POTENTIALLY BE
13 WHIPSAWED WITH ONE SIDE OR THE OTHER RUNNING TO WHICHEVER BENCH
14 OFFICER THEY THINK IS GOING TO GIVE THEM A MORE FAVORABLE
15 RULING IF THEY DON'T LIKE WHAT HAPPENED IN THE FIRST CASE.

16 I LOOK FORWARD TO WORKING CLOSELY WITH JUDGE DEMBIN
17 AND JUDGE BATTAGLIA TO TRY TO SEE THAT THAT DOESN'T HAPPEN.
18 AND, HOPEFULLY, COUNSEL FOR BOTH SIDES WILL NOT TRY TO BE
19 ABUSIVE OF THE RISKS INHERENT IN THE FACT THAT YOU BASICALLY
20 HAVE TWO DIFFERENT CAPTAINS SAILING THE SAME BOAT AT THE SAME
21 TIME.

22 LIKewise, ISSUES OF DEALING WITH GENERAL CAUSATION,
23 WHICH, ACCORDING TO WHAT DEFENDANTS SAID, APPEARS TO BE
24 SOMETHING THAT THE DEFENDANTS INTEND TO CONTEST SERIOUSLY, AS
25 THEY HAVE WITH PANCREATITIS. AND, THEREFORE, IT WILL BE

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1 IMPORTANT THAT JUDGE BATTAGLIA AND MYSELF BE CONSCIOUS OF WHEN
2 AND HOW WE COME TO ADDRESS THE GENERAL CAUSATION ISSUE. THE
3 STANDARD IN CALIFORNIA STATE COURT MAY NOT BE IDENTICAL TO WHAT
4 JUDGE BATTAGLIA RELATED AS THE DAUBERT STANDARD. BUT IF IT
5 TURNS OUT THAT THERE ARE DIFFERENT CAUSATION RULINGS ON
6 ADMISSIBILITY, THAT, OBVIOUSLY, IS RIPE FOR ALTERNATIVE
7 COMPLICATIONS IN HOW THE LITIGATION PROCEEDS.

8 AND WITH THAT DULY NOTED, IT'S MY UNDERSTANDING THAT
9 BASED ON THE CASE CALENDAR OF CURRENT FILINGS, AND LIKELY
10 FUTURE FILINGS, THAT THE AUTHORITY OF THE PANCREATIC AND
11 RELATED CANCER CASES ARE IN OR LOOPED IN THE FEDERAL MDL; AND,
12 THEREFORE, THERE IS TO SOME EXTENT A LEGITIMATE PRIMACY OF
13 PLACE FOR THE MANAGEMENT OF THE FEDERAL MDL.

14 (COURT REPORTER'S INTERRUPTION)

15 **THE COURT:** JUDGE, COULD YOU SLOW DOWN A LITTLE BIT?
16 THERE IS SOME KIND OF A NOISE THAT IS GOING ON THAT IS
17 INTERRUPTING THE REPORTER'S ABILITY TO FOLLOW.

18 **JUDGE HIGHBERGER:** IT SOUNDS LIKE SOMEBODY IS WORKING
19 IN A KITCHEN WHILE THEY ARE ON THIS CONFERENCE CALL.

20 **MR. HOERMAN:** CAN SOMEBODY MUTE THEIR PHONE?
21 SOMEBODY IS MAKING A LOT OF BACKGROUND NOISE. I THINK THAT IS
22 WHAT IT IS.

23 **THE COURT:** THERE IS SOME BACKGROUND NOISE BY
24 SOMEBODY ON THE PHONE.

25 **JUDGE HIGHBERGER:** CAN MA'DAM REPORTER OR

1 MR. REPORTER PICK UP WHERE WE LEFT OFF AND I WILL TRY TO FINISH
2 THE SENTENCE?

3 (RECORD READ)

4 **THE COURT:** YOU WERE SORT OF TALKING ABOUT THE
5 NUMEROSITY OF THINGS, JUDGE.

6 **JUDGE HIGHBERGER:** OH, YES. BASED ON THE NUMBER OF
7 CANCER CASES THAT ARE ON FILE IN THE STATE PROCEEDING, AS
8 COMPARED TO THE FEDERAL MDL AND THE LIKELY NEW FILINGS, THAT
9 THE CENTER OF GRAVITY OF THESE CASES FAIRLY SHOULD BE SEEN AS
10 BEING WITHIN THE FEDERAL MULTI-DISTRICT LITIGATION. BUT, OF
11 COURSE, I HAVE TO BE RESPECTFUL OF THE RIGHTS OF SPECIFIC
12 LITIGANTS WHO HAVE CASES PENDING IN FRONT OF ME, TO MOVE THEIR
13 CASES FORWARD AND TO GET RULINGS FROM THE JUDGE TO WHOM THE
14 CASE IS ASSIGNED, WHICH IS, OF COURSE, MYSELF.

