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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO.: 16-cv-21199-CMA

ANDREA ROSSI, et al., )  
 )  
Plaintiffs, )  
v. )  
THOMAS DARDEN, et al., )  
 )  
Defendants. )

March 9, 2017

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DISCOVERY HEARING PROCEEDINGS  
BEFORE THE HONORABLE JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On behalf of the Plaintiffs:

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BY: JONATHAN ANNESSER, ESQ.

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APPEARANCES CONTINUED:

On behalf of the Defendants:

JONES DAY  
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BY: CHRISTOPHER PACE, ESQ.  
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1 (Thereupon, the following proceeding was held:)

2 THE COURT: Good afternoon. We are here today in the  
3 case of Andrea Rossi versus Thomas Darden and others; Case  
4 Number 16-cv-21199.

5 We are here on a notice by the Plaintiff and, then,  
6 also a notice by the Defendant on discovery issues.

7 Could I have appearances for the Plaintiff first.

8 MR. CHAIKEN: Yes. Good afternoon, Your Honor. Brian  
9 Chaiken and Dr. Andrea Rossi.

10 THE COURT: Thank you.

11 And for the Defendants.

12 MR. PACE: Good afternoon, Your Honor. Chris Pace and  
13 Chris Lomax for the Defendants.

14 THE COURT: All right. What is the problem with the  
15 Plaintiffs?

16 MR. CHAIKEN: Your Honor, we have two issues before  
17 you today. As I joked with counsel before can you came into  
18 the courtroom, we actually did work together some prior to this  
19 hearing to try to resolve the majority of the issues that we  
20 had between us.

21 I think we did resolve a lot of them. There are a few  
22 on their side and a few on our side. The few on our side  
23 relates to your order that was signed on February 23rd of 2017  
24 as it relates to communication between Defendant Tom Darden and  
25 an attorney by the name of Zalli Jaffe.

1           And I have a copy of a motion that we had filed  
2 yesterday. It was filed under seal. Judge Altonaga ruled a  
3 few minutes ago that it was not proper to be filed under seal  
4 and we will file it as such.

5           If I may approach?

6           THE COURT: Sure.

7           MR. CHAIKEN: The reason --

8           THE COURT: Do you have a copy of the order?

9           MR. CHAIKEN: A copy of Judge Altonaga's order or your  
10 order?

11          THE COURT: My order.

12          MR. CHAIKEN: Yes, I have a copy of your order.

13          THE COURT: For some reason I see a February 21st  
14 order in here, but I don't see a February 23rd.

15          MR. CHAIKEN: February 23rd.

16          THE COURT: Thanks.

17          MR. CHAIKEN: The reason this is relevant, Your Honor,  
18 is because --

19          THE COURT: Remind me what it is. Which document are  
20 you talking about that you want to have -- is it the one that  
21 was provided to you by mistake?

22          MR. CHAIKEN: Correct.

23          THE COURT: Okay.

24          MR. CHAIKEN: There were two that were provided by  
25 mistake. One was clearly attorney/client privileged. We claim

1 that it was waived. You ruled that it was privileged. We have  
2 no issue with -- that's not the reason we're here today.

3 We're here regarding the single one between Zalli, who  
4 is an Israeli attorney and Tom Darden, which is, I believe, the  
5 second paragraph in your order.

6 THE COURT: Okay.

7 MR. CHAIKEN: Okay. So the issue, Your Honor, is that  
8 there was an e-mail in that order that was not deemed to be  
9 privileged and it was an e-mail between Tom Darden, Zalli  
10 Jaffe, and a gentleman by the name of Uzi Shaw.

11 THE COURT: And what was that e-mail?

12 MR. CHAIKEN: That e-mail that is attached to our  
13 motion for sanctions there is Exhibit Number 5 and it is near  
14 end. I apologize to make you page through that.

15 THE COURT: Okay.

16 MR. CHAIKEN: Now the reason why we believe this is  
17 relevant is because --

18 THE COURT: Why what is relevant?

19 MR. CHAIKEN: The issue of the Zalli e-mail.

20 Uzi Shaw, who we have come to learn, has reached out  
21 to at least one of the Lugana professors and that professor  
22 reached out to us and said be believed that Mr. Shaw attempted  
23 to bribe him to change his support for Lugana reports, which  
24 supports the efficacy of the technology that's at issue in this  
25 case.

1 THE COURT: Okay.

2 MR. CHAIKEN: So we are connecting the dots.

3 Uzi Shaw is connected to Zalli Jaffe. Zalli Jaffe is  
4 connected to Tom Darden who is the Defendant in this case. We  
5 think that any representation of Zalli Jaffe relates to what he  
6 did with Uzi Shaw and we would like to uncover what happened  
7 there.

8 And we don't believe that a privilege applies to  
9 bribing potential witnesses in this case and we should be able  
10 to get into that issue.

11 So we are asking you to reconsider your order with  
12 respect to that document because there's an affidavit from  
13 Giuseppe Levi, who is one of the professors in this action.

14 THE COURT: I read that affidavit actually.

15 What he says in his affidavit this guy came and talked  
16 to me. He talked about making some money. I felt like he was  
17 bribing me. He said that in two or three contexts, as best I  
18 can see.

19 You know, I don't know who this guy is. Anybody could  
20 say I felt like I was being bribed. I think you need a little  
21 bit more than some guy who provides -- where is this fellow  
22 located?

23 MR. CHAIKEN: Which one?

24 THE COURT: The one who gave the affidavit.

25 MR. CHAIKEN: He's in Italy, Your Honor.

1 THE COURT: You get somebody in Italy who swears on an  
2 affidavit that I felt that somebody was trying to bribe me, who  
3 is not even a person in this case. Rather, it is a person two  
4 or three times removed from the Defendant in the case.

5 MR. CHAIKEN: Well, not two or three times removed.

6 He's directly in contact with the Defendant in this  
7 case, Your Honor. In fact, the e-mail from Tom Darden to Uzi  
8 Shaw is attached, Your Honor.

9 THE COURT: Well, I mean, you saw the other e-mail.  
10 The other e-mail you had in your possession and you guys read  
11 it, right?

12 MR. CHAIKEN: Right.

13 THE COURT: So what does that have to do with bribing  
14 a witness?

15 MR. CHAIKEN: Well, we believe that e-mail talked  
16 about doing a forensic investigation in the relationship  
17 between my client and those professors and we think that went  
18 much deeper than a forensic investigation.

19 In fact, they reached out to the professors and they  
20 tried to change their opinion. They made statements to say,  
21 hey, you and your universities could get in trouble if all this  
22 information of how this alleged fraud perpetrated by my client  
23 comes out and it is going to impact you and your  
24 representation.

25 THE COURT: Is that true? Well, I mean, assuming they

1 are able to prove it, isn't that true?

