SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

HONORABLE RICHARD A. KRAMER, JUDGE PRESIDING

DEPARTMENT NO. 304

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CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM, Plaintiff, vs. MOODY'S CORP., MOODY'S INVESTORS SERVICE, INC., THE MCGRAW-HILL COMPANIES, INC., FITCH, INC., FITCH GROUP, INC., FITCH RATINGS, LTD. and DOES 1 through 100, Defendants.	**Case No. CGC-09-490241**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Friday, December 10, 2010

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P R O C E E D I N G S

Friday, December 10, 2010

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THE CLERK: Calling the matter of California Public Employees Retirement System vs. Moody's Corp. et al., Case Number 490241.

THE COURT: Welcome, everybody. And the court reporter knows who you are.

We have a hearing on the first prong of an anti-SLAPP motion on calendar here today. I'm going to give you a tentative ruling in just a moment, but I think it is absolutely essential that I first describe anti-SLAPP motions and what the standards to be applied here are.

There is some argument in the papers indicating a difference of view regarding that, but in any event, this is my usual practice so in the event my work is reviewed, a reviewing court knows what I think I'm doing.

An anti-SLAPP motion is, by its terms and its nature, a special motion. It is a special motion to strike certain claims and that's what we have here, a special motion to strike the one claim that's asserted here. It is -- this motion is based on an express legislative finding in CCP Section 425.16, which found that there was a disturbing number of lawsuits brought without merit for the sole purpose of chilling freedom of expression. And in order to curtail that, the legislature set up a special procedure different from other procedures.

When I teach this in law school, I say that the special procedure involves three separate concepts. The first is there

is an asserted "good guy," it's a technical term; that's the defendant. And the reason the defendant is an asserted good guy is because the defendant is doing nothing other than exercising constitutionally protected activities.

And then there's a purported "bad guy." Purported bad guy is the plaintiff, whose sole purpose in filing the lawsuit, whatever form it takes, the lawsuit, is trying to curtail that exercise.

And the third concept is the "look-see," l-o-o-k, s-e-e, whereby if the Court is convinced that there is a good guy, the Court, for the first time and early on, looks at the substance of the evidence to see if in fact there is a basis for believing the law has merit and is therefore not strategically designed to curtail freedom of expression, looks at the substance of the claims. And if there is no basis for believing, then the lawsuit is ended early. If there is a basis for believing, then the case goes on as if nothing happened.

So that's what we're doing here, and I bifurcated the proceedings. There are two prongs under the statute. The first is the asserted good guy comes in and demonstrates that the lawsuit arises out of protected activity, and that's what we're doing today. If the good guy fails in that regard, we never get to the second step, but if the good guy does show that the action arises out of protected activity, then you move to prong two where the asserted bad guy comes in and has to show a probability of prevailing on the claim, which under the cases show the existence of evidence of substance as to each and every element of the claim.

So we're working on prong one to see if we go to prong two. All right. That's what I think I'm doing here today. That's as clear as I can make it.

Now, here the defendants claim that their activities arise out of their participation in the public forum through websites and other public disseminations of information upon the topic of investment vehicles, and specifically their participation is assertedly making future predictions which are not then factual matters, but their opinion as to the future performance of a wide range of investment vehicles. And they do so, according to what they've submitted, both generally and publicly, without regard to any targeted activity, and they do so with a business end in mind.

The question is whether that is, for the purposes of the anti-SLAPP statute, protected activity and whether the lawsuit here arises out of that activity.

I want to emphasize just because a Court were to find it's protected activity, it doesn't mean it's sheltered activity or immune activity. For the purposes of the anti-SLAPP statute, a finding that this is protected activity and that the lawsuit arises out of it simply brings us to prong two where the Court gives the look-see to see if there's any substance to the claims here. A lot of the briefing talked about this couldn't be completely protected or completely sheltered because of the possibility of abuses, and that's not what the anti-SLAPP statute is about.

One more comment before I get you off the edge of your chair as to what the answer is, and that is, my rulings on the

demurrers early on have absolutely nothing to do with this hearing. The footnote in the reply papers that recognize that in a demurrer the Court is obligated to assume everything is true that's alleged in the complaint, and doesn't go beyond that, was absolutely accurate, and my view is that the findings made under that standard are quite irrelevant. I guess they can't be quite irrelevant; they are either irrelevant or they are not, but it's irrelevant to what I'm supposed to do here now. So all of the briefing on I've already determined this is, to my way of thinking, not correct.

All right. My bottom line is my tentative ruling is that the activities demonstrated by the defendants do in fact arise out of protected activity as defined in the statute and that the fact, for example, that this lawsuit does not require ultimately findings of public dissemination, but rather is based upon private or limited dissemination to those capable of buying the investment vehicles, doesn't matter. It's not the structure of the lawsuit that determines the "arising out of" prong. It's the activity itself that the Court should look at, not how a defendant has pled a claim or claims.

The cause of action is really irrelevant to an anti-SLAPP motion because you could allege a breach of contract, you can allege defamation, just about anything. It's what's the activity that occurred from which the lawsuit arose, and here, the ongoing activity of the defendants of making public and other future predictions as to the economic performance of investment vehicles is the activity.

Is that public? Tentative ruling is, yes, there is a public

interest in the country's economics, in the types of investment opportunities that exist, the quality of those as well, and here we have simply future predictions as to how much or how they might perform in the future.

If you stood on a soap box on the corner of Central Park -- I was going to use Hyde Park but of course that would be out of our jurisdiction -- and stood up and said, "I think the economy is going to be booming next year and there's going to be lots of money to be made everywhere. I think packaged vehicles consisting of securitized mortgages is the way to go because they're good." That's protected activity, a matter of public concern. It's quite analogous to the protected activity claimed here.

Bottom line, tentative ruling is that the first prong of CCP Section 425.16 has been met and that we should move on to the second prong, which is to have the plaintiffs come in and just demonstrate the probability of success which, to give guidance, assuming my tentative ruling stands, to my way of thinking requires the plaintiffs to produce substantial evidence as to each element of the cause of action.

Substantial evidence is not how high is the pile. It is evidence of substance. Let's not lose sight of the fact that the whole point of the anti-SLAPP statute is to have the Court look to see whether or not this is a meritless claim designed solely for the purpose of chilling particular protected activity.

Therefore, under the statute, the next thing that has to happen is the plaintiff comes in and shows this is not

meritless. We have evidence of substance as to each and every element.

Anybody want to argue?

