

Exhibit 3

Deposition of Jason Cobb as Conducted by Anthony
V. Smith on Tuesday, October 11, 2011

Jonathan Cobb Sr. and Walter St. Clair
vs.
Ernest Brede et al.

Jason Cobb
October 11, 2011
Pages 1-197

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

JONATHAN D. COBB, SR., and WALTER ARLEN ST. CLAIR, Plaintiffs,

vs. No. 3:10-CV-03907-MEJ

ERNEST BREDE, LUIS CONTRERAS, PAUL KOEHLER, LARRY LAVERDURE, DONALD SHOWERS, AARON LUCAS, STEVE MISTERFELD, ALAN SHUSTER, RICHARD ASHE and DOE SDG:SSX, Defendants.

DEPOSITION OF JASON COBB Tuesday, October 11, 2011

REPORTED BY: NIKI MAKELA, CSR NO. 11024

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A P P E A R A N C E S

FOR THE DEFENDANTS:

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TELEPHONICALLY PRESENT:

Brenda Tolbert, Courtroom Deputy for Judge James Chris Nathan, Law Clerk for Judge James

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BE IT REMEMBERED that, pursuant to Deposition Subpoena, and on Tuesday, October 11, 2011, commencing at the hour of 9:55 a.m. thereof, at Circle Video Productions, 1350 Old Bayshore Highway, Suite 60, Burlingame, California, before me, NIKI MAKELA, a Certified Shorthand Reporter, there personally appeared JASON COBB, called as a witness by the Defendants, and who, being by me first duly sworn, was thereupon examined and testified as hereinafter set forth.

--oOo--

P R O C E E D I N G S

MR. SMITH: We are on the record here. We were prepared to move forward with the deposition of Jason Cobb. He is under court order to appear today at 9:30. He confirmed his attendance yesterday by e-mail. I left a message on Mr. Cobb's cell phone or phone number that is contained in his lawsuit that he filed in San Mateo County Superior Court, phone number being 650-815-1547, calling to confirm whether he intends to appear.

I left the phone number of the location where we are at, Circle Video, that number being 650-340-8455.

We will wait around for a few more minutes, another five or ten minutes or so and see if he appears. If not, we will reconvene. We will get back on the

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<p>(1) record and perhaps contact the judge and suspend these</p> <p>(2) proceedings for the time being, but maybe he will show.</p> <p>(3) (Break in proceedings.)</p> <p>(4) EXAMINATION BY MR. SMITH</p> <p>(5) MR. SMITH: Q. Could you state your full name</p> <p>(6) for the record?</p> <p>(7) A. Jason Everett Cobb.</p> <p>(8) Q. Have you ever had your deposition taken before,</p> <p>(9) Mr. Cobb?</p> <p>(10) A. No.</p> <p>(11) Q. Have you ever had or given testimony in a court</p> <p>(12) of law before?</p> <p>(13) A. No, I don't think so. I'm pausing to check. I</p> <p>(14) spoke to a judge in traffic court once, so I don't know</p> <p>(15) if that qualifies. I will let you decide.</p> <p>(16) Q. Okay. Have you ever been a party -- let me</p> <p>(17) back up. Let's go over some ground rules about today's</p> <p>(18) session so we can make for a clear record.</p> <p>(19) It is important that you speak audibly because</p> <p>(20) nods of the head, because "uh-huhs" and "um-hums" don't</p> <p>(21) make for a clear record. So it is important that you</p> <p>(22) give an audible response. Is that agreed?</p> <p>(23) A. Okay.</p> <p>(24) Q. I will assume that you understand my question</p> <p>(25) when I ask it and when you answer it. So if there is</p>	<p>(1) Q. Make yourself comfortable. I think there might</p> <p>(2) be some breakfast bars over there too.</p> <p>(3) A. All right.</p> <p>(4) Q. So let me ask: Have you ever been a party to a</p> <p>(5) lawsuit before?</p> <p>(6) A. No.</p> <p>(7) Q. You have never been a party to a lawsuit?</p> <p>(8) A. I don't believe so. I mean I am certainly a</p> <p>(9) party to lawsuits at present, but you know...</p> <p>(10) Q. That would include the present. So any time in</p> <p>(11) the past and the present?</p> <p>(12) A. Yeah, there are other lawsuits.</p> <p>(13) Q. So presently you are parties to a lawsuit,</p> <p>(14) correct?</p> <p>(15) A. Yeah. And that will impact the scope of the</p> <p>(16) discussion today because a number of -- most of what you</p> <p>(17) requested would be counted as privileged relative to one</p> <p>(18) of those actions.</p> <p>(19) Q. We haven't even gotten to that yet.</p> <p>(20) A. Okay.</p> <p>(21) Q. So we will address that as we go.</p> <p>(22) A. Sure.</p> <p>(23) Q. Why don't you give me the names of the cases in</p> <p>(24) which you are a party at present?</p> <p>(25) A. Why would you need that?</p>
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<p>(1) something -- sometimes I don't ask the best question and</p> <p>(2) I don't profess to be the best questioner, but if there</p> <p>(3) is something about my question that you are not clear</p> <p>(4) about, let me know and I will try to rephrase it. Okay?</p> <p>(5) A. Okay.</p> <p>(6) Q. Are you on any medication that would prevent</p> <p>(7) you from moving forward today with the deposition?</p> <p>(8) A. I do have medication. I don't believe it would</p> <p>(9) inhibit.</p> <p>(10) Q. So you are feeling physically fit to go through</p> <p>(11) and have this discussion today?</p> <p>(12) A. I am feeling as well as I can.</p> <p>(13) Q. Okay.</p> <p>(14) A. I am, you know, having some health challenges.</p> <p>(15) I drove here today. I think I have been responsive thus</p> <p>(16) far. I think we will be okay.</p> <p>(17) Q. Okay.</p> <p>(18) A. If it changes, I will let you know.</p> <p>(19) Q. And just to let you know, if at any point you</p> <p>(20) need to take a break, just let me know and we can take a</p> <p>(21) break. We will probably break for lunch at some point</p> <p>(22) so we can finish this. Just let me know if you want to</p> <p>(23) get some water. We have water available and there is</p> <p>(24) coffee over in the cafe across the way there.</p> <p>(25) A. Okay.</p>	<p>(1) Q. I'm entitled to conduct discovery relating to</p> <p>(2) any potential claims of defenses in this lawsuit filed</p> <p>(3) by your father and Mr. St. Clair, and that also may bear</p> <p>(4) on the defenses that may be asserted by the defendants.</p> <p>(5) This is just general discovery. I don't plan</p> <p>(6) on going into any particulars about these lawsuits. I</p> <p>(7) just want to know the places they are filed and the</p> <p>(8) names of the lawsuits.</p> <p>(9) A. Yeah, I will decline that question.</p> <p>(10) Q. Okay. So you refuse to provide the names of</p> <p>(11) the lawsuits to which you are a party; is that correct?</p> <p>(12) A. I don't see how that is relevant --</p> <p>(13) Q. Okay.</p> <p>(14) A. -- for the scope of this discussion.</p> <p>(15) Q. Now, you understand you are here today as a</p> <p>(16) witness in the matter filed by your father and</p> <p>(17) Mr. St. Clair against various defendants; is that</p> <p>(18) correct?</p> <p>(19) A. I do.</p> <p>(20) Q. And you understand you are not a party to this</p> <p>(21) lawsuit; is that correct?</p> <p>(22) A. Yes.</p> <p>(23) Q. Okay. So the scope of our --</p> <p>(24) A. Am I loud enough so far?</p> <p>(25) THE COURT REPORTER: Yes.</p>