2 MR. CHAIKEN: Well, there is no evidence of that, Your  
3 Honor. We don't believe there is any evidence of that, Your  
4 Honor.

5 THE COURT: Well, that is what they allege in their  
6 counterclaim, right?

7 MR. CHAIKEN: Right.

8 THE COURT: If they're able to prove it.

9 I mean, I don't see -- I don't understand. In other  
10 words, let's say what you're saying is true that they went to  
11 him and said, hey, if Darden wins his case it is going to make  
12 you guys look bad.

13 I mean, that's probably true, right? Because these  
14 guys are supporting what Mr. Rossi said. Darden is saying what  
15 Mr. Rossi said was a lie. And if, you know, some jury some  
16 where or a Judge decides what Darden is saying is true, isn't  
17 that what is going to make Mr. Rossi and these other folks,  
18 these professors look bad?

19 MR. CHAIKEN: Well, not necessarily, Your Honor.

20 Because these guys are the top of the field, right?  
21 These guys are the preeminent guys in this field. And they've  
22 done a test and they said we believe this technology works.  
23 We've done the test.

24 THE COURT: That's great evidence for you at trial.  
25 You might beat them --

1 MR. CHAIKEN: Right.

2 THE COURT: -- if you are able to prove that.

3 MR. CHAIKEN: That's the point.

4 THE COURT: You want me to waive attorney/client  
5 privilege. I assume it's based on some kind of crime fraud  
6 exception.

7 In other words, if what these guys are doing they're  
8 trying to bribe witnesses and there are e-mails that prove  
9 that, I agree with you that an e-mail that would show that they  
10 were bribing witnesses would not be protected by the  
11 attorney/client privilege because if you are committing -- you  
12 cannot use the attorney/client privilege to cloak a crime --

13 MR. CHAIKEN: Right.

14 THE COURT: -- or to hide a crime.

15 MR. CHAIKEN: And let me be real clear.

16 We're not suggesting that Jones Day or their counsel  
17 had anything to do with this. I want to make the record clear.

18 THE COURT: Oh, so you are just saying that Mr.  
19 Darden, then, is trying to bribe witnesses or intimidate  
20 witnesses?

21 MR. CHAIKEN: Perhaps and/or his agents, absolutely.

22 THE COURT: I mean, you are talking about agents or  
23 people who are working on behalf of Darden, right?

24 MR. CHAIKEN: That's correct.

25 THE COURT: In other words, that wouldn't be Darden

1 doing it.

2 MR. CHAIKEN: I agree.

3 THE COURT: Darden doesn't have any protection if he  
4 tells these guys over there in Israel to go and you know --

5 MR. CHAIKEN: Offer money in exchange for their  
6 cooperation to recant their support for this report, which  
7 basically says this technology works.

8 THE COURT: Okay. I mean, in the affidavit, I didn't  
9 read that someone said, hey, I'm going to pay you a bunch of  
10 money if you recant your testimony.

11 MR. CHAIKEN: Well, it wasn't as overt as that, Your  
12 Honor. It was subtle. It was, hey, I have all this money that  
13 people want to invest in you Dr. Levi.

14 THE COURT: Right.

15 MR. CHAIKEN: If you revisit the test maybe you can do  
16 it over again. Maybe you can retract your support for it. It  
17 wasn't a here's the red flag and we're offering you money if  
18 you say these words.

19 THE COURT: Bribes are not quite explicit. They're,  
20 you know, implicit or fail because people are concerned about  
21 breaking the law.

22 MR. CHAIKEN: Absolutely.

23 And that is the gist of why we're here before you  
24 saying let's get into this more.

25 We want to find more information as it relates to this

1 because this professor came to us and said I think I've been  
2 bribed and here's what happened.

3 THE COURT: But one problem is discovery is over in  
4 this case, isn't it?

5 MR. CHAIKEN: Discovery cutoff is over. You're right,  
6 Your Honor.

7 THE COURT: So how are you going to get into -- and  
8 the other problem it is not alleged in your complaint.

9 MR. CHAIKEN: Well, we just learned of this, Your  
10 Honor. We just learned of this a few weeks ago.

11 So, you know, what are we supposed to do when we find  
12 out that a witness, a potentially third party witness, who is  
13 not a party comes and says, hey, someone has bribed me to  
14 change my testimony?  
15 What remedy do we have? We filed this motion for sanctions and  
16 we --

17 THE COURT: One thing you have is you put him on the  
18 stand and when he testifies you examine him about that.

19 Assuming that Judge Altonaga will allow you to do that  
20 that would certainly cast a doubt on the veracity of Mr. Darden  
21 and his agents, as you call them.

22 MR. CHAIKEN: Sure.

23 But we would certainly like to get into what Darden  
24 told his agents and understand what he told his agents. I  
25 mean, the e-mail that you had deemed to be privileged --

1 THE COURT: Yes.

2 MR. CHAIKEN: -- didn't mention what the scope of the  
3 legal representation was.

4 There's no document which identifies, hey, I'm acting  
5 as a lawyer and here's what I'm doing as a lawyer. It  
6 mentioned a forensic investigation.

7 THE COURT: I mean, you don't need to have a document.

8 There are lots of people who walk into lawyer's  
9 offices and say, hey, give me some legal advice and they don't  
10 sign a piece of paper or get a letter saying this is the extent  
11 of my representation. I mean, sometimes they do, but a lot of  
12 times that never happens.

13 MR. CHAIKEN: I'll agree with that, but where is the  
14 line drawn between, hey, I'm doing an investigation for fraud  
15 or I'm providing legal service? You know, I believe there's a  
16 line there, Your Honor.

17 THE COURT: Well, now you are rearguing what I already  
18 ruled. You are rearguing the argument that you lost last week  
19 and I am not inclined to hear reargument on that.

20 I understand you are bringing new facts to me now and  
21 saying it could relate to the bribery so the protection should  
22 not apply, but you haven't provided -- there is nothing new  
23 other than that that came to my attention.

24 So if you are just arguing that I was wrong before,  
25 you know, I am denying that request because I examined that

1 document carefully before making my ruling.

2 Let me see what the Defendant says about all of this.

3 MR. PACE: I appreciate that, Your Honor.

4 We will get to the exact same point. I understand the  
5 adage I should sit down while I'm ahead, but I do feel the need  
6 since accusations have been made, to respond at least in part  
7 which is, first of all, of course Your Honor has read the  
8 declaration.

9 He never said, you know, I don't know how thin-skinned  
10 this individual is. And I don't know how this occurred, but  
11 there was no here's a million dollars, change your report.  
12 Here's anything, you know, here's you're being threatened.  
13 There was some kind of contacts.

14 Notice the context. This e-mail that you're talking  
15 about here that you've already ruled on was November of 2015.  
16 If you notice in the declaration it's talking about conduct  
17 began in May of 2016.