MR. TABACCO: I'm prepared to see if I can make some headway, Your Honor, on two of the issues; "arise out of" and whether or not this is a public interest. And I know that Your Honor has spent a lot of time with quite a substantial pile of information that you were provided, and I have to say that in my practice, it is not typically something, anti-SLAPP is not something that I frequently run across so for us it's been quite an education just to understand the unique nature of the statute.

THE COURT: I'm told by Justice Rylaarsdam, who sits in Orange County on the Court of Appeal, that a substantial number of their cases are reviews of anti-SLAPP motions, a large number of them are. Most lawyers don't deal with these things, but as far as these things being filed, they're pretty common, a lot more than you might think. And I also want to say that given the plaintiffs saying they're not claiming 425.17 applies here, then I didn't have to discuss business activity or any of that stuff. It's not part of the claim.

All right. Go ahead.

MR. TABACCO: Sure. And this again focuses -- last summer when we had the CMC, at the time I think I telegraphed the fact that I thought we would have a hard time fitting within .17 given the particular words that were anticipated to be at the center of the SLAPP motion, and in one paragraph we said we are not pursuing .17. But with regard to .16, we understand that

"arises out of" deals with the acts of the defendants.

And while it is true that this stage is different than the demurrer stage, we certainly understand that. It is also true that as part of this stage, among things that the Court could consider are the pleadings. And if you were to consider our pleadings, which I'm sure you have, and if you were to look at Paragraphs 47 through 92 of our 130 plus paragraph complaint, the essential gravamen of this case is that in -- when the SIVs were sold to a select group of qualified institutional buyers and qualified investors out of the large population, population at large, we start with the premise that these particular investments could only be sold to a small group.

And then we look at what was the activity that was done that caused us injury in our single negligent misrepresentation claim. The activity that was done was the time and the energy that the rating agencies spent in working hand and glove with the structures of the SIVs to determine the mix of investments that would be put into these pools that could then be offered so that the end result was that the rating agencies could stamp and certify that these were AAA rated. And the -- as our affiants have stated, folks who have worked at both Standard & Poor's and Moody's and have a lot of experience, and I'm sure you have reviewed the declarations, the birth, the spark of life for these SIVs can only occur if that AAA rating is stamped on the envelope.

THE COURT: Let me interrupt you for a second.

MR. TABACCO: Sure.

THE COURT: The gravamen of the claim does not determine

whether the activity arises or whether the lawsuit arises out of protected activity. That's absolutely crucial to my ruling. That's why I took some time telling you what I thought I was doing here. The gravamen of the claim really fits into prong two, but the question of whether the protected -- the activity is protected and whether the lawsuit arises out of that is not dependent on your particular theory.

So what happens is that given the -- a finding that the lawsuit arises out of protected activity, then you have to come and show the Court what exactly it is you're claiming and whether you have substantial evidence as to each of the elements.

The first step is nothing more than whether you get the look-see, that's why I call it a look-see, but the whole point, and if you read the cases, I probably read every anti-SLAPP case because that's just what I do, it's not dependent on the pleading and how creative a plaintiff can be. It's dependent on what is the activity from which the lawsuit arose, and then we get into but, yeah, we're not really talking about public dissemination here. We're talking about a very narrow portion of what the defendants do. That's for a later date.

So I fully understand the difference between the public forum activities that I've tentatively said exist and what it is your lawsuit is about.

MR. TABACCO: Can I just try to put a fine point on that?

THE COURT: You can put fine or not so fine or any other point you want.

MR. TABACCO: Well, there's two cases that come to mind, and

undoubtedly you are very familiar with them. The defendants rely on the same case that we do for a different proposition. That's the *ComputerXpress* case. And in *ComputerXpress*, you had a company that a competitor was disparaging the company, was filing complaints with the SEC, was doing a variety of things, posting things on the web, and the lawsuit involved a claim for about nine different causes of action. And what the Court of Appeals said in its opinion is you really have to look at what it is that is being sued, what is the reason that people are being sued to determine whether the protected conduct could be applicable or not.

And that case gave a very excellent description of where you have like a libel and slander claim that clearly touches upon words that would be displayed on a website or in a public forum, or filed with the SEC. But where you have a negligent misrepresentation claim, which happens to be our claim here, that the conduct, the acts of the defendant, while they might give rise to other acts that would be under SLAPP, don't give rise to that, don't arise from -- the cause of action for negligent misrepresentation does not touch upon acts that arise from the conduct that's subject to SLAPP.

THE COURT: It's the same ratings though, right?

MR. TABACCO: The same --

THE COURT: -- Ratings. Same ratings, same activity. Some of it is done publicly, some of it results in showing up in a prospectus because the defendants allegedly give permission to promoters to use them, but it's the same ratings.

MR. TABACCO: Well, I'm thinking of an example like -- let's

see how this one goes.

Guy goes to a surgeon to have his right root removed. Surgeon chops off his left foot.

THE COURT: He sues. He loses because he doesn't have a leg to stand on.

(Laughter.)

THE COURT: My whole life I've hoped someone would tee that one up for me.

I apologize.

MR. TABACCO: Not at all. You knew exactly where I was going except that you jumped the gun because after the surgery, at lunchtime, he goes to the web and publishes an expansive article about the dangers of chopping off the wrong foot. And then of course the guy sues and doesn't have a leg to stand on.

So the point there is, is what is the act that he did. The act that he did was he chopped off the wrong foot. It's not that he went out later and published a story on the web that was talking about the dangers and then says, well, that's my protected activity. You can't sue me for that.

And here, we happen to have Page 1 of the Stanfield Victoria offering prospectus. The words that appear are in medium term notes, and this is just one of the three, and they're all very similar, but on Page 1 it's stamped Standard & Poor's, AAA. Moody's Investment Services, AAA. There wasn't any discussion of the importance of what's going to happen with the economy, or how important SIVs are or anything. Those are the words. And it's those words alone that caused our lawsuit.

It wasn't that they later went off or had earlier talked

about their ratings on the web because, indeed, if you think about what injured us, without this stamp, just like the *OASIS* case, without that organic certification, the product could not be sold, and it's because this little stamp appeared on the product, on the label, just like a drug label saying that this is going to grow your breasts or it's going to reduce weight, or all those cases in that long lines of cases, it's that label that gives rise to our cause of action.

If they never published a single word on the web or ever had a newsletter or anything that went out, we would still be here. We would still be injured by the appearance of those words on this piece of paper. So we view "arise out of" as a critical step that we don't think exists here. I heard Your Honor's tentative, but that's really the essence of our case.

