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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 16-CV-21199-CMA/JJO

ANDREA ROSSI, *et al.*,
Plaintiffs,

vs.

THOMAS DARDEN, *et al.*,
Defendants.

Miami, Florida
December 20, 2016
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TRANSCRIPT OF DISCOVERY HEARING
BEFORE THE HONORABLE JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 P-R-O-C-E-E-D-I-N-G-S

2 COURTROOM DEPUTY: All rise.

3 THE COURT: Afternoon. We're here today in the case of
4 Rossi versus Darden, Case number 16-civil-21199.

5 Could I have appearances for the Plaintiff first?

6 MR. CHAIKEN: Yes. Good afternoon, Your Honor. Brian
7 Chaiken, C-H-A-I-K-E-N and Christopher Perre, P-E-R-R-E, on
8 behalf of Plaintiffs.

9 I also have Dr. Rossi who is here with us today. Dr.
10 Rossi asked me to tell you that he is wearing a piece on his
11 head for health reasons, and instead of wearing a hat, which
12 really didn't help the cause, he has a piece. So that explains
13 his appearance.

14 THE COURT: That's fine. I wouldn't have even known
15 that. Okay. Thank you. You can be seated unless you're
16 addressing the court.

17 Who is here for the Defendant?

18 MR. PACE: Good afternoon, Your Honor. Chris Pace and
19 Chris Lomax are here for Industrial Heat.

20 THE COURT: Okay. All right.

21 I got -- the Defendant's filed an objection to the
22 Plaintiff's notice of hearing. That's inappropriate, so I'm
23 striking that. In the future, if you have an objection to it,
24 when you come here, you can tell me all about it, but you're not
25 supposed to be filing anything before that. The notice only

1 indicated in there what the issues were that were going to be
2 addressed and not argument. The idea of having these hearings
3 is not to have argument ahead of time because it puts you in
4 some kind of advantage.

5 All right. Let me hear from the Plaintiff.

6 MR. CHAIKEN: Well Your Honor, we have two issues. One
7 substance and one form. I guess we'll deal with form first. I
8 guess that's the bigger picture issue.

9 Plaintiffs -- excuse me. Defendants have been
10 providing us with documents responsive to our request pursuant
11 to the previous order that you had issued in this case. They
12 have produced over 65,000 documents, over 138,000 pages worth of
13 materials as well as a 3.2 terabyte hard drive. And we've gone
14 back and forth with opposing counsel, and our biggest issue that
15 hasn't been unresolved as of yet is trying to get Defendants to
16 identify which documents are responsive to which requests.

17 THE COURT: Okay. What do you say about?

18 MR. CHAIKEN: And if I can just really briefly go into
19 that.

20 Their claim in the case is that the documents were
21 produced in the ordinary course of business and the way they're
22 normally held, pursuant to Federal Rule. We shared with them
23 yesterday some of the comments or feedback we received from our
24 vendor who is trying to help us decipher what we received, and I
25 had sent him an e-mail and I'll just quote one thing that I had

1 sent them, which I think sums up the entire thing. And our
2 provider told us that based on the volume, format and file types
3 produced, video, audio, database files, et cetera, it will take
4 an extreme amount of time, cost and resources to fully evaluate
5 the production. More so, given the complete lack of
6 transparency Defendant has shown with this production. There
7 are hundreds, if not thousands, of hours of audio and video, an
8 assumption based on the file size that has been produced. This
9 format, more so with no understanding of what the files are
10 responsive to, create undue burden on the Plaintiffs and may
11 result in unnecessary expense for them to attempt to decipher
12 the content of the production. Furthermore, based on
13 Plaintiff's sampling of the production, it is also believed that
14 select video and audio files are not even responsive to
15 discovery. This heightens our concern about the Defendants
16 simply performing a data dump.

17 Now I've got examples of documents, Your Honor.

18 THE COURT: what did they say about that?

19 MR. CHAIKEN: They haven't responded to that. Or they
20 claim that our requests were so broad that they were just being
21 responsive.

22 THE COURT: So did they respond to that or not?

23 MR. CHAIKEN: Their response was our requests were so
24 overly broad that their responses were within the scope of our
25 requests.

1 THE COURT: Okay.

2 MR. CHAIKEN: Now, they've also said that they're not
3 going to identify, you know, which documents are responsive to
4 which requests, which I think would resolve most of our
5 problems.

6 THE COURT: Okay. What do you say about that,
7 Mr. Pace?

8 MR. PACE: A few things. One Your Honor -- and let me
9 provide this before I provide it to you. One, Your Honor, is
10 that this e-mail came over yesterday. And as opposed to when it
11 should have come over, had time for the parties to talk about
12 it. Can I hand the court one piece of paper?

13 THE COURT: Yeah. Well, did you talk about the e-mail?

14 MR. PACE: I'll address --

15 THE COURT: Hand it to me.

16 MR. PACE: Actually I don't know if we (inaudible).
17 Sorry. Let me get back to the microphone.

18 we did talk about it and we talked about trying to, you
19 know, resolve the matter or look into the matter. But let me --
20 let's talk about the video and this production. I've given you
21 an example, because this is the 3.2 terabyte hard drive. We
22 have things -- these things are broken down into files, so this
23 is just an example. If you go into it and you look at the file,
24 one of them is filed Italy. You click on Italy, you come up
25 with these breakdowns by year. You click on the year and you

1 come up in these subfolders, analysis, data, images, video. So
2 they're all put together.

3 Plaintiffs, on the other hand, when they produced a
4 very, very small number of videos, just gave us the videos
5 without any indication. Some of them are of somebody's
6 apartment. We actually were able to open a couple of them.
7 There are a few seconds showing the inside of somebody's
8 apartment. The reality of the process is that I don't know if
9 in here they're going to find a video. I mean, our folks
10 reviewed them, they were the testing related videos. I would
11 imagine none of them are of somebody's apartment or of a
12 birthday party. But they may -- if they're a video that was
13 taken of the testing facility, they asked for everything we had
14 relating to the testing facility, we produced it.

15 So is there a lot of data there? Yeah. I mean, we
16 told the court the last time we were here there's a lot of data.
17 They asked for a lot of data. We had a meet and confer about
18 them, they were saying they wanted to have receipts for pipes
19 and wires -- I'm sorry, I keep using pipes instead of wires. So
20 we got all of the testing data. We organized it so that that
21 massive file is all organized in this fashion, which they didn't
22 do with the videos they produced which are also --

23 THE COURT: So how -- I thought you said this is how
24 it's kept in the ordinary course of business.

25 MR. PACE: Well actually, for this what we did is it

1 was in different places and we said get it together and put it
2 in an organized fashion so we could produce it this way.