18 So it is not like we're saying Tom Darden sent an  
19 e-mail on November 4th of 2015 and, then, these guys contacted  
20 somebody on November 6th.

21 So, in fact, if you want to have a direct payment to  
22 Professor Levi there actually is evidence in the record of  
23 that. It was from Fabioni who testified under oath the other  
24 day in his deposition that he's made direct payments to  
25 Professor Levi.

1 I'm not here to tell you that that was criminal  
2 because I think that was for a different cause, but I am just  
3 saying, you know, these things happen. He's not a witness.  
4 He's never been deposed.

5 They got Fabioni Penon to come in from Italy to  
6 testify in their behalf and have them come into the Dominican  
7 Republic. He's listed I think for -- I think relisted him  
8 actually as a potential witness and, then, we've never deposed  
9 him. They've never deposed him.

10 No one has made any effort to depose this guy. He's  
11 not going to be a witness at trial. They know that. And when  
12 you said, well, bring him into trial -- you know what? Bring  
13 him into trial. He can -- that's one thing to happen and I'll  
14 find a way of cross examining him.

15 And I'm not going to lose a lot of sleep over it, but  
16 to now say we get to reopen and reconsider a ruling that you  
17 made about a November 2015 e-mail based on what happens in May  
18 of 2016 after the litigation has begun that are these kind of  
19 supposedly veiled implications to this individual.

20 Again, he has a chance to say they have threatened me.  
21 They punched me. They beat me up. He doesn't say any of that.  
22 And again, I'm not saying anything in here is accurate. What  
23 I'm saying what he has written in here doesn't constitute that.

24 And anything that occurred during this time period, as  
25 we know, would be work product. I mean, you can investigate,

1 you know, this is May. This is after the lawsuit is filed.  
2 Somebody can go out and do an investigation and that would all  
3 be work product.

4 THE COURT: It's not work product if you're bribing  
5 witnesses.

6 MR. PACE: I agree, Your Honor.

7 I'm sorry. I'm not trying to suggest that. I think  
8 there's nothing here that says they're bribing witnesses. I  
9 meant something --

10 THE COURT: I think he says in here I believe that --  
11 I mean, a couple of places in here he indicates that he  
12 believes that they were either trying to -- I can't remember if  
13 they were trying to intimidate him, or bribe him, or maybe it  
14 was both.

15 MR. PACE: He claims both. He claims I feel harassed,  
16 threatened, and coerced.

17 And again, if Your Honor wants to order that Professor  
18 Levi come in here and show up in court and provide testimony  
19 and be cross examine him for the purpose of discovery purposes  
20 we can do that.

21 I understand that, but the fact of the matter is he's  
22 given descriptions of what he claims is the conduct -- by the  
23 way, we've never -- we've just seen this. And that --

24 THE COURT: You saw it yesterday. Did you call these  
25 guys up and say, hey, did you offer him money to --

1 MR. PACE: I have not called them up.

2 I will give them a call. I mean, opposing counsel is  
3 correct. This is not a law firm we have engaged -- that Tom  
4 Darden had engaged separately but, no, so I have not spoken to  
5 him. I will certainly speak to him.

6 I mean, you know, but my only point just so I'm clear  
7 on the work product is just to say I'm not talking about  
8 bribing. I'm just saying once you start getting into the work  
9 product area, you also don't have the whole limitation of  
10 visiting a lawyer and visiting an investigator. That's all I'm  
11 saying.

12 Obviously, he doesn't have to be a lawyer anymore for  
13 work product to apply, but again at the end of the day, before  
14 you is a motion for reconsideration. Judge Altonaga gets this,  
15 right, in the motion for sanctions unless she refers it to you,  
16 but presently it's just a motion for reconsideration. They  
17 have given you no basis for a motion for reconsideration on an  
18 e-mail that you already examined and made a ruling on.

19 THE COURT: Okay. What do you say, Mr. Chaiken?

20 MR. CHAIKEN: Real briefly.

21 The new evidence, obviously, is that he's, you know,  
22 this professor in Italy, yes, he says that -- and it says I'm  
23 looking at Paragraph 8 of his declaration.

24 He's to receive big money in return for a new report.  
25 You know, that is new evidence. I'm not asking you to revisit

1 your ruling based on nothing. I've got new evidence before  
2 you, Your Honor.

3           Clearly Uzi Shaw is connected to Zalli Jaffe. That  
4 e-mail that's also attached to this motion shows that. We  
5 don't know the extent -- we don't know anything other than the  
6 fact that they're connected via that e-mail.

7           We would like to explore it a little bit deeper and we  
8 think that, you know, there is something -- there is some smoke  
9 here and we think there may be fire.

10           THE COURT: Okay. All right. The motion for  
11 reconsideration is denied.

12           I find that although counsel has provided an unsworn  
13 declaration of Mr. Levi, who is located in Italy, where he  
14 indicates that at certain points he feels as if he has been  
15 harassed, threatened, or coerced based on contacts from people  
16 who have a connection to the Defendants that that's not  
17 sufficient evidence of crime or fraud to override the  
18 attorney/client privilege, which I've previously found applies  
19 to the document at hand which I believe is a November 4th  
20 e-mail from Mr. Darden to Mr. Zalli.

21           So the request for reconsideration is denied. I also  
22 note that discovery is completed in this case. There is no  
23 more discovery time left.

24           You know, you would need to convince Judge Altonaga if  
25 you wanted more discovery time. I'm not permitted to allow

1 that in any case. So the motion for reconsideration is denied.

2 What is the next issue?

3 MR. CHAIKEN: Your Honor, the next issue relates to  
4 two discovery requests issued. One to Tom Darden and one to  
5 Mr. Vaughn. They're identical.

6 We sought documents reflecting payments made to those  
7 two individuals by the corporate entities and they're  
8 affiliates in this case. We had a meet and confer and we  
9 actually narrowed the scope of our request to be documents  
10 sufficient to show compensation received by these two  
11 Defendants.

12 Plaintiffs don't think it is relevant to any issue in  
13 the case. We think it is relevant. One of the issues in the  
14 case is whether or not Cherokee fraudulently induced my client  
15 to enter into agreement with a different entity.

16 Some of the evidence that we have already received in  
17 the case show that these Defendants were working for these  
18 other entities while also claiming to be working for Defendant  
19 Industrial Heat, which is a signatory to the contract.

20 THE COURT: What are the entities that we are talking  
21 about? Because you just said corporate entities.

22 MR. CHAIKEN: Well, there are three corporate  
23 entities; Cherokee Investment Partners, Industrial Heat LLC,  
24 IPH International BV.

25 THE COURT: Hold on.

1 MR. CHAIKEN: Sure.

2 THE COURT: Cherokee, International Heat. What was  
3 the third one?

4 MR. CHAIKEN: I'm sorry.

5 Cherokee Investment Partners LLC. These are the named  
6 Defendants in the case.

7 THE COURT: I know, but I don't have them all listed  
8 here. And believe it or not, I don't have them all memorized  
9 either.