And I really think that the negligent misrepresentation claim requires us to show at some point that we and our agents relied upon those words and that really kind of goes to the merits of the claim.

The fact that they were later publications, later statements, later exposés on SIVs from very interesting newsletters, I have say there's a lot of fine reading in the declarations, but from our point of view they were not relevant to our claim. So if I did anything today, it would be to see if I could see you to view "arise out of" really in the context of what caused our injury. That's why we think they haven't satisfied "arise out of."

THE COURT: Which is why I took the time at the outset to tell you what I think "arise out of" means. You're right. We

disagree.

MR. TABACCO: Okay.

And then the second question is looking at those same words, what is the public interest? That, I think, and obviously when you get down to (e)(3) and (e)(4), you really have to have a bit more than just the fact that I filed something in court or I went to my legislature. (3) and (4) require an examination by the Court to really determine the public interest.

So those long line of cases we think are applicable, whether it's *OASIS* or whether it's *Century* or some of the other cases where they say, look, the words that you are talking about here are very narrow, and it is not appropriate for you to say, I said AAA with regard to a particular rating and that's what caused the injury; for you to say, well, yeah, but the generality from that is that we're really talking about the major impact that these billion-dollar investments could have on the economy.

That's nowhere in those words and the courts certainly teach us, Your Honor, that the words are where you start then. It can't be just generalities that you draw from the words that it might touch upon. It has to be directly at the heart of it. So I think with regard to the second prong, they don't satisfy it as well.

And I could spend more time on that, but that's the argument.

THE COURT: Okay.

I think there is definitely a public forum on investments. I think the cyclical activities of the investment community, of

the banking community and the like are of great public interest. You flip on the TV and you see my namesake, who is not related to me, talking to somebody about these things, probably not investors, on the particular matters that he's talking about. Talking about what's his name, Cramer.

It's everywhere you go. People are interested in that. That's especially true now that the financial crisis has hit but I'm being careful not to make this a temporal thing. But the fact is that this country is obsessed with the use of capital. I guess that's why we're capitalists.

But everywhere you go, there's a public forum on this kind of stuff and that there is participation. This is not an instance where the sole activity of the defendants is to provide investment benchmarks for qualified investors.

The defendants have demonstrated that they participate in a public forum that goes well beyond the targets for most of the investment vehicles and that they do so on an ongoing basis and not as the dissemination of otherwise private information, which would not create a public forum.

But I think it is beyond question that this country is concerned with what goes on on Wall Street and other similar places, talk about it all the time. And some of it is because we have this great tendency maybe every eight years to screw something up horribly, leverage buyouts, dot-coms, the original derivatives, whatever that meant, securitized oil companies, or oil contracts is what they were securitizing in Enron. Securitized mortgage packages.

People talk about that all the time. They may not buy them.

They may not be able to buy them. They may not be qualified to buy them under federal law. But it's all over the place, that's what I think. And I think defendants have demonstrated that in addition to having a specific economic motive, they also just participate in this ongoing discussion.

So I fully understand your argument. I fully understand the limited market for a securitized SIV product, but I still think there's a market out there where people just want to talk about these things. That's especially true after everybody got nailed in the securitized home mortgage market. Not everybody, but a lot of people. But I think that's just the nature of America.

MR. TABACCO: Couple of things.

We all have heard a lot about SIVs. I dare say that in 2005 if you walked down the street, despite all the postings on the web and all the publications, that nine out of ten, you know, 19 out of 20 people wouldn't have a clue what an SIV was. And, remember, in *OASIS* the Court said, look, it is not a question of is this going to be a -- is the particular activity going to foster the debate generally about the import of organic food. There it's just a question of commercial activity, you put a stamp on a particular product.

Here it's a commercial activity, you put a stamp on an obscure product that no one ever heard of, and it should be measured not now, not today, because Jim Cramer and others have talked about how the financial meltdown has occurred. It has to be in 2005, was this particular statement in this particular investment on anybody's radar screen?

And the answer is no, and quite frankly, it's what the

defendants intended, to limit the audience by limiting the dissemination knowing that it was limited, that how could that now -- how could they now say by putting the stamp on this particular product, that because of other activity that they did that wasn't directly related to this activity that caused the injury, how could they now say that because of the stuff they did later in other forums that didn't affect the investment at all, that that somehow gives them an anti-SLAPP protection.

That's where I think the cases tell us you have to look. You can't draw generalities about the great debate that could happen on both the financial markets; if you're talking about whether Stanfield Victoria, Sigma, whether those three SIVs, obscure products as they were, deserved AAA ratings or not at the time. That's the narrow issue of this lawsuit. That's why we don't think it rises to the public forum.

THE COURT: It's a good argument but I don't agree with you. The *OASIS* case, O-E-S-I-S?

MR. TABACCO: O-A-S-I-S.

THE COURT: There's a line in there in the majority opinion that says if the public was concerned about the standards or the nature of what this designation meant, then that would -- could very well be protected activity, but there was no showing there was any of that in the case. That's what the majority opinion says. It was the very narrow, should a particular product get a particular stamp. That's the distinction to me.

And, again, you keep talking about protections under the anti-SLAPP. It doesn't protect anything. It simply gives a look-see. That's why I like the term, partly because I made it

up, but partly it doesn't shelter behavior. It just requires that the Court look beyond the pleadings at an early stage to see if there is substance to the lawsuit. It doesn't shelter behavior. That's a different body of law.

MR. TABACCO: Well, on those two issues, I've heard your tentative. I've given you my opening salvo. I may come back if my colleagues have anything to say to try something else, but I think you and I can probably sit here for awhile and come to the same conclusions.

THE COURT: I would suspect so but that's what courts are about. All right. Thank you.

MR. TABACCO: Thank you.

THE COURT: Defendants wish to argue?

MR. ABRAMS: No, Your Honor.

MR. COSTER: No, Your Honor.

THE COURT: Only thing that you did differently than I would have done is I wouldn't even have stood up.

All right. Anything further on this?

MR. TABACCO: There is -- we did -- it probably is -- well, I don't know, I'll ask Your Honor. We had lodged, both parties had lodged a series of evidentiary issues with regard to the submissions.

THE COURT: I'll rule on them, but they don't have anything to do with what I'm concerned about here.

MR. TABACCO: This prong.

