

EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 15-20782-CIV-MARRA

DENNIS L. MONTGOMERY,)	
)	
PLAINTIFF,)	
)	
-v-)	
)	
JAMES RISEN, ET AL.,)	
)	
DEFENDANTS.)	Miami, Florida
)	October 16, 2015
_____)	

TRANSCRIPT OF DISCOVERY HEARING PROCEEDINGS
BEFORE THE HONORABLE JONATHAN GOODMAN
UNITED STATES MAGISTRATE JUDGE

Appearances:

(On Page 2.)

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FOR THE PLAINTIFF
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* * * * *

1 (Call to the order of the Court.)

2 THE COURTROOM DEPUTY: Calling case
3 15-20782-CIVIL-MARTINEZ, Montgomery versus Risen, et al.

4 The Honorable Jonathan Goodman presiding.

5 THE COURT: Good afternoon, folks.

6 I'm hoping that the beeping noise that I just heard
7 indicates that we now have an additional counsel on the line,
8 and, if so, I think we've got everybody here.

9 So you haven't missed anything. We're just starting
10 now.

11 So let's start off with appearances.

12 First for the Plaintiff, I believe we have hopefully
13 counsel on the phone?

14 MR. KLAYMAN: Yes, we do, Your Honor. Larry
15 Klayman.

16 How are you today?

17 THE COURT: All right. Good.

18 Mr. Klayman, by the way, were you on television last
19 night on the Jimmy Kimmel show?

20 MR. KLAYMAN: No, I don't think so, but --

21 THE COURT: There's a fellow who was interviewed
22 there on the street. Jimmy Kimmel sometimes has one of these
23 on-the-street surprise ambush interviews, and there was a
24 fellow interviewed who looked significantly like you and had a
25 similar demeanor and a similar way of speaking, and I said, my

1 gosh, is Mr. Klayman out there on Sunset Boulevard, in
2 Hollywood? But apparently not.

3 All right.

4 MR. KLAYMAN: I think it may have been me, Your
5 Honor. I actually was -- it may have been me. I did give an
6 interview to them a while back. I guess they held it.

7 THE COURT: Oh, really?

8 MR. KLAYMAN: Yeah.

9 THE COURT: Oh.

10 MR. KLAYMAN: Was there a dog on there?

11 THE COURT: Yes, you were holding a dog.

12 MR. KLAYMAN: Yes, that's me.

13 THE COURT: And, in fact, there was a reference to
14 the dog being like your wife or something, right?

15 MR. KLAYMAN: No, it's like my daughter.

16 THE COURT: Oh, my gosh, I was correct, that was
17 you.

18 MR. KLAYMAN: I don't know. Maybe I said if I had
19 had my dog I never would have gotten married. Maybe I --

20 THE COURT: There was some reference to a dog and a
21 wife.

22 So, yeah, I guess they do these interviews and they
23 hold them for, I don't know, weeks at a time, whenever they
24 have a need. It wasn't particularly time sensitive.

25 MR. KLAYMAN: They held it for months, months.

1 THE COURT: It was you, Mr. Klayman. My gosh.

2 Okay. Good.

3 Who else do you have on the phone?

4 MS. HANDMAN: You have Laura Handman and Micha
5 Ratner, from DC.

6 THE COURT: All right. Either of you on television
7 lately?

8 MS. HANDMAN: No.

9 THE COURT: All right. And here in court we have?

10 MR. BOHRER: Sandy Bohrer, Your Honor.

11 THE COURT: Very well.

12 All right. So happy Friday to everyone.

13 We're here for a discovery dispute, and I understand
14 this is a matter that the defense would like to bring to my
15 attention. So I'm happy to hear what you have to say.

16 MS. HANDMAN: Thank you, Your Honor.

17 We're here again today for sanctions for failure to
18 comply with paragraph 5 and 6 of the Court's post-hearing
19 discovery order of August 22nd. We seek sanctions under Rule
20 37(b) and (e).

21 Your Honor will recall, the revelations made at the
22 August 21st hearing which Your Honor described in your denial
23 of the stay of the August 22nd order, that Montgomery, quote,
24 "recently and secretly turned over the software to the FBI
25 without keeping a copy, without advising Defendants of his

1 plan to do so, without advising this Court of his strategy,
2 and without seeking leave of court to, in effect, sequester
3 what could be the most important evidence in the entire case."

4 The Court ordered on August 22nd, in paragraph 6,
5 that by September 4, Plaintiff use, quote, "his self-described
6 right of continued access to nonclassified information,"
7 paren, "in relation to his turning over the subject software
8 to the FBI, to produce the software to defendants."

9 That was by September 4.

10 Plaintiff's counsel wrote to the FBI and AUSA Curtis
11 on August 26th quoting and attaching the order.

12 Then on September 8th, the FBI's general counsel
13 wrote back to Plaintiff's counsel, with a copy to Your Honor
14 and to Defendants' counsel. Not only did Mr. Baker say the
15 Government was not aware of this case and the pending document
16 demand when they received the information, but, most
17 importantly, he said: "Notably absent" -- I'm quoting -- "is
18 any information which would assist the Government in locating
19 and producing the software at issue in *Montgomery v. Risen*."

20 And then why? Because what Plaintiffs gave the FBI
21 on August 19th, just two days before the hearing before Your
22 Honor on the software, was hard drives containing, according
23 to Mr. Baker, 51.6 million files amounting to 600 million
24 pages, which the Plaintiff claims had classified information
25 throughout.

1 Hence, Mr. Baker said, quote: "This massive amount
2 of information means there is no reasonable way for the
3 Government to locate and provide the alleged software absent
4 specific instructions from the Plaintiff.

5 Mr. Baker then specified what was needed. One was a
6 number or designation of the drive on which the software is
7 present. Two, the file name of the software. Three, the
8 creation date of the software. Four, any other identifiers of
9 the software.

10 So we asked Mr. Klayman on September 21st whether
11 Plaintiff had provided that information requested, and to
12 please provide us the communications evidencing same, as well
13 as the prior communications referenced in Mr. Baker's letter,
14 all of which this Court ordered to be produced in paragraph 5
15 of the August 22nd order.

16 We did not get the software, which was supposed to
17 be produced by September 4, nor any evidence that the
18 information requested by the FBI in order to locate the
19 software have been provided, nor any communications with the
20 FBI.

21 And in the absence of any such communications
22 confirmation, I communicated on October 5 with Ted Schwartz,
23 the assistant -- the FBI's assistant general counsel, and he
24 advised that Mr. Klayman had sent an e-mail on September 24 --
25 that would be after our meet and confer -- to which the FBI

1 responded on October 1st, quote, "asking for more information
2 and clarification."