3 THE COURT: So why don't you tell them that the
4 terabyte is in response to your requests that you have all
5 videos of the plant or whatever it is you just said to me?

6 MR. PACE: We've told them that. They know what's in
7 the terabyte drive. They know it's the testing data. I don't
8 think he's saying to the contrary.

9 THE COURT: Okay. Do you have a problem with the
10 terabyte drive?

11 MR. CHAIKEN: Yeah, I absolutely do, Your Honor. I've
12 got a copy of two videos right here I could show you.

13 THE COURT: I'm not watching a video.

14 MR. CHAIKEN: What's on the terabyte. They're 30
15 second videos.

16 THE COURT: I'm not watching videos, you can tell me
17 what's on it.

18 MR. CHAIKEN: The videos show a bunch of people in a
19 church. That's the first video. The second video shows people
20 riding on a train.

21 THE COURT: Okay. why is that?

22 MR. PACE: Your Honor, I'm not going to dispute that
23 there may be some videos in there that shouldn't be in there,
24 just like they gave us videos of an apartment, of somebody's
25 apartment.

1 THE COURT: I mean, it's not like well, they didn't do
2 the right job so we're going to send them videos of our church.

3 MR. PACE: We didn't, Your Honor. There's a lot of
4 videos in here. If somebody had a file that says videos of X,
5 they copied it over. Now, maybe in that video of X, you know,
6 if you go into my work computer it's almost all work stuff. I
7 will admit I have a couple pictures of my daughters in there.
8 If I kind of said here's the file folder of my work stuff and I
9 copy it when you're producing this large amount of data, then
10 you can have it. If the issue is the videos, you know, we can
11 go back and look at the videos. I mean, I'm not going to
12 dispute that there's something in there. Like I said, I think
13 this is the reality of the production process given the amount
14 of stuff we were trying to produce.

15 THE COURT: Okay. So I don't understand, what does the
16 Plaintiff want them to do?

17 MR. CHAIKEN: The Plaintiff wants them to identify
18 which documents are responsive to which requests.

19 THE COURT: All right. Well, he just told you the JPEG
20 is -- the JPEG is all videos? I mean, the terabyte thing?

21 MR. PACE: No, the terabyte drive has analysis, data,
22 images and videos. But it all relates to the E-Cat testing or
23 is supposed to all relate to the E-Cat testing. Out of 3.2
24 terabytes, I'm not going to say that there can't be mistakes in
25 there.

1 MR. CHAIKEN: If that's the answer, I'm satisfied with
2 that answer, Your Honor. These documents are --

3 THE COURT: Okay. You got the answer --

4 MR. CHAIKEN: These documents are --

5 THE COURT: So you got the answer for that. We don't
6 need to talk about that anymore.

7 Now, what else do you want?

8 MR. CHAIKEN: Okay. We've got 65,000 documents which
9 and I have no idea -- and 138,000 pages, and I have no idea what
10 requests they're responsive to.

11 THE COURT: Okay. What do you say about that?

12 MR. PACE: We're allowed to produce -- well, two
13 things. One is we're allowed to produce things in the ordinary
14 course. But second is --

15 THE COURT: It's the way they're maintained in the
16 ordinary course of business. Generally what that contemplates
17 is like the old days where you would go, show up at the person's
18 business and they'd say all of my invoices are in that filing
19 cabinet there. Go ahead and look at it. Or I guess if they're
20 on a computer, all my invoices are, you know, under such and
21 such. Go ahead and look at it.

22 MR. PACE: I agree, Your Honor. And in the new world,
23 fortunately they kind of changed it and updated it a little
24 (inaudible), we didn't highlight the (inaudible) -- I'm sorry.
25 I keep getting away from the microphone. I apologize for that.

1 I've got another case too, but I think this will make
2 the point. What we have agreed to provide them, and I will
3 admit, I said this yesterday because I did not realize we hadn't
4 provided the file path -- I'm sorry, Your Honor. I think it's
5 Page 8. Six. Wow, my eyesight is going. Eight. It's
6 highlighted, it should be.

7 THE COURT: I see it. Eight and nine here.

8 MR. PACE: Yeah. But there's two issues with
9 production on electronic documents. And we did not give them
10 the file path originally because I thought that we had -- we
11 gave them the file name which is what they requested, but we're
12 providing them the file path. When you provide the file path on
13 the electronic documents, it does tell you the way that they're
14 maintained.

15 THE COURT: Okay. Have you looked at the file path?

16 MR. PACE: They have not because I haven't given it to
17 them. It just came up yesterday and I told them we'll get it to
18 them by the end of the day.

19 THE COURT: All right. Will you be satisfied if he
20 gives you the file path?

21 MR. CHAIKEN: I don't know, Your Honor. I would have
22 to see it first. We've received, as per your last order,
23 documents over the last month including just recently as Friday,
24 so we're still analyzing the documents. We have provided the
25 documents to our service provider. We provided Defendant's

1 counsel with a protocol for providing the metadata that we've
2 requested. In fact, we provided it way up front. We never
3 received any feedback, they just gave us the documents in the
4 form they decided to give them to us. We've given them a new
5 protocol very recently, asked them to give us comments and
6 feedback, we've yet to receive any feedback.

7 THE COURT: Okay. When did you give them that?

8 MR. CHAIKEN: I believe it was yesterday, Your Honor.

9 THE COURT: I mean, why do you give them stuff
10 yesterday when we're here today?

11 MR. CHAIKEN: Well, Your Honor --

12 THE COURT: So that we can just make sure that nothing
13 is resolved and you can just throw it up in the air in front of
14 me and I'm supposed to figure out what to do with 650,000
15 documents?

16 MR. CHAIKEN: Absolutely not, Your Honor. In fact, we
17 gave them our ESI requests and our requests for metadata over a
18 month ago and again, they gave us documents in the form they
19 gave them to us. They never said we're not going to give you
20 these fields or --

21 THE COURT: Well, when you have your ESI conference,
22 you're supposed to discuss what form you're going to get the
23 documents in, you're supposed to agree that the documents will
24 be provided in some form and then you give them to him in that
25 form and he gives them to you in that form.

1 MR. CHAIKEN: I would agree, Your Honor.

2 MR. PACE: Your Honor, we produced them in the format
3 they requested and in the form they requested. They didn't
4 request file path, but I'm saying I --

5 THE COURT: Well, you got the file path -- hold on.
6 Give them the file path. You have an expert who is working on
7 this thing too who is collecting all this stuff?