THE COURT: Right. I've said it too many times but I will say it one more time. Understanding the nature of this motion is crucial to understanding what I'm doing here, and I think

that there has been a sufficient showing by the defendants that using my loose analogy, which I think works, is that they are potentially good guys here so that now the plaintiff has to come in and just satisfy the second prong of the anti-SLAPP statute. And individualized pieces of evidence, as objected to, aren't going to affect the way I look at this, but I will rule on them if you'd like me to, if -- would you?

MR. TABACCO: No, I think given where we are, Your Honor, I don't think it's necessary.

THE COURT: All right. And I think there were some defense matters as well. Do you want me to rule on any of that?

MR. ABRAMS: No, Your Honor.

MR. COSTER: No, Your Honor.

THE COURT: All right. So then we move on to prong two, and let's go off the record and schedule it, figure out what everybody needs, what kind of time and how we do it, all right? Off the record.

(Off-the-record discussion.)

THE COURT: Back on the record. We're talking about what's going to happen next. I asked plaintiffs when plaintiffs would like to file their papers regarding what is called prong two; that is, demonstration of probability of success, and when would you like to file them and what else would you like to say?

MR. TABACCO: Yes. Thank you, Your Honor.

We believe that the date has to be several months out because, as we understand what our burden is under prong two, while we're not going to be presenting our case as if it's ready to go to the jury, we necessarily need, because of the nature of

the allegations in our case, substantial discovery from the defendants and third parties to be able to present to Your Honor the evidence sufficient to make the showing that our case has merit and has a likelihood of success on the merits. To date we've had no formal discovery of -- virtually no formal discovery. We've had a little bit of discovery in the context of jurisdiction, and I will tell you, and probably the CMC presages what you are going to hear, is that we have a substantial disagreement even on the separate issue, which is without the other contract issue.

So I am anticipating that if we gave you a date, say we file by mid-January, there is absolutely no likelihood that I would be able to present and carry my burden, even if it's something below a burden for a jury trial because we necessarily need access to the defendants' books, records and witnesses to make the showing that they didn't do their job in issuing the AAA ratings that they put in these products.

MR. ABRAMS: Your Honor, if that's what they need, they shouldn't have brought the suit. The whole purpose of an anti-SLAPP motion, particularly after the Court has ruled that it does involve protected speech and that the case arose out of the protected speech, is to get to the look-see that Your Honor spoke of in terms of what it is that the plaintiffs have when they sue, not discovery. There are many cases and -- the norm is no discovery at all. There is discovery on good cause, but the whole theory of the anti-SLAPP approach is to give defendants who have engaged in activity which is protected speech a way out of the case, if they deserve it, after the

Court looks at the sort of evidentiary showing. And it's not a trial like, but it is evidentiary that the plaintiffs can come up with and whatever we have to say in response.

When Your Honor said earlier that they have to show that they have enough to proceed with respect to each element in the claim, which is also our understanding, that they ought to be able to do that. That doesn't mean that they have to show enough to win the case, but they do have to show enough to defeat this motion based on what they supposedly had when they brought the lawsuit.

THE COURT: Do you want to respond to that?

MR. TABACCO: I do. It is not to say that we don't have information and evidence, but some of it would not be in a form that's admissible without sponsoring witnesses, foundational questions of authentication. There are pieces that -- my approach on this, as I understand it, is a look-see is not a trial going to the merits, a jury trial going to the merits.

But if you're looking for something beyond what we put in the pleadings, and we have information beyond what we put in the pleadings, but to present that information in an admissible evidentiary framework is going to necessarily require discovery to do that. We're going to have to take depositions, we're going to have to authentic documents, we're going to have to tie up pieces that we have so that we're not going to be faced with the evidence that would, on its face, be probative but not admissible.

THE COURT: Well, the statute says no discovery unless good cause is shown. The whole idea is that there's an early look at

the substance of the plaintiff's claim. I've given -- made a couple of comments as to what the evidentiary standard is. I will be listening to arguments of counsel if you disagree with what I said earlier today. So if you think I'm wrong, that's fine. We'll revisit that, but my understanding of it is that in order to determine whether or not the lawsuit was brought solely for the purpose of chilling behavior, the plaintiff has to show a probability of prevailing. And the cases, as I understand it, you will get to argue otherwise if you want, say what that means is substantial evidence as to each and every element.

Substantial evidence is, in my view, a misunderstood term because it sounds like you have to have a giant pile. I think substantial evidence means evidence of substance to show a prima facie type of analysis, not that you're going to convince a fact-finder. But you'll all be arguing what all that means later.

The standard, though, is no discovery except for good cause shown. And what I'll do is I'll entertain a motion and I think it ought to be a formal motion with analysis of cases discussing what is good cause shown and what is the burden of satisfying prong two and perhaps even what is the responsibility of counsel before you sign off on filing a lawsuit.

MR. TABACCO: Sure.

THE COURT: But I think I ought to do that on the record formally and not now on the fly. Therefore, I think what I ought to do is be flexible as to when the response -- excuse me -- your papers -- it's still a response, but your papers on prong two get filed.

If you're satisfied now that you're going to be making a motion of the nature I described, then we can plan that now and then, depending on how that motion is resolved, figure out when your brief is due on the rest of it.

If you don't know whether you are going to file such a motion, then we can do something else.

MR. TABACCO: I think that it makes sense to anticipate that we make such a motion.

THE COURT: What does the defense want to do here?

MR. ABRAMS: That's fine with us, Your Honor. I think they should make a motion, and we'll respond and appear before you at your convenience.

THE COURT: How long will it take you to put this together? Be mindful that the holidays are upon us.

MR. TABACCO: I am mindful of that, and I recall when we were at the CMC this summer and my colleague said it would take them 60 days to prepare their motion, I expressed shock that it would take so long, but that seems like an eminently reasonable standard all of a sudden.

THE COURT: I thought shock too because I thought, gee, that's awful quick, given the way things happen around here. Let's go off the record for a minute.

(Off-the-record discussion.)

THE COURT: Back on the record. We're going to have a hearing on plaintiff's motion to allow discovery for the second prong of the anti-SLAPP motion. It will be heard at 9:30 on Friday, March 25th, 2011. The last of the papers must be delivered to this Court and filed by March 18, St. Patrick's

day. The briefing will be -- the motion will be filed on February 10, is that what you said?

MR. TABACCO: That's correct, Your Honor.

THE COURT: February 10, and by "filed," I mean filed with the Court, a courtesy copy delivered to the basket and in the hands of your -- the basket in front of the courtroom, and in the hands of your opponent on that day. So electronically delivered or by some other method.

