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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

HONORABLE RICHARD A. KRAMER, JUDGE PRESIDING

DEPARTMENT NO. 304

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PEOPLE OF THE STATE OF CALIFORNIA,)
acting by and through San Francisco)
City Attorney Dennis J. Herrera,)

Plaintiff,)

Case No. CGC-08-473569

vs.)

NATIONAL ARBITRATION FORUM, INC.,)
FIA CARD SERVICES, N.A.; COLUMBIA)
CREDIT SERVICES, INC.; DOES 1-50)
inclusive,)

Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Friday, July 10, 2009

Reported by: Joseph H. Vickstein, CSR No. 4780
Official Reporter

A P P E A R A N C E S O F C O U N S E L

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1 **THE COURT:** Sorry to keep you waiting. Your tax dollars
2 were hard at work in the back. Do you want to call the case.

3 **THE CLERK:** Case Number 473569, People of the State of
4 California versus National Arbitration.

5 **THE COURT:** All right. This is a People's motion to compel
6 various responses to discovery. There are some requests for
7 judicial notice from the Defendant.

8 The tentative ruling on the judicial notice is to deny
9 judicial notice of the three websites. It is my view that it is
10 not appropriate to take judicial notice of websites for the
11 purposes set forth here. And to grant the Request for Judicial
12 Notice as to the case from the Santa Clara Superior Court.

13 I should state that none of the matters for which judicial
14 notice is requested is material to my analysis of this case.
15 Anybody want to argue my tentative decision on the Request for
16 Judicial Notice?

17 **MS. VAN AKEN:** No, Your Honor.

18 **MR. MALLOW:** If Your Honor allows, could we reserve the
19 argument to see the materiality? If it's not material, I don't
20 want to argue it.

21 **THE COURT:** Sure. All right. Regarding the People's Motion
22 to Compel Discovery, I will give you an overall view of what
23 should happen here. And then if necessary, I am prepared to go
24 through each and every item covered and do them individually.
25 But maybe I can do this as a broad brush.

26 It is my tentative ruling that none of the justifications
27 set forth by the NAF which relate to some sort of a privilege or
28 a similar concept in an arbitration proceeding is sufficient to

1 justify not producing the information here.

2 I don't believe that the immunity that attaches to
3 arbitration or mediation proceedings applies to this case. I
4 don't think that the arbitral privilege applies to this case. I
5 do not think that the FAA preempts anything that would affect
6 discovery in this case.

7 I think the litigation privilege contained in the California
8 Civil Code has nothing to do with this case, and therefore would
9 not prevent any discovery in this case.

10 And about the only problem I have with the production is
11 producing the databases for all California arbitrations from
12 March 24 to 2004 for present purposes at the present time
13 appears to be overbroad, and I think there can be a less
14 burdensome and less intrusive manner that this information can
15 begin to be produced.

16 Say a random sampling of cases or something like that,
17 holding off until another time the question of whether every
18 single one of them has to be produced. There's a lot of them
19 and I see the burden in producing them and I don't think every
20 single file needs to be produced at this time, and maybe never.

21 Bottom line on my conclusion regarding the arbitration
22 privilege is all of the points raised by NAF concern concepts
23 designed to protect the confidentiality of an arbitration
24 proceeding or the integrity of a single arbitration proceeding.

25 They are designed to preclude the frustration of arbitration
26 through coming to courts and essentially relitigating the whole
27 deal. Or some other similar concept that has to do with
28 protecting the integrity of the process vis-a-vis the litigants

1 involved in a specific arbitration.

2 Here, the claim has to do with the integrity of the entire
3 arbitration setup. It's different. It is not the integrity of
4 a single arbitration or the rights of single litigants that
5 we're talking about.

6 We are talking about whether or not the whole system as
7 alleged in the Complaint is something that is, A, factually
8 provable, and B, something that this Court should do something
9 about.

10 And that being the case, none of the protections cited have
11 anything to do with gathering reasonable facts to figure out if
12 the arbitration system as alleged exists, and is something that
13 this Court, as I said, should do something about.

14 That's my tentative view. Do you want to argue?

15 **MR. MALLOW:** Yes, Your Honor.

16 **THE COURT:** I thought you might.

17 **MR. MALLOW:** Let's start with the notion --

18 **THE COURT:** I'm going to cut you off because I forgot to say
19 something.

20 And the result of this would be not an order requiring the
21 withdrawal of the claims of privilege or preemption. It would
22 be simply an order to produce the material notwithstanding the
23 claims.

24 So the requested remedy is not what I would do here. The
25 requested remedy that I order the claim should be withdrawn
26 isn't going to happen. You are entitled to make the claims and
27 keep them for some other court's review as well. But rather it
28 would simply be an order for the production of the information

1 notwithstanding the claimed privilege. All right. I won't
2 interrupt you this time. Sorry.

3 **MR. MALLOW:** That's okay, Your Honor. Feel free to
4 interrupt all you wish.

5 **THE COURT:** I actually do, but I won't wish to do so. So go
6 ahead.

7 **MR. MALLOW:** Let's start with the, with Your Honor's basic
8 premise that the arbitral immunity has no place in this case
9 because it only applies to single arbitrations.

10 The arbitral immunity, like a judicial immunity, is a
11 protection of a neutral from undue influences related to the
12 litigation or the threat of litigation. It is an understanding
13 that the neutral needs to be able to act without fear of being
14 subject to liability as a result of those acts.

15 This case is actually a perfect example of why the arbitral
16 immunity is required. Not an example of why it should be
17 excepted.

18 What we have in this case is the government making
19 allegations to effectuate a result. The result which is that
20 the government believes consumers are not being treated
21 favorably enough in the NAF procedures.

22 Through the use of litigation or threatened litigation, the
23 City is trying to compel NAF to do something different in terms
24 of its process.

25 Now, the City is not a neutral. The City is not without
26 interests. The City is not without bias. The City is an
27 advocate. And through the threat of litigation by an advocate,
28 the City is trying to change procedures which it believes are

1 not favorable enough for consumers.

2 There is no difference between the City's initiating a
3 litigation against the NAF on a wholesale basis, challenging the
4 process, and every other case that has come before every other
5 court raising the exact same issue, but is being brought by a
6 party to the arbitration who has alleged, "I have been treated
7 unfairly and therefore I get to sue the National Arbitration
8 Forum for their procedures and processes that led to an
9 arbitration result."