3 Mr. Schwartz said he could not provide the documents
4 absent a formal subpoena subject to the Touhy regulations but
5 said, quote, the FBI has no objection to Mr. Klayman providing
6 us a copy of the e-mail exchange.

7 So we asked Plaintiff's counsel, again as part of
8 the meet and confer on October 7th, for this exchange, and
9 advised them that the FBI had no objections. We asked again
10 for the prior communications and confirmation that the
11 information necessary to locate the software had been
12 provided, and for the software itself.

13 We have gotten no response, no documents, no
14 software, even though clearly required by this Court's order
15 of August 22.

16 By giving the FBI this one and only copy of his own
17 software and not keeping a copy which had been the subject of
18 the specific discovery request since June 1, and which is, as
19 Your Honor observed, the critical evidence in the case, and
20 providing it to the FBI in a massive document dump that makes
21 it difficult, if not impossible, to retrieve, Plaintiff has
22 engaged, in our view, in deliberate spoliation, in defiance of
23 this Court's order to retrieve the software and provide the
24 communications with the FBI.

25 We were able to get, as Your Honor probably knows, a

1 brief extension of the discovery deadline, but it is now fast
2 approaching. It's one month away, and we need time for our
3 expert to examine the software and test whether it works or
4 not and do follow-up discovery.

5 So we respectfully request that the Court order
6 Plaintiff to, one, produce by Monday all communications
7 regarding the location of Montgomery software, which is what
8 Your Honor ordered on August 22nd in the paragraph 5,
9 including, but not limited to, the July 28 letter agreement
10 with the FBI, the August 1 e-mail that are both referenced in
11 Mr. Baker's letter, the September 24 e-mail from Mr. Klayman,
12 and the FBI's October 1 response, which Mr. Schwartz advised
13 of, and any subsequent communications with the FBI.

14 We'd also ask Your Honor to order that if he has not
15 already done so, by Monday, he provide the FBI with all the
16 information the FBI has required in order to identify and
17 locate the software and provide documentation that that has
18 been done.

19 And, finally, we'd ask that they provide the
20 software by October 26.

21 We ask that if these requirements are not satisfied,
22 including provision of the software, even if the FBI has not
23 been able to return the software to the Plaintiff by that
24 time, due to Plaintiff's deliberate decision to not keep a
25 copy of its own software, but instead provide it to the FBI in

1 a manner that did not permit timely retrieval and production,
2 and causing extreme prejudice to Defendants' ability to defend
3 this case, we ask the Court to impose sanctions as provided
4 under Rule 37.

5 First, we would ask to dismiss the action with
6 prejudice. And if not dismissed, we would ask the Court to
7 make a finding that the software either did not exist, or did
8 not work, or, at a minimum, draw an adverse inference that the
9 software did not exist or did not work.

10 We cited some authority in Footnote 17 in our
11 prehearing memorandum of August 4th, but we would be happy to
12 supplement that with additional authority if the Court
13 requires.

14 THE COURT: Thank you.

15 Mr. Klayman?

16 MR. KLAYMAN: Yes, Your Honor.

17 First of all, I would say that we did comply with
18 your order of August 22nd, 2015. You ordered that we put the
19 FBI on notice by August 26th that to look for the software, if
20 it existed. We did not know whether or not, of the 47 hard
21 drives, 600 million pages of documentation provided to the
22 FBI, that, in fact, software existed on that.

23 Secondly, the FBI advised in the letter from
24 Mr. Baker of September 8th that they were conducting, or they
25 would conduct a classification review. Because we said if it

1 does exist it may be classified, and that's why we just
2 couldn't turn any software, even if it existed, over
3 willy-nilly. That would create liability, and not just for
4 Mr. Montgomery, but also for Defendants. If they were to
5 receive classified information, they could be in great legal
6 difficulty.

7 Now, that having been said, we have --
8 Mr. Montgomery has communicated with the FBI and has given it
9 information whereby it could make a concerted effort to find
10 that software to the best of his ability, if it exists.
11 However, this is an ongoing criminal investigation by the FBI,
12 and the information that's being provided to the FBI in terms
13 of it trying to be able to locate if any such software exists
14 and if it's classified, would be subject to work product in
15 the context of that criminal investigation.

16 We did get correspondence from Mr. Schwartz, but it
17 was never copied on Ms. Handman. I don't know how she has
18 that. So I assume that the FBI was keeping this close to the
19 vest as part of the criminal investigation. As a former
20 prosecutor for the Justice Department, I have to respect the
21 investigatory privilege of the FBI, particularly when a
22 criminal matter is involved.

23 And, in fact, contrary to what was said in
24 Mr. Baker's letter, he's a very honest man, and I have the
25 highest regard for him, but he was not privy at the meeting at

1 the Miami field office of the FBI. An Assistant U.S. Attorney
2 was. So the information was provided second hand.

3 We filed affidavits on the record, both myself and
4 Ms. James, who was present, Dina James, paralegal, that, in
5 fact, we had told the FBI that there was a civil matter, and
6 that, for that reason, we would need access if required by
7 this Court to anything revolving around if software existed or
8 any other matter. And the FBI and the AUSA agreed at that
9 point in time. That was not put in writing, but that was
10 said. But we did put it in an affidavit.

11 So we have been completely forthright in making an
12 attempt to find out if any software is there. The FBI is
13 conducting a classification review. These things are very
14 important. And we know, you know, in other matters that are
15 in the news these days that the FBI has some very significant
16 matters concerning a person called Hillary Clinton. And, you
17 know, obviously their resources are being stretched thin.

18 I mean, the documents here are 600 million pages.
19 That's huge in comparison to the 35,000 pages which went
20 missing in that very high profile case. So this is a matter
21 which they're moving with all due speed, and we are proceeding
22 in that regard.

23 Now, I don't know if Your Honor had the
24 opportunity -- I assume you did, because you're a very
25 diligent jurist -- to look at our objection to your order, in

1 all due respect. And we're not saying that you went out of
2 your way to require this to be produced without any basis.
3 But what we're saying is, and we're asking Judge Martinez to
4 take a look at it, and I hope that you can look at it, too, is
5 that, you know, it's ironic that they're making this issue of
6 the software, and it's strategic.

7 And I predicted that this was going to happen at an
8 early hearing, because their initial motion to dismiss was
9 based on the premise that everything that was published by
10 Mr. Risen came from prior publications in Playboy Magazine, in
11 Bloomberg News, and in Congressional testimony on the public
12 record. And Mr. Risen never relied on confidential sources
13 inside the Government, contrary to a source note in his book,
14 which was meant to sell the book but was obviously false given
15 his testimony. And he confirmed that when he was deposed,
16 that he didn't have access to any software or confidential
17 information from the Government.

18 And we put that in that objection.

19 So this is a red herring, and Ms. Handman has just
20 now confirmed that this is true, that they were trying -- they
21 were trying to create a Catch 22 with regard to the software
22 to try to get this case dismissed.