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(1) **MR. SMITH: Q. So the scope of your testimony**
(2) **relates to your knowledge pertaining to facts or**
(3) **relating to the lawsuit. Do you understand that?**
(4) A. Yeah, I believe I do. Yeah.
(5) Q. Okay.
(6) A. Which is not a waiver for any subsequent
(7) question. Each question presented will be evaluated on
(8) a case-by-case basis as to whether or not I will provide
(9) a response.
(10) Q. Could you give me your current residence
(11) address?
(12) A. 1101 Menlo Oaks Drive.
(13) Q. How long have you resided at 1101 Menlo Oaks
(14) Drive?
(15) A. Since February 2011.
(16) Q. Are you married?
(17) A. Yes.
(18) Q. And your spouse's name?
(19) A. Relevance?
(20) Q. Again, this is background information. Your
(21) spouse's name is Jennifer, if I'm not mistaken; is that
(22) correct?
(23) A. What is the relevance?
(24) Q. I'm here to ask the questions. If you don't
(25) want to answer, just tell me and you can decline to

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(1) answer it.
(2) A. Okay.
(3) Q. We don't have to get into relevance and issues
(4) about what is relevant, those are decisions to be made
(5) by the judge. If you refuse or decline something, just
(6) tell me you refuse or decline so then I'm not wasting
(7) your time and you are not wasting my time. Okay?
(8) So you refuse to answer the question about the
(9) name of your spouse; is that correct?
(10) A. Correct.
(11) Q. Do you have any children?
(12) A. I do.
(13) Q. And your children's names?
(14) A. I will decline.
(15) Q. Okay. So you refuse to answer the question
(16) relating to your children, is that correct, their names?
(17) A. Yes.
(18) **MR. SMITH: Why don't we go ahead and mark the**
(19) **first exhibit.**
(20) **(Whereupon Exhibit 1 was marked for**
(21) **identification.)**
(22) **MR. SMITH: Q. I would like for you to take a**
(23) **moment to review what has been marked as Exhibit 1,**
(24) **which is an order compelling you to appear for the**
(25) **deposition today. Just take a minute to read that.**

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(1) A. Um-hum.
(2) Q. So you understand you are here pursuant to a
(3) court order to provide deposition testimony; is that
(4) correct?
(5) A. That is correct.
(6) **MR. SMITH: Let's mark the next in order.**
(7) **(Whereupon Exhibit 2 was marked for**
(8) **identification.)**
(9) **MR. SMITH: Q. Did you have a question that**
(10) **you wanted to ask?**
(11) A. No. Rounding out the previous point, yes,
(12) there was a court order that was given. The court
(13) order, as far as appearing for the deposition, was
(14) specific to October 5th which came and went without
(15) occurrence. I am here of my own volition as far as, you
(16) know, going through the process; but that aspect of the
(17) court order is not binding for today --
(18) Q. Okay.
(19) A. -- based on my reading of it. I just want that
(20) to be a point of record and that was specific to
(21) October 5th and today is October 11th.
(22) Q. Are you aware that you appeared on October 5th
(23) for your deposition, correct?
(24) A. Um-hum.
(25) Q. And at that time, we had a snafu with the court

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(1) reporter not being present. Do you recall that?
(2) A. That's correct.
(3) Q. And do you recall we had a conversation --
(4) strike that.
(5) Do you recall that we made attempts to
(6) reconvene the deposition at 12 o'clock on that day,
(7) correct?
(8) A. There were discussions of that as a course of
(9) action. I'm not sure if that was ever defined.
(10) Q. In fact, you arrived back here at Circle Video
(11) at 12 o'clock with the attempt -- with the thought that
(12) we could reconvene your deposition?
(13) A. Right.
(14) Q. Isn't that correct?
(15) A. That arrival was pursuant to reviewing your
(16) voicemail stating that you were having difficulty in
(17) getting the required reporter and so it was in question
(18) as to whether or not it would occur. I happen to be in
(19) the area pursuant to lunch.
(20) Q. That's fine. We had some discussions about
(21) continuing it on the 6th of October, correct?
(22) A. There were general discussions of a continuance
(23) and we needed to settle on a time.
(24) Q. And you actually agreed to contact me by
(25) 4 o'clock on October 5th to confirm whether or not you

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(1) could appear on October 6th for your deposition; isn't
 (2) that correct?
 (3) A. Yes.
 (4) Q. And I informed you that if I didn't hear from
 (5) you by October -- by 4:00 p.m. on that day, that I would
 (6) seek an order from the court extending the time to
 (7) complete your deposition, isn't that correct? Do you
 (8) recall that discussion?
 (9) A. What I recall is a statement that you would
 (10) generally submit an order to extend time for discovery.
 (11) It wasn't my understanding that that was specific to my
 (12) deposition.
 (13) Q. I will represent to you it was specific to your
 (14) deposition. I will also represent to you as I did
 (15) e-mail you a copy of the order extending the time for me
 (16) to complete your deposition up to and including
 (17) Thursday, October the -- what is this Thursday? I think
 (18) it's the 13th. And you received a copy of that order,
 (19) didn't you? I e-mailed it to you.
 (20) A. I do remember seeing multiple e-mails, and I
 (21) believe one e-mail had a reference.
 (22) Q. So you understand then that what has been
 (23) marked as Exhibit 2 -- excuse me -- Exhibit 1, the order
 (24) compelling your attendance, is still in full force for
 (25) today's deposition? I want you to be aware of that.