10 Every other court that has heard this argument -- and this
11 argument is not new. It is a recycled argument based on
12 allegations, which are based on allegations, which are based on
13 allegations that NAF procedures are unfair and not favorable
14 enough to consumers.

15 The fact that the City is packaging it all up and looking at
16 all the arbitration results and then attacking the system that
17 way, is no different, and raises the exact same concerns as
18 having a single arbitrator bringing the same exact case against
19 the NAF. And in every other case the courts have recognized
20 that immunity.

21 So the distinction that the Court is relying on, the notion
22 that, "Hey, we are not really attacking individual arbitrations"
23 and that the rationale between arbitral immunity doesn't exist
24 here, I submit, Your Honor, is directly not taking into account
25 what is really going on here.

26 What's really going on here is the City has determined,
27 based on studies that it has read, and based on the notion that
28 somehow consumers must be treated unfairly because they don't

1 win enough. That's the City's case.

2 The only way the city is -- and the City has conceded that
3 the only way that they can try to evidence their case is to look
4 at those arbitration files to determine how those results were
5 reached.

6 What is the difference whether you are having one
7 arbitration party say "I want to look at all the results so I
8 can sue the NAF," versus the City's saying the exact same thing?

9 It can't be because the City is a neutral or is a
10 determinant of what is a neutral and unbiased system. Because
11 this City is itself an advocate. And it's an advocate on behalf
12 of consumers.

13 So the notion, I think, Your Honor, that arbitral immunity
14 somehow doesn't apply in this case because the City isn't a
15 client to a specific arbitration, or isn't looking at one award
16 and attacking the NAF on one award, I think misses the bigger
17 picture.

18 And when you go back and look at the Complaint that the City
19 has brought against the National Arbitration Forum, and you read
20 the motion that it has brought to compel discovery, and most
21 importantly when you read the reply brief, it is absolutely
22 clear that there's no difference between what the City is doing
23 in this case and what every other arbitrator who has sued the
24 National Arbitration Forum complaining of bias has done in those
25 cases.

26 And consistently the courts have recognized arbitral
27 immunity and they must. And the reason they must is what is
28 preventing the City from attacking any neutral provider by

1 allegations -- not evidence -- allegations that somehow they are
2 a sham. And in this case, Your Honor, I think you need to be
3 very suspect of those allegations. Why? Because you have
4 courts that have previously looked at this issue who have
5 disagreed with litigants that have raised that issue.

6 Because the City has brought to you and argued in its motion
7 case files which absolutely prove the opposite of what the City
8 is trying to espouse in their Complaint.

9 The case files that have been brought to Your Honor don't
10 show a sham. The City argues to you that there are two case
11 files that are indicative of 90 percent of the 100,000
12 California arbitrations.

13 And then when you look at those two case files, what do you
14 see? You see a process that's working exactly the way that the
15 Legislature intended. Whether it be the Federal legislature or
16 the California Legislature.

17 You have one case where -- in fact the Santa Cruz case, Your
18 Honor, we have finally obtained the documents from the file.
19 And what did the judge do in that case? Judge denied the
20 petition to confirm the Arbitration Award because the judge,
21 without a consumer showing up, said, "There's no service."

22 **THE COURT:** What exactly are you arguing now? You are
23 arguing now that there's no merit to the City's case. And
24 therefore because of the files that you point to, you should win
25 this lawsuit. You are not arguing about immunity.

26 **MR. MALLOW:** Well, the City's argument, Your Honor, up until
27 this point, has been essentially a circular one:

28 "We allege the NAF is a sham. Its processes are a sham."

1 Because it is a sham and we are alleging it's a sham, arbitral
2 immunity does not apply. Because arbitral immunity does not
3 apply, we are entitled to discovery. We need that discovery to
4 prove that the NAF is a sham."

5 It's a very convenient and circular argument, Your Honor.

6 **THE COURT:** Well, if that were it, I probably wouldn't buy
7 it. But I didn't read the argument that way. I read it that
8 they are alleging, the City is alleging that there is something
9 rotten in Denmark.

10 Peter Busch said, "That's good enough to go forward past a
11 demurrer."

12 Now they are saying, "We have to see what's going on with
13 these arbitrations." And that when you are looking at
14 information for that purpose, the immunity doesn't apply. Not
15 that immunity doesn't apply because the City says it's going to
16 win. It's who is asking what question.

17 Just by way of example, the first interrogatory, want to
18 know the names of the arbitrators. Objection. Arbitration
19 immunity, because they are never going to get to testify anyway.

20 **MR. MALLOW:** Well, in point of fact, Your Honor --

21 **THE COURT:** Right? That's the argument that you make?

22 **MR. MALLOW:** That is one of the arguments. Though they have
23 all the arbitration providers nonetheless because that was
24 produced in the context of the discovery that has already
25 occurred.

26 So we are not in a position now -- these objections have
27 been raised, and they were raised along with discovery being
28 produced. So the City is not sitting here today on just its

1 allegations.

2 And let me step back a second. Let's talk about Judge
3 Busch's ruling. Because if you go back and look at that
4 transcript, Your Honor, Judge Busch had essentially two major
5 concerns. One was 1281.96. The second major concern was the
6 advertising.

7 Now, Judge Busch deferred, essentially deferred ruling on
8 the Motion to Strike because he knew the case was going to be
9 sent to complex, and he didn't want to put his imprimatur on the
10 case.

11 But if you look at that transcript, he was very troubled by
12 the immunity argument. He was concerned about that immunity
13 argument. And he focused on two very narrow portions of the
14 City's case in overruling the demurrer.

15 And as you know, because it's a single count 17200 case,
16 anything that might stick would defeat the demurrer. That is
17 why the Motion to Strike was filed, so that the case could be
18 narrowed. And he referred the case here based on the concept
19 that we had the ability to narrow the case.

20 Now, I am not going to retrace the steps that led us to
21 reviewing these motions, you know, these issues under a Motion
22 to Compel. It is what it is. But Judge Busch, along with all
23 the other courts who have reviewed this arbitral immunity issue,
24 was troubled by the City's case. And indicated that for him it
25 was a tough issue.

26 We are now a year later. And after that year there has been
27 discovery that has been provided. And at the end of the day,
28 the City's motion, the City's argument truly is if arbitrable

1 immunity applies, it shouldn't apply in this case, because we
2 have alleged NAF is a sham.

3 And they have argued in their Motion to Compel at length
4 that NAF is a sham. They present evidence to you that they
5 think supports the notion that NAF is a sham.