10 MR. CHAIKEN: That's okay.

11 THE COURT: And what was the other one?

12 MR. CHAIKEN: IPH International BV.

13 THE COURT: So they don't even want to give you the  
14 ones from the named Defendants?

15 MR. CHAIKEN: Correct.

16 THE COURT: And are there any others that you are  
17 asking for or is that it?

18 MR. CHAIKEN: There is one which is now the parent  
19 company. It's called IHHI, which I believe is an entity formed  
20 in the UK.

21 THE COURT: It's a parent company of what?

22 MR. CHAIKEN: It's above all of the -- not the  
23 Cherokee, but the Industrial Heat.

24 THE COURT: IPH Industrial Heat.

25 MR. CHAIKEN: Exactly.

1 THE COURT: Okay. And you want payments made from  
2 them to who?

3 MR. CHAIKEN: To the two individual Defendants, Tom  
4 Darden and J.T. Vaughn.

5 THE COURT: To Darden and Vaughn for what period?

6 MR. CHAIKEN: January 1st of 2012 through August of  
7 2016.

8 THE COURT: And is that the time period that I found  
9 -- I know before we had some conversations about what a  
10 relevant time period is. Is that the time period that I found  
11 relevant?

12 MR. CHAIKEN: I think you said April of 2016 was the  
13 time in which the lawsuit was filed.

14 THE COURT: Okay.

15 MR. CHAIKEN: That was the period, August of 2016.

16 THE COURT: All right. What do the Defendants say.

17 MR. PACE: Your Honor, the discussion yesterday was  
18 not -- and they may not agree to a further narrowing.

19 They wanted it from any of the entities. Any  
20 conversation from any entity. So there is, aside from Cherokee  
21 Investment Partners, there are things called Cherokee funds  
22 that does the real estate investment.

23 THE COURT: He has now narrowed it. So let's get to  
24 what is before us now.

25 MR. PACE: Your Honor, if it is documents sufficient

1 to show the compensation paid to Tom Darden and J.T. Vaughn --

2 THE COURT: It was not compensation it was payments  
3 made and not compensation.

4 MR. PACE: Well, I think he said compensation and  
5 payments. Are we getting expense reimbursements?

6 THE COURT: No, he says compensation is fine.

7 MR. PACE: Compensation paid by CIP IH or IPH  
8 documents sufficient to show we will provide that.

9 THE COURT: I'm sorry. Just so I understand you  
10 quickly, Cherokee, Industrial Heat IPH, and IHHI. That's who  
11 they want.

12 MR. PACE: We can do IHHI as well.

13 And it's Cherokee Investment Partners, just to be  
14 clear.

15 THE COURT: Okay.

16 MR. PACE: There are a bunch of entities with the name  
17 Cherokee -- with the name Cherokee.

18 THE COURT: Okay.

19 MR. PACE: And the time period is January of 2012 to  
20 August of 2016.

21 THE COURT: Okay. When can you get him those?

22 MR. PACE: The beginning of the week. I'll try to  
23 give it to them tomorrow, but I don't know if I could do it  
24 that fast. So I think some of these things are actually in our  
25 discovery production in all honesty, but I'll find out.

1 THE COURT: All right. So Tuesday by next week, is  
2 that good?

3 MR. PACE: Perfect.

4 THE COURT: So by March 14th.

5 MR. PACE: March 14th.

6 THE COURT: All right. Any other issues for the  
7 Plaintiff?

8 MR. CHAIKEN: No, sir.

9 THE COURT: All right. Good.

10 MR. PACE: We have two issues, Your Honor.

11 THE COURT: Right.

12 MR. PACE: First is the agreement struck in court and  
13 you entered as order was that --

14 THE COURT: Let me just get that order.

15 MR. PACE: Oh, I'm sorry.

16 THE COURT: I remember it was last week. You guys  
17 weren't here, if I remember correctly.

18 MR. PACE: It's not on the written order? We haven't  
19 submitted a written order yet?

20 MR. LOMAX: Yeah, I think the Judge told us that we  
21 didn't need to submit a written order on that. If we had  
22 reached an agreement we put it on the record.

23 THE COURT: Okay. This is at the end of the hearing  
24 where you are talking about bank records?

25 MR. LOMAX: Correct.

1 THE COURT: Okay.

2 MR. PACE: The agreement was we were going to get to  
3 see all the bank records.

4 THE COURT: Right.

5 MR. PACE: And request some of them.

6 Mr. Lomax went over there. There are some of the  
7 entries. They didn't allow him to see, including claiming some  
8 of them they couldn't see for trade secret reasons.

9 Two responses. One, the agreement entered here in  
10 court was to see everything. IT wasn't to see some of it.  
11 They couldn't hold back some of it.

12 Two, there's a protective order. I mean, you can't  
13 take -- again, if there is a trade secret, so be it. But, you  
14 know, you're covered by a protective order and it's not like  
15 somebody could turn around and go out and broadcast it.

16 And again, our view is let's just do this the right  
17 way. There was a simple way it was discussed in court. That's  
18 the way to do it. And if there is some concern afterwards  
19 that's fine, but every time they say you can't see something,  
20 we don't know what the heck it is, right? And we always have a  
21 concern of --

22 THE COURT: What is it that you are actually seeing?  
23 You are seeing a bank statement, or you are seeing the  
24 deposits, or seeing a check, or what?

25 MR. PACE: The bank statements as well -- well, the

1 bank statements and checks and the cancelled checks, but only  
2 if they would let us see them. Only if they would let Mr.  
3 Lomax see them.

4 So in other words -- and by way, in seeing those they,  
5 thereafter agreed to produce a bunch of them that when Chris  
6 saw them and said I want to see that. That's relevant.

7 For example, a bunch of payments between the  
8 Defendants. Those I think are very relevant to us, but there  
9 are some that they withhold from us, from Chris even seeing.  
10 And again, our view is just --

11 THE COURT: And I am trying to understand and maybe  
12 Mr. Lomax can answer since he was there.

13 When you went over there you looked at what, cancelled  
14 checks and bank statements?

15 MR. LOMAX: Yes, Your Honor.

16 Cancelled checks, bank statements, some electronic  
17 transfer information and it was actually told to me verbally.  
18 And, then, if I requested to see it if they agreed they would  
19 then provide it to me subsequent to the meeting.

20 THE COURT: And did you actually look at the bank  
21 statement itself?

22 MR. LOMAX: No, not at the time.

23 In some instances, yes, but they sat down and looked  
24 at the bank statements and read to me information from the bank  
25 statements. And then, if I said that's something that I would

1 want to see they said, okay, we will provide it to you.

2 THE COURT: What is the for instance something they  
3 told you that you wanted to see and they said no, or they just  
4 refused to read you something to start with?