23 And the other thing that supports that is the fact
24 that on the last day, for them to have designated an expert to
25 review any such software -- which they could have done from

1 the start -- they didn't even give us anything more than the
2 name of the expert, in violation of federal rules on producing
3 information with regard to experts. You know, their prior
4 qualifications, prior testimony and everything like that.

5 So the bottom line here, Your Honor, is -- and I
6 don't want to get too diverted, but the background's
7 important -- is that we should be allowed to have this
8 objection run its course. It's a legitimate objection. Your
9 Honor didn't -- not have all this information at the time that
10 Your Honor ruled initially. We took time to plot it out. To
11 turn software, which we don't know whether it exists or not,
12 over now, and the FBI's looking for it, and it's classified,
13 and communications over what's in those discs would moot out
14 the objection, could potentially expose classified
15 information, which would be helpful even to foreign interests
16 adverse to the United States, it would compromise an ongoing
17 criminal investigation by the FBI -- the communications are
18 technically work product here, because Mr. Montgomery is, in
19 fact, a witness for the FBI. He's an informant for the FBI,
20 and that's why he got that immunity letter.

21 And for all of these reasons, Your Honor, we have
22 been in good faith, we respect you highly, we respect your
23 orders, but to turn over internal communications would
24 compromise a criminal investigation and possibly classified
25 information and could result in national security damage to

1 this country.

2 So that's our stance right now.

3 Let the FBI run its course. It's moving --
4 Mr. Montgomery has participated in helping them, despite the
5 fact that he went back into the hospital after another stroke.
6 And let's see what the FBI comes up with. I know they're
7 moving with all due speed. I don't think it's necessary that
8 we have an extension on discovery. It hasn't been requested
9 yet. But if that's necessary, and Your Honor so rules and the
10 Judge so rules, then that's something we would respect.

11 But, again, they're not basing their case on any
12 software or classified information, you just need to look into
13 their motion to dismiss to tell you dismiss this case because
14 it all came from public sources.

15 So we respectfully request, Your Honor, to allow
16 that objection to be ruled upon, and in the meantime allow the
17 FBI to do its declassification review and to determine whether
18 or not that software is in there and whether or not it's
19 classified, if, indeed, the objection's not withheld.

20 THE COURT: Now, Mr. Klayman, I have a couple of
21 follow-up questions for you.

22 I heard you say about two minutes ago that the
23 information is classified, and I seem to recall that at other
24 hearings you said to me, I don't know whether the
25 information's classified, Judge, I've never looked at it

1 myself, all I'm saying is it could be.

2 So did you perhaps misspeak this afternoon when you
3 said --

4 MR. KLAYMAN: Yeah, I think I misspoke in context.
5 Okay. Let me make that clear.

6 What I'm saying is that the -- I don't know whether,
7 if any such software exists, it's classified or not. That's
8 for the FBI to determine. And it must make that first initial
9 determination.

10 What I'm saying is that the communications that
11 Mr. Montgomery has had with the FBI since, pursuant to your
12 order, could lead potentially to disclosing classified
13 information about what's on those hard drives. That could
14 compromise the FBI's investigation, which is criminal, and
15 undoubtedly Defendants will make this public, and it could
16 compromise the national security of the United States. And
17 that's why this is a very significant matter which can't be
18 taken lightly.

19 And, in fact, you know, the Assistant U.S. Attorney,
20 Debra Curtis, has said to me orally, said, Larry, you know,
21 don't mix the civil with this criminal case. I mean, we have
22 to proceed criminally here. You know, we're concerned about
23 that.

24 THE COURT: So when you --

25 MR. KLAYMAN: So, you know, it's -- and that's why I

1 point out, Your Honor, that at this stage, when the
2 Defendants, themselves, have rested their motion to dismiss on
3 the basis that Mr. Risen did not have access to the software,
4 therefore he couldn't have made his opinions that it was
5 fraudulent, and that his entire publication, "Pay Any Price,"
6 as concerns Mr. Montgomery was simply based on what was
7 already public in terms of prior newspaper articles and
8 Congressional testimony.

9 This -- and given the fact that they designated an
10 expert only by giving us his name on the last day, and could
11 have brought this issue up in front of the Court a lot sooner,
12 this is a strategy, a tactic, to put us in a Catch 22
13 situation, not just me -- I mean, not just Mr. Montgomery, but
14 the FBI and the Department of Justice, to try to get this case
15 dismissed.

16 It's kind of like heads, I win, tails you lose.

17 I mean, we didn't base this book on anything that
18 was confidential or classified. Even Risen admitted to that
19 when he testified. That's in the objection.

20 But now we're going to make an issue of it, because
21 if we can paint you into a corner, maybe we can get the
22 magistrate judge and/or the judge to rule that the case should
23 be dismissed if you don't turn over something that we never
24 even had anyway when we wrote the book or relied on.

25 See, and it's clever. I predicted this to my

1 colleagues from day one, that Defendants would try this, okay,
2 and this obviously has come to be true.

3 THE COURT: Well, Mr. Klayman, you've already made
4 that argument to me before, and I certainly appreciate your
5 creativity, but you haven't persuaded me of that, because I've
6 already noted that this particular software is, in fact,
7 critical evidence in the case, because this is a defamation
8 case, and one of your main burdens as the Plaintiff is to
9 prove -- it's your burden to prove the falsity of the
10 allegation.

11 And, quite frankly, it doesn't really matter all
12 that much whether Mr. Risen had access to this software or
13 not.

14 Let's assume for the sake of discussion that he just
15 wildly speculated that the software didn't work. He had never
16 seen it, he had never had access to it, he had never spoken to
17 anybody about it. He was just incredibly reckless and wrote a
18 book that said the software doesn't work. But if it turns out
19 that the software doesn't work, then it's a true statement.
20 So that's still part of your burden of proof.

21 So in any event, you've made that argument before,
22 and, quite frankly, you didn't make much headway then, and
23 you're not making much headway now.

24 But setting that aside, when you told me earlier
25 today that Mr. Montgomery has communicated with the FBI and

1 gave the FBI information so that it could try to track down
2 the software amongst this massive amount of electronically
3 stored information that was given to the FBI, were those
4 communications in writing, or were they oral, or were they
5 both?

6 MR. KLAYMAN: They were in writing. They were
7 forwarded to the FBI, and what I also argued was, Your Honor,
8 that Mr. Montgomery did this as soon as he could, because he's
9 been ill. He was in a hospital, had another stroke. And --
10 but that this is part -- to review that information while an
11 objection is pending -- we are challenging this with the
12 Court -- you know, could potentially compromise national
13 security.