8 MR. PACE: We have an e-discovery vendor, we do.

9 THE COURT: Okay. Good. That person is to communicate
10 with his e-discovery vendor, his e-discovery person, and he's to
11 explain to him how he's to research these records so he can get
12 to what he wants. Because this is not hide the ball.

13 MR. PACE: Your Honor, it's not -- that first came up
14 yesterday. Wait a second, Your Honor. In fairness to us and
15 the amount of volume we produced, we produced the testing data
16 in an incredibly organized fashion.

17 THE COURT: I don't want to hear a speech about what
18 you provided. There's two ways to provide things, okay?

19 MR. PACE: Fair enough.

20 THE COURT: Maybe, and I suspect that this thing isn't
21 right because you guys aren't communicating well together,
22 that's why I'm telling you to get your experts together so they
23 can communicate with each other well.

24 But there's two ways of -- one thing is to give them a
25 lot of documents, but give them so much garbage that there's no

1 way they're ever going to find what is relevant to this case.
2 The other thing is to provide a lot of documents because they
3 asked for a lot of documents and they're all relevant and, you
4 know, that's fine. But just saying well, we provided this and
5 we provided that, that means nothing to me. I've got no idea.

6 I've had cases where they only provided ten documents
7 and people were happy, and I've had other cases where you got to
8 provide a million documents and that wasn't enough. You have to
9 provide 1.5 million documents then. So, you know, telling me
10 the number of documents means zero except for the fact that you
11 provided a lot of junk to them.

12 MR. PACE: well, what I was going to say, Your Honor,
13 was we gathered up the testing material and we organized it.
14 That's the big production. We then produced, for example, the
15 communications back and forth.

16 THE COURT: I don't understand. What production is
17 that?

18 MR. PACE: The terabyte hard drive. The terabyte hard
19 drive.

20 THE COURT: I don't want to hear what you provided, I
21 want to hear what the problems are. I don't want to hear what
22 you did, I want to hear what you didn't do and why you didn't do
23 it. I've heard that, I'm now ordering you to provide the path.
24 Or if you're voluntarily providing the path, you're to do that.
25 The part you're to provide your expert or someone who is

1 familiar with how these records are kept, how they can be
2 searched, and have them talk to his expert and don't come back
3 here again either of you until you've accomplished that.

4 And don't come back here again and tell me -- you guys
5 have been, you know, calling my law clerk about five times a
6 week going we need time, we need more time, and then you come in
7 here and go oh well, I just sent him all this stuff yesterday.
8 And he's not -- you know, that doesn't make sense. Instead of
9 calling my law clerk asking for 30 minutes every 30 minutes, why
10 don't you instead call each other and talk to each other?

11 I mean look it, this is a big case. You guys are good
12 lawyers. You shouldn't need me for more than 30 minutes to
13 resolve an issue. It should be an issue that comes to me and
14 say judge, you know, we think that this stuff is protected by
15 the work product privilege and they think there's not and I
16 think we need to have an argument on this or we think that this
17 stuff is hidden in a mountain in Colorado and we shouldn't have
18 to go get it, so we need a judge really to decide whether or
19 not, you know, it's proportional to the needs of the case. Not,
20 you know, oh we gave them videos and we did this and we did
21 that. This is garbage. This is not what I'm here for.

22 So I suggest you guys start working on this stuff a
23 little better. I don't know who is, you know, doing the
24 communicating between you, but if it's not you two and it's
25 someone else, they need to communicate. And if they can't get

1 it accomplished, then you two get it accomplished before you
2 come and see me again. I'm not here to resolve kindergarten
3 matters, and I'm serious about this.

4 All right. What's the next issue?

5 MR. CHAIKEN: Your Honor, as it relates to that same
6 point, which is we believe that they are responsible for
7 providing us which documents by Bates stamp number are
8 responsive to which.

9 THE COURT: They're not if they give it to you in the
10 ordinary -- the way it's kept in the ordinary course of
11 business.

12 MR. CHAIKEN: Right.

13 THE COURT: Now you're telling me you can't figure out
14 head or tails. He tells you that he's going to give you
15 whatever this trail is so that you can hopefully do that.

16 MR. CHAIKEN: Right. I've got some case law as well I
17 would like to present.

18 THE COURT: Here's another thing. You want to present
19 case law, he just did this too. You present the case law to the
20 opposing party 48 hours before the hearing so that way he's not
21 reading it while you're arguing.

22 MR. CHAIKEN: Yes, Your Honor.

23 THE COURT: Okay. What are you giving me case law on?

24 MR. CHAIKEN: I'll get to a microphone. This case
25 stands for the proposition that if a party claims the documents

1 were kept in the ordinary course of business, it bears the
2 burden of demonstrating that fact. Even when a party produces
3 documents as they were kept in the ordinary course of business,
4 if the business recordkeeping system is so deficient as to
5 undermine usefulness of production, that party may not have met
6 its obligation under Rule 34.

7 THE COURT: All right. So why are you giving me this?
8 Didn't he just say he's going to be giving you something that
9 you're going to be able to search this?

10 MR. CHAIKEN: And we will discuss that with our
11 provider. In fact, I suggested that our two service providers
12 talk to each other and that was a suggestion that I made as of
13 yesterday. I understand, Your Honor, we will do that.

14 Getting past that, then we can walk through just a few
15 of the additional objections that they've raised to our specific
16 requests. If you don't have them in front of you, I can hand
17 you a copy Your Honor.

18 THE COURT: Okay. You can hand me a copy I guess.

19 MR. CHAIKEN: Sure.

20 THE COURT: They're probably attached to your motion,
21 aren't they? Or no?

22 MR. CHAIKEN: I hope so, but I've got the amended
23 responses (inaudible).

24 THE COURT: They wouldn't be -- well, unless they were
25 attached to your -- but this is fine.

1 MR. CHAIKEN: If you open up the interrogatory
2 responses, we can quickly go through the issues I have.

3 MR. PACE: Your Honor, the interrogatory responses were
4 not noticed for today's hearing.

5 THE COURT: Yeah, the two things you have on here are
6 requests for production on your notice of hearing. Is that
7 right? I mean, you're looking at me like --

8 MR. CHAIKEN: Yeah.

9 THE COURT: One is the first request for production and
10 one is the second request for production.

11 MR. CHAIKEN: I guess we missed putting the -- the
12 amended response is the first set of interrogatories.

13 THE COURT: What's the issue in the first set of
14 interrogatories?

15 MR. CHAIKEN: There are two interrogatories that I
16 think require that you hear the issue.

17 THE COURT: All right. Tell me what they are.

18 MR. CHAIKEN: Interrogatory Number 6 which is on page.

19 THE COURT: This also tells me that you guys aren't
20 communicating because if you were communicating before you filed
21 this notice, you would have been talking about this
22 interrogatory.