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(1) A. I will reserve judgment on that, but I
 (2) acknowledge your statement.
 (3) Q. Okay. Why don't you take a look at Exhibit
 (4) Number 2. I would like for you to read that. I will
 (5) represent to you that is a protective order that has
 (6) been issued by Judge James, the judge in this case, that
 (7) was filed on September 26th, 2011. I need you to read
 (8) this entire exhibit. And the reason I need you to read
 (9) it is because I may ask you questions about certain
 (10) documents that will be labeled as confidential, and I
 (11) will need you to either agree or not agree to sign
 (12) Exhibit A to that order, which is an acknowledgment and
 (13) agreement to be bound to the terms of this protective
 (14) order. So we can just take a few minutes for you to do
 (15) that.
 (16) A. Had page 13 been included previously?
 (17) Q. It is directly from the court's website.
 (18) A. I have read it, but I'm reviewing it to the
 (19) extent possible to verify that this is the copy that I
 (20) read. Without the benefit of the document that I had in
 (21) hand for initial review, I can't say for sure if it is
 (22) precisely the same to the letter. It appears to be the
 (23) same document.
 (24) So I will acknowledge reading this today on
 (25) October 11th, and I will check back with the original

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(1) copy that I reviewed. Okay.
 (2) And what was the next point? So Exhibit A?
 (3) Q. You have had an opportunity to look at
 (4) Exhibit --
 (5) A. Two.
 (6) Q. -- two, and I'm representing to you that this
 (7) is the exact copy of the order that was issued by Judge
 (8) James, which concerns a protective order issued in this
 (9) matter of Cobb vs. Brede, and I requested that you sign
 (10) Exhibit A because in the course of your deposition I
 (11) will have to ask you questions that I have marked as
 (12) confidential pursuant to this order. So I need to know
 (13) whether you are willing to be bound by the
 (14) confidentiality order that was issued by Judge James.
 (15) Let me also caution you that your refusal to be
 (16) bound by this confidentiality order in this deposition
 (17) may affect your future participation in this case as a
 (18) witness.
 (19) A. I'm looking at page 2 of Exhibit 2 at the
 (20) different designations under "definitions" to determine
 (21) which category I would fall into. Which category do you
 (22) feel I would fall into?
 (23) Q. I'm looking for the provision where it
 (24) indicates that use of confidential information during
 (25) the course and scope of a deposition could subject the

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(1) witness to the provisions of this order.
 (2) A. So I'm wondering how something could be marked
 (3) as confidential. Has this been signed by both parties,
 (4) plaintiffs and defendants?
 (5) Q. Okay. I get to ask the questions. I will help
 (6) clarify any confusion you might have about the court's
 (7) order. This protective order has been the subject as
 (8) you well know of a lot of discussion between your father
 (9) and Mr. St. Clair on the one hand and myself.
 (10) A. Right.
 (11) Q. And so the judge issued her order after hearing
 (12) all the discussion from all parties over a period of
 (13) several months so we could move this case along.
 (14) A. Understood. And that question was presented in
 (15) the spirit of clarification.
 (16) Q. Okay.
 (17) A. Because I'm wondering if it is appropriate for
 (18) me to sign Exhibit A prior to the actual plaintiffs and
 (19) defendants signing off on the order itself.
 (20) Q. There is no reason -- there is no need for any
 (21) of the parties to sign off on the order. This is the
 (22) judge's order. What we could do so we don't waste time
 (23) here, we can contact -- there is a procedure to deal
 (24) with when we have discovery disputes in the course of a
 (25) deposition and that is essentially to call the judge and

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(1) see if we could have her conference in and help us
 (2) resolve this.
 (3) Again, this is the judge's order that we are
 (4) dealing with. This is after she has reviewed proposed
 (5) order by both your father and Mr. St. Clair on the one
 (6) hand and myself on the other hand. She came up with her
 (7) own order drafted for this particular case.
 (8) So on that basis that we are -- that I have
 (9) requested that you sign this. Essentially, I need to
 (10) ask you questions about some bank records that contain
 (11) private information. So I need to have this order
 (12) signed in order for me to do so.
 (13) A. Yeah, I get the point. And this is part of
 (14) helping me, Anthony, in terms of the process. I'm
 (15) already privy to all that information in most cases, and
 (16) I probably have been the source of that information.
 (17) So I'm struggling with why I would need to sign
 (18) something since I'm privy to that information in view of
 (19) what I believe is my station in the corporation. My
 (20) duties relative to the corporation are not subject to
 (21) the court order would be my understanding.
 (22) And then I do have a concern about my signing
 (23) something ahead of the actual parties in the action.
 (24) I'm not aware of any provisions that they may have to
 (25) appeal the order or to suggest alternative verbiage.

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(1) I'm just not aware of that.
 (2) Q. Okay. Let me turn your attention to page 7 of
 (3) Exhibit 2 --
 (4) A. Okay.
 (5) Q. -- under the subheading "Access to and use of
 (6) protected material." Actually, the point that I wanted
 (7) to refer you to comes up on page 8 --
 (8) A. Okay.
 (9) Q. -- actually, Subsection 7.2, "Disclosure of
 (10) Confidential Information or Items." And I would like
 (11) for you to read Subsection F contained on page 8.
 (12) A. Okay.
 (13) Q. Read it out loud, if you could.
 (14) A. "During their depositions, witnesses in the
 (15) action to whom disclosure is reasonably necessary and
 (16) who has signed the acknowledgment and agreement to be
 (17) bound, Exhibit A, unless otherwise agreed by the
 (18) designating party or ordered by the court."
 (19) Q. So just to put this in a better perspective, if
 (20) we turn back one page to page 7, the beginning of 7.2,
 (21) that heading that I just referred to, it says that
 (22) "Unless ordered by the court or permitted in writing by
 (23) the designating party, a receiving party may disclose
 (24) any information or item designated confidential only to"
 (25) and that would include that Subsection F that you read.