14 He is a witness for the FBI. He's an informant.

15 THE COURT: Have you seen this letter, Mr. Klayman,
16 the one that you said Mr. Montgomery sent to the FBI in order
17 to give it instructions on how to track down the software?

18 MR. KLAYMAN: I've seen the e-mails. We forwarded
19 the information that he provided to us to the FBI.

20 THE COURT: So you have seen the written
21 communications that Mr. Montgomery sent to the FBI?

22 MR. KLAYMAN: I have seen that, but I have -- it's
23 not classified. All I'm saying is it could lead a person to
24 information that would possibly be classified, and that's why
25 I think it's sensitive.

1 THE COURT: Well, it may be sensitive, Mr. Klayman.
2 There are a lot of documents in lawsuits that are, quote,
3 sensitive, and a lot of documents that people would prefer not
4 to turn over. But the most important word that you said in
5 your explanation is "could" or "potentially," which, to me, is
6 simply speculation.

7 You have already reviewed these communications, so
8 you have the ability to tell me, as an officer of the court,
9 unequivocally whether or not Mr. Montgomery's communications
10 by e-mail to the FBI in which he gave instructions on where to
11 find this software contains classified information. You've
12 reviewed it.

13 Does it contain classified --

14 MR. KLAYMAN: I don't believe it does, okay, but I
15 wanted to give the FBI the opportunity to deal with that.

16 See, I had no knowledge that Mr. Schwartz had given
17 anything to Ms. Handman. I was copied on an e-mail asking for
18 some information, and she was not copied on it. I was never
19 told by the FBI that I could turn anything over to her. I was
20 not.

21 THE COURT: Okay. So --

22 MR. KLAYMAN: I'll swear to an affidavit under oath
23 in that regard. So --

24 THE COURT: Hang on just a minute.

25 Let me just ask a question of defense counsel.

1 Ms. Handman, you had made reference to, among the
2 documents that you were looking for, a written agreement
3 between Mr. Montgomery and the Government and the FBI, and I
4 think you even issued or mentioned a date.

5 What was that specific date, the date of the
6 agreement that you're looking to obtain?

7 MS. HANDMAN: It's referenced in Mr. Baker's letter
8 on September 8th, and I believe it's July 28 was the
9 agreement, letter agreement. He says: "Based upon the
10 proffer and your client's representations that certain
11 relevant information on the drives was highly classified, the
12 Government agreed to grant your client production immunity for
13 these items as memorialized in a letter agreement dated
14 July 28, 2015."

15 He then goes on to say -- there's an e-mail. He
16 quotes an e-mail on August 12th about the retrieval process.

17 And then what I also referenced -- and those are
18 both referenced in Mr. Baker's letter, which I was CC'd on, as
19 were you, Your Honor, and was put in the public records.

20 Then I followed up with Mr. Schwartz, the gentleman
21 who forwarded Mr. Baker's letter. He's the assistant general
22 counsel for the FBI, and he said:

23 "Ms. Handman, we are unable to provide documents you
24 request at this time, as requests to the FBI for documents in
25 connection with civil litigations must be made in accordance

1 with the DOJ's Touhy regulations, also to the extent any
2 documents that you request are covered by the Privacy Act, you
3 would need to provide us with a waiver, a court order or any
4 basis for production.

5 "I can tell you that the FBI sent Mr. Klayman an
6 e-mail on October 1, 2015, asking for more information and
7 clarification in response to an e-mail he sent on
8 September 24, 2015. The FBI has no objection to Mr. Klayman
9 providing you a copy of that e-mail exchange or the other
10 documents you seek," which are the ones that include those
11 two -- the letter agreement that I had mentioned and the
12 e-mail of August 12th.

13 And we told Mr. Klayman that the FBI had no
14 objection, and frankly it's only the Government which can
15 assert the classified privilege, and they've not sought to
16 intervene in this case at any point in time.

17 In fact, in Mr. Baker's letter, he specifically
18 says: "However, the Government neither agrees to undertake
19 nor understood any obligation to conduct a classification
20 review of any of these materials for the purpose of any civil
21 litigation."

22 And Mr. Klayman mentioned that Ms. Curtis said don't
23 mix the civil with the criminal. Well, you did -- they did,
24 by putting the alleged software, the one and only copy of the
25 alleged software, in with whatever data dump they gave to the

1 Government.

2 And I would remind the Court that back at the
3 August 21 hearing -- and we briefed this in our August 4
4 memoranda -- we cited the Nevada court which has specifically
5 held that the software was not classified. The Government was
6 a party to that case.

7 And then when Mr. Montgomery did not produce the
8 software, it sanctioned him with a \$2500-a-day sanction, which
9 ultimately resulted in a \$25 million concession of judgment by
10 Mr. Montgomery, followed by bankruptcy that was never
11 discharged, and a reinstatement of the judgment and no
12 production of the software.

13 So it seems to us that this is another effort to
14 circumvent this.

15 And this so-called investigation that Mr. Mont --
16 Mr. Klayman mentioned in which he purports to be a
17 whistleblower I think is what the investigation is that
18 Mr. Klayman is referring to, he told a very similar story to
19 the Maricopa County Sheriff's Office, who paid him
20 approximately \$250,000, and he gave 49 hard drives to them,
21 and ultimately the sheriff's office had two former NSA experts
22 review the hard drives, and they provided a two-page memo on
23 November 13th, 2014, which was recently introduced in the
24 court proceeding in Arizona before federal judge Snow.

25 And their conclusion was that Montgomery, quote, "is

1 a complete and total fraud," and they said, "which, among
2 other things, that the 45 hard drives, among other things,
3 contain a high volume of recordings of Al Jazeera television
4 network," and their conclusion was, "in summary, this letter
5 certifies that as to the best of Mr. Weebie's (phonetic) and
6 Mr. Drake's knowledge, none of the data examined reveals or
7 otherwise supports the assertion that the data contained on
8 the hard drive resulted from the clandestine collection and
9 processing of modern digital network communications and is,
10 instead, evidence of an outright and fraudulent con
11 perpetrated on the Government for person gain and cover."

12 And these hard drives that were subsequently seized
13 by the U.S. Marshals under order of Judge Snow and I believe
14 are also being reviewed by DOJ at this point.

15 And what makes this conclusion so remarkable is not
16 only may our software be at issue in those hard drives, but
17 the two NSA experts, Tom Drake and Kirk Weebie, are clients of
18 Mr. Klayman, who filed a whistleblower suit on their behalf on
19 August 20th of this year in DC federal court. And so he can
20 hardly denigrate their expertise or counter their conclusions.

21 So whether there is indeed -- whether, indeed, he is
22 a whistleblower, whether, indeed, his software is classified,
23 et cetera, this has been a story that's been told for a long
24 time.