15 BUT I DO LOOK FORWARD TO WORKING CLOSELY WITH JUDGE
16 BATTAGLIA AND JUDGE DEMBIN, TO TRY TO LET THE PARTIES AND THEIR
17 COUNSEL RESOLVE THESE DISPUTES WITH THE LOWEST OUT-OF-POCKET
18 LITIGATION EXPENSE.

19 IT'S ALSO MY PERCEPTION THAT BECAUSE THE PRODUCTS IN
20 ISSUE CONTINUE TO BE SOLD WITH REGULATORY APPROVAL IN THE
21 UNITED STATES AND EUROPE AND ELSEWHERE, THAT WE ARE LIKELY
22 STRUCTURING A CASE ON BEHALF OF MANY PLAINTIFFS AND MULTIPLE
23 DEFENDANTS, WHICH WILL HAVE TO BE DECIDED ON THE MERITS, AND IS
24 NOT LIKELY TO BE RESOLVED BY ANY EARLY COMPROMISE.

25 IN THE CONTEXT OF THE CASES OF THIS TYPE, EVEN

1 MINDFUL OF ALL THE DISCOVERY THAT HAS OCCURRED IN THE PAST
2 UNDER THE SUPERVISION OF JUDGE CARL WEST, WHO HAD MY CASE
3 BEFORE I GOT IT, AND MYSELF, THE LIKELY COST TO REDISCOVERY,
4 EVEN WHEN HANDLED ECONOMICALLY, IS GOING TO BE VERY
5 SUBSTANTIAL. BUT I THINK THAT IS UNAVOIDABLE. NEVERTHELESS,
6 IT SHOULD BE AS REASONABLE AS POSSIBLE, GIVEN THE MAGNITUDE OF
7 THE EFFORT CONTEMPLATED.

8 AS AN ASIDE TO THE REPORTER, SINCE WE NOW IN STATE
9 COURT LIVE WITHOUT REPORTERS, I APOLOGIZE IF I HAVE FALLEN
10 UNDER THE HABIT OF TALKING TOO FAST.

11 **THE COURT:** NO PROBLEM. THANK YOU, JUDGE.

12 FROM THE PLAINTIFFS' STEERING COMMITTEE, THE LIAISON
13 COMMITTEE, ANYTHING YOU FOLKS WOULD LIKE TO ADD AT THIS POINT?

14 **MR. THOMPSON:** NO, YOUR HONOR.

15 **THE COURT:** AND HOW ABOUT FROM THE DEFENSE SIDE?

16 **MR. MARVIN:** NO, YOUR HONOR.

17 **THE COURT:** SO WHAT THE PLAN WILL BE -- AND TO ECHO
18 WHAT JUDGE HIGHBERGER SAID -- THE FEDERAL JUDGES AND HE WILL
19 COORDINATE. HE WILL BE INVITED TO PARTICIPATE IN ALL OF THE
20 HEARINGS AND STATUSES SO THAT WE DO INDEED MAXIMIZE THE
21 RESOURCES OF ALL.

22 AND AT THIS POINT WE WILL HAVE ANOTHER STATUS
23 CONFERENCE NOVEMBER 21ST AT 9:00 A.M. IN THIS COURTROOM, WITH
24 THE PLAINTIFFS' CO-LEAD COUNSEL, THE DEFENDANTS' STEERING
25 COMMITTEE, AT WHICH POINT WE'LL REVIEW THE STATUS OF THESE

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1 MATTERS IN PROGRESS, ALL OF WHICH HAVE DUE DATES AT ABOUT
2 NOVEMBER 18TH, AND SET FURTHER PLANS AND PROCEEDINGS BASED UPON
3 THE PROGRESS OF THE PARTIES AND THE ISSUES AS THEY DEVELOP.

4 NOW, HAVING SAID ALL OF THAT AND NOTING A LARGE GROUP
5 OF FOLKS THAT HAVE COME, I THINK, AS A MATTER OF COURTESY, I
6 WILL ASK IF ANY OF THE NON-STEERING-COMMITTEE MEMBERS HAVE ANY
7 COMMENTS OR QUESTIONS THEY WANT TO ASK THE GROUP IN TOTAL; OR,
8 OF COURSE, IF YOU WANT TO RESERVE THOSE FOR YOUR RESPECTIVE
9 STEERING COMMITTEES, THAT IS FINE, TOO.