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(1) Despite the fact you may have been privy in
 (2) some fashion for some of the documents that may be
 (3) deemed confidential in this case, I'm still required
 (4) pursuant to this order to obtain your consent or your
 (5) agreement to be bound by the terms of the
 (6) confidentiality order.
 (7) Now, I don't want to spend a lot of time going
 (8) back and forth on this. If it is just easier, we can
 (9) just call the judge up. That is the procedure that we
 (10) are required to use in the Northern District Federal
 (11) Court here in California. If we have a dispute in the
 (12) course of a deposition, Judge James has a standing order
 (13) on how to resolve this.
 (14) A. Okay.
 (15) Q. This is the reason -- it is reasonably
 (16) necessary that I disclose what clearly are confidential
 (17) documents, specifically applications to open up a Wells
 (18) Fargo bank account that contains private confidential
 (19) information, identification information, which I have
 (20) not redacted so that it is clear that I have not altered
 (21) documents that were produced by Wells Fargo pursuant to
 (22) an earlier subpoena. So that's the reason. I have
 (23) stated my point on the record. If you want to take a
 (24) minute to think about this, do that.
 (25) A. No, there is no need for that. I have two

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(1) responses. The first response is a question for
 (2) clarification. The scenarios that enter my mind as I
 (3) listen to you are two. I have another action that will
 (4) deal with this exact same material that I'm preparing
 (5) for currently, which is privileged. And I will need to
 (6) have free access to the very documents that you
 (7) reference I believe in part are contained within my
 (8) actual complaint. And so there is no way that I could
 (9) be bound in my usage of that material for my other case.
 (10) The other scenario is pursuant to duties
 (11) relative to the corporation -- financial reports,
 (12) financial statements, statements of financial state to
 (13) members or others as part of the regulated duties for a
 (14) corporation. And so I'm wondering if signing this
 (15) document would preclude any actions on my part in those
 (16) regards.
 (17) Q. Quite frankly, I'm not here to give you legal
 (18) advice, but practically speaking I don't see how
 (19) following the court order in a Federal Court case would
 (20) bar you from performing any obligations you are legally
 (21) obligated to perform?
 (22) A. Right.
 (23) Q. So --
 (24) A. But let me be specific. One of the rules for a
 (25) nonprofit corporation that any member at any time can

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(1) request information specific to the financial state of
(2) the corporation present or past, and so that would
(3) include protected materials based on your criteria and
(4) so there we have an issue.
(5) Q. Well, let me just remind you this is the
(6) judge's criteria. I'm not going to render an opinion
(7) about your view of the order. I think what we will do
(8) is just call the court clerk and see if we can get the
(9) judge on the phone pursuant to her standing order.
(10) Clearly we have a discovery dispute that will affect the
(11) balance of this deposition and perhaps your future
(12) testimony in this case or availability of your testimony
(13) in this case. So why don't we follow Judge James'
(14) standing order. Let me go there.
(15) A. So this is with her being on the phone and not
(16) her clerk?
(17) Q. Well, let me read you the procedure. It is on
(18) the website. Actually, this is an Internet enabled
(19) room, so if you -- for the purposes of looking to ensure
(20) that I am being accurate --
(21) A. No, I won't be accessing the Internet here.
(22) That can open a can of worms.
(23) Q. I'm referring to the Honorable Maria Elena
(24) James' standing orders. She has a standing order re
(25) discovery effective September 23, 2010. Again, I'm

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(1) referring to standing orders that are located on her
(2) website. The order is entitled in caps, "Standing
(3) Order." Below that, "Discovery and Dispute Procedures."
(4) The relevant aspect of that order as it relates
(5) to today's deposition is Item Number 4, which is
(6) contained on page 2 of that order. And I'm going to
(7) read that and, of course, you know you will be entitled
(8) to a complete copy of the transcript from today's
(9) proceedings, your deposition, and everything that we
(10) discuss here is being taken down by the court reporter.
(11) That will include the discussion we have with the court
(12) clerk. But before doing that --
(13) A. The court clerk?
(14) Q. And the judge.
(15) A. Okay.
(16) Q. We have to call her first. We can't call the
(17) judge direct.
(18) A. Okay.
(19) Q. Let me read Paragraph Number 4 of this standing
(20) order. "In the event that the parties are participating
(21) in a deposition or a site inspection and a dispute
(22) arises, the parties may contact the courtroom deputy,
(23) Brenda Tolbert, to inquire whether Magistrate Judge
(24) James is available to address the dispute
(25) telephonically. In the event that Judge James is

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(1) unavailable or the parties are unable to contact her
(2) courtroom deputy, the parties shall follow the
(3) procedures for requesting a telephone conference as set
(4) forth in Paragraph 3 above. In such a case, the
(5) deposition or site inspection shall proceed with
(6) objections noted for the record."
(7) So why don't we grab that phone and put it up
(8) here and let's see if we can reach the judge.
(9) (Mr. Smith calls the Judge's Clerk.)
(10) **MR. SMITH: I'm dialing Brenda Tolbert, the**
(11) **judge's clerk, and phone number 415-522-4708. And after**
(12) **I connect, I will put this on the speaker phone. My**
(13) **call did not go through. Let me take a moment to get**
(14) **the lady who handles this phone and see if we can figure**
(15) **this out. I don't see how you hang this thing up.**
(16) **(Mr. Smith ends call to Judge's Clerk.)**
(17) **(Mr. Smith exits deposition room.)**
(18) **(Mr. Smith and Ms. Hunter enter the deposition room.)**
(19) **MR. SMITH: We are still on the record because**
(20) **we want to make sure this is all on the record. So we**
(21) **just asked Angel to come in who works here at Circle**
(22) **Video to see if we can get this phone connected so we**
(23) **can reach Brenda Tolbert, the judge's clerk.**
(24) **We are trying to dial that number, and then we**
(25) **want to put her on speaker phone. 415-522-4708.**