23 MR. CHAIKEN: No, we did actually, Your Honor. We did
24 talk about these interrogatories yesterday.

25 THE COURT: Again, yesterday. From now on, here's what

1 you're supposed to do. Before you file a notice, you're
2 supposed to discuss this stuff with each other and you're
3 supposed to try to resolve it. Now, I know what happens a lot
4 of times is you try to resolve them, maybe you can't get it all
5 resolved, and then some lawyers, before they come in here go,
6 you know, I don't really want to go in front of Judge O'Sullivan
7 and show him how immature we are and how we can't practice law
8 and so you resolve it the night before. I understand that
9 happens a lot, which I'm very happy when I get here and you say
10 well, we resolved two out of three of these issues.

11 But you don't start the night before trying to resolve
12 the issues that you're going to discuss with me the next day.

13 MR. CHAIKEN: Your Honor, to be fair, we had started
14 discussing these issues well over a month ago.

15 Interrogatory Number 6. We're requesting that they
16 provide us information with respect to their claim that
17 Mr. Penon, who is the expert in charge of validating the test,
18 anything that they stated as to why the protocol --

19 THE COURT: Who did Mr. Penon work for?

20 MR. CHAIKEN: Penon worked for the entity, Defendant
21 Industrial Heat, and he was selected by both parties and agreed
22 to by both parties as the evaluator for the validation test.

23 THE COURT: Okay. Okay. Go ahead.

24 MR. CHAIKEN: And so we've asked them to provide us,
25 you know, each and every reason why the agreed-upon protocol was

1 not followed. And you can read through A through G. And their
2 response was the test -- the protocol that you've identified is
3 incorrect. The correct protocol is attached as Exhibit 1 to the
4 response, but they haven't responded to any of the items A
5 through G. We've asked them to give us a response and they've
6 refused.

7 THE COURT: Okay. Well, they're saying that what you
8 attached as A was not the test protocol; am I correct?

9 MR. CHAIKEN: That's correct. And they attach what
10 they claim is the correct protocol.

11 THE COURT: Okay. Now what, you want them to do it for
12 the correct protocol?

13 MR. CHAIKEN: That's correct.

14 THE COURT: Okay. Do you have a problem with that?

15 MR. PACE: They can certainly serve an interrogatory on
16 that. I don't have the interrogatories with me, it wasn't
17 noticed for the hearing. These have not been being discussed
18 for the last few months. This came up just yesterday,
19 production issues have been, that I admit. But no, I mean, they
20 can serve an interrogatory on it and we can respond to it.

21 THE COURT: I'm just -- here's what you're to do.
22 You're to substitute in Interrogatory Number 6, the correct
23 protocol is substituted for Exhibit A and you're to provide a
24 new response. Either answer it -- either -- are you listening
25 to me?

1 MR. PACE: I am.

2 THE COURT: You either answer it or give me an
3 objection. Whatever you want to do. But we're not going to go
4 and start all over in the 30 day program and then you guys argue
5 over another 30 days and then come and see me in six months.

6 what's the next one?

7 MR. CHAIKEN: Number 2 on Page 4. We've asked them to
8 identify persons with knowledge regarding the subject matter of
9 the action and the basis and substance -- excuse me, nature and
10 substance of the knowledge they believe each person has.
11 They've identified persons, but not what knowledge they may
12 have. It's important for us to understand what knowledge these
13 people may have so we can identify the appropriate witnesses to
14 be deposed, if necessary; or not to be deposed if they don't
15 have knowledge of anything that's really relevant.

16 THE COURT: Okay. What do you say about that? You
17 gave a list of 31 people, the question was to provide what
18 knowledge they have. That doesn't mean you have to write a
19 novel on each one of these, but you have to indicate who the
20 person is and what his position is.

21 MR. PACE: Your Honor, this is not -- this is not
22 something that's been coming up recently. Had they asked us
23 about it, we could have provided -- we will provide the
24 paragraph. This still isn't the way it should be done. I mean
25 --

1 THE COURT: Well I know, but what should be done was
2 when you listed the people, you should have answered the
3 question. Don't you think so?

4 MR. PACE: Your Honor, I don't have -- I don't even
5 have it in front of me, so I'm sorry.

6 THE COURT: Okay. I mean, I don't see any objection
7 here. Let's see what you say here. Does he have an objection
8 to providing what knowledge they have?

9 MR. CHAIKEN: They just simply said they may have
10 knowledge and information pertaining to the facts alleged in the
11 pleadings or underlying the subject matter of the action.

12 THE COURT: Okay. So you're to provide a one or two
13 sentence explanation of what this person has to do with this
14 case. Okay?

15 MR. PACE: We will, Your Honor.

16 THE COURT: All right. Does that take care of the
17 interrogatories?

18 MR. CHAIKEN: That does, Your Honor. Thank you.

19 THE COURT: Okay.

20 MR. CHAIKEN: Going to the requests for production.

21 THE COURT: Which one?

22 MR. CHAIKEN: Specifically Number 8 which is on page --
23 begins on Page 8.

24 THE COURT: On Page 8?

25 MR. CHAIKEN: Yep. It's Request Number 8, we ask for

1 documents reflecting what the relationship and/or agreements
2 between Defendant IH and these individuals, and they've agreed
3 to provide us with that information for certain individuals but
4 not others.

5 THE COURT: Okay. Which ones don't they want to
6 provide?

7 MR. CHAIKEN: They don't want to provide with respect
8 to Barry West, Joe Murray, T. Barker Dameron.

9 THE COURT: Hold on. Hold on. Barry West, Joe Murray,
10 go ahead.

11 MR. CHAIKEN: T. Barker Dameron, Joe Pike.

12 THE COURT: I got it. Yeah.

13 MR. CHAIKEN: Daniel Pike, Robert Godes and Woodford.

14 THE COURT: Okay. Do they indicate why they don't want
15 to provide it for them?

16 MR. CHAIKEN: I'm not sure why they've excluded those
17 people, Your Honor.

18 THE COURT: Okay. How come you didn't want to provide
19 it regarding those people?

20 MR. PACE: Well, we actually did on a separate document
21 request provide, I think, the Joe Murray employment agreement.
22 T. Barker employment agreement. But otherwise what -- let me
23 get one objection out first because you've already struck the
24 objections so you said I should raise it here, which is our view
25 is we've already had a hearing on the objections, they're now

1 going back and re-raising -- we had an hour long hearing on it.