25 All we're asking for is the software. We're asking

1 that Mr. Montgomery supply the communications that he's made
2 to the FBI to enable them to produce the software, and that
3 the software be produced promptly so that we can defend this
4 case that he's brought.

5 And whether we can't defend it because it's
6 classified or whether we can't defend it because he's
7 presented it in such a manner to the FBI, his one and only
8 copy of the software, that it's now irretrievable, is not our
9 problem. Our problem is we can't defend the case, and that's
10 why we're asking that the sanctions outlined in Rule 37 be
11 awarded.

12 MR. KLAYMAN: Your Honor --

13 THE COURT: What is Mr. Schwartz's first name again?

14 MS. HANDMAN: Ted.

15 THE COURT: Ted?

16 MS. HANDMAN: Ted.

17 And he's the one that forwarded the letter from
18 Mr. Baker to Your Honor and to myself. And so that's why I
19 contacted him.

20 MR. KLAYMAN: Your Honor.

21 THE COURT: Yes, sir.

22 MR. KLAYMAN: May I respond to that?

23 That's nice testimony. Unfortunately, Ms. Handman
24 is not a witness in this case.

25 I take extreme issue with her characterization of

1 the facts. I do not know whether any such software exists on
2 those hard drives, and neither does Mr. Montgomery. He gave
3 the FBI, on more than one occasion, parameters on how to try
4 to find it, and they're making that effort right now. And
5 that should be allowed to run its course, along with our
6 objection to this entire line of inquiry.

7 Secondly, with regard to Mr. Schwartz, I have no
8 knowledge -- in fact, Ms. Handman basically says two different
9 things. One, she says that Schwartz tells her that he just
10 can't turn over communications because there's been no Touhy
11 request. I know Your Honor knows what a Touhy request is.

12 THE COURT: Yes, I do.

13 MR. KLAYMAN: Okay. And no Privacy Act request.

14 First he says he can't do that, and then she says
15 the exact opposite, he says, oh, turn it over.

16 THE COURT: No, that's not what Ms. Handman said.

17 What she said is that Mr. Schwartz said "I," meaning
18 the FBI, can't turn it over because of Touhy regulations and
19 the Privacy Act requirements. But there is nothing to prevent
20 Mr. Klayman or Mr. Montgomery from doing it, and "I, on behalf
21 of the FBI, have no objection if they turn it over."

22 That's --

23 MR. KLAYMAN: But here's the --

24 THE COURT: That's what I understand Ms. Handman to
25 be saying.

1 MR. KLAYMAN: Okay. I have -- I had -- I have
2 confusion as to what maybe -- I haven't had much sleep in the
3 last few weeks. I've had, like, four court hearings and
4 stuff, and . . .

5 THE COURT: Well, let's just clarify.

6 MR. KLAYMAN: All right.

7 THE COURT: Ms. Handman, wasn't that the point that
8 you were making?

9 MS. HANDMAN: Absolutely, Your Honor. And I have an
10 e-mail that I'd be happy to furnish counsel and yourself that
11 says exactly that.

12 MR. KLAYMAN: Well, that's nice, Your Honor.

13 THE COURT: Whoa, whoa, wait.

14 An e-mail from who, Ms. Handman?

15 MS. HANDMAN: Mr. Schwartz.

16 THE COURT: Okay.

17 MR. KLAYMAN: I don't have any such e-mail.
18 Mr. Schwartz has never told me or Mr. Montgomery anything to
19 that effect.

20 I have to honor the FBI, you know, Your Honor. Not
21 just that, you know. I was a Justice Department lawyer. I
22 was a law enforcement officer. I work with the FBI. I've had
23 FBI agents as clients. I value highly my relationship with
24 them, and, you know, Director Comey, who we dealt with
25 directly on this case through Mr. Baker.

1 And I just can't willy-nilly turn things over
2 between the FBI and us. And I wasn't even given the courtesy
3 of knowing -- assuming it's true. And that's a big
4 assumption, you know. And I don't want to get into a
5 contest --

6 THE COURT: You think that -- you think Ms. Handman
7 is making up the fact that she received an e-mail from Ted
8 Schwartz? She manufactured a bogus document?

9 MR. KLAYMAN: No, no. In the past -- I mean, she
10 did make up things in the beginning of the case. I brought it
11 up with Your Honor. You said don't bring it up again, so I
12 won't.

13 THE COURT: All right. Well, don't bring that up
14 issue.

15 Let's take it one step at a time.

16 Ms. Handman, the e-mail from Mr. Ted Schwartz,
17 what's date of that e-mail, please?

18 MS. HANDMAN: I wrote him on October 5th, and he
19 responded on October 6th, at 10:55 a.m.

20 THE COURT: And you have Mr. Schwartz's response
21 e-mail there?

22 MS. HANDMAN: Yes, I do.

23 THE COURT: Read it, please.

24 MS. HANDMAN: Attached to my e-mail to him.

25 THE COURT: Read it, please.

1 MS. HANDMAN: Okay.

2 "Ms. Handman, we are unable to provide the documents
3 you request at this time, as requests to the FBI for documents
4 in connection with civil litigation must be made in accordance
5 with DOJ's Touhy regulations, 28 CFR 1621, et seq.

6 "Also, to the extent that any documents you request
7 are covered by the Privacy Act, 5 U.S.C. 552(a), you would
8 need to provide us with a waiver, court order or other basis
9 for production consistent with the Privacy Act.

10 "I can tell you that the FBI sent Mr. Klayman an
11 e-mail on October 1, 2015, asking for more information and
12 clarification in response to an e-mail he sent on
13 September 24, 2015. The FBI has no objection to Mr. Klayman
14 providing you a copy of that e-mail exchange or the other
15 documents you seek."

16 And that references my e-mail below, where I ask for
17 that July 28 letter agreement and the August 12 e-mail, which
18 is subject to Your Honor's order of August 22, where you say
19 in paragraph 5: "Concerning Defendants' request for
20 Production 7 to Plaintiff, Plaintiff shall, by August 31,
21 2015, turn over all documents concerning this request" --
22 which was a request for documents as to the location of
23 software -- "which would now include documents related to the
24 disclosure and production of the subject software to the FBI."

25 THE COURT: All right. So Ms. Handman, here's what

1 you're gonna do for me, please.

2 By Monday, I want you to, under a notice of filing,
3 file your October 5th, 2015, e-mail to Mr. Schwartz, and then
4 his October 6th response e-mail to you.

5 Now, here's what you're going to do, Mr. Klayman.

6 I realize that you objected to my earlier ruling. I
7 realize that you filed a motion for a stay, which I denied,
8 and therefore, in the absence of a stay from Judge Martinez or
9 someone else, you need to comply.