5 MR. LOMAX: There was an instance with respect to a  
6 trade secret of some sort that Leonardo Corporation had  
7 transactions that were related to some trade secret that we  
8 don't know about and we have no idea what it is.

9 Our understanding is that what Leonardo has worked on  
10 exclusively is related to the E-Cat or the E-Cat IP. And you  
11 previously ruled that all things related to the E-Cat or  
12 E-Cat IP, or any derivatives therefrom would be relevant and  
13 would be ripe for discovery. I was not allowed to see that.

14 THE COURT: I still don't understand the process.

15 How did you know it existed? They told you what?

16 MR. LOMAX: That this is -- they said, well, there's a  
17 transaction here.

18 THE COURT: They said there's a million dollar check  
19 to somebody?

20 MR. PACE: No, no, no. No information. They just  
21 said there is something here that you can't see. It has to do  
22 with the trade secret.

23 THE COURT: Okay.

24 MR. PACE: Your Honor, if I could put in context  
25 because you have summary matters. We issued subpoenas to the

1 bank. You said, okay, but the records have to go to the  
2 Plaintiffs and not to us.

3 So that's why. I mean, they have the bank records  
4 that we would have gotten directly and they were looking at  
5 them and, then, would say you can see this, but you can't see  
6 this. And so in an area where Chris couldn't see it, he wasn't  
7 given the information.

8 They didn't say there's a million dollar check to the  
9 Smith Company and I'm not going to let you see it. They would  
10 say there's a payment here, but it is covered by trade secret  
11 and you don't get to see it.

12 THE COURT: But, I mean, isn't that the way discovery  
13 works that they decide -- when you ask them what's relevant and  
14 they give you what's relevant.

15 MR. PACE: It's not a question of relevance. They  
16 didn't make an objection to relevance. They made an objection  
17 to trade secrets.

18 There's a protective order. There's a protective  
19 order that covers trade secrets that's why you have a  
20 protective order to cover trade secrets.

21 THE COURT: Okay. I mean, I would agree, but it is  
22 also -- in other words, if it's relevant and a trade secret, I  
23 understand your argument, but if it is not relevant and it also  
24 happens to be a trade secret --

25 MR. PACE: They made no argument on relevancy.

1           And it's during the time period when Leonardo  
2 Corporation is supposedly working. And yet, this time period  
3 is when Leonardo Corporation is supposedly working exclusively  
4 on the E-Cat.

5           And by the way, the license agreement is very broad in  
6 terms of after developed technology. So, again, substantively  
7 we can get into a big issue over this, but the answer is this  
8 is the agreement struck in court before you that made a simple  
9 process. We get to see it all. Whether we get copies of it  
10 might be a different issue. They might claim relevancy there,  
11 but let us see the stupid thing. There's a protective order  
12 so.

13           THE COURT: So these are bank records of Leonardo  
14 Corporation?

15           MR. PACE: Yes, Your Honor.

16           THE COURT: Okay. And remind me, Leonardo Corporation  
17 is what?

18           MR. PACE: Is a Plaintiff and a counter Defendant.

19           THE COURT: And they did what? What was their  
20 participation in this?

21           MR. PACE: Leonardo Corporation is the corporation  
22 owned by Andrea Rossi.

23           THE COURT: That's owns --

24           MR. PACE: I shouldn't say owns E-Cat, but that it has  
25 the IP that was licensed and transferred pursuant to the

1 license agreement.

2 THE COURT: Okay. I got it.

3 What do you say, Mr. Chaiken?

4 MR. CHAIKEN: Your Honor, procedurally you've got to  
5 take a step back. They issued these bank subpoenas. We moved  
6 to quash. You quashed them. They issued the subpoenas again  
7 and we moved to quash.

8 Right at the end of the discovery period you said,  
9 okay, what is the issue here. You ordered them to deliver them  
10 to our office because the discovery period was ending.

11 The issue was they claimed that some of our  
12 interrogatory responses as it related to business expenses  
13 didn't line up with some of the other discovery they received  
14 directly from those vendors.

15 This was the only issue that they brought before you  
16 to say why they were entitled to these bank records. It wasn't  
17 to see our trade secrets.

18 It wasn't to see our entire -- every single  
19 transaction ever made. It was to see specifically what the  
20 discrepancies were between what our interrogatory response was  
21 and what they claimed they had received from vendors.

22 So the scope of this should have been very narrow. To  
23 the extent that we have something in our bank statements that  
24 we didn't want them to see that was completely unrelated to  
25 that singular narrow issue, I think we were entitled to

1 withhold that.

2 THE COURT: What about your agreement here last week  
3 that they would be able to come and look at the records and,  
4 then, you would determine whether or not to allow them to copy  
5 it?

6 MR. CHAIKEN: Well, my understanding and I wasn't  
7 there. I mean, Mr. Annesser, who just walked into the  
8 courtroom, he was present and he could speak to that in a  
9 little greater detail but --

10 THE COURT: He was present?

11 MR. PACE: He wasn't present at the hearing, but he  
12 was present when the bank records were being reviewed.

13 THE COURT: Oh, okay.

14 MR. PACE: My understanding there was a dispute in our  
15 office at the time. We said, hey, listen if we can't agree to  
16 the methodology we're going to apply here for reviewing the  
17 bank records, let's go back before the Court.

18 THE COURT: Why didn't you just get a transcript? Did  
19 you order the transcript?

20 MR. PACE: I didn't order a transcript from that  
21 hearing, but at that time, counsel, everyone agreed that this  
22 was the methodology we were going to apply. We could have  
23 called your chambers that day. We didn't do that.

24 We said we, we'll walk you through the statements to  
25 the extent you want to see something that is relevant as it

1 relates to, you know, this discrepancy that you claim. We're  
2 happy to show it to you. We walked out of that meeting  
3 thinking we were done.

4 And had they not made that agreement, we would have  
5 insisted that we come back before you and iron that out because  
6 we think that the issues, as it related to the bank statements,  
7 was narrow and related to just those discrepancies. And now,  
8 they're seeking -- they're back before you again --

9 THE COURT: How many documents did you not show them?

10 MR. ANNESSER: Your Honor, if I may, since I was the  
11 one that did the review, we showed them every document.

12 There were two line items. One on one document and  
13 one on another that were not disclosed to them. We scrolled  
14 past it on the security screen and then scrolled up above it  
15 and they saw the whole document but for two line items.

16 Mr. Lomax had indicated to me that they were not  
17 interested in money coming in, deposits, or otherwise at that  
18 point in time. Although we went through every one with the  
19 exception of those two.

20 THE COURT: And those two are deposits or a check?

21 MR. ANNESSER: Your Honor, those were both deposits  
22 coming into the account. So it wouldn't fall within that  
23 anyway.

24 In addition, I can represent to the Court that they  
25 were not vendors being paid under the E-Cat, which was the

1 scope of that review, number one. They were not being paid.  
2 Those monies were not between the parties at all.