2 THE COURT: On what?

3 MR. PACE: On the objections. That was the hearing we
4 had before you on October 28th.

5 THE COURT: On this request for production?

6 MR. PACE: On both these sets of requests for
7 productions, as well as on the interrogatories. And their
8 position is there's things that they didn't get to in that
9 hearing, but we had an hour before you and now we're going back
10 to these things.

11 THE COURT: Okay. Why are we going back to something
12 that we argued about before?

13 MR. CHAIKEN: Well, we didn't argue about this specific
14 request for production. We ran out of time at the last hearing
15 and at the end of the last hearing, you said hey, take my
16 rulings into account, go back see if you can come to an
17 agreement. If you can't, come back here.

18 THE COURT: Okay. What do you say about that?

19 MR. PACE: Your Honor, all you said is if there's other
20 issues, you can come back. I don't think it meant that they can
21 come back on the objections. I understand --

22 THE COURT: I would agree if I ruled on the objection.
23 But what he said sounds familiar to me, like something I would
24 say. I don't have a particular memory of saying it, but it
25 seems like that's what I would say. Now, if I already ruled on

1 this particular objection, I'm not ruling on it a second time.
2 I don't recall ruling on it the first time.

3 MR. PACE: Well, some objections were handled in
4 groups. So let me just say on this, there are requests in here,
5 and this -- you may recall this from the last hearing. There
6 are requests in here that seek information relating to my
7 client's or -- yeah my client's investments in other
8 technologies. And what we had argued last time, and I thought
9 we prevailed on last time, was the point of if it has some
10 connection to the E-Cat Technology, we were producing it. I
11 mean, so in other words, if they sent something to somebody
12 reference the E-Cat Technology, we were going to produce it even
13 if -- doesn't matter who that person is. But otherwise, getting
14 into our other inventors was inappropriate.

15 THE COURT: Okay.

16 MR. PACE: And that -- I believe that was a limitation
17 Your Honor recognized. Same thing with getting into all these
18 different kinds of, you know, investment companies. It's just
19 not relevant to the case. The case is about Industrial Heat and
20 IPH. There was a question about Cherokee, and I think we did
21 agree to give them anything about Cherokee because Cherokee is
22 the other party and the other party covered by the allegations.
23 They made allegations that the judge said didn't mean anything,
24 that they said oh, you formed subsidiaries or you formed other
25 companies. And the judge's order on the motion to dismiss said

1 that's not a fraud. Forming other companies doesn't create a
2 fraud. So we've tried to narrow this thing down to agreements
3 with the parties in here, we included Ampenergo, because
4 Ampenergo has a relationship to the E-Cat Technology.

5 THE COURT: well, let's talk about the ones you didn't
6 provide. Barry West. who's he?

7 MR. CHAIKEN: Barry West was an independent contractor.
8 We've separately provided for Barry West and for Barry West, for
9 T. Barker and for Joe Murray. We've provided their employment
10 agreement or independent contractor agreement.

11 THE COURT: Barry West -- I'm sorry. T. Barker and who
12 is the third one?

13 MR. PACE: Dan Maroon and Joe Murray.

14 THE COURT: Joe Murray and Dan Maroon? Is that one of
15 the ones that's here?

16 MR. PACE: Yes. It's G, Your Honor.

17 THE COURT: I see T. Barker is G. You said Dan Maroon.
18 Who is Dan Maroon? I mean, I don't see his name on here.

19 MR. CHAIKEN: Dameron.

20 MR. PACE: I'm --

21 THE COURT: Okay.

22 MR. PACE: I'm sorry. I'm butchering it. I'm sorry.
23 (Cross talk between the court and counsel)

24 THE COURT: I got it. Okay. All right.

25 So the documents they provided for those, is that

1 sufficient or do you need for documents?

2 MR. CHAIKEN: If those are the agreements between IH
3 and those individuals, we'll accept that.

4 THE COURT: Okay. All right. So that leaves us with
5 Joseph pike, Daniel Pike, Robert Godes and Woodford Patient
6 Capital Trust, PLC if I'm not mistaken.

7 MR. CHAIKEN: Correct.

8 THE COURT: Okay. So who is Joe Pike?

9 MR. PACE: Joe Pike is an investor in IHHI, which is
10 the holding company of Industrial Heat.

11 THE COURT: Okay. Why is he -- why do you want his
12 documents?

13 MR. CHAIKEN: He's listed. I want any agreement
14 between him and IH. He's someone they listed in response to
15 Interrogatory Number 2. If he played some role or has some --
16 obviously someone who has knowledge of the facts of our case.
17 If he has an agreement with IH, we would like to know what that
18 agreement is.

19 THE COURT: Okay.

20 MR. PACE: If the agreement relates to Dr. Rossi or
21 Mr. Rossi, we would be producing it. We produced e-mails with
22 Joe Pike. I mean, we're not concealing the name Joe Pike, but I
23 don't think -- like his shareholder agreements, to the extent
24 that's what they're seeking, I don't think that that's
25 responsive or relevant to discovery.

1 THE COURT: Okay. what do you say about that?

2 MR. CHAIKEN: Well, if he's a shareholder in IH or
3 anything having to do with our technology, then certainly we
4 would like to know what the basis of that investment was, what
5 he was told by the company. If he was told by IH that hey, this
6 is the greatest technology ever and it works fantastically and
7 then he's turning around in this lawsuit saying this technology
8 is worthless and doesn't work, we would like to be able to point
9 out those contradictions.

10 MR. PACE: Those documents would have been produced and
11 they know that because we produced the investor presentations.
12 Again, he's referencing Mr. Rossi's technology. If it
13 referenced Mr. Rossi's technology, we've produced it.

14 MR. CHAIKEN: Okay. You know what, I'll accept that,
15 Your Honor.

16 THE COURT: Okay. Daniel Pike? Is that the same
17 thing? Is he related to Joseph Pike?

18 MR. CHAIKEN: I believe so. He's the son of Joe, so
19 same issue. I agree.

20 THE COURT: You agree to provide the same documents?

21 MR. PACE: We provided them with Daniel Pike as well.
22 If it related to Mr. Rossi, we provided it.

23 THE COURT: Okay. Robert Godes?

24 MR. CHAIKEN: Robert Godes is an inventor who works for
25 a company called Brillouin. We believe Brillouin may have

1 received information regarding the E-Cat intellectual property.
2 Mr. Godes is the inventor and/or owner of Brillouin. We would
3 like to know if there is any agreements between independent --
4 Industrial Heat and Brillouin and Mr. Godes that could impact
5 this case.