10 IS THERE ANYBODY THAT WANTS TO BRING UP ANY ISSUES?
11 SEEING NO HANDS --

12 **MR. THOMPSON:** JUDGE, JUST TO CONFIRM. ON THE 21ST
13 WE'RE AT 9:00 A.M. FOR THE STATUS CONFERENCE?

14 **THE COURT:** YES. NOVEMBER 21ST, 9:00 A.M.

15 AND THERE IS NO ONE RAISING THEIR HAND. IT'S ALWAYS
16 DANGEROUS TO ASK THAT QUESTION IN A GROUP OF LAWYERS. I KNOW
17 TO BUY A LOTTERY TICKET NEXT.

18 AND THEN WE WILL CALL THE CONFERENCE INTO RECESS, AND
19 I WILL PUT OUT A BRIEF ORDER JUST CONFIRMING THE NEXT DATE, AND
20 THE LIST OF ITEMS THAT ARE EXPECTED TO BE ADDRESSED.

21 I WOULD SAY THAT SHOULD THE PLAINTIFFS' LIAISON
22 COUNSEL OR DEFENSE STEERING COMMITTEE WANT TO RAISE ISSUES TO
23 ADD TO THAT, FEEL FREE TO SUBMIT THOSE SO THAT ALL OF THOSE CAN
24 BE ADDRESSED. AND SO MY LIST WON'T BE FINITE; IT WILL JUST BE
25 WHERE WE LEFT OFF.

1 **MR. HOERMAN:** WOULD YOU LIKE US TO SUBMIT AN AGENDA
2 PRIOR -- A WEEK OR SO PRIOR OR A COUPLE DAYS PRIOR?

3 **THE COURT:** I WOULD SAY A COUPLE DAYS PRIOR SUBMIT A
4 SUPPLEMENTAL AGENDA. YOU CAN JUST PIGGYBACK ON WHAT I AM GOING
5 TO LAY OUT. YOU CAN ADD ANY NEW ISSUES YOU FOLKS FEEL
6 APPROPRIATE.

7 WE'RE TALKING NOVEMBER 21ST. SUBMIT THAT BY THE
8 19TH, AT THE LATEST. JUST BULLET POINTS. NO BRIEFING, NO
9 ARGUMENTS. JUST THE FACTS, MA'AM, AS JOE FRIDAY USED TO SAY.

10 **MR. HOERMAN:** MIGHT I SUGGEST, JUDGE, THAT RATHER
11 THAN HAVE EVERYBODY IN THE COURTROOM WHILE WE'RE IN CHAMBERS
12 HAVING CONVERSATIONS, MAYBE WE DO A 9:00 CHAMBERS MEETING AND A
13 9:30 HEARING SO WE SORT OF SPLIT THEM BETWEEN THE TWO?

14 **THE COURT:** THAT WOULD BE PERFECTLY APPROPRIATE. WHY
15 DON'T WE SAY 9:00 AND 10:00, JUST OUT OF AN ABUNDANCE OF
16 CAUTION, AND RESPECT THEIR ABILITY TO DO OTHER WORK.

17 SO IT WILL BE 9:00 FOR THE LIAISON. WE'LL TAKE THE
18 BENCH AT 10:00 TO SUMMARIZE AND OTHERWISE ADDRESS ISSUES IN A
19 FORMAL SENSE. AND IN THE INTERIM, YOU ARE INVITED TO CONTACT
20 JUDGE DEMBIN TO ASSIST YOU IN THE VARIOUS MATTERS THAT ARE
21 DISCOVERY-RELATED.

22 OKAY. SO WE ARE IN RECESS. THANK YOU VERY MUCH FOR
23 YOUR PATIENCE, AND TALK TO YOU SOON.

24 **MR. HOERMAN:** THANK YOU, JUDGE.

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THE COURT: THANKS, JUDGE HIGHBERGER.

JUDGE HIGHBERGER: OF COURSE. HAVE A GOOD DAY.

(PROCEEDINGS CONCLUDED AT 11:02 A.M.)

CERTIFICATION

I HEREBY CERTIFY THAT I AM A DULY APPOINTED,
QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED
STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE
ON OCTOBER 17, 2013; THAT SAID TRANSCRIPT IS A TRUE AND CORRECT
TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE FORMAT
USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF THE
UNITED STATES JUDICIAL CONFERENCE.

DATED: 10/18/13, AT SAN DIEGO, CALIFORNIA.

S/N
JEANNETTE N. HILL, OFFICIAL REPORTER, CSR NO. 11148