6 But when you look at the evidence it supports the exact
7 opposite position. And we can go through every single thing
8 that's in that reply brief to show that in fact their position
9 on the sham argument which is critical if arbitrable immunity
10 applies, doesn't exist.

11 But the notion that arbitral immunity somehow doesn't have a
12 role in this case because it's the City attacking the entire
13 process, when at the end of the day, it's not just the entire
14 process. It's each individual arbitration.

15 Ask the City, Your Honor, what is the basis for why they
16 brought this claim? What is the basis? Because consumers lose.
17 Why do consumers lose, Your Honor? Because the only aspect of
18 NAF's process that the City wants to bring before you --

19 **THE COURT:** Slow down.

20 **MR. MALLOW:** -- is the credit card issues. Look at the 24
21 cases that the City had picked that NAF has produced. All
22 credit card cases.

23 There is not a lot of defenses to a credit card case.
24 There's only two absolute ones. A, it wasn't me who made the
25 charges. B, I paid them. That's it for an absolute defense.

26 It's not a surprise that consumers lose. When consumers
27 default, when they default in this court or they default
28 anywhere else, the likelihood is, the strong likelihood is they

1 are going to lose.

2 **THE COURT:** What you are arguing here is you are going to
3 win this case. What you are arguing here is that there are
4 logical explanations for the patterns that the City alleges.
5 You are arguing that your interpretation should be accepted,
6 therefore the City's case must fail.

7 You might be right. But that's got nothing to do with
8 what's in front of me today. What's in front of me today is
9 whether or not the requested discovery is reasonably calculated
10 to lead to the discovery of admissible evidence. And if so, is
11 it otherwise protected from production by some sort of privilege
12 related to the fact that the underlying events are arbitrations.
13 That's what is in front of me today.

14 **MR. MALLOW:** But Your Honor, just because the argument
15 ultimately goes to the merits of the case, or the lack thereof,
16 that is not what I'm suggesting today. We are not here on a
17 Summary Judgment Motion.

18 **THE COURT:** I know.

19 **MR. MALLOW:** What we are here on is a Motion to Compel
20 Discovery. And there is an immunity that exists. There are
21 litigation privileges that exist that prevent the exact type of
22 discovery harassment that is going on in this case.

23 This case, Your Honor, right now, is more disruptive to the
24 NAF than when this case resolves. Now, unless NAF goes out of
25 business, its business will be less disrupted once this case
26 concludes, regardless of the results, as long as NAF doesn't go
27 out of business.

28 Why? Because arbitration parties are concerned about

1 whether the arbitrations would be enforceable. They are
2 concerned about 1282 challenges to the arbitrations based on
3 bias, based on improper following of procedures. All of those
4 claims are covered by a statute in California and by the FAA.
5 Okay?

6 What the City is doing is doing an end run around that
7 process. They are trying to effectuate a change in a neutral's
8 practices and procedures through the litigation or threat of
9 litigation. And that's what immunity covers.

10 Every one of the claims is addressed by arbitral immunity.
11 And without looking at the individual arbitration files which
12 the City has conceded it needs to look at because it has to find
13 something to substantiate its allegations, without looking at
14 those files, there is no case here.

15 Because what the City's case starts from is the premise that
16 consumers lose more than we think they should. And because they
17 lose more than they think we should, there must be something
18 evil afoot. That's their case.

19 **THE COURT:** You are starting to repeat yourself here.

20 **MR. MALLOW:** I understand, Your Honor.

21 **THE COURT:** Anything else?

22 **MR. MALLOW:** Up to this point, Your Honor, there has been no
23 court that has recognized an exception to the arbitral immunity
24 that you are suggesting here.

25 This could be an exception if Congress legislates it as an
26 exception. Congress is aware of the arbitral immunity.
27 California Legislature is aware of the arbitral immunity.

28 Congress can turn around and say, "We do not recognize the

1 arbitral immunity" or, "The arbitral immunity will not be a
2 defense to allegations related to processes and procedures."
3 There is no such statute or legislation. Same in California.

4 **THE COURT:** Your argument would be better if all the City
5 was asking for were the files. But most of the questions have
6 to do with things other than the files.

7 And you have invoked the arbitration immunity as a defense
8 to producing virtually anything about the process, including the
9 names of the arbitrators, including the methods of publication
10 of statutorily required data, including the names of employees.

11 The argument being none of this could possibly result in
12 admissible evidence because the arbitration's a shroud over
13 everything.

14 The files, I agree with you, the request is overbroad and we
15 are going to have to deal with the files. But most of this
16 discovery has to do with the superstructure and procedures and
17 data that you have as a group basis regarding these
18 arbitrations.

19 And the individual cases that you are referring to are
20 individual cases where individual litigants go through an
21 arbitration and then one of them shows up and says, "I want a
22 different day in court." That's the difference.

23 And as I said, I am prepared to go through every one of
24 these things. The very first one, what is the one I gave as an
25 example? The names of all the arbitrators.

26 Objection. Arbitration immunity. You can't ask them any
27 questions anyway, so why do you need their names? Right?
28 That's one of your objections to Interrogatory Number 1.

1 That's not going through the file. That's not something
2 that the litigants normally fight in court following somebody
3 being disgruntled about a result. That, they know who the
4 arbitrator was because they were there. So that's largely what
5 is wrong with your argument that they are trying to just get
6 into the files.

7 They are saying that the whole system is rotten. And you
8 are saying because arbitrations are protected activities, the
9 government can't look into how your arbitrations work in any
10 way.

11 Let's say that your arbitrations had something like you
12 picked arbitrators who were cousins of executives of NAF. I'm
13 not suggesting that that happened. But you are saying that
14 because an arbitration is shrouded with protection that nobody
15 could ever find out if that were true?

16 **MR. MALLOW:** Two responses to that, Your Honor.

17 **THE COURT:** Yeah.

18 **MR. MALLOW:** Number one, there is a process by which the
19 government can look into this issue and implement changes. It's
20 called Congress. It's called the Legislature.

21 And, in fact, they are doing that as we speak. There is
22 legislation pending at the Federal level. The National Consumer
23 Arbitration Fairness Act, I believe is what it's called, is a
24 bill that is moving through Congress now. Congress is having
25 hearings on it. Congress is having discussions about it.

26 That is the proper way to address an issue that may be of
27 concern. There is a mechanism for it. Suing the provider is
28 not it. That's what we are saying. You can't sue the provider

1 to effectuate that change.