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(1) **(Mr. Smith's call to Judge's Clerk begins.)**
(2) **MR. SMITH: Hi, Ms. Tolbert. It is Anthony**
(3) **Smith calling in the matter of Cobb versus Brede. We**
(4) **are in the middle of Jason Cobb's deposition.**
(5) **MS. TOLBERT: Okay.**
(6) **MR. SMITH: We are on the record with the court**
(7) **reporter. Jason Cobb is present, and we have a**
(8) **deposition dispute that perhaps the judge, if she is**
(9) **available, could help us to resolve.**
(10) **Maybe first, just to confirm, Jason Cobb, you**
(11) **are present here at your deposition, correct?**
(12) **THE WITNESS: Yes.**
(13) **MR. SMITH: So the essential problem that we**
(14) **are having is in this deposition, I'm going to have to**
(15) **ask Mr. Cobb some questions relating to some bank**
(16) **records that contain private financial or private**
(17) **information of individuals, and these are not redacted**
(18) **because I wanted to produce the actual copy of the**
(19) **records that I received from Wells Fargo Bank.**
(20) **So I have requested Mr. Cobb to read Judge**
(21) **James' protective order that she issued on**
(22) **September 26th, and I have requested that he sign the**
(23) **last page of that order that -- where he agrees to be**
(24) **bound by the terms of the protective order for the**
(25) **purposes of this case, and he seems to have some**

(1) difficulty with that.

(2) I will let him express his own feelings. But

(3) this will obviously not only affect the deposition, how

(4) much we can complete today, but it may affect his future

(5) testimony in this case. We are just following the

(6) judge's standing order to call first to see if she is

(7) available. So that's what we are doing.

(8) Did I summarize this correct, Mr. Cobb?

(9) THE WITNESS: More or less.

(10) MR. SMITH: Can you hear us?

(11) MS. TOLBERT: And what was his answer?

(12) THE WITNESS: Yeah, correct. I mainly was

(13) looking for some clarification. The point of concern

(14) that I have is Number 1, I'm not sure I should be

(15) signing anything prior to the actual parties to the

(16) action. I'm not clear whether or not the plaintiffs and

(17) the defendants have signed off on this protective order

(18) at this time. Maybe you would know that. I don't know

(19) that.

(20) The other point is that I have a separate

(21) action at the state level that is dealing with similar

(22) content. In fact, the complaint for that action

(23) actually contains some of the very bank records that

(24) Mr. Smith is referencing. So obviously that will come

(25) into play for that particular activity.

(1) And then the third point that I have is

(2) pursuant to California Corporate Code Law, any member of

(3) a corporation can approach at any time and request

(4) information specific to the present or past financial

(5) state of the corporation.

(6) So you have a law at the state level that would

(7) in my mind hold me responsible for responding to such

(8) inquiries; however, that would appear to create a

(9) conflict by virtue of this protective order.

(10) So I'm just trying to understand how the

(11) protective order would be reconciled in view of those

(12) real-world scenarios.

(13) MS. TOLBERT: Okay. What I'm going to do,

(14) first of all, I'm going to transfer you down to the law

(15) clerk.

(16) MR. SMITH: Okay. Thank you.

(17) MS. TOLBERT: And then he can go from there as

(18) far as if the judge is in fact needed.

(19) MR. SMITH: Okay.

(20) MS. TOLBERT: Hold on, please.

(21) MR. SMITH: Thank you.

(22) THE WITNESS: Who is the law clerk?

(23) MR. SMITH: I have to get his name.

(24) THE WITNESS: That means Judge James' clerk?

(25) MR. SMITH: Judge James' law clerk.

(1) THE WITNESS: Is the same as the law clerk.

(2) They are one and the same?

(3) MR. SMITH: I don't know if she has more than

(4) one. I assume she has just one. Most judges just have

(5) one.

(6) MR. NATHAN: This is Chris.

(7) MR. SMITH: Hi, Chris. Is this Chris Nathan?

(8) MR. NATHAN: Yes.

(9) MR. SMITH: Hi, Mr. Nathan. Anthony Smith on

(10) Cobb versus Brede.

(11) MR. NATHAN: Yes.

(12) MR. SMITH: We are on the record here in the

(13) deposition of Jason Cobb, who is appearing pursuant to

(14) an order by Judge James.

(15) MR. NATHAN: Okay.

(16) MR. SMITH: We have run into a discovery

(17) difficulty, and so we are calling pursuant to Judge

(18) James' standing order.

(19) MR. NATHAN: Okay.

(20) MR. SMITH: The problem is that I have

(21) requested Mr. Cobb to sign Exhibit A to the protective

(22) order that Judge James issued back on September 26th.

(23) MR. NATHAN: All right.

(24) MR. SMITH: And the reason I have asked him to

(25) sign that is that there are bank records, perhaps maybe

(1) that he has, I don't know, that contain private

(2) financial information and private identification

(3) information because they are unredacted. He has a

(4) difficulty signing this exhibit.

(5) I have explained to Mr. Jason Cobb that both

(6) parties have submitted proposed protective orders over a

(7) period of months and the judge produced her own order

(8) that after considering both proposed orders from the

(9) plaintiffs on the one side and the proposed order by me

(10) representing the defendants.

(11) So he still has some additional concerns. I

(12) have informed him -- he is here. He will be able to

(13) respond when I'm finished -- whether he signs this order

(14) or not may affect not only his testimony today, but also

(15) it may affect his testimony in the future in this

(16) matter.

(17) MR. NATHAN: Okay.

(18) MR. SMITH: So, Mr. Cobb, do you want to weigh

(19) in and mention your points?

(20) THE WITNESS: Sure. Hi, Mr. Nathan.

(21) MR. NATHAN: Hi.

(22) THE WITNESS: I just needed some clarification.

(23) I'm not trying to be difficult. I'm just trying to

(24) account for very legitimate considerations here.

(25) MR. NATHAN: Okay.