6 THE COURT: Okay.

7 MR. PACE: Your Honor, if it related to Mr. Rossi and
8 Mr. Rossi's technology, we've produced it. They have no
9 connection with Brillouin. But the fact of the matter is if
10 there is an e-mail or a document with Brillouin that references
11 anything about the Rossi technology, it has been --

12 THE COURT: Were any payments made to Godes as a result
13 -- relating to that technology?

14 MR. PACE: Relating to the Rossi technology, it's been
15 produced.

16 I do want to say one thing on the record because of
17 something that he said. We don't agree with his
18 characterizations of Penon. I don't think it's germane to the
19 hearing.

20 THE COURT: Of who?

21 MR. PACE: Penon. The person he characterized as the
22 expert that was selected by both the parties and was on our
23 side.

24 THE COURT: Oh, okay.

25 MR. PACE: I don't think Your Honor needs to resolve it

1 for this hearing.

2 THE COURT: All right. That leaves Woodford Patient
3 Capital Trust, PLC.

4 MR. CHAIKEN: Yes. And Woodford is referred to in
5 their response, there's allegedly an agreement with Woodford
6 Funds with respect to some funding. We don't know why that
7 wouldn't be produced.

8 THE COURT: Okay. Why would that not be produced?

9 MR. PACE: If it related to Mr. Rossi, if it references
10 Mr. Rossi or his technology, it has been produced. And they
11 know that. They know they've got a bunch of investor
12 presentations, they used them at depositions.

13 MR. CHAIKEN: Presentations are one thing, agreements
14 are something else.

15 THE COURT: Are there any agreements with him regarding
16 Mr. Rossi's technology?

17 MR. PACE: No. No. Well, investment agreements. And
18 we also I think actually maybe did produce one of those in any
19 event. But still it's --

20 THE COURT: Well, that would include if he's investing
21 in the company because of Mr. Rossi's technology then.

22 MR. PACE: Well, our position would be Woodford was
23 investing in the company because of its kind of portfolio, but
24 if we did not produce the subscription agreement of Woodford, I
25 will produce it. But I still think -- I'll go find out whether

1 we've produced that one.

2 THE COURT: Okay. Produce it if you have it.

3 MR. PACE: But if there's any communications with
4 Woodford about Mr. Rossi or any documents sent to him back and
5 forth about Mr. Rossi or his technology, we've produced that
6 already.

7 THE COURT: Okay.

8 MR. CHAIKEN: Just to be clear, I would like to see the
9 copy of the agreement that's referenced in response to
10 Interrogatory Number 16.

11 THE COURT: 16 says -- well I don't see that being -- I
12 mean, I can't say. I don't know what you're talking about
13 there. Is there some agreement they provided pursuant to 16?

14 MR. CHAIKEN: That's what I'm asking for. I'm asking
15 to see a copy of it. They referenced it.

16 THE COURT: Where did they reference it?

17 MR. CHAIKEN: Page 22, interrogatories.

18 THE COURT: Oh, interrogatories.

19 MR. CHAIKEN: Yes.

20 THE COURT: Page 22. Okay. What do you say about
21 that? They want to see the agreement with Westford Funds for an
22 additional \$150 million in capital if the circumstances warrant
23 it.

24 MR. PACE: I think -- wait, wait. I may be looking at
25 the wrong one that he was referencing. Yeah. No, this is the

1 one that I'm saying, Your Honor, it's -- there's an option
2 provision for 150 million. I believe we've produced it. But
3 again --

4 THE COURT: Okay. If not, produce it.

5 MR. PACE: I'll produce it.

6 MR. CHAIKEN: Thank you, Your Honor. That's it for
7 that one. We can move on to Number 19 which is on Page 16.

8 THE COURT: Okay.

9 MR. CHAIKEN: Number 19, request Number 19 provides any
10 and all documents evidencing communications between you and any
11 other person or entity in which you mention, discuss or refer to
12 any deficiency or noncompliance with any testing procedure or
13 test plan in relation to the E-Cat. And the response from
14 Defendants was they'll provide documents which discuss or refer
15 to any deficiency or noncompliance with the operation of the one
16 megawatt E-Cat plant and they've basically limited our request.

17 THE COURT: well, do you have something else other than
18 the one -- what did you say? Megawatt E --

19 MR. CHAIKEN: Megawatt E-Cat plant, right, exactly. So
20 they're talking about the deficiency or noncompliance with the
21 operation of the plant. We're asking for communications
22 regarding deficiencies or noncompliance with the testing
23 procedures or test plans, not merely the operations of one
24 plant.

25 THE COURT: Okay. what do you say about that?

1 MR. PACE: It's been produced. They could have raised
2 this with us, we would have told them. We produced anything
3 that was covered by other requests where it was anything about
4 the E-Cat testing.

5 THE COURT: Okay. So amend your response to Number 19
6 to indicate it's been produced.

7 MR. PACE: We will.

8 THE COURT: What's the next one?

9 MR. CHAIKEN: Let's see, Number 33 which is on Page 24.
10 We asked for any and all documents which support, pertain to or
11 evidence your statement that Leonardo has long since failed to
12 achieve guaranteed performance as described in the second
13 amendment. I'm assuming Mr. Pace is going to tell me they've
14 produced them already.

15 MR. PACE: I'm sorry, which one are we talking about?

16 MR. CHAIKEN: Number 33 on Page 24.

17 THE COURT: Evidence regarding your statement that
18 Leonardo has long since failed to achieve guaranteed performance
19 as described in the second amendment.

20 MR. PACE: And we said we produced documents which
21 reflect, discuss or address whether or not they support
22 Industrial Heat's statement that Leonardo has long since failed
23 to achieve guaranteed performance as described in the second
24 amendment, and we've done that.

25 MR. CHAIKEN: Right.

1 MR. PACE: So, I mean, I think our objection was trying
2 to figure out -- and we raised this with them to figure out what
3 was meant to be covered by pertained. It's not covered within
4 reflect, discuss or address.