2 Go to Congress. Go to the Legislature. So long as the
3 Legislature doesn't create legislation that is preempted by the
4 FAA, the Legislature is a fair forum to discuss these issues.
5 Clearly Congress is a fair forum to discuss these issues. And
6 they are being discussed.

7 Number two, litigants in private arbitration routinely sue
8 the National Arbitration alleging exactly what the City is
9 alleging in this case, that the system is biased. They request
10 information related to all of the arbitrators, all of the
11 arbitrations, to try to argue that the system is unfair, and
12 that is why they ended up with the result they ended up with.
13 And they sue the NAF and those cases are routinely dismissed.

14 The third point, Your Honor, is litigation is disruptive in
15 and of itself. Discovery is disruptive and injurious in and of
16 itself.

17 Perfect example -- and California absolutely recognizes
18 that. Just look to 425.16. That statute is based on the notion
19 that you can bludgeon the other side with discovery and
20 effectuate a result when one is not appropriate.

21 And the California Legislature has put protections in place
22 to ensure that a party is not defeated through discovery. The
23 immunity protects against discovery as well as against -- you
24 know, protects against the filing of the lawsuit, the threat of
25 the lawsuit and the discovery that would be attendant to the
26 lawsuit. Because the immunity contemplates that there should be
27 no undue influences upon the arbitration -- the arbitrator or
28 the arbitration provider.

1 NAF is not above the law, and its processes are not above
2 the law. This is just the wrong forum to address it. That's
3 what is being said. And it be the wrong forum for exactly the
4 undue influence that exists by the City being able to threaten
5 or bring its case and effectuate discovery.

6 **THE COURT:** So now back to my question. Do you remember it?

7 **MR. MALLOW:** I thought I answered it, Your Honor.

8 **THE COURT:** Then I will accept that as your answer to it. I
9 don't think you did.

10 **MR. MALLOW:** The answer --

11 **THE COURT:** You are suggesting that the shroud of protection
12 precludes the government from looking into whether there's an
13 ongoing repeated inappropriate practice here.

14 And the one I gave was something, I had blood relations to
15 the NAF, I could have said a bribery system or all arbitrators
16 had to commit to find a certain, in a certain way.

17 Your arguing point number one was go to your legislature if
18 you don't like that that exists. You are saying that there's a
19 protection from anybody looking into how the process works.
20 Right?

21 **MR. MALLOW:** There are two -- at least two ways to identify
22 that as an issue. Meaning somebody is committing a criminal
23 fraud, which is what you are suggesting. Bribing the arbitrator
24 to obtain a result. There are two places to do that. One is
25 again Congress. The other is the government is free to bring a
26 criminal prosecution. There is no arbitral immunity for
27 criminal prosecution. Okay?

28 So you have, the government can review the system and

1 effectuate changes through legislation, which is being
2 contemplated as we speak. And if the wrongs are severe enough
3 to constitute and warrant criminal prosecution, that is another
4 way that the government can address the concerns that the
5 government may have.

6 Suing NAF in a civil suit using 17200 is not the appropriate
7 mechanism for addressing what the City believes to be problems.

8 **THE COURT:** Got you. Anything else?

9 **MR. MALLOW:** No, Your Honor.

10 **MS. VAN AKEN:** Your Honor, I am not going to take issue with
11 the Court's tentative that the entire database request is
12 overbroad at this time, and that the People should proceed by
13 trying to narrow that and then possibly revisiting the issue
14 later if it turns out the database is needed.

15 But I want to address one issue about that, which is whether
16 ultimately the law has any concern at all about the people
17 looking to individual arbitration files, not to overturn
18 particular awards, not to undo those particular awards, but
19 instead to use what happened in those proceedings as evidence.

20 Now, this is not a case where we are talking about a
21 mediator's privilege. That privilege applies to documents,
22 papers, conversations, anything. All of that is privileged.
23 But that's not what we are talking about here. These are
24 arbitrations.

25 There is one statutory privilege concerning arbitration.
26 And that is Evidence Code Section 703.5. And that says that an
27 arbitrator is not competent to testify about the results of the
28 arbitration or his or her reasoning. I am not quoting that, but

1 that's the gist. So the People will not be permitted to obtain
2 or present arbitrator testimony. But that's the exclusive
3 discovery privilege in the law.

4 The other legal issue that we are talking about today is
5 arbitral immunity which prevents claims from going forward in
6 certain situations.

7 Now, if the Court adheres to its tentative, that that claim
8 does not at least preclude the discovery, then this case
9 proceeds until NAF brings a Motion for Summary Judgment or other
10 dispositive motion or until we go to trial.

11 But arbitral immunity, no case in California finds that
12 arbitral immunity acts as an independent limitation on
13 discovery, and no court should find that. Because it's only an
14 immunity as to the claim. And once the case is going forward,
15 it doesn't protect discovery.

16 Let me say a little more about arbitral immunity.
17 Mr. Mallow says that NAF's processes and procedures are
18 shrouded. That's not the case.

19 What arbitral immunity protects is two things. It protects
20 the integrity of the contract between parties where parties have
21 that agreed that an arbitrator is going to be the final say in a
22 dispute, then courts protect the integrity of that agreement.

23 Now, here, where arbitration awards are entered, the People
24 are not claiming that we have the ability to undo those
25 arbitration awards. That's precisely the problem. Once an
26 award is entered, it's very, very difficult, if not impossible
27 to unravel in certain situations.

28 That's why this case is necessary to resolve the business

1 practices that NAF is, we allege, committing on such a large
2 scale.

3 And the second thing that arbitral immunity protects is the
4 finality of awards. Once an award is issued, the parties should
5 not be able to collaterally attack an award. But that is not
6 what we are doing. We are not a party to any arbitration
7 contract. The People are not a party to any arbitration award.
8 And the people do not seek with this lawsuit to take any
9 arbitration award and undo it.

10 Now, as I said, there's nothing that prevents us from using
11 what happened in particular arbitrations as evidence. Let me
12 give the Court an example.

13 Since we filed our reply brief, a former employee of NAF has
14 filed an affidavit that says that what she saw NAF employees
15 doing was taking consumers' responses to arbitrations and
16 finding them to be deficient on spurious grounds so that the
17 arbitration claim would end up in a pile of uncontested cases
18 that NAF would send out in large batches to arbitrators to
19 decide with one signature.

20 If that's happening, then I think the way to prove that,
21 then we think that's an unfair practice, and the way to prove
22 that is to show that that's happening by looking at the response
23 that was filed and demonstrating that it was disregarded for
24 improper reasons under NAF's own rules. I don't see another way
25 to prove that allegation.