3 In fact, it has absolutely nothing to do with this  
4 case. If the Court would like to do an in camera review of  
5 those two items, it would be very brief.

6 I did not bring them today, but I would be happy to do  
7 so, but I do not believe that we should even have to do that.  
8 It is not within the scope of discovery. It is not relevant  
9 and it does not pertain to any document that has been  
10 subpoenaed or --

11 THE COURT: Okay. I mean, but the problem that you  
12 have is that you reached an agreement here. It was last week  
13 or whenever it was that as I recall -- and I don't know how the  
14 transcript is.

15 It wasn't that important because you guys reached an  
16 agreement, but as I recall it was they would look at the  
17 documents. And then, if you would agree you would provide a  
18 copy. If you did not agree, I guess you would have to come  
19 back to me.

20 So what it seems what I would require you to do is  
21 say, here, this is -- whatever it is -- some thousand dollar  
22 deposit in the amount of this on this date from so and so. He  
23 says I want it and you say no.

24 Then, you have to come back to me and you say it is  
25 not relevant because that person was, you know, this fellow's

1 godson and he sent him a check for Christmas, or something, or  
2 whatever it is. That has absolutely nothing to do with this,  
3 but the problem is you have an agreement that you made here.

4 MR. ANNESSER: Your Honor --

5 THE COURT: And why is this so sensitive that he  
6 cannot -- I mean, why are we spending twenty minutes on this  
7 thing? Why don't you just show it to them and they will say,  
8 okay, it's not relevant.

9 MR. ANNESSER: Your Honor, our company works with  
10 certain parties that has nothing to do with this license  
11 agreement and nothing to do with anything at issue in this  
12 case.

13 And they have gone -- and I believe Mr. Chaiken may  
14 have already addressed it, but they have gone and they have  
15 reached out to people in this case and have put stuff all over  
16 the Internet. One of their main, I guess, representatives --

17 THE COURT: Wait. Who has done that?

18 MR. ANNESSER: Mr. Weaver who is --

19 THE COURT: First of all, if you showed it to these  
20 folks it would be for attorney's eyes only, I assume. And  
21 then, if you wanted to go further than that you would have to  
22 come back to me.

23 MR. PACE: And Your Honor, to avoid Mr. Annesser  
24 wasting more time, we will agree that it would be attorney's  
25 eyes only. There is a provision of the protective order to let

1 a client see it. We are willing to avoid that. We just want  
2 to simplify this. Make it easy. Let us see it. If he's  
3 right, he's right. If he's wrong, he's wrong.

4 THE COURT: What do you say about that?

5 MR. ANNESSER: Well, Your Honor, again, to the  
6 extent --

7 THE COURT: Why don't you go outside right here and  
8 show it to him now and you could tell him. And then, you know,  
9 he can decide if he's fine with it. And if he's not, you can  
10 making an argument now that --

11 MR. ANNESSER: Your Honor, I could represent broadly  
12 it's a company providing financing to my client and we do not  
13 want any interference with that.

14 MR. PACE: There's no basis for expecting any  
15 interference for that from the lawyers here. Judge, it was a  
16 simple process.

17 THE COURT: All right. I am going to require because  
18 of the agreement as I recall it -- and nobody has shown me  
19 anything different or controverted to what my recollection is.

20 Although I am not saying it is one hundred percent,  
21 but I am going to direct that you show the document to him for  
22 attorney's eyes only. And if they still believe it's relevant  
23 and you don't want to give them a copy of it, or they want to  
24 discuss it outside of attorney's eyes only, you will have to  
25 come back to me.

1 MR. PACE: I want to clarify when he says the document  
2 what does he mean?

3 THE COURT: He doesn't say document. He says two  
4 documents. Were there more than two documents that were  
5 withheld?

6 MR. LOMAX: Well, yes, there were a number of  
7 documents that I was not allowed to see as a result of the, I  
8 guess, subsequent agreement that we reached on how to do this  
9 after they decided not to go forward with the original process.  
10 And so I imagine that those documents -- I think some of them  
11 involve payments to the patent or trademark office, right?

12 MR. ANNESSER: I would like to respond when you've  
13 finished because I think Mr. Lomax has misrepresented something  
14 to the Court.

15 Any document that he asked to see, with the exception  
16 of those two line items, he was offered the opportunity to come  
17 and see. We reviewed them first to make sure there wasn't  
18 something that otherwise would ring a bell that couldn't be  
19 unring, but there were only two things withheld and those were  
20 those two line items in the entire review.

21 He was welcome to see anything else. In fact, there  
22 were a number of documents that we went through and we said  
23 here's a check to somebody. We have no idea who it is. Feel  
24 free because we don't know whether it is responsive or not at  
25 this point in time.

1           So to the extent that he is saying he wasn't permitted  
2 to see other documents, the only other documents that he didn't  
3 see were the ones that he didn't ask to see.

4           MR. PACE: Your Honor, let's make it simple.

5           There were documents produced by the bank. Any  
6 documents that we didn't see that were produced by the bank we  
7 should see. Make it easy. That was the original agreement  
8 that any --

9           THE COURT: Pardon me.

10           I mean, we have two contradictions here. Were both of  
11 you present? Why is Mr. Lomax saying there were several  
12 documents and you are saying there were only two?

13           MR. LOMAX: He's saying I didn't ask to see them. It  
14 was because, Your Honor, we had a big argument about an hour  
15 and-a-half about the scope of this review and how it was going  
16 to work out and I said, okay, fine.

17           Look, we even had to go through and look at document  
18 requests to talk about whether I would be able to see payments  
19 between the Defendants because I wasn't going to be allowed to  
20 see this or see that.

21           What they originally proposed is that they would take  
22 a look at the documents and go through them on their own and  
23 give me the ones they thought were relevant as to the service  
24 providers.

25           I said, well, my reasons for inspecting these

1 documents are beyond that and you know that and we talked about  
2 this. And we came to the point where I said, okay, fine.  
3 Let's go through this now because the discovery period is  
4 ending.

5 I don't know if Judge O'Sullivan is available. Let me  
6 get the payments to the other parties. When we get the  
7 payments to service providers and everything else I'm just  
8 going to go ahead and not fight with you about it.

9 But you were here, Your Honor, and you just recited  
10 what the agreement was that we reached on the record. Whether  
11 I showed up at their office --

12 THE COURT: Is your recollection the same as mine?

13 MR. LOMAX: My recollection is exactly that, Your  
14 Honor.

15 That's the agreement that we reached that I would sit  
16 down and somebody from our side would sit down and go through  
17 the records and identify the ones we thought were, you know,  
18 the ones we should get copies of. And if they disagreed, we  
19 would come back to you and that's not what happened. And the  
20 reason they are saying that I agreed to it is because I was  
21 sandbagging. I was --

22 THE COURT: I understand what you are saying.

23 All right. Show him the all the documents attorney's  
24 eyes only and if there's an issue you can come back to me next  
25 week or something.