5 MR. CHAIKEN: Okay.

6 THE COURT: So do I need to rule on that?

7 MR. CHAIKEN: No, I think we're fine with that one. I
8 apologize, Your Honor.

9 I think the last -- let's see. The last one we have --
10 just look through my notes, Exhibit 52. Request Number 52 which
11 is the last one. Page 34.

12 THE COURT: All right.

13 MR. CHAIKEN: Any and all agreements between IH and
14 Penagril (ph). Penagril was the broker who Plaintiffs used to
15 find purchasers of technology or licensors of technology. We've
16 asked for all agreements. They've limited it to simply the
17 agreements related to the E-Cat IP. We think if there are other
18 types of compensation agreements between IH and Penagril, we
19 should be able to see it.

20 THE COURT: Why?

21 MR. CHAIKEN: It could influence bias in this case.
22 And Penagril hasn't -- although Penagril would be owed over \$45
23 million under the contract, they haven't made any claim in this
24 case. We think there's some other side deal going on and we
25 would like to see it.

1 THE COURT: All right. What do you say to that?

2 MR. PACE: Your Honor, if there's anything related to
3 the E-Cat, we would have produced it. They are also a
4 shareholder in IHHI and so agreement -- I mean, I think
5 agreements could cover kind of shareholders. But this says
6 Industrial Heat. Well again, look, I don't think it's relevant,
7 but if we need to search for it, we can go ahead and search for
8 it. But again, my position is that would not cover anything in
9 their capacity as a shareholder of IHHI.

10 THE COURT: What do you say about that?

11 MR. CHAIKEN: Well, I think that goes to the point. If
12 they're a shareholder of IHHI, then they have an ulterior
13 interest here. They're listed as a party that has knowledge of
14 the facts of this case. We think there may be some bias. We
15 would like to get into that.

16 MR. PACE: By the way, they also have this. Because
17 they have a production from AEG. This is another reason why
18 this shouldn't be coming up.

19 THE COURT: Who is AEG.

20 MR. PACE: Ampenergo. Sorry.

21 THE COURT: Okay.

22 MR. PACE: Ampenergo gets abbreviated as AEG.

23 THE COURT: All right.

24 MR. PACE: I apologize. They have a document
25 production from AEG. I think it includes some of the

1 shareholder stuff. Even though we don't think it's really
2 relevant to the case, but again --

3 THE COURT: All right. I'm going to overrule your
4 objection and find that you have to respond in full to 52.
5 Because, I mean, I think my general rule is it has to relate to
6 the E-Cat, but I think in this instance, he's showing why it
7 would be relevant even if it doesn't relate to E-Cat itself.

8 All right. What else do we need to talk about?

9 MR. CHAIKEN: That's all I have, Your Honor.

10 THE COURT: Okay.

11 MR. PACE: Your Honor, can I just make sure so we're
12 not back here again?

13 THE COURT: Yeah.

14 MR. PACE: To be clear on the record, we're done with
15 their document requests, we're done with the interrogatories,
16 they've had their chance to --

17 (Cross talk between the court and counsel.)

18 THE COURT: I'll wait until the end until we're done
19 with that because today we didn't run out of time. I think the
20 last time we did run out of time.

21 MR. PACE: Fair enough. I just don't want to come back
22 here.

23 THE COURT: You still have an obligation, if you find
24 additional stuff that would be responsive to that, to produce
25 it.

1 MR. PACE: I agree, and we may even have production
2 issues, Your Honor. I'm not going to dispute that we're not
3 going to have something else. I don't want to come back on
4 these objections. I don't think this is the way the process is
5 supposed to work. I'm getting kind of blasted a little bit here
6 and I understand the heat just flows in this direction, but I
7 didn't set this hearing for an hour, I didn't wait until
8 yesterday to raise some of these issues when it relates to
9 objections. I know you don't want to hear about it, but I'm
10 just saying I don't want to have to come back here a third time.

11 THE COURT: I just said that, that we're done with
12 these two. But you have a duty to continue to supplement if
13 there's additional records that are provided.

14 MR. CHAIKEN: Well Your Honor, then I would ask just
15 the issue of whether or not they've produced documents in the
16 ordinary course of business including the 100 --

17 THE COURT: Yeah. Well, that issue would not resolve
18 -- hopefully it's going to be resolved when your experts meet
19 and when he provides you this path way. And if not, you can
20 come back to me on that. Yeah.

21 MR. CHAIKEN: Fair enough. That's all I need, Your
22 Honor.

23 MR. PACE: Can I move to one other issue?

24 THE COURT: Yeah, sure.

25 MR. PACE: Just because of scheduling concerns because

1 of the holidays. We have -- and we've had multiple meet and
2 confers with the third party defendants, we have at least a
3 couple of issues as to each, neither of which will take more
4 than 30 minutes. There's a schedule -- I mean we could -- we
5 tried to get in the schedule this week, they weren't available,
6 I understand it. Next week I understand the court's off, so
7 that pushes us all the way into January. And our discovery
8 cut-off, including experts, is the end of February.

9 THE COURT: So I'm sorry, what did you want to set for
10 a hearing?

11 MR. PACE: I'm trying to -- in all honesty, Your Honor,
12 I'm trying to figure out how to handle -- we've got some
13 discovery objections or some objections we want to resolve, but
14 just --

15 THE COURT: Objections by them or by a third party?

16 MR. PACE: No. Third party. I'm sorry, Your Honor.
17 We had some conversations, I don't -- maybe I should not be
18 doing this on the record, but I'm trying to figure out from a
19 scheduling standpoint when we should try to schedule this and
20 when we can try to schedule this thing.

21 THE COURT: You have to tell me what it relates to.
22 It's objections by a third party to what? A subpoena?

23 MR. PACE: I'm sorry. The party. A third party
24 defendant. They're a party in this case.

25 THE COURT: Oh, they're a party in this case.

1 MR. PACE: Yes. And I'm not asking you to rule on
2 anything, I'm just trying to figure out --

3 THE COURT: So it's JM Products or with Henry Johnson
4 or one of those folks?

5 MR. PACE: Right. It's with all of those folks.

6 THE COURT: Okay.

7 MR. PACE: And --

8 THE COURT: So you want me to give you 30 minutes in
9 the beginning of January?

10 MR. PACE: Well, I also want to be able to confer with
11 them first. But I'm trying to figure out just from what Your
12 Honor just said -- I mean, I don't want to set a notice without
13 knowing what I'm going to do.

14 THE COURT: Here's what I'm going to do. I'm going to
15 give you a time in the beginning of January and then you're
16 going to let me know whether or not you need it or not.
17 Hopefully you're going to be able to resolve the issues with
18 them and if you can't, then you can use this time to set it down
19 for a hearing. But I want you to have a real conversation with
20 them ahead of time.