26 But that's very different than saying the arbitration of
27 Mr. X, who was subjected to that, is no longer valid. That
28 award must be undone. Those are two completely different things

1 and that's why the evidentiary -- there's no evidentiary burden,
2 barrier to our obtaining the evidence we need so long as we do
3 not unwind the finality of arbitration awards.

4 I also want to point out that Mr. Mallow has not addressed
5 two serious problems with his claims. The first is NAF's
6 admission in materials that we presented to the Court concerning
7 the scope of arbitral immunity. There's simply no word about
8 that. And we think that at least demonstrates what their view
9 of the law was at one time.

10 And the second thing I want to point out is that 17200 is a
11 statutory cause of action. Arbitral immunity is a common law
12 immunity. The common law does not override statutes. Instead,
13 the analysis goes we have to find, in order to find a common law
14 immunity to apply, that the Legislature intended to incorporate
15 that common law immunity into the statutory cause of action.

16 There is no analysis at all about that that Mr. Mallow has
17 offered to you. No case has ever held that. In fact in *Morgan*
18 *Phillips*, 2006 I believe case by the Court of Appeal, the Court
19 found that a case against an arbitration provider could go
20 forward, including the 17 -- the unfair advertising cause of
21 action.

22 It didn't specifically discuss that cause of action, but
23 without comment it allowed that to proceed. And it also found
24 that arbitral immunity did not apply to the contract claim that
25 the arbitrator failed to render the award.

26 Mr. Mallow discusses the SLAPP Statute as a reason why
27 discovery is intrusive. There is no anti-SLAPP motion here. He
28 discusses a lot about the merits of the case and why he believes

1 that NAF is not a sham organization. This isn't a proper place
2 for us to be litigating the merits. That comes later.

3 And finally with respect to the Motion to Strike, I want to
4 point out what I believe to be a misstatement. The Motion to
5 Strike was not deferred. It was denied. So there is no pending
6 Motion to Strike. There's nothing that's been pushed over.

7 And finally, the Class Action Fairness Act and the other
8 legislative efforts that Mr. Mallow discusses don't have
9 anything to do with regulating particular arbitration
10 organizations. They relate to banning mandatory pre-dispute
11 arbitration clauses. So they have nothing to do with either
12 allowing or disallowing local government law enforcers to sue
13 arbitration agencies.

14 I want to conclude with a statement that no court has ever
15 applied the common law immunity to a case like this. For the
16 court to apply it here would truly be an extension of the law.
17 And NAF has given the Court no reason to extend the law in that
18 way.

19 **THE COURT:** Thank you.

20 **MR. MALLOW:** Two things, Your Honor. First, I was given the
21 City, in light of Your Honor's position regarding the
22 applicability of arbitral immunity in the context of the Motion
23 to Compel, it didn't seem tremendously relevant, but since the
24 City has raised it, I will raise it to you.

25 The City again has indicated that NAF had a previous
26 interpretation of arbitral immunity that is inconsistent with
27 the position it's taken in this case. The City's argument is
28 based on its failure to include in the context of the quoted

1 language that appears in its reply brief, the entirety of the
2 quote that it was citing.

3 In fact, there's nothing inconsistent between the NAF's
4 position on arbitral immunity in this courtroom and what it had
5 indicated to arbitrators.

6 And when Your Honor reviews the entirety of the language,
7 which -- because we didn't have a sur reply, we did not get to
8 put forth before Your Honor, I think it is indicative of what
9 this case is about and how the City is going about litigating
10 this case.

11 The quote for the purposes of the record in its full form
12 is:

13 "Arbitral immunity is not absolute. Injunctive
14 relief may be granted by a court in limited
15 situations. A party may seek injunctive relief from
16 a court to stay or preclude an arbitration hearing.
17 A party seeking injunctive relief ordinarily sues the
18 opposing party and not the arbitration organization
19 or arbitrator. It is unnecessary for a party seeking
20 injunctive relief to proceed against the arbitration
21 organization or arbitrator unless unusual
22 circumstances warrant such relief. Immunity applies
23 to all acts done by an arbitrator whether proper or
24 improper, unless the arbitrator acts in clear abuse
25 of jurisdictional power. Immunity does not apply to
26 criminal acts you commit as an arbitrator. Nor does
27 civil liability for parties adversely affected by
28 your criminal conduct. Immunity may also not apply

1 to misconduct unconnected to your work as an
2 arbitrator, or to egregious misconduct committed
3 while acting as an arbitrator."

4 The City left out the entire discussion other than the few
5 phrases that it decided were relevant and helpful to its
6 position.

7 Also, there was a case recently that talked about the
8 application of common law immunity based on statutory claims and
9 that's the Komarova case. The name may sound familiar to you,
10 Your Honor, because Ms. Komarova is the poster child for the
11 City's claims against the NAF. It's the case involving the
12 woman who was the unfortunate object of a misidentity.

13 There was an arbitration filed against a Komarova whose
14 named had a different spelling. The case that the arbitration
15 before NAF was involving the Komarova who did owe money on her
16 credit card.

17 And unfortunately the creditor, upon obtaining an
18 arbitration award, sought to enforce the award against the wrong
19 Komarova. Despite the fact that it shows up as, you know, the
20 first allegations in this Complaint, Ms. Caramova's situation
21 has absolutely nothing whatsoever to do against NAF or involving
22 NAF, but somehow became the poster child for the wrongs of the
23 NAF.

24 In that case the Court did an analysis of arbitral immunity
25 in the context of a statutory provision, and with the exception
26 of one provision which essentially pierces an immunity because
27 the statute specifically addressed a process, and it was clear
28 from the intent of Congress that immunity would apply, the

1 immunity essentially applied.

2 The City's position that 17200 somehow pierces immunity
3 means that there is no immunity. Because as you know, Your
4 Honor, 17200 is an extremely general, broad statute that borrows
5 any other statute or any other unlawful act, has a fraudulent
6 prong and an unfair prong.

7 To say that 17200 doesn't apply to immunity is basically
8 saying that any arbitrator who brings a claim under 17200 can
9 pierce arbitral immunity. That cannot be the law. It is not
10 the law.

11 The City takes a far too narrow view of arbitral immunity.
12 Yes, it is not an absolute immunity. But as the *Pelham* Court
13 suggests, and *Pelham* is a case where, yes, Under Section 1983,
14 there would be no immunity.