And then the response to the motion, I think you said the 2nd of March, did I get that right?

MR. ABRAMS: Yes, Your Honor.

THE COURT: March 2nd, and the reply --

MR. ABRAMS: I'm sorry. The 3rd, Your Honor.

THE COURT: All right. The 3rd of March. And the reply?

MR. TABACCO: If we did the 17th, that would give us two weeks, give you eight days before the hearing.

THE COURT: All right. You're taking all this time so you can write shorter briefs, I'm sure, right?

MR. TABACCO: Right.

THE COURT: Okay. And so we won't set -- we won't set the hearing date for prong two until I have resolved this.

Let's take a break and then we'll come back and talk about what we're going to do about the other stuff that's going on here, all right? And also I'd like you to think about whether you want me to -- whether you want to generate an order on what I did today and whether you want to talk about going to the Court of Appeal on a writ only after I do prong two.

Remember, the *OASIS* case, prong one ended the motion, and it

was only prong one that was done by the trial judge in the *OASIS* case. So here we might be better off waiting until we finish prong two before you go up on a writ. So we can talk about what kind of order you want.

Normally this happens all at once, but because of the nature of this case, we didn't do it that way. So just give some thought to that, maybe talk to each other. See you in about ten minutes. Okay?

(Recess was taken at 10:43 a.m.)

(The proceedings resumed at 11:09 a.m.)

THE COURT: Okay. Welcome back. Case management conference.

Let's talk for a moment about what I said before I left the room. I think I said it off the record that we should talk about whether you want an order or not and whether, if there's going to be writ review of my anti-SLAPP work, whether it ought to be both prongs at once. I changed my mind. Do whatever you want. And the reason is I don't want to seem as if I'm manipulating the jurisdiction of the Court of Appeal.

If you think you want writ review on what I did today and you think you're entitled to it, then it should go to the Court of Appeal and I shouldn't sequence orders to in any way impact that. Okay?

MR. TABACCO: Let me clarify something, Your Honor. It is our understanding that the writ process would only apply, if we fell under the .17, 17 commercial exception, that the winner or loser of a .16, 425.16, would have an automatic right of appeal. So it's not a writ.

THE COURT: Well, I'm not going to comment on that, but that analysis is what, in part, caused me to say what I just said.

425.17, which they enacted based on legislative findings of a different nature, and changing some of the standards for appeal versus writ and the like, I don't want to get in the middle of all of that, and the Court of Appeal will figure out whether they have an appeal or a writ and what the timing on it is, and I will review any orders submitted to me and have no opinion regarding what I think is an interesting question, the one you just posed, as well as others.

MR. TABACCO: And there is a corollary to that, because we probably wouldn't intend to submit an order; maybe my colleagues on the other side would. Then we think that the SLAPP procedure really, even though it's two steps, and even though you had the *OASIS* case that Judge Munter kind of did in the two bite process, that typically most of the cases we've seen, the whole thing goes up in one shot and that this way the Court of Appeals has everything to decide.

So I think there's a danger of, if you were to issue an order and then, say, we appeal, then the Court of Appeals would have that. Once that happened, if it's automatic, then this Court might be divested of jurisdiction, might get sent down on some procedural ground, and then we would have a second appeal on phase two.

So we think that could be -- if we, at the end of the day, continue to be optimistic that we will have a case at the end of the day, and if we don't, I guess it won't matter. But if we did, then we think the way to do it is to have the order reflect

both prong one and prong two so that whatever side ultimately prevails, would then have everything to bring up to the Court of Appeal in one shot.

THE COURT: Okay. I understand.

Anybody that chooses to submit an order must have it approved as to form by the other side, and if, upon receiving such a proposed order, anybody wants to argue it's premature for me to sign it, may do so. How is that?

MR. TABACCO: Thank you.

THE COURT: Doesn't matter what I say about the Court of Appeal's jurisdiction anyway. They say the trial court opined as to our jurisdiction, thanks for your thoughts. That's the way it works.

All right. So now what? What does anybody want to do going forward between now and when we have the festivities on the second -- well, actually, it would be a motion to open discovery? Anybody have any ideas?

MR. SEAVER: Your Honor, there's a couple outstanding issues. There's the subscription contract affirmative defense that each of the defendants assert and the related discovery. That's number one.

And number two is the outstanding motion to quash by Fitch Ratings Limited and the attendant jurisdictional discovery. So there's reports, progress and otherwise to make to Your Honor and perhaps suggestions of where to go next.

So I can, if Your Honor would like, I'll begin to speak to the contract issue from a discovery standpoint.

THE COURT: Yes. Give me the reports, tell me what you want

to do next; then I'll hear from the defendants as to what they think ought to happen next.

MR. SEAVER: Briefly, the parties served sets of discovery on each other. The parties met and conferred before serving the discovery formally on one another and discussed parameters, and then after discovery was formally served, the parties met and conferred further, several meetings of several hours. So we are -- there are some discovery requests where each side is making substantive responses and providing information and that is ongoing, but there is also significant disagreement over some fundamental scope on the contract discovery.

And on that point, on that disagreement, the sides, at least in plaintiff's view, have agreed to disagree. It affects the scope of discovery that the plaintiffs would like and also the scope of discovery the defendants would like of CalPERS. And so we've -- the parties have stipulated with one another to dates -- I believe it's January 12 or 13th for dates by which the parties would file motions to compel.

MR. DAVIS: Fitch has no such agreement. I am not aware --

THE COURT: Hold on. Let me get everything they're going to tell me and then we'll see.

MR. SEAVER: If I'm wrong on that, I am willing to be corrected, but I believe plaintiff has reached an agreement with Moody's, McGraw Hill and Fitch on a deadline by which motion to compel will be filed.

So for the subscription contract affirmative defense of the defendants, from plaintiff's point of view, it isn't ripe for briefing until the discovery dispute is decided. And I think

we've done -- made tremendous efforts, the defendants and plaintiffs, to try and understand what each other's positions are that in our view is ready for the Court's intervention. It's just a question of how best to tee that up.

And I will leave it there on the contract issue if the -- invite the defendants to comment.

THE COURT: Jurisdictional discovery. Give me your report on that.

MR. SEAVER: Sure. Dan?