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(1) THE WITNESS: So the first point is -- and,
(2) actually, this is something you can answer, Mr. Smith.
(3) Have you presented Exhibit A to your previous -- the
(4) previous individuals that you deposed, the actual
(5) plaintiffs here?

(6) MR. SMITH: I'm not here to answer questions.
(7) I'm here to conduct a deposition, Mr. Cobb. And I have
(8) already -- on this particular issue, I have informed you
(9) that the plaintiffs, your father and Mr. St. Clair, they
(10) produced proposed orders. I've produced proposed
(11) orders. This has been fully briefed.

(12) THE WITNESS: I got you, and that's fine. I
(13) will save you the trouble.

(14) The significance of the question, Mr. Nathan,
(15) is that Mr. Smith has already deposed the actual
(16) plaintiffs in this case and pursuant to conferring with
(17) them after their depositions, I don't sense that they
(18) were presented the opportunity to sign off on this
(19) agreement. And so I'm a non-party to this action as I
(20) believe most are aware. And in view of that, I'm just
(21) wondering about protocol and what is appropriate.

(22) MR. NATHAN: All right. So the purpose of
(23) protective order is an agreement between the parties.

(24) THE WITNESS: Okay.

(25) MR. NATHAN: The purpose of Exhibit A is for

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(1) anyone who is not a party in the case.

(2) THE WITNESS: Okay.

(3) MR. NATHAN: So it would be a third party that
(4) has to possibly disclose confidential information.

(5) THE WITNESS: Okay.

(6) MR. NATHAN: Exhibit A is an acknowledgment
(7) from that third party that they recognize there is a
(8) protective order in place in this action.

(9) THE WITNESS: Okay. Great.

(10) MR. NATHAN: So they are bound by the same
(11) obligations that the parties would be when it comes to
(12) the confidential information.

(13) THE WITNESS: By virtue of this signed
(14) agreement?

(15) MR. NATHAN: Right.

(16) THE WITNESS: Okay. Great. That takes us to
(17) the next point. I have a state level action that deals
(18) with some of the similar points of content. In fact, I
(19) think the very same bank records that Mr. Smith are
(20) referencing are attached to my state level complaint as
(21) exhibits. So clearly that is going to factor in at that
(22) level. So that is a consideration because a number of
(23) elements that Mr. Smith has requested in his subpoena
(24) previous to this deposition, you know, are privileged by
(25) virtue of that state action. That is one point here.

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(1) The other point that I have is a practical
(2) consideration, and I'm just trying to understand how
(3) this protective order would impact this practical
(4) consideration. In my mind, I still have a role in
(5) standing relative to the corporation that is the subject
(6) matter of these proceedings.

(7) So according to California Corporate Code
(8) sections -- multiple sections, any member can approach
(9) at any time and ask a question regarding the financial
(10) state of the corporation, the current state or the
(11) previous financial state, and I'm obligated to respond
(12) to that.

(13) So I'm trying to reconcile that state law and
(14) provision with the ramifications of my signing this
(15) document.

(16) Does that make sense?

(17) MR. NATHAN: So I'm -- maybe both of you could
(18) talk about this. What is the information that is
(19) confidential that couldn't be disclosed to a member of
(20) the corporation?

(21) THE WITNESS: Yeah, great question. In my
(22) mind, I think it is a legitimate point that Mr. Smith is
(23) making as far as I certainly wouldn't disclose
(24) necessarily someone's driver's license number as part of
(25) a corporate statement; however, the actual data specific

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(1) to the state of the accounts and any transactions
(2) therein would be available and should be extended to any
(3) member of the corporation. So if --

(4) MR. NATHAN: Are you saying that that is
(5) confidential?

(6) THE WITNESS: I would allow him to answer that.

(7) MR. SMITH: I'm not here to answer questions or
(8) give advice to Mr. Cobb. I'm sorry. Were you finished,
(9) Jason?

(10) THE WITNESS: No. I'm just clarifying the
(11) point. I think you can see that there is a potential
(12) basis for conflict. You have state law and then you
(13) have this federal proceeding.

(14) MR. NATHAN: I am just trying to figure out for
(15) Judge James what is the information that is considered
(16) confidential in the records that couldn't be disclosed
(17) to a member of the corporation?

(18) THE WITNESS: I'm not sure that she has
(19) provided such a granular statement to that effect.

(20) MR. NATHAN: There is -- he wants you to sign
(21) Exhibit A for the protective order.

(22) THE WITNESS: Um-hum.

(23) MR. NATHAN: But what is the confidential
(24) information that is at issue? There is the bank
(25) records, but what in the bank records?

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(1) MR. SMITH: I can address that. There are
 (2) applications for the Wells Fargo Bank account that
 (3) contains driver's license information from, I believe,
 (4) Mr. Cobb and perhaps his father.
 (5) And, Mr. Nathan, as you are aware in this
 (6) proceedings I have been accused of quite a few things.
 (7) And from a professional standpoint, I want to make sure
 (8) that I am complying with the judge's order and I'm not
 (9) taking any steps to produce confidential information
 (10) because these are unredacted records from Wells Fargo.
 (11) MR. NATHAN: Okay.
 (12) MR. SMITH: So that essentially for today
 (13) that's what I am discussing.
 (14) MR. NATHAN: Okay. I think I understand. Let
 (15) me get Judge James. One moment.
 (16) MR. SMITH: Thank you. Oh, Chris.
 (17) MR. NATHAN: Yes.
 (18) MR. SMITH: There was one other point too that
 (19) may be relevant. And that is in plaintiff's second
 (20) amendment complaint that controls this litigation filed
 (21) on November 9th, 2010, there is no cause of action
 (22) directly relating to the corporation. There are a
 (23) number of causes of action that talk about fraud,
 (24) extortion, wire fraud, mail fraud, but there is no cause
 (25) of action arising under state law in that complaint.