1           Why are we fighting over in this case? I mean, is  
2 there some like secret document there that he gave a million  
3 dollars to Donald Trump or something, or there is a crime that  
4 is revealed by it? Just show it to him.

5           MR. ANNESSER: There were only two that we did not  
6 want to show him.

7           THE COURT: He says that is because you narrowed the  
8 scope of the disclosure. And he finally say, well, I might as  
9 well see what I can see today because you are not going to  
10 agree on this other stuff.

11           Just show him every bank document that you have in  
12 this regard and give him copies of the ones that you feel okay  
13 with. If you don't, then, you can come back to me.

14           MR. ANNESSER: Your Honor, for clarification --

15           THE COURT: And please, don't come back to me unless  
16 it is really important. Because I am not here to say I don't  
17 want to show him that check. Well, is there some reason? No,  
18 I just don't want to show them that check because I don't want  
19 them to go any further with it.

20           Well, attorney's eyes only. Unless you are going to  
21 show me that these guys have been disclosing stuff and they are  
22 on the Internet disclosing stuff that is attorney's eyes only.

23           That's what you do. You know, you put your big boy  
24 pants on and you play the game. You know, we went through this  
25 last time. This case is getting a little aggravating to me

1 because this should not be all of this disruption over this  
2 simple stuff.

3 My ruling is to show them every document that you have  
4 relating to -- every bank document that you received pursuant  
5 to the subpoena regarding the Leonardo Corporation bank records  
6 and for attorney's eyes only. If you have any other issues  
7 come back.

8 All right. Any other issues?

9 MR. PACE: Yes, Your Honor, one more. They're  
10 refusing on the production of tax returns that we've made a  
11 request for them.

12 THE COURT: Why tax returns?

13 MR. PACE: They're subject to one of the accounts that  
14 the Judge refused to strike and has maintained in the complaint  
15 that their agreement required them to pay certain taxes and  
16 they failed to pay the taxes.

17 THE COURT: What kind of taxes?

18 MR. PACE: Income taxes, Your Honor. So it reflects  
19 on the income tax returns.

20 THE COURT: I don't understand. Explain that to me.

21 MR. PACE: Yes, Your Honor.

22 Dr. Rossi has had -- let's just say without getting  
23 into details -- has had issues at least relating to taxes. I'm  
24 not going to get anything beyond that.

25 THE COURT: Okay.

1 MR. PACE: As a consequence the agreement has certain  
2 tax provisions in them.

3 We pled and they made it a subject of the motion to  
4 dismiss and they lost. They made it the subject of the motion  
5 to strike and they lost.

6 We have pled that it's, you know, that he had breached  
7 the agreement based on certain information that we have  
8 relating to taxes for 2012 and 2013. All we're asking for now  
9 are the tax returns.

10 THE COURT: Okay. But I still don't understand. The  
11 allegation is that --

12 MR. PACE: It would be a breach of the license  
13 agreement, Your Honor.

14 THE COURT: The license agreement requiring him to do  
15 what?

16 MR. PACE: Pay taxes.

17 Again, the concern was we don't -- if this is somebody  
18 who has had tax issues in the past -- and again, I'm not going  
19 to get into details on that -- but somebody who has had tax  
20 issues in the past, we don't want to be party to tax issues in  
21 the future. So all we're requesting --

22 THE COURT: I know a little bit about taxes.

23 I was a CPA and I actually worked for the IRS a few  
24 years ago. I know what you are saying.

25 MR. PACE: Your Honor, take a step back.

1           There are requirements in the license agreement that  
2 say you have to pay all of your taxes on anything we paid to  
3 you; okay.

4           THE COURT: Okay.

5           MR. PACE: And the fact that you've paid all of your  
6 taxes, period, that you've probably paid all of your taxes.  
7 The reason for it, there was a -- again, I'm trying to avoid  
8 getting into some details.

9           There were accusations out there. Put aside whether  
10 they're merited or not. There were accusations out there that  
11 Dr. Rossi had various tax issues historically in Italy. The  
12 concern was we don't want to get ourselves wrapped up in these  
13 tax issues.

14           And as a result, there was a requirement for paying  
15 taxes. We subsequently developed information that these taxes  
16 were not properly paid.

17           If you want, Your Honor, there is an additional reason  
18 to believe in that and we would get some of the discovery that  
19 has been produced. If you want the factual background for why  
20 we understand that, I am happy to provide it. I don't know how  
21 much detail Your Honor wants.

22           All we're asking for is the production of those tax  
23 records. And they can be produced attorney's eyes only, but  
24 again, I am happy to provide Your Honor with more detail.

25           THE COURT: Let me hear from the Plaintiff first.

1 Where is it in your complaint, by the way, that you allege  
2 this?

3 MR. PACE: It's count --

4 MR. CHAIKEN: Plaintiff 132, Your Honor.

5 MR. PACE: I think there is more of it than just 132.  
6 I should look at it. I know it is primarily --

7 THE COURT: Is it the original complaint in this case?

8 MR. CHAIKEN: The fourth amended, Document 132.

9 MR. PACE: Your Honor, are you looking at the  
10 complaint or the answer and counterclaims?

11 THE COURT: Oh, okay.

12 MR. PACE: It's the --

13 THE COURT: I'm sorry. You're right. So it's Docket  
14 Entry 30?

15 MR. CHAIKEN: 132.

16 THE COURT: Okay.

17 MR. PACE: Referred to the paragraph.

18 MR. CHAIKEN: It's actually both. It's Document 132  
19 and Paragraph 132.

20 MR. PACE: What are the chances of that?

21 MR. CHAIKEN: But Paragraph 132 --

22 THE COURT: I want to get there.

23 MR. CHAIKEN: I've got a copy here if you would like  
24 it.

25 THE COURT: That would be faster, but I'm almost

1 there. You said 132 is the document?

2 MR. CHAIKEN: Correct. February 1st of 2017.

3 THE COURT: What page is that on?

4 MR. CHAIKEN: Page 60.

5 THE COURT: I'm getting close. Page 60 or 61?

6 MR. CHAIKEN: Mine says 60.

7 THE COURT: I'm looking at the top of it.

8 MR. CHAIKEN: Right. I'm looking at the bottom.

9 THE COURT: Okay.

10 MR. CHAIKEN: You read Paragraph 132, but they don't  
11 have an affirmative claim saying that we've breached the  
12 contract and they're entitled to damages for our failure to pay  
13 taxes. This was almost a defensive allegation.

14 THE COURT: Prior breach. So if there was a prior  
15 breach then they couldn't have --

16 MR. PACE: Right. On information and belief.

17 And we asked them what evidence do you have of this  
18 and we have an interrogatory response and I could show you  
19 their interrogatory response, Your Honor.