MR. BARENBAUM: Your Honor, we have moved on to general jurisdiction and we're going to approach that. I think we're actually narrowing the finish line. We're trying to -- Fitch Ratings, Ltd. and plaintiffs are trying to come up with the final touches of discovery that we might need in order to brief the motion. We've tried to do it with tools that are simple and quick, stipulations and things of that nature, and based on conversations last week with counsel for Fitch, I think we're nearing that.

From Fitch's perspective, I believe, and I'll let Mr. Davis elaborate further, but that they feel that it's critical for their motion to have this deposition of CalPERS' agent so I think that what's driving the date for briefing this, actually, is probably when they're going to finish getting discovery from the agent and when they will be able to take that deposition. And Mr. Davis is in communication with that agent and will be in a better position to report on that.

THE COURT: Thank you.

MR. DAVIS: So with regard to jurisdictional discovery,

we're making great progress. We're talking about some stipulated facts. We still need to do a little work on the stipulations, but I think we're making good progress.

With regard to the deposition of eSecLending, as you know, Your Honor signed a commission which I was to hold in my back pocket. So far I haven't had to take it out of the back pocket because eSecLending has provided us on a rolling basis the documents. They promised they can complete the document production by January 7th. We're looking to have that deposition by the end of January and so we should be in a position, assuming that we don't run into a problem with the deposition or the witnesses' ability to answer the questions or anything like that, which we hope we will not and don't anticipate we will, we should be able to be in a position to start briefing right after the end of January.

THE COURT: Okay. Anything else?

MS. BUTLER: I think that Mr. Seaver adequately and accurately described the state of the parties' discussions with respect to the contract discovery. I think we are still continuing those discussions and we have agreed we will submit any motions to compel, or if there's another way Your Honor would like us to tee that up, by January 12th.

THE COURT: Okay. Anybody want to opine on CCP Section 425.16(g)?

MR. ABRAMS: I was just looking at it, Your Honor, and it is pretty clear on the face of it.

THE COURT: Let's give everybody a chance to open up your books. And we've got a code over there somewhere, I think.

And (g) is a little "g" in parentheses.

MR. ABRAMS: I think looking at it, Your Honor, there might be a distinction, perhaps between discovery relating to who the parties are, the jurisdictional issues, and sort of merits discovery.

As I read it, it's pretty flat about discovery being stayed absent good cause shown, the theory, again, being in the context of an anti-SLAPP motion, the defendants shouldn't have to undergo the burden of discovery, at least as a generality, and I guess I think that's accentuated by your ruling this morning which gets us only over the first hurdle, but at least which rules what Your Honor has ruled. I must confess I didn't come here with an answer to that question ready, but it does seem to me that the message of subpart (g) is quite clear that discovery ought to be stayed until we resolve this issue of whether we ought to be in this courtroom in the first place.

THE COURT: Go ahead.

MR. SEAVER: Well, on the one hand, that part of the statute has already been -- the parties have already been undergoing discovery so if it's a question of whether to do any discovery at all, we've already been doing it. So I don't know that there's harm in continuing to carry out discovery on their affirmative contract defense.

And I think there's a good reason, and that is the idea of the SLAPP statute is that we're talking about a SLAPP motion to strike. The idea is not to have the defendant, or the good guy, have to be dragged through the courts at all, even be subject to anything, undergo expense or burden associated with litigation,

including discovery.

But the way this SLAPP motion has been fashioned in this litigation, the motion to strike, Your Honor exercised the Court's discretion to permit the filing well, well past the statutory deadline to file it, and in CalPERS' view, if Your Honor can do that, you probably have discretion to permit discovery on the contract issue to go forward simultaneously.

THE COURT: Well, I raised it because of the mandatory language. Usually I don't raise strategic things, but there's mandatory language there. I think good cause would include the parties see the wisdom in going forward with discovery that they've already been working on, so if everybody wants to continue that discovery, I am prepared to make a finding of good cause, and the discovery would be on the contract defense as well as jurisdiction.

Yes.

MR. DAVIS: One thought that occurs to me is that since we're going to have a motion on whether or not there will be discovery in connection with prong two, that doing piecemeal discovery until that motion is resolved doesn't make a lot of sense and that it therefore seems to me that at least it might be more efficacious to hold off on this subscription discovery until after the ruling on discovery generally with respect to prong two.

THE COURT: Okay. You're a step ahead of me. All I said so far is if you're willing to do it, I'll find good cause. Are you willing to do -- let's start with what you call the subscription discovery. I assume the plaintiffs wish to go

forward with that.

MR. SEAVER: Yes, Your Honor.

THE COURT: Let's talk about jurisdictional. Do you wish to go forward on that?

MR. SEAVER: Yes, Your Honor.

THE COURT: All right. Defendants, each defendant give me whether you are willing to go forward on subscription and/or jurisdiction.

MR. DAVIS: Your Honor, since I am the only one on jurisdiction, we are prepared to go forward on that jurisdictional discovery review. We know the issue of jurisdiction as different than anything connected to the merits of the case in any way.

THE COURT: All right, then. As to the jurisdictional discovery, I see the wisdom implicit in the responses by the parties that if there's going to be some down time, we could use it productively on that discovery and that, to me, is sufficient to satisfy the (g) requirement of good cause so I find good cause for the jurisdictional discovery to go forward and that may.

Now, subscription defense discovery. What's the defendants' positions on those?

MR. COSTER: Your Honor, as to Moody's, obviously, we're continuing the meet-and-confer process and we think that makes sense. I don't know that it makes sense to go forward if we're unable to agree to go -- to starting engaging in motion practice, but I do think it makes sense to continue what we've been working on in terms of trying to work out our differences

and see if we can agree on what should be produced and then produce that.

THE COURT: Okay. Let me transmute that into a declaratory sentence, not what you don't think or do think.

Are you willing to go forward in any sense on subscription discovery?

MR. COSTER: Yes, we will continue the meet-and-confer process and produce that which we agree to at the end of the process.

THE COURT: Are you willing to go forward on subscription discovery to the extent that I would hear disputed matters regarding it, like motions or have informal sessions and the like?

MR. COSTER: We don't think it makes sense to go forward with respect to motion practice, Your Honor, motions to compel.

THE COURT: So that was a no.

MR. COSTER: Yes, Your Honor. That's correct.

MR. ABRAMS: Your Honor, I would echo that no. Counsel can do whatever counsel is prepared to do informally, but in terms of the processes of the Court, I don't think, consistent with subsection (g) and the purpose of the anti-SLAPP statute, that Your Honor ought to as a court order the discovery to proceed on this.

MR. DAVIS: For Fitch, I agree.