10 So by next Tuesday, this coming Tuesday, you will be
11 filing with the Court and producing to Ms. Handman copies of
12 all of the correspondence between you and the FBI, you and
13 Ms. Curtis, Mr. Montgomery and the FBI, Mr. Montgomery and
14 Ms. Curtis, concerning Mr. Montgomery's turning over of
15 various ESI, hard drives and other material to the FBI.

16 So that will include all the documents that we've
17 been talking about today, the July 28th, 2015, letter
18 agreement, the September 24th e-mail from you, an August 12th,
19 2015, e-mail, an October 1st, 2015, e-mail, all of the e-mails
20 or other correspondence that Mr. Montgomery sent to the FBI in
21 an effort to try to answer Mr. Baker's request for additional
22 information so that the FBI could try to find, in that massive
23 amount of electronic discovery, the software at issue here.

24 In addition to that, by next Wednesday, you, on
25 Mr. Montgomery's behalf, or Mr. Montgomery himself, will be

1 sending the FBI, by e-mail, and in particular Mr. Schwartz, a
2 comprehensive set of instructions, the best available to
3 Mr. Montgomery, as to how to pinpoint the software at issue in
4 this case from the massive amount of material, the
5 51.6 million files totaling 600 million pages, that were
6 turned over to the FBI.

7 I realize that Mr. Montgomery may have already made
8 some effort in that regard in one or more e-mails, but I want
9 to make sure that he sends to the FBI the most detailed, most
10 comprehensive, most specific set of instructions and guidance
11 as to how to locate the software.

12 And if the answer is, gee, I really can't tell you
13 exactly how to pinpoint the software at issue in this civil
14 lawsuit from among the massive 51.6 million files turned over
15 to the FBI, then he shall so state in this written
16 communication, which must be sent by Wednesday. Copies of
17 that document, which will either be forwarded by you,
18 Mr. Klayman, or sent directly by Mr. Montgomery, will be filed
19 with the Court by the following day, which will be Thursday.
20 So that will be in the court file.

21 In addition, by October 26, you will, in fact,
22 produce the software at issue in this case to the Defendants.

23 Now, I'm going to make sort of a practical
24 observation and a realistic comment, which is even though
25 you're now going to be under a specific court order to produce

1 that software October 26th, I'm not naive, and I think there's
2 a significant chance that, for whatever reason, or reasons,
3 you and/or Mr. Montgomery will not be complying with that
4 order.

5 And, therefore, in connection with the
6 Government's -- I'm sorry, with the Defendants' request for
7 sanctions.

8 This is not a mild request. You're seeking,
9 Ms. Handman, the ultimate sanction of a dismissal with
10 prejudice, really based on a spoliation theory, or a violation
11 of a court order, or a combination of both. But that's really
12 not the kind of routine, garden variety discovery matter that
13 I typically consider without the benefit of memoranda. You're
14 asking me to issue a report and recommendation that this
15 entire case be dismissed because the software most likely will
16 not be timely produced to you, notwithstanding the order
17 requiring it.

18 So, therefore, I'm not going to be able to assess
19 that request simply based on a telephone hearing and a letter
20 or two.

21 So if you want me to seriously contemplate issuing
22 that kind of a drastic substantial order of either a dismissal
23 with prejudice or a finding that the software didn't exist or
24 never worked, or even an adverse inference, you're going to
25 have to do so in a specific written motion, and, more

1 importantly, with a supporting memorandum of law.

2 So my suggestion is that you get started on that
3 project now. I don't know whether you're going to be drafting
4 it, or one of your colleagues or maybe Mr. Toth, or maybe
5 other Holland & Knight lawyers, or maybe it will be drafted by
6 committee, I don't know. But my suggestion is that you get
7 that project underway, because the sooner that you get that to
8 me, the sooner I'll be able to make a ruling. Because
9 obviously I'm not going to be making a ruling simply based on,
10 number one, this phone call, and, number two, your motion and
11 memorandum. I'm obviously going to have to need to see and
12 adequately review Mr. Montgomery's response.

13 I'm sure Mr. Klayman will want a full and complete
14 opportunity to respond to your written motion and memorandum.

15 So you should probably all start whatever research
16 is necessary to get that underway so that we don't have to
17 unduly delay this case any further. I'll be issuing a written
18 administrative order probably Monday summarizing the specific
19 rulings.

20 But just in case there's any confusion, Mr. Klayman,
21 do you have any questions about the specific rulings and the
22 deadlines that you and Montgomery have to comply with the
23 rulings made this afternoon?

24 MR. KLAYMAN: No, Your Honor.

25 We do await your written order, just in case we

1 haven't written it down correctly.

2 But I do have a request here, and we would ask that
3 in terms of producing, as far as what Your Honor has ordered,
4 communications with the FBI, that we be able to produce that
5 and file it under seal. I don't want this out for national
6 security reasons and also for the health, safety and welfare
7 of my own client, who's been threatened by the Government, by
8 certain forces in the Government.

9 We believe that what Risen wrote was the result of
10 trying to smear him, because he's been trying to come forward
11 for years. In fact, we started this process with the FBI
12 about a year ago, long before this case was filed. So I would
13 like to be able to file that under seal to protect him, with
14 Your Honor's permission.

15 THE COURT: Well, based on what I've heard so far,
16 Mr. Klayman, we're just talking about some e-mails between
17 Ms. Handman and Mr. Schwartz, some e-mail from Mr. Montgomery
18 saying presumably here's where you would look for this
19 specific file and the software that you have. Doesn't strike
20 me that any of these e-mails will contain any classified
21 information or information that, for some reason, needs to be
22 filed under seal.

23 MR. KLAYMAN: Let me tell you what my concern is in
24 that regard.

25 THE COURT: Sure, sure, go ahead.

1 MR. KLAYMAN: I don't mean to get personal here, but
2 there is a personal aspect of it.

3 Okay. Ms. Handman, as I said in an earlier hearing,
4 is very close with the Obama Administration and also very
5 close with Mrs. Clinton. Her husband is Harold Ickes. Your
6 Honor may know who he is. She made reference to him -- I
7 didn't bring it up -- at the earlier hearing.

8 And I know from experience, having been with
9 Judicial Watch, that Mr. Ickes will do things that -- and I'm
10 trying to find a diplomatic way of doing it -- are very
11 destructive and very politically based, and could use
12 information to try to destroy my client.

13 And that kind of thing, this closeness with the
14 Clinton Administration and with the Obama Administration,
15 causes me great concern that they will use any information
16 that's out there in the public record to try to destroy my
17 client.

18 And I also have the national security concern,
19 so . . .

20 THE COURT: So Mr. Klayman, I hear what you're
21 saying, and here's my observation.

22 I'm going to assume for the sake of discussion that
23 your perspective is correct. In other words, assume that
24 Ms. Handman's husband does, in fact, have that motivation.