15 The *Pelham* Court suggests that arbitral immunity -- or the
16 judicial immunity and arbitral immunity and judicial immunity
17 ride together, they are co-extensive, is extremely broad and any
18 narrowing of that immunity must be done carefully and only in
19 the most severe of circumstances.

20 So it's not for NAF to say there is, you know, an intent to
21 expand the immunity to a case like this. It's to the City to
22 point to an exception. And they have not done so.

23 The *Pelham* Court is very instructive also on the purpose of
24 the immunity. The purpose of the immunity is not, has nothing
25 to do with the finality of decisions. As *Pelham* suggests, it
26 has to do with the chilling effect that litigation has on an
27 independent decisionmaker.

28 That's what *Pelham* talks about. It's the chilling affect

1 that we are here about. Not because of the finality of
2 arbitrations. That has nothing to do with it.

3 The City raises this notion that somehow 17200 again
4 undermines -- it pierces arbitral immunity and it points to a
5 case where the clear holding of the case was an arbitration
6 provider can be sued if it refuses, or an arbitrator refuses to
7 provide an arbitration award. That's the only context. It's a
8 breach of contract. When -- and the advertisement was, "If you
9 give us your money, we will render a decision." They didn't
10 render a decision. And therefore -- and the immunity didn't
11 apply to that.

12 It does not also apply in context where an arbitrator
13 provider had no jurisdiction to render an arbitration award.
14 And without a contractual agreement or an agreement of parties
15 for the arbitrator or arbitration provider to act, there can be
16 no immunity. So that's not an exception. It's just where it
17 doesn't apply.

18 The discovery privileges in this case that apply to
19 arbitrators, the law is clear, applies to the provider and the
20 staff. The privilege is co-extensive with discovery. And the
21 litigation privilege would also apply and prevent discovery in
22 this case.

23 So I mean the issues that the City raises show even more why
24 the arbitrable immunity applies in this case, not less.

25 **THE COURT:** Thank you. All right, now, so far my tentative
26 ruling stands. Do you want me to go through every one of these?
27 Or if I left you to your own devices, could you go through them
28 and figure out what that means?

1 **MS. VAN AKEN:** Your Honor, as we understand it, the
2 tentative is that the result would be an order that NAF produce
3 the documents, notwithstanding the claimed immunities and
4 privileges and FAA preemption, with the exception of the
5 database where the Court finds the request to be overbroad at
6 the present time?

7 **THE COURT:** Not just the document. There's interrogatories,
8 too.

9 **MS. VAN AKEN:** Correct.

10 **THE COURT:** It's those privileges do not apply, period. I
11 could go through each one and see what, if anything, is left.
12 Or I could leave it to your own devices on that, because there
13 are other objections here, too.

14 **MS. VAN AKEN:** My understanding was that NAF had agreed that
15 it would have to revisit its discovery responses if the Court
16 ruled in our favor. That's what Mr. Mallow has stated at a
17 previous Case Management Conference.

18 **THE COURT:** Well, here's my suggestion. And then we will
19 take a break and you can think about my suggestion.

20 My suggestion is that I leave the ruling as is, because I am
21 going to. But I not go through the individual matters. And
22 that you meet and confer if you have any problems.

23 You will also give NAF an opportunity to go to the Court of
24 Appeal on this, because you are raising questions that I think
25 are packaged succinctly so you could go up on a Writ and you can
26 get an answer while you guys are talking about what is to be
27 produced.

28 And by the way, it doesn't trouble me when people go up to

1 the Court of Appeal. Just about everything I do goes up to the
2 Court of Appeal. I think it has to do with the nature of the
3 work in this department rather than my decisions. And they
4 usually affirm me pretty quickly. Just joking about that one.

5 In any event, that's probably the smartest thing to do here
6 is to cut out all this privilege stuff. You both revisit what
7 means in terms of your objections. And also that would give the
8 Court of Appeal a chance to review this if you so desired to do
9 that. And then I could have you come back in a month or so. We
10 would know if you got the Court of Appeal's interest or not.
11 And hopefully you would work through most, if not all, of your
12 disputes. And then all I would have left to do would be the
13 cleanup stuff.

14 **MS. VAN AKEN:** Your Honor, I think that's fine. We actually
15 didn't move on the other objections that they have interposed
16 because that was sort of part of the Case Management process.
17 So I think that makes sense. The Court had suggested that the
18 discovery motion be staged and only focus on certain things for
19 now.

20 We have a Case Management Conference on July 30th that is a
21 perfect time for us to have some progress from the meet and
22 confer efforts.

23 **THE COURT:** I have got to give my court reporter a break
24 here. He's just about to fall over and throw something at you
25 people. So let's take about 10 minutes. And then maybe talk to
26 each other about whether you want to do it that way.

27 I think July 30th is about a perfect timing for coming back.
28 And if you file a writ and if they want the alternative writ

1 issued or however it comes out, we can always delay that Case
2 Management Conference to see what the Court of Appeal might make
3 out of all of this.

4 Let's take a 10 minute break and you guys think yourselves
5 and talk to each other about what you want to do here, okay?
6 And my staff people come in the back for a second, okay?
7 Thanks.

8 (Recess taken.)

9 **THE COURT:** Okay. Welcome back. Everybody be seated. So
10 my idea of having you come back in about a month, time to figure
11 out what next, is that what we are going to do?

12 **MR. MALLOW:** That's acceptable to National Arbitration
13 Forum, Your Honor.

14 **MS. VAN AKEN:** There are just two issues that I want to see
15 if the Court is willing to give a ruling or give some clarity
16 on.

17 The first is one of the bases for our motion is NAF said in
18 response to many discovery requests that it would produce
19 documents, subject to and without waiving these objections, et
20 cetera. And now will produce, et cetera.

21 And that has not occurred in the instances where we pointed
22 out. And so we'd like to request that the Court rule on the CCP
23 2031.320(a) issue which is where a party is committed to produce
24 documents and hasn't done so, the other party is entitled to get
25 an order.

26 The second I wanted to raise is that we sought sanctions.
27 So --

28 **THE COURT:** I had three more items to go. You hit two of

1 them.

2 **MS. VAN AKEN:** I apologize, Your Honor.

3 **THE COURT:** For what? Missing the third?

4 **MS. VAN AKEN:** Yes.

5 **THE COURT:** The third one is what are we going to do about
6 the database on the cases? Because we are going to start
7 something on that. Okay?

8 **MS. VAN AKEN:** Okay.