MR. SEAVER: If I may, Your Honor, a couple things.

First, back in July, the defendants and plaintiff agreed to go ahead with discovery notwithstanding 425.16(g). I'm not sure the reasons for the reversal position of the defendants now, but

the second thing is a question of fairness.

The defendants capitalized on subscription contract discovery in their SLAPP motion. They took interrogatory answers that CalPERS had provided in the course of that discovery and used it so they've already utilized what they're saying now should not be done, and that's discovery during the SLAPP -- discovery, even though it was brought in the contract issue, they used it in the SLAPP context.

So as a matter of fairness, you know, just as a question of what makes sense and what doesn't make sense, I think it's hard to credit an argument that says it doesn't make sense to have any discovery going on that's simultaneous with the SLAPP motions and oppositions and whatnot. It's already been done and it can go forward.

THE COURT: Well, I'm not sure that good sense is good cause. Maybe it ought to be in a hypothetical jurisdiction, but I don't know about that here. So here's what I'm going to do. I find good cause for subscription discovery to go forward to the extent the parties are willing to do so. And to the extent that there is no agreement, you may make a motion to be heard -- to be briefed and heard in accordance with the discovery on the prong two motion.

You can make another motion to have me find good cause to have anything that you won't agree upon go forward, and the issue there would be whether there is good cause to have such discovery go forward. So do what you're willing to do on subscription; that's good cause as far as I'm concerned.

That which you're not willing to do, figure out what that

is, and if you want to make a motion for me to find good cause, then we'll just have one-stop shopping when we do the other motion. Okay?

MR. COSTER: Thank you, Your Honor.

THE COURT: Use the same briefing schedule. If that causes a problem, then get me on the phone and I'll resolve any disputes regarding the briefing schedule for this possible second motion regarding the subscription discovery. But we'll hear it at the same time, and the last brief, no matter what, will be due on the same day as the last brief on the other motion.

And just to be completely clear, what I just said only applies to the subscription discovery. The jurisdictional discovery, everybody agrees should go forward, and I have already found that is good cause for me to allow it to do so. All right?

MR. COSTER: Thank you, Your Honor.

THE COURT: All right. What else?

MR. SEAVER: Your Honor, there is a matter of a protective order. The parties have met and conferred extensively, exchanged drafts with some success, but there are a handful of areas where the parties don't agree, so from CalPERS' perspective, the point at where we are is to submit an order by motion for Your Honor in due course, and if defendants want to oppose it, they would obviously be able to do so.

THE COURT: What don't you agree on? This isn't the greatest thing to hit Western jurisprudence. It's just a protective order. What's the hangup?

MR. SEAVER: Couple of the key disagreements are the scope; number one, what is the scope of what can be designated as confidential?

THE COURT: How about this: You can designate anything you want and the other side at any time can ask me to change the designation.

MR. SEAVER: The issue there, Your Honor, is that it permits just blanket designations of everything and, first of all, it would not be in accordance with the California rules; and, secondly, it presents a practical problem that, you know, anytime you've got motion practice papers submitted to the Court, you're talking about numbers of motions to file things conditionally under seal or challenges, not to get too ahead of ourselves, but you could be talking about hundreds and hundreds of challenges.

THE COURT: What do you want as a standard?

MR. SEAVER: We think the standard should mirror what is the definition of what is confidential. That's trade secrets, commercial -- highly sensitive commercial information, but the burden in the first instance is on the party making the designation and that wholesale designation is not permitted.

THE COURT: I don't know what "wholesale" means. You mean you have to do each document individually or you can't say all of our internal analyses of how we reach our ratings are confidential. You wouldn't be allowed to do that?

MR. SEAVER: By wholesale, I mean that every piece of paper that comes off the printing press with a Bates number also has a confidential stamp on it without any discretion.

THE COURT: All right. Would you be satisfied with a standard that requires that a party designating the document have a good faith belief that it is confidential under applicable law?

MR. SEAVER: I don't think, in all candor, Your Honor, I don't think that that standard would get us very far.

THE COURT: You want to list the specific items that would qualify for confidentiality?

MR. SEAVER: Yes, by category. And it puts a finer point on it than a good faith effort.

THE COURT: Good faith belief.

MR. SEAVER: Good faith belief, yes.

CalPERS would suggest that trade secrets, financial information, internal financial information, and items that are personal or private, those things.

THE COURT: Well, personal or private, that just wiped out what you are trying to accomplish. You can't use the word personal or private. That's pretty broad.

MR. SEAVER: Well, to the extent a document would contain someone's, you know, an individual employee's cell phone, mobile telephone number or something like this, or their top secret chocolate chip cookie recipe, I don't know, something that is confidential, personal, private.

THE COURT: That's personal and private. Not personal or private.

What else besides individual confidential information, trade secrets. Are you going to say financial information so that a 10-Q, which is financial information but filed with the SEC,

would be covered?

MR. SEAVER: No. Internal financial information. We think what should be avoided is -- we have this anomaly where the rating agencies, even here today, the defendants say everything is public, it's disseminated, but the parties are at an impasse about the language of what could be produced in discovery.

THE COURT: I got it. I understand.

From the defense perspective, are you willing to go along with a list that specifies categories which would be confidential, not publicly disseminated financial information, trade secrets, and personalized matters like somebody's phone number?

MR. DAVIS: Your Honor, that's too narrow, from our perspective. You look at us here and you think we're all one big happy family, but in fact we're all serious competitors and there's competitively sensitive information. I represent the smallest and so we are particularly sensitive about competitive information.

THE COURT: I got it. I don't look at you as one big happy family. One of the things I used to do when I was in your seats, I used to try to find a different table to sit at, like by the water cooler or something.

I can tell you what I think ought to happen or you can submit motions and do whatever you want.

MR. SEAVER: All right. I think on that question of what is permitted to be designated confidential, right off the bat is an area where the parties disagree. We have specific language that I have in front of me. We suggested that. We have not yet been

able to come to an agreement. I don't think it has to be a major production. If the parties can't agree, it would be a simple thing probably if competing language which could be ultimately one set of language or another could be chosen by Your Honor and an order ultimately entered.

THE COURT: I guess that means you don't want to hear my idea?

MR. SEAVER: Always willing to.

THE COURT: Here's my idea. That the standard be that the designator have a good faith belief that the item designated is confidential, is justifiably entitled to confidential treatment under applicable law, and that the non-designated -- non-designating party could ask for court review, and upon such court review, the burden of establishing confidentiality is on the designating party.