25 Even if true, that doesn't mean that the documents

1 that I'm requiring you to be filed would be the type of
2 document that he or any other political operative could
3 somehow use to unfairly intimidate, threaten or prejudice your
4 client. The documents seem, on their face, to be fairly
5 innocuous.

6 So even if you perceive him to be a very
7 Machiavellian fellow who is sharpening his knives in order to
8 go after you or Mr. Montgomery, if the information itself is
9 innocuous, there's not much that he can do.

10 So I'm sensitive to your concern, and I don't want
11 to just, if I can use the phrase, willy-nilly minimize it.

12 But what I will do is I'll give you the opportunity
13 to review the materials yourself and take a good, hard look at
14 them, and if you, in good faith, believe that there is
15 something in these documents that compel an under-seal filing,
16 then I'll permit you to file a motion to file the materials
17 under seal in compliance with the local rule, which means you
18 have to explain the good grounds to file it under seal, and at
19 that point the documents will be filed under seal.

20 You will then --

21 MR. KLAYMAN: I will do that.

22 THE COURT: Let me just finish.

23 MR. KLAYMAN: Okay.

24 THE COURT: If you decide to do that -- and, by the
25 way, it doesn't have to be an all or nothing arrangement.

1 In other words, let's say for the sake of
2 discussion, Mr. Clayman, there are 12 pieces of paper that
3 you're filing, seven e-mails and three letters -- I'm just --
4 and two other memos. So it may be that only two out of those
5 12 pieces of paper are worthy of an under-seal filing. So you
6 would only try to file, or file a motion for an under-seal
7 presentation as to the two pages, not to everything. So
8 you'll make a page-by-page good faith assessment.

9 But then, in addition to that, you will file a
10 courtesy copy of your motion to file under seal, as well as
11 the under-seal documents, to me. You can have them delivered
12 in one of two ways. You can either have them hand delivered
13 to my chambers, or you can submit them to my e-file inbox,
14 which is Goodman@FLSD -- F, as in Frank -- FLSD.USCOURTS.GOV.

15 And then I'll be able to review those materials
16 myself and make a determination as to whether or not your
17 motion to file under seal was well taken. And if it is well
18 taken, the provisional under-seal filing will remain under
19 seal. And if I agree with some of your conclusions but not
20 others, I'll issue an appropriate ruling to unseal some of
21 these pages, but not others. And if I disagree with all of
22 your presentation, then I'll issue an order to unseal all of
23 them.

24 By the way, this is not a procedure unique to this
25 case. I have several major cases where people are regularly

1 filing materials under seal, and when I think that perhaps an
2 under-seal filing is not such a slam dunk decision I follow
3 this procedure, and then at times I agree with the under-seal
4 filing, and at times not, and then the documents are unsealed.

5 All I would ask you to do, Mr. Klayman, is -- is to
6 take a reasonable, rational view of these materials.

7 And my suspicion is that at least some of them may
8 not be so classified, so confidential, so sensitive, that they
9 need to be filed under seal, because my -- my knee jerk
10 reaction, even though I haven't seen the documents, my knee
11 jerk reaction is that Mr. Schwartz, who's a high ranking FBI
12 attorney, would be hard pressed to be writing Ms. Klayman
13 (sic) to say, but it's -- we're perfectly okay if these
14 documents are disclosed by someone else, if those documents
15 contained classified information. I think he probably would
16 be hesitant about making that kind of a comment if the
17 documents were as sensitive as you suspect that they may be.

18 But in any event, that's the protocol that we will
19 follow, and everybody has their homework assignment, and to
20 the extent there's any confusion, the written order
21 memorializing the rulings will be out to give you some
22 guidance.

23 So --

24 MS. HANDMAN: Judge Goodman, one other thing.

25 I assume that we will get copies of the filings --

1 the motion to file under seal, as well as the unseal -- the --
2 all the documents so that we can review and respond. I mean,
3 that's not putting on the record. It's not subject to any
4 restriction, other than obviously we won't make it public
5 until you've ruled on what is or is not sealed, but I
6 assume --

7 THE COURT: Well, sort of, but not exactly.

8 In other words, when Mr. Klayman --

9 First of all, he may not even file a motion to seal.
10 Maybe he'll review the documents and say, you know, on second
11 thought I may have overstated the sensitive nature, and maybe
12 they don't need to be filed under seal. So that's always a
13 possibility.

14 But if he does decide to file it under seal, he'll
15 file a motion. He'll have to follow the local rule
16 procedures, and it will have to be, you know, personally
17 hand-delivered over to the sealing clerk here in the Clerk of
18 the Court, and it will be a motion to file under seal, and
19 then the actual under-seal submissions will be attached. And
20 so therefore that's filed under seal.

21 But, Mr. Klayman, you will serve counsel in the case
22 with a copy of the motion itself, not the under-seal
23 documents, but the motion.

24 Because the motion itself is not a sensitive
25 document. The motion is merely the request for an under-seal

1 filing, along with the purported rationale for the under-seal
2 filing. So obviously in the motion you're not going to be
3 quoting the actual language from the documents under seal,
4 because that would let the cat out of the bag.

5 You understand what I'm saying, right?

6 MR. KLAYMAN: I do.

7 And I just have a --

8 MS. HANDMAN: Judge Goodman, this is not -- I mean,
9 when things get -- you know, a motion is made under seal, the
10 parties get to see it. It's the public that doesn't get to
11 see it.

12 THE COURT: No, no, no.

13 MS. HANDMAN: Unless you're seeking in-camera
14 review, ex parte in-camera review.

15 And, you know, I absolutely take issue, of course,
16 with everything he said about me and my husband, but I won't
17 clutter the record with that. But the notion that we should
18 not be able to see it, as well. Yes, the public may not be
19 able to see it, and, yes, we're bound not to disclose it while
20 we see it and it's under seal. But it's my understanding that
21 when there's a motion to file something under seal, that
22 doesn't exclude the parties to the litigation. They are bound
23 by the sealing until it's unsealed.

24 THE COURT: It depends, Ms. Handman. It all depends
25 on the circumstances.

1 I have cases all the time where people make an
2 under-seal filing where the actual under-seal submission is
3 not shown to the other side.

4 For example, let's say that somebody is arguing that
5 a document is protected by work product or attorney/client.
6 Obviously, they're not going to be submitting copies of a work
7 product document to the other side. Instead, it's subject to
8 an in-camera ex parte examination by the judge. In this case
9 it will be me. And if I look at the material and decide that
10 it is privileged, then the under-seal submission remains under
11 seal, and the opposing party will not get to see it.

12 On the other hand, if I disagree with that theory,
13 then I'll make an appropriate ruling, and the documents are
14 unsealed, and then the opposing counsel gets to see it.