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(1) MR. NATHAN: Okay. One second.
 (2) THE WITNESS: You are referencing documents
 (3) from Wells Fargo that have my personal information? Is
 (4) that what this is about?
 (5) MR. SMITH: Let's -- I'm not sure whose -- you
 (6) will know the answer to this more than I will. I want
 (7) to make sure -- Jason, this is why I am doing this. You
 (8) have seen the filings in this case. I have been accused
 (9) of a lot of things. And when you are dealing with an
 (10) individual's private information, all -- everyone is
 (11) supposed to take that very -- act very cautiously.
 (12) That's why I am doing that. So let's find out.
 (13) THE WITNESS: There is no concern with that.
 (14) MR. SMITH: Well, it is a concern to me. And
 (15) based upon --
 (16) THE WITNESS: I'm glad it is.
 (17) MR. SMITH: Well, it should be a concern for
 (18) you too.
 (19) MR. NATHAN: Okay. Are you there?
 (20) MR. SMITH: Yeah, we are.
 (21) MR. NATHAN: Yeah, I just checked with Judge
 (22) James. She wants to make sure, Mr. Cobb, are you
 (23) comfortable with signing Exhibit A knowing it is for
 (24) third parties and not --
 (25) THE WITNESS: Yeah, that was -- there were

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(1) three points of concern. That was the first one. I
 (2) didn't want to preempt the actual parties to the action
 (3) in signing off on the protective order itself.
 (4) MR. NATHAN: And she said, as far as disclosing
 (5) the information, she thinks that what you would normally
 (6) do is if you are disclosing it to a member of the
 (7) corporation, you would redact any kind of identification
 (8) information, like driver's license, contact information,
 (9) that kind of thing. And if you weren't going to redact
 (10) that information, you would need to check with Mr. Smith
 (11) to make sure that both parties are in agreement as to
 (12) what can be -- what can be shown to the third party.
 (13) And if you can't agree on it, then you would need to
 (14) file a letter to the court saying what is going on.
 (15) THE WITNESS: Okay.
 (16) MR. NATHAN: There is no blanket -- if a member
 (17) of the corporation wants to see the corporation records,
 (18) there is no blanket thing that because of this court
 (19) case they can't see them. But you would in the normal
 (20) course of business redact certain information that that
 (21) member didn't need to see.
 (22) So if there is confusion as to what needs to be
 (23) redacted, then the two of you would need to discuss it
 (24) and then file a letter if you can't agree.
 (25) THE WITNESS: Okay. And that's fine. And I

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(1) think you are speaking to a very specific point. My
 (2) impression in initially listening to Mr. Smith this
 (3) morning is that the impetus wasn't so much on
 (4) personal/private information, but more so on the
 (5) entirety of the bank records themselves; and that is
 (6) what I am speaking to in a broader sense because that
 (7) gave me the impression that there would by some
 (8) restraint as far as my sharing that information with the
 (9) shareholder.
 (10) And the other point that I mentioned as well
 (11) there is a state level action examining some of these
 (12) same elements, and those bank records are going to
 (13) factor into that state action. I can't be handcuffed
 (14) from using that information.
 (15) MR. NATHAN: The protective order doesn't
 (16) prohibit how this information would normally be used.
 (17) So if there is a member of the corporation that is
 (18) entitled to see the information, they are still entitled
 (19) to see it. But if there is confidential information
 (20) that a person normally wouldn't get to see, they are
 (21) still not going to be able to see that.
 (22) THE WITNESS: That's fine. And then you are
 (23) not addressing the other point about the state action.
 (24) You know, I will need to leverage the materials that I
 (25) have a right to by virtue of my station relative to the

(1) corporation. I'm not bound by some protective order
(2) when it comes to discharging my duties by the provision
(3) of the State of California.

(4) MR. NATHAN: If there is a state action and
(5) confidential information needs to be disclosed in that
(6) action, there is going to be a separate protective order
(7) I imagine.

(8) THE WITNESS: Yeah, so this wouldn't inherently
(9) extend to that and in any way impede my use of
(10) information that I already have in my possession?

(11) MR. NATHAN: For purposes of that state court
(12) action, right. So it could be -- it could be used
(13) within that state court action.

(14) So, Mr. Smith, are we missing what your concern
(15) is?

(16) MR. SMITH: No. First of all, I have been very
(17) clear about what it was that I plan to use today during
(18) the deposition. So it has never been -- we don't even
(19) have all the bank records. As you know, the judge just
(20) signed the order a couple weeks ago. So it is not some
(21) broad -- I have never taken a broad position. It has
(22) just been these specific documents. I think it is
(23) probably less than ten of them that I want to cover some
(24) ground on.

(25) But I'm still not clear if Mr. Cobb is going to

(1) sign the agreement or not. It sounds -- I haven't heard
(2) a yes or a no.

(3) THE WITNESS: Well, because I'm gathering
(4) information toward providing that answer. There are
(5) certain prerequisites that I have in terms of what it
(6) means and what it doesn't mean. And I think the
(7) response that we have gotten from you, Nathan, is
(8) helpful in clarifying that picture.

(9) MR. NATHAN: Okay. So, yeah, Exhibit A is just
(10) meant to bind third parties to make sure that they
(11) understand that there is a protective order in this
(12) case, and that's what the information is used for within
(13) that protective order. So it is basically saying you
(14) can't disclose that information as well, but...

(15) THE WITNESS: And, Nathan -- and I want to make
(16) sure you are clear on my stance in hearing that from
(17) you. As of this moment, prior to signing this document,
(18) I am at liberty to do whatever I want with information
(19) specific to the corporation to which I hold station,
(20) correct?

(21) MR. SMITH: Well, I don't think Mr. Nathan is
(22) here to give legal advice.

(23) THE WITNESS: I'm not asking for his legal
(24) advice. It was a question more so intended as a
(25) statement of fact to establish the parameters of this

(1) situation. I want to make sure that I'm not giving up a
(2) right that I already possess relative to my station for
(3) the corporation.

(4) MR. NATHAN: Any rights that you would have
(5) regardless of the protective order you still have. But
(6) just keep in mind the purpose of this is to enable the
(7) parties to get all the information they can gather
(8) without breaching any kind of confidentiality issues.

(9) So if for some reason you weren't going to sign
(10) on to say that you understand there was a protective
(11) order and you agree to be bound by that, that could
(12) cause issues with either side using any evidence from
(13) you.