I'll sign that. If you want to try something else, that's fine too.

What's the next issue?

MR. SEAVER: On the protective order, I think in terms of, you know, importance, the next issue would be the provision the parties have gone back and forth on regarding experts.

If a party has an expert witness, testifying expert or consulting expert, that the protective order lists persons to whom items marked confidential or highly confidential can be disclosed to. And it comes as no surprise that parties agree that experts testifying or consulting should be able to have access to confidential or highly confidential information.

The caveat the defendants would like to that is something

plaintiffs can't agree to; is that the expert, whoever the person is, cannot be a potential competitor with the defendants.

First of all, I think that is an unworkable standard. Read a certain way, it could rule any expert out from having information produced in a case marked confidential disclosed to him or her, and the other side would have the ability to seek sanctions for breaching a court order, a protective order. And it puts an enormous amount of risk on a party trying to live up to that order. It's just not necessary.

So we have a disagreement about that.

THE COURT: A standard way of handling that, not the only way, but a standard way, is to have everybody who this information is shown to, sign an agreement to be bound by the terms of the protective order which would say can't use it for any purpose other than the litigation and to rely on such person to abide by that, whether or not he or she ultimately competes with one of the parties. That's a standard way of doing it.

And this problem, by the way, works both ways, because CalPERS may not want people, an expert for the defense who talks about institutional investment standards, to see the confidential stuff and it wouldn't necessarily have to be anticompetitive. It could be something that would help somebody market services to you people, knowing how your secret ways of analyzing things are. So it's in everybody's interests to agree.

I have found it unwieldy in the past to try to identify persons to whom you can't show it to because they are either competitors or likely to be competitors or might be competitors.

That, plus it's my personal view that if I order somebody not to use anything for a purpose beyond that which they're allowed to see it for that, they're going to follow that order, but I am mindful that enforcing that has problems.

My bottom line on this is that, imperfect as it is, the idea that you abide by the court order is probably sufficient protection. I can't recall ever seeing an order whereby categories of people were carved out as being not allowed to be shown the stuff which is tantamount to saying you can't use these people as consultants or experts.

So my advice is that -- or my statement is I'll sign one that says that if you show it to somebody, they're going to be bound by the protective order and that's going to include you can't use it for other purposes, but I'll consider anything that the parties have in mind regarding restrictions on who those people might be. It's really hard to figure it out, real hard.

Next.

MR. SEAVER: The next thing would be inadvertent production. We mostly agree, but there's just one bit at the end of what happens if one side inadvertently produces something privileged to the other.

THE COURT: I got it.

MR. SEAVER: CalPERS would like the order to reflect that if a party receives information through discovery that's inadvertently produced that here's what happens: That it -- well, the other side will notify it, first of all, and then let's say it's CalPERS that receives something that's inadvertently produced by defendant. CalPERS then can't use it,

can't refer to it, can't do anything with it. And then the other sides says, look, we inadvertently produced, we want it back, we would like you to destroy it, or whatever it is, and there's a set process reflected in the order how that's done.

And if it is inadvertently produced, then in this hypothetical CalPERS would certify its destruction or its return, or if it's an electronically produced thing, that every bit of data is wiped off of CalPERS' repository.

The defendants, on the other hand, wish that once CalPERS in this hypothetical is notified that they have something that was inadvertently produced that it's given back straight away; then the burden is on CalPERS in this instance to move and show that it wasn't inadvertently produced.

THE COURT: I got it. All right. Some day I hope to meet the person who invented the term "clawback" because it's a disservice. These things ought to be called "Bring Bambi Home" provisions because clawback implies all of the problems that you just described, an adversarial thing.

As a matter of fact, I have my opinion as to which gender came up with this one. I think it's the males came up with this one because it's so full of testosterone, it's unbelievable.

It's real simple, I think. I will sign something that says in the event there's a claim of inadvertent production or in the event that the recipient gets something and has a good-faith belief that it could have been inadvertently produced -- you receive internal lawyer-client communications with no evidence that it went out beyond the lawyer and the client -- that the parties shall meet and confer to resolve it; and that failing,

bring it to my attention. And during the course of that, no use be made of it -- or no further dissemination be made of it is a better way of putting it.

I will sign that.

If you want to go into lots and lots of procedures, some of them might very well be quite reasonable and workable and I'll certainly consider them, but I will sign something that simplifies it down to a common denominator.

Talk about it. If you can't reach an agreement, come to me.

Next.

Where did the thing "clawback" come from? It had to be New York, right?

MR. DAVIS: It's a bankruptcy term so some bankruptcy lawyer must have had an inadvertent production problem.

THE COURT: It actually had to do with conveyances of property originally within the 90-day period plus a fraudulent conveyance period, is where I think it really came from, but it still came from a New York lawyer, I am sure.

MR. DAVIS: Probably so.

THE COURT: And having worked with a bunch of them, I can give you four or five candidates that are not in this room.

MR. DAVIS: Thank you, Your Honor.

THE COURT: All right. Next.

MR. SEAVER: Nothing further.

THE COURT: All right. Anything further from you guys on the protective order?

MR. DAVIS: I think with Your Honor's suggestions and so on, further meet-and-confer is definitely appropriate, and I'm

optimistic.

THE COURT: I didn't order anything. I just gave you some suggestions. If there are better ways, then I'll learn something about better ways. That's fine. You won't hurt my feelings. But like I said, this thing is not the greatest thing to hit Western jurisprudence, and the last paragraph should say something like, "This is subject to further court order," which it is anyway so if something isn't working, you can always come in and say, Woe, we have a problem now. All right?

Anything else for today?

What I have in mind is to set a case management conference for the same day as the motions hearing date.

MR. COSTER: That makes sense.

THE COURT: What was that?

MR. ABRAMS: March 25.

MR. DAVIS: March 25th at 9:30, Your Honor.

THE COURT: Case management conference. Let me know what's going on. If you need me between now and then, you can get me on the phone or you can get on my calendar. Otherwise, brief all these things and see what happens next.

Anything further? Don't say "no," just say "yes" if you have something.

All right. Off the record.

(Whereupon, proceedings adjourned at 11:49 a.m.)

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State of California)
)
County of San Francisco)

REPORTER'S CERTIFICATE

I, Janet S. Pond, CSR No. 5292, Official Court Reporter for the Superior Court of California, County of San Francisco, do hereby certify:

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

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

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

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

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

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

Dated: December 12, 2010

_____

Janet S. Pond, CSR No. 5292