9 **THE COURT:** Let's start with the -- which was also my first
10 one -- about the items where there seems to be a commitment to
11 produce, am I correct, that you are going to produce the matters
12 that you said you will produce?

13 **MR. MALLOW:** Your Honor, my thought was to go back, since we
14 are going to have to revisit all of the discovery, just go back
15 and revisit the discovery to go back and revisit the discovery
16 which would include the issue of what was promised and what
17 wasn't promised.

18 As you probably read from the papers, the context in which
19 discovery was promised was suspect. Nevertheless, I would
20 suggest that we would go back, revisit all the discovery as we
21 said we would. To the extent that there are issues that are
22 unrelated to the privileges and immunities, we can discuss them,
23 and on the 30th report back to the Court.

24 And it would be all issues, which would include also issues
25 related to certain discovery where there may have been an
26 indication that we would produce.

27 **THE COURT:** Well, I'm thinking of Production Numbers 4, 8,
28 14 through 63, 67 through 69, and 73. And as to those, it

1 appears to me there is no objection. Not that there is some
2 indication you may produce. And there's a difference. Am I
3 right about those?

4 **MR. MALLOW:** Again, Your Honor, I don't have the specific
5 requests in front of me, but it would be -- if we have not
6 objected, other than on the privilege grounds, then we would
7 produce.

8 **MS. VAN AKEN:** Your Honor, that's not what happened. In
9 those specific cases where we have moved, and we specifically
10 made our motion on that ground, and it's in the Separate
11 Statement, Request for Production Numbers 4, 8, 14 through 63,
12 65, 67 through 69 and 73 are cases where NAF said, "Subject to
13 and without waiving these objections," et cetera, "we will
14 produce either responsive documents or some subset of responsive
15 documents."

16 And it seems to me that revisiting that is simply saying,
17 "We may not actually live up to that commitment." And we think
18 under 2031.320(a), NAF is required to live up to that
19 commitment.

20 **THE COURT:** Your numbers were the same as mine, except I
21 omitted 65. And you are right and I am wrong. 65 was in there.
22 Okay.

23 **MS. VAN AKEN:** Thank you.

24 **THE COURT:** Well, I will just do this. Anything to which
25 there has been no objection, and those are the ones that I
26 articulated, plus Number 65, shall be answered. And if there's
27 a ground for revisiting or not answering, you will let me know
28 what that is and I'll get past it promptly. Either you are

1 right or you are not.

2 But as to any of those items that you don't think there's an
3 articulable, legally sustainable ground, the order is you answer
4 them. How long do you need? How long do you need to do so?

5 **MR. MALLOW:** In which to respond to the discovery, Your
6 Honor?

7 **THE COURT:** Produce the information, yes.

8 **MR. MALLOW:** Your Honor, if I may, I think as it relates to
9 specific requests, it's going to be a different answer depending
10 on the request itself, and depending on the burden of the
11 request.

12 So to say, to turn around and say can we have 30 days, given
13 the limited resources in which to dedicate to responding, some
14 may be 30, some may be 60, we can do it on a rolling basis. But
15 I think we should discuss it with the City first. And if we
16 can't work out a time line, that's one of the issues we would
17 bring back to Your Honor.

18 **MS. VAN AKEN:** Your Honor, much of this is information that
19 we've been informed can be printed upon a query in a database.
20 The rest of it has been the response that we will produce
21 certain items, such as marketing materials has been outstanding
22 for months. And NAF was placed on notice that the People were
23 putting these items in issue.

24 So to not commit to a deadline now seems to me to invite the
25 Court to set one. I would suggest 45 days as an appropriate
26 deadline for production. I think that's a generous deadline.

27 **THE COURT:** How about I set a Case Management Conference on
28 August 27th, 2009 at 2:30? And that's when we'll take up the

1 matters that there may be some cleanup left in light of my
2 ruling today. And that that be the deadline for production,
3 except as to anything you can explain to me what the problem is.

4 **MS. VAN AKEN:** Your Honor, we also have a Case Management
5 Conference on July 30th.

6 **THE COURT:** We are going to talk about that in a minute.

7 **MR. MALLOW:** Your Honor, I have another matter in Los
8 Angeles on the 27th in the morning.

9 **THE COURT:** Okay.

10 **MR. MALLOW:** Not that it's my favorite to fly back and forth
11 on Friday from San Francisco, but the 28th is an open day. Or
12 we can put it in after the Labor Day weekend. I think the Labor
13 Day weekend is that week of the 29th.

14 **THE COURT:** No.

15 **MS. VAN AKEN:** It's the following.

16 **THE COURT:** Let's go off the record here.

17 (Off-the-record discussion.)

18 **THE COURT:** Back on the record. We are going to have a Case
19 Management Conference regarding the rest of this discovery
20 motion. I haven't forgotten two other matters for today.

21 On September 1st at 1:30, be prepared to stay here until
22 4:30. We will talk about the production of information pursuant
23 to what went on here today. And if there's anything that has
24 yet to be produced, there should be a good reason for doing so,
25 because I have also ordered it all be produced by August 27, was
26 it?

27 **MS. VAN AKEN:** Yes, Your Honor.

28 **THE COURT:** August 27th. So the matters that you would

1 withhold for all these various privileges and claimed FAA
2 preemption, all produced by the 27th, except for the database
3 which we are going to talk about in a minute. And anything you
4 don't produce, you explain to me why not and most importantly
5 when it will be produced. And start producing it on a rolling
6 basis. Not all of it on the 27th. As it's ready, produce it.

7 Plaintiffs will prepare an order. The sooner the better
8 because the NAF wants to take it to the Court of Appeal. So as
9 soon as possible.

10 **MS. VAN AKEN:** Yes, Your Honor.

11 **THE COURT:** How about no written order? Anybody want a
12 written order? I have already ordered it.

13 **MR. MALLOW:** You mean ordered the transcript, your Honor?

14 **THE COURT:** No, I have already ordered that the privileges
15 are not justifiable bases for withholding documents. So no
16 order. Just I have done it orally in court. Is that okay with
17 the Plaintiff?

18 **MS. VAN AKEN:** Yes, Your Honor.

19 **THE COURT:** Is that okay with NAF?

20 **MR. MALLOW:** I think that's fine, Your Honor.

21 **THE COURT:** Good. Okay. All right, the databases. There
22 are some ideas that I have on this. The first is wait until we
23 get the rest of them and then decide what to do about the
24 database.