21 MR. PACE: We have been, Your Honor. And that's why
22 I'm saying, I hope we can resolve it, but just in case we can't.

23 THE COURT: Right. I'll give you a time and if for
24 some reason they say look it, you know, I'm at my great
25 grandmother's wedding that day, then come to me or call up and

1 say we can't do it, that way we have to do it another day.

2 MR. PACE: If somebody is at their great grandmother's
3 wedding, I actually will personally come in here and tell you.
4 I'll probably withdraw the objection.

5 THE COURT: There you go. Hopefully they'll be at
6 their great grandmother's wedding.

7 How about Thursday, January 5th? Is that good? In the
8 afternoon?

9 MR. PACE: That would be great, Your Honor. Can we --
10 they're represented by two separate groups of lawyer.

11 THE COURT: Hold on. Hold on. I just realized that
12 the preliminary injunction hearing is probably going to last all
13 day. We can do it the afternoon of Tuesday, January the 3rd.
14 Or we can go to the next week if you want. I mean, I don't know
15 what you guys -- if you guys are working, you know, Christmas
16 week or not. Because that's the first day back after the
17 holiday, the 3rd. Can't do it on that Thursday because I have a
18 preliminary injunction hearing. I can do the 6th if you want at
19 2:00. Oh, you're right. Okay. Yes, I do have time on either
20 the 5th or the 6th in the afternoon.

21 MR. PACE: That's perfect. We'll deal with the other
22 lawyers and --

23 THE COURT: Which one you want me to hold for you? You
24 pick one.

25 MR. PACE: Just because I hate doing things on Friday

1 afternoon, can we take Thursday afternoon?

2 THE COURT: Okay. Thursday afternoon at 2:00.

3 MR. PACE: 2:00. And then if we could --

4 THE COURT: I mean, if you talk to them and they need
5 Friday, just call. But if you don't call for a week, it could
6 be gone. I'll hold that Thursday afternoon at 2:00 for you.

7 MR. PACE: That's why I wanted to raise it here. With
8 all the scheduling things going around, it's just been hard to
9 try to get something scheduled, so we wanted to try to lock
10 something in and then work backwards.

11 THE COURT: All right.

12 MR. PACE: But we have been negotiating with them and
13 trying to eliminate the issues.

14 THE COURT: Good. All right. So if you need me --
15 Tori, put this on the calendar tentative 30 minutes for
16 Thursday, January 5th for Darden. I don't know, I assume are
17 you guys going to be here or is that something --

18 MR. CHAIKEN: I don't believe that's our issue.

19 THE COURT: Okay. Good. All right.

20 Anything else? Any other issues you want to discuss
21 today? You're welcome to the -- it wasn't on this thing, if you
22 think it's going to help move the case forward and not sandbag
23 somebody.

24 MR. CHAIKEN: No, Your Honor. We appreciate your time.
25 Thank you very much.

1 THE COURT: Okay.

2 MR. CHAIKEN: Happy holidays.

3 THE COURT: Yeah, you guys have a great holiday. See
4 you next year.

5 MR. PACE: Thank you, Your Honor. Nothing else.

6 THE COURT: All right. Thanks a lot.

7 Oh yeah, when do you want to provide me with the order?

8 MR. CHAIKEN: 48 hours from when we get the transcript?

9 THE COURT: How long does it take to get the
10 transcript, Cheri?

11 COURTROOM DEPUTY: It varies depending on what you're
12 willing to pay.

13 THE COURT: Yeah, if you want to pay a lot of money,
14 you can probably get it in an hour.

15 COURTROOM DEPUTY: Find out.

16 MR. CHAIKEN: Can we get it next week?

17 THE COURT: Are you working next week?

18 MR. CHAIKEN: I'm working next week, yes sir.

19 THE COURT: Okay.

20 COURTROOM DEPUTY: You'll have to speak to the court
21 reporters. I'll give you the number. They can tell you when
22 you can get it.

23 THE COURT: All right. When are the amended responses
24 going to be provided and whatever order you've agreed to today?

25 MR. PACE: I'm trying to go back through my -- figure

1 out what we --

2 THE COURT: I don't think there was anything that was
3 super extraordinary.

4 MR. PACE: That's what I'm thinking. I mean, look,
5 we'll get them done as fast as we can. I'd say outer limit of
6 two weeks. I don't think we need two weeks, but I just don't --
7 I'm looking at a little bit of scribble scratch here right now
8 to be perfectly honest with you so --

9 THE COURT: Provide them as soon as possible, but in no
10 event later than January 3rd.

11 MR. PACE: That's perfect, Your Honor.

12 THE COURT: All right. And when do you want to -- you
13 still haven't told me, you have to give me a date when you want
14 to provide the --

15 MR. CHAIKEN: How about Thursday next week?

16 THE COURT: That's fine. If you want to put it off --
17 I'm not going to be here next Thursday, so if you want to put it
18 off to the 3rd, you're welcome to. I mean, if you get it
19 earlier, you can send it early.

20 MR. PACE: Can't we just set the date as Christmas and
21 just --

22 THE COURT: Yeah, right. That would be nice. That's
23 when we should set this case for trial.

24 MR. PACE: It will be our present to you. We'll be
25 like here, happy holidays.

1 THE COURT: Yeah, right. All right. So by, you know,
2 hopefully earlier. But if not by January 3rd provide the order,
3 proposed order. Yes.

4 MR. PACE: It's just strange to have the same date that
5 the order would come in to you.

6 THE COURT: The order is in effect right now.

7 MR. PACE: Right. That's fine.

8 THE COURT: So it really doesn't matter. The order is
9 in effect, the documents are due by then.

10 MR. PACE: I wasn't thinking. We'll have the
11 transcript well before then, so we'll be able to look at the
12 transcript that we haven't missed anything in our chicken
13 scratch.

14 THE COURT: Okay. All right.
15 Anything else I can help you all with?

16 MR. PACE: No. Happy holidays.

17 MR. CHAIKEN: Thank you very much.

18 THE COURT: All right. Have a great holiday.

19 MR. CHAIKEN: Thank you.

20 (PROCEEDINGS CONCLUDED)

C E R T I F I C A T E

21 I certify that the foregoing is a correct transcript from the
22 record of proceedings in the above-entitled matter.

23 12-22-2016
Date

/s/ Dawn M. Savino
DAWN M. SAVINO, RPR

24

25