20 THE COURT: Okay.

21 MR. CHAIKEN: It's the last one. It starts on Page 21  
22 and 22. Interrogatory number 15.

23 THE COURT: Yes.

24 MR. CHAIKEN: And their proof of their allegation is a  
25 conversation in 2013 before the taxes were due.

1 THE COURT: Hold on.

2 Okay. So you are asking them what evidence they have  
3 to support 132. Is that what the --

4 MR. PACE: Exactly right.

5 THE COURT: Hold on. Let me read that.

6 MR. CHAIKEN: So they base it on two things.

7 A conversation that happened in 2013 which were before  
8 the taxes were due, number one. And number two, is an alleged  
9 conversation that is hearsay between a member of AEG, which was  
10 Dr. Rossi's partner for purposes of finding financing for the  
11 technology.

12 This claim that somehow the accountant told AEG who  
13 told Industrial Heat that the taxes weren't paid. So you have  
14 a double hearsay. We deposed AEG. They said no such  
15 conversation took place.

16 So, Your Honor, this is a massive fishing expedition  
17 with absolutely no proof and with no basis. And they're saying  
18 let's get all -- if every party to a lawsuit wanted to find  
19 someone's tax returns, they could go ahead and say on  
20 information and belief I believe that you didn't pay your  
21 taxes. So show me all your tax records and that can't be --

22 THE COURT: If it was relevant to the issue which -- I  
23 mean, the thing that they have on their side is that in your  
24 agreement there is actually an agreement that you are going to  
25 pay the taxes.

1 In most cases most contracts don't say that. I mean,  
2 some of them do. I've seen settlement agreements that say  
3 that, but I do not think it is usually in most agreements, but  
4 just knowing that taxes, if you receive income that taxes --

5 MR. CHAIKEN: Right.

6 THE COURT: The problem you have here is you allege in  
7 the complaint you apparently, at least according to the  
8 Defendant, they tried to strike it. Judge Altonaga didn't  
9 strike it.

10 I agree with you that perhaps their answer to  
11 interrogatories are not admissible evidence at least in part,  
12 but you know, discovery does not have to be admissible. It  
13 only has to lead to relevant evidence.

14 The allegation still in the complaint generally you  
15 get -- in other words, the way the rules are you get discovery  
16 relating to the allegations you made in the complaint. You do  
17 not test the complaint until after the discovery is over. And  
18 then, you can, you know, go back and I can't imagine -- the  
19 paragraph whatever how many pages of a complaint this is, but I  
20 guess you would always have that opportunity.

21 MR. CHAIKEN: My response would be, Your Honor, if  
22 they're entitled to our tax returns, we should be able to see  
23 Defendants and know their tax returns.

24 THE COURT: That's not a good response unless it is  
25 alleged in your complaint with something like that where they

1 are required to pay their taxes too.

2 MR. CHAIKEN: I don't believe that was in the  
3 agreement, Your Honor.

4 THE COURT: All right. I am going to require that tax  
5 returns be provided for attorney's eyes. It's alleged in the  
6 complaint. Not even a defense really saying there was a prior  
7 breach. So because of the prior breach serves as a defense to  
8 Plaintiff's breach because the contract was already breached.

9 MR. CHAIKEN: Thank you, Your Honor.

10 THE COURT: I'm not sure how far that is going to go,  
11 but it's (inaudible) I'll tell you that.

12 MR. CHAIKEN: Your Honor, I am happy to provide you  
13 with some additional details that you will find very  
14 interesting, but you have ruled in my favor. So I will stop.

15 THE COURT: Not better --

16 MR. CHAIKEN: I could confidently tell you that there  
17 is more to the story. I'm trying not to put it all in the  
18 record here so we don't have to seal things.

19 THE COURT: I don't think anything is getting sealed  
20 here.

21 MR. PACE: I don't believe so either, Your Honor.  
22 Thank you, Your Honor.

23 THE COURT: Okay. Anything else from the Plaintiff?

24 MR. CHAIKEN: No, Your Honor. Thank you for your  
25 time.

1 THE COURT: So any documents are to be provided by  
2 Tuesday, unless I've said otherwise. I forgot. There was  
3 something -- what was the other things that you were going to  
4 do? Okay. The bank records I guess by Tuesday.

5 MR. PACE: Can you get over there by Tuesday?

6 Okay. Thank you, Your Honor.

7 THE COURT: When did you want to provide me with an --

8 MR. CHAIKEN: An order?

9 THE COURT: Yes. I think it would be best for the  
10 Defendant to do just one order rather than doing two orders.

11 MR. PACE: Yes, Your Honor.

12 We will do one order. And I'm trying to think of the  
13 schedule next week. Can we provide it to you by Wednesday?  
14 This is probably a little easier than some of the other ones.

15 THE COURT: But the order is in effect based on my  
16 oral ruling. I think we still have one thing left in this.  
17 There's two issues on attorney/client privilege that needs to  
18 be addressed that I am going to need to see you guys on.

19 MR. PACE: Relating to attorney/client privilege. And  
20 I'm not saying that those are the only issues that remain but  
21 hopefully --

22 THE COURT: I'm talking right now they're --

23 MR. PACE: We appreciate that.

24 THE COURT: I'm just waiting for you guys to call  
25 because I just don't feel right about them.

1 MR. PACE: How would you know?

2 THE COURT: Waiting to hear what is the latest  
3 argument.

4 How about next Tuesday? You guys have any time left  
5 in the afternoon to hear your argument on that?

6 MR. CHAIKEN: Tuesday the 14th?

7 THE COURT: Yes, March 14th.

8 MR. CHAIKEN: Yes, we could do that.

9 THE COURT: Is that good with the Defendants?

10 MR. PACE: Just one second, Your Honor.

11 Yes, Your Honor. That works perfect for us.

12 THE COURT: Okay. 3:30 does that work good? Let's  
13 say 3:00. Does that work with everybody?

14 MR. PACE: Yes, Your Honor.

15 THE COURT: All right. Anything else?

16 MR. PACE: No, Your Honor.

17 THE COURT: All right. Good.

18 You guys are never going to settle this case, huh?

19 MR. PACE: Probably not.

20 THE COURT: How long is this case going to take to  
21 try?

22 MR. PACE: A couple of weeks.

23 THE COURT: Really?

24 MR. PACE: Yes. Two, three weeks.

25 THE COURT: When are you set for trial?

1 MR. PACE: Set is a calendar period -- I think our  
2 status conference is like the end of June. So we're probably  
3 looking at the end of June, beginning of July.

4 THE COURT: That would be a good way to spend the  
5 summer.

6 (Thereupon, the proceedings concluded.)

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CERTIFICATE

I hereby certify that the foregoing transcript is an accurate transcript of the audio recorded proceedings in the above-entitled matter.

03/13/17

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