(14) THE WITNESS: Yeah, and that's understood. I
(15) just want to make sure you understand my point that I'm
(16) not waving my right as provided by the State of
(17) California.

(18) MR. NATHAN: So anything that -- so anything
(19) that you would do in your position, you still do that
(20) but you just need to be aware that there is this
(21) confidential information that is being disclosed for the
(22) purpose of this lawsuit.

(23) THE WITNESS: Right.

(24) MR. NATHAN: So you can't disclose that
(25) information.

(1) THE WITNESS: And I want Mr. Smith and the
(2) record to be aware of the fact that I don't expect to be
(3) hit or blindsided with some point relative to my state
(4) action hereafter. That has already started.
(5) Information has already been submitted, and it will be
(6) considered in that action.

(7) MR. NATHAN: Okay. It sounds like if there is
(8) going to be a specific issue that comes up later,
(9) obviously, the best thing to do is for both sides to
(10) talk about it. And if you are not able to resolve it,
(11) then you would just submit a letter to Judge James.

(12) THE WITNESS: Yeah, and --

(13) MR. NATHAN: I don't think we can address every
(14) single thing that is going on during your deposition
(15) time.

(16) THE WITNESS: Sure. But you have been very
(17) helpful. I'm just making it clear for the record as it
(18) has been noted that I'm not waiving any rights and I
(19) don't anticipate there is a basis for federal preemption
(20) of state law in these matters as far as using
(21) information I am entitled to in view of my station
(22) relative to the corporation. I think we have that clear
(23) at this point. I just want to make sure it is clear for
(24) everybody.

(25) MR. NATHAN: Okay. Mr. Smith?

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(1) MR. SMITH: I think we -- there is a state
(2) lawsuit that Mr. Cobb filed on September 2nd of this
(3) year. It is my understanding that the defendants have
(4) not appeared. Those defendants include Ernest Brede,
(5) Luis Contreras and Larry Laverdure. Whatever issues in
(6) that -- obviously, there are issues that will come up
(7) that will need to be addressed in that state law case.

(8) And although I'm not yet formally representing
(9) those defendants in the state law case, I will take the
(10) opportunity to reserve any rights they may have too with
(11) respect to the protective order.

(12) I think we are making a mountain over a mole
(13) hill here when I'm talking about just asking questions
(14) about a few bank records that Mr. Cobb already has. And
(15) so I think -- you know, there is nothing else to say
(16) from my standpoint. I would like to move the deposition
(17) on.

(18) THE WITNESS: Thank you for your input. It was
(19) helpful for me.

(20) MR. NATHAN: Okay.

(21) MR. SMITH: Okay.

(22) MR. NATHAN: Good luck.

(23) MR. SMITH: Thank you.

(24) MR. NATHAN: Bye.

(25) MR. SMITH: Bye. How do we turn this thing

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(1) off?

(2) (Mr. Smith's call to Judge's Clerk ends.)

(3) THE WITNESS: Let's take a recess.

(4) MR. SMITH: Let's take about ten minutes.

(5) THE WITNESS: Yeah.

(6) (Break in proceedings.)

(7) MR. SMITH: We are back on the record.

(8) Q. Have you had a chance to take a break?

(9) A. Yes, sir.

(10) Q. I saw you out in the hallway. Did you get a
(11) chance to speak to the plaintiffs or someone on what to
(12) do about this protective order?

(13) A. Yeah. I think the feeling is -- it was already
(14) my feeling. I did confer with them. I think the
(15) feeling is they haven't signed anything, and so I don't
(16) think I will be signing anything today.

(17) Q. Okay.

(18) A. I think the best way to handle that is --
(19) obviously, I imagine you have other lines of questioning
(20) that aren't relevant to this particular issue. So we
(21) can just cover whatever you have.

(22) Q. Okay. Let me just state then for the record,
(23) of course, we have to continue your deposition to a
(24) future date possibly.

(25) A. Possibly.

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(1) Q. Depending upon how we and/or the judge view
(2) your refusal to sign Exhibit A to the protective order
(3) as explained to you by the judge's law clerk, I will
(4) move on to areas that -- whichever areas we can
(5) accomplish. I do want to, as I mentioned before, warn
(6) you that as Mr. Nathan warned you that your refusal to
(7) sign the protective order could affect future evidence
(8) presented in this case by your father and Mr. St. Clair
(9) in the future, but we can address this later.

(10) A. And let me respond and clarify. I am choosing
(11) not to sign today, October 11, 2011. This is not a
(12) definitive and outright refusal under any and all
(13) circumstances. You yourself pointed to the verbiage in
(14) Exhibit 2, the protective order, which allowed for a
(15) conference with Judge James. And I don't feel that the
(16) call that took place today in my mind fully satisfies
(17) that provision. I would want the satisfaction of direct
(18) communication with Judge James to ensure my clarity and
(19) comfort with the implications of signing said document.
(20) And upon having that, then I am very confident that I
(21) will be able to proceed at that time.

(22) Q. Have you finished?

(23) A. Yes.

(24) Q. Just to clarify a couple points, then we have
(25) to move on. As you are aware, I have mentioned and I

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(1) have served you with the order continuing and extending
(2) the time to complete your deposition. According to the
(3) terms of that order, I must complete your deposition on
(4) or before Thursday, October 13th. I'm not sure if you
(5) are aware of it, but there is a standing order in this
(6) case -- I'm sure your father perhaps shared this with
(7) Mr. St. Clair or Mr. Steel -- that there are certain
(8) cutoff dates that apply to this litigation.

(9) So I took the extra step to get this order to
(10) extend your time to complete your deposition. There
(11) will be no other option -- strike that.

(12) So I'm under an order to complete your
(13) deposition. I'm going to reserve the right to recall
(14) you should the need arise. I will give you the
(15) opportunity to take whatever position you want to take
(16) and can address it further. That is your prerogative.
(17) So why don't we move forward.

(18) A. Okay.

(19) MR. SMITH: Why don't we mark this next in
(20) order.

(21) (Whereupon Exhibit 3 was marked for
(22) identification.)

(23) MR. SMITH: Q. I would like to show what has
(24) been marked next in order, Exhibit 3, and that is a
(25) subpoena to you that was served on you to appear at your