25 In other words, that would be a topic of discussion on
26 September 1. We'll have the other information, we'll have some
27 of the information, say, as to who the arbitrators are, or other
28 characteristics. So if we were, for example, to make a random

1 selection, we would have more information to do so. You might
2 also have some decision by the Court of Appeal. I think I am
3 inclined to do that.

4 Unless there is a reason for not doing that, I'd say meet
5 and confer before the 1st of September and come up with a
6 proposal for starting off producing less than the entire
7 database. Sort of a, maybe random selection, maybe a not random
8 selection. But something that could allow a sampling within the
9 valuation of the sampling and later determinations as to where
10 we go next.

11 And having thought it out now, I think if we are going to do
12 that, because we will come up with a much more intelligent way
13 of doing it, or we'll get stopped in our tracks. One or the
14 other.

15 **MS. VAN AKEN:** Your Honor, that's acceptable to us.

16 **THE COURT:** And I'm sure that's acceptable to NAF, right?

17 **MR. MALLOW:** Yes, Your Honor.

18 **THE COURT:** Okay. But talk about it and be ready to present
19 something that has logic to it.

20 **MS. VAN AKEN:** Your Honor, just one -- we may need a small
21 number of files from the database, or small bit of information
22 in order to design a statistically relevant query. So I take it
23 that you are order compasses meeting and conferring on things
24 like that?

25 **THE COURT:** Yes. It also encompasses getting your geeks
26 involved. The City is familiar with my use of the term "geek."
27 A "geek" is a term of endearment for somebody who really knows
28 what it takes to retrieve data.

1 You people stand up and tell me it's impossible and cost
2 prohibitive. You are not lying to me. You believe that. But
3 you don't really know.

4 The only people that really know are the geeks. And a
5 "geek" is somebody who you call to your office when your
6 computer isn't doing what you need it to do, and you want that
7 person to get it to do that or the closest thing to what you
8 need.

9 And you do not need that person to come in and tell you the
10 20 reasons why it won't work. You want that person to tell you
11 what can be done that comes close to what you need. That's a
12 geek. And a better geek is that person who has a pocket
13 protector. Okay?

14 And we may bring the geeks to Court if you guys get into an
15 argument about what it takes to search a database. Because
16 here's my chance to use the word that you used with me all the
17 time, "with all due respect" to the lawyers, you have no idea
18 what you are talking about usually when you are telling me about
19 searching databases.

20 So get your geeks involved. And have the geek come up with
21 a program that is economically rational and designed to start
22 the flow of information so you can make sequential decisions on
23 future searches, if appropriate. And that's what they are
24 trained to do, is to get what you want, not to tell you why they
25 can't do it. So that's how we will handle that. Okay?

26 **MR. MALLOW:** Understood, Your Honor.

27 **THE COURT:** Okay. So we will have a plan for that.

28 All right, regarding sanctions, I told you this at the start

1 when I had my discussions with you, that sanctions of the nature
2 requested here are a misnomer. They are not sanctions. They
3 are cost shifting. They are mandatory unless the non prevailing
4 party's position has been shown to be substantially justified.
5 I believe that that is the standard here. It makes things
6 easier for judges.

7 It is my view that the question of whether or not these
8 claimed privileges and claimed immunities apply to discovery of
9 the nature that we have here is not a close question. If the
10 Court of Appeal disagrees, I will revisit this. But in my view
11 the NAF's position is not substantially justified and therefore
12 the City is entitled to sanctions.

13 200 bucks an hour is probably the best bargain going in the
14 City right now at the hourly rate. And 67 hours may or may not
15 be a lot of time, but you are only looking for half of that. So
16 my view is the amount of requested sanctions is justifiable,
17 \$6,725.

18 I want to underscore, the standard I am applying is not as a
19 punishment for the Defendant's doing anything wrong. The
20 sanctions of the nature I am imposing are required by law to the
21 prevailing party unless the non-prevailing party's position is
22 substantially justified. And I don't think it is here, because
23 I just don't buy your argument. If you win in the Court of
24 Appeal, you will probably get the sanctions reversed, too. So I
25 am going to award sanctions of \$6,725.

26 **MR. MALLOW:** Your Honor, NAF would request that the sanction
27 be stayed until September 1st.

28 **THE COURT:** Problem with that?

1 **MS. VAN AKEN:** We don't have a problem with that, Your
2 Honor.

3 **THE COURT:** Great. Not great. None of this is great, but
4 acceptable. Okay?

5 Anybody have anything further for today?

6 **MR. REIDY:** Yes, Your Honor. Just a housekeeping matter.
7 FIA and the City submitted a stipulated order redacting certain
8 information from public files in San Francisco County. The City
9 approved the form of that order and we submitted that jointly.

10 **THE COURT:** This was the one on all the different files, and
11 I asked you to figure out how to do it, right?

12 **MR. REIDY:** Right.

13 **THE COURT:** Got signed a couple days ago.

14 **MR. REIDY:** Okay. What we are trying to work out with the
15 Clerk is that we wanted it signed but not entered yet, because
16 Exhibit A, the parties agree that Exhibit A should not be put in
17 the public record. Kind of defeats the purpose of what we are
18 trying to do.

19 **THE COURT:** There was no Exhibit A, as I recall. All right.
20 We will check it. As soon as we go off the record I will have
21 us find this. And anything else? All right. Off the record.

22 (Whereupon, the proceedings are adjourned.)
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27
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1 State of California)
2 County of San Francisco)
3
4

5 I, Joseph H. Vickstein, Official Reporter for the Superior
6 Court of California, County of San Francisco, do hereby certify:

7 That I was present at the time of the above proceedings;

8 That I took down in machine shorthand notes all proceedings
9 had and testimony given;

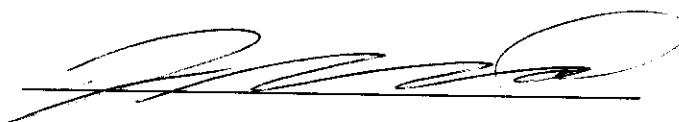
10 That I thereafter transcribed said shorthand notes with the
11 aid of a computer;

12 That the above and foregoing is a full, true, and correct
13 transcription of said shorthand notes, and a full, true and
14 correct transcript of all proceedings had and testimony taken;

15 That I am not a party to the action or related to a party
16 or counsel;

17 That I have no financial or other interest in the outcome
18 of the action.

19
20
21 Dated: July 13, 2009

22
23 

24 Joseph H. Vickstein, CSR No. 4780
25
26
27
28