15 So in this particular --

16 MS. HANDMAN: Your Honor, that's privilege material
17 that obviously, you know, you're trying to protect from the
18 other side seeing. This is a motion to seal. We have a
19 protective order in place, that it could be produced subject
20 to that, as well. And I really don't see the same process
21 applying here, where -- as to the parties. As to the public,
22 yes.

23 And I would point out if Mr. Klayman has it -- I
24 don't believe he's gotten classification -- clearance,
25 security clearance. He says he doesn't have it, and that's

1 why he hasn't looked at anything. So, by definition, I don't
2 think they could possibly be classified or subject to a
3 security clearance, and I don't know that he could provide it
4 to you without a security clearance.

5 So I really don't think it's the same process as
6 privilege, and we do have a protective order, and I am an
7 officer of the court, and I would observe any sealing
8 requirements that is in place.

9 THE COURT: So Mr. Klayman, is it your position that
10 the under-seal filing should also preclude opposing counsel
11 from reviewing these materials, or just the public?

12 MR. KLAYMAN: Well, subject to your review, Your
13 Honor.

14 I think you laid out a very fair and reasonable and
15 legally defensible procedure here. I'd like you to be able to
16 see it first.

17 Now, I do have concerns about it being turned over
18 before you have a chance to take a look at it. And I've got
19 to tell you, I mean, Mrs. Handman started laughing when I made
20 reference to Harold Ickes, her husband. But I deposed him
21 twice in the 1990s, and it was believed -- and I certainly
22 believe it based on the information I got -- that he
23 intimidated witnesses during that period of Clinton scandals.
24 And that's why the court, Judge Lambert, allowed me to depose
25 him.

1 In fact, he was ordered back at a deposition, when
2 he left the deposition room claiming he was going to defecate
3 on my carpet.

4 Okay. So I have --

5 THE COURT: I think we're getting a little far
6 afield here, Mr. Klayman.

7 MR. KLAYMAN: Okay. I have serious concerns, and I
8 want an order -- I would ask the Court to make an order to
9 Ms. Handman not to share this information with her husband.

10 MS. HANDMAN: Believe me, he has no interest in it.

11 MR. KLAYMAN: Oh, I believe he has a great interest,
12 because Mr. Montgomery does have information about both the
13 Obama Administration and Hillary Clinton, okay, and you are
14 both very close with her.

15 THE COURT: Listen, folks, folks, I'm sorry.

16 It's now 5:30 on a Friday afternoon, and the hearing
17 is about to end. In fact, I thought the hearing did end, and
18 then I asked if there were any questions about the ruling.

19 So when you file --

20 First of all, who knows whether you're going to even
21 want to file all or some of these documents under seal. You
22 may have second thoughts. But if you do want to file some or
23 all under seal, you'll file the appropriate motion, you'll
24 attach the documents to be filed under seal. You'll serve
25 Ms. Handman with a copy of the motion, as well as copies of

1 the under-seal documents.

2 Ms. Handman will not be able to provide or share or
3 discuss those documents with her husband.

4 And then, in addition, you will serve me with a
5 courtesy copy of the under-seal documents. I've already told
6 you the two alternatives for providing courtesy copies to me.

7 And then I will decide whether or not an under-seal
8 submission is possible.

9 Based on what you've told me so far, Mr. Klayman, it
10 sounds like you have a significant hurdle to clear to convince
11 me, because these documents sound to be relatively innocuous,
12 and the mere fact that you or Mr. Montgomery would prefer that
13 they not be filed, or that you (sic) might be potentially
14 embarrassing, or they're, quote, sensitive, whatever that
15 means, typically those are not sufficient reasons for an
16 under-seal filing.

17 So that's my general orientation.

18 So that's the ruling. I think everybody understands
19 what's going to be happening in the next few days.

20 So we will be in recess, and I wish everybody a good
21 weekend. Take care. By, now.

22 MR. KLAYMAN: Thank you, Your Honor.

23 MS. HANDMAN: Thank you, Your Honor.

24 (Proceedings concluded.)

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I N D E X

Oral Argument 2

* * * * *

E X H I B I T S

(None.)

* * * * *

CERTIFICATE

I, Stephen W. Franklin, Registered Merit Reporter, and Certified Realtime Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated this 22nd day of OCTOBER, 2015.

/s/Stephen W. Franklin

Stephen W. Franklin, RMR, CRR

MR. BOHRER: [1] 5/9 MR. KLAYMAN: [37] MS. HANDMAN: [18] THE COURT: [49] THE COURTROOM DEPUTY: [1] 3/1	33131 [1] 2/10 33145 [1] 2/4 33401 [1] 1/17 35,000 [1] 12/19 37 [3] 5/20 10/4 25/10 3768 [1] 1/16	admitted [1] 17/18 adverse [3] 10/8 14/16 32/24 advised [4] 7/24 8/9 9/12 10/23 advising [2] 5/25 6/1 affidavit [2] 12/10 20/22 affidavits [1] 12/3 afield [1] 43/6 after [3] 7/25 15/5 36/8 afternoon [4] 3/5 16/2 33/23 43/16 again [6] 5/17 8/7 8/9 15/11 25/13 28/11 agents [1] 27/23 ago [2] 15/22 34/12 agree [2] 37/19 38/3 agreed [2] 12/8 21/12 agreement [9] 9/9 21/2 21/6 21/9 21/9 21/13 22/11 29/17 30/18 agrees [1] 22/18 ahead [1] 34/25 al [3] 1/6 3/3 24/3 allegation [1] 18/10 alleged [3] 7/3 22/24 22/25 allow [2] 15/15 15/16 allowed [3] 14/7 26/5 42/24 along [2] 26/5 40/1 already [7] 9/15 17/7 18/3 18/6 20/7 31/7 44/5 also [11] 9/14 11/4 19/7 21/17 22/1 24/14 29/6 34/6 35/4 35/18 42/10 alternatives [1] 44/6 always [1] 39/12 am [1] 42/6 ambush [1] 3/23 among [4] 21/1 24/1 24/2 31/14 amongst [1] 19/2 amount [4] 7/1 19/2 30/23 31/4 amounting [1] 6/23 and/or [2] 17/22 32/3 another [3] 15/5 19/9 23/13 answer [2] 30/21 31/12 any [38] anybody [1] 18/17 anything [8] 3/9 12/7 14/1 17/17 20/17 20/19 27/18 42/1 anyway [1] 17/24 aol.com [1] 1/18 apparently [1] 4/2 appearances [2] 1/14 3/11 applying [1] 41/21 appreciate [1] 18/4 approaching [1] 9/2 appropriate [3] 37/20 41/13 43/23 approximately [1] 23/20	argument [3] 18/4 18/21 45/3 Arizona [1] 23/24 around [1] 12/7 arrangement [1] 36/25 articles [1] 17/7 aside [1] 18/24 ask [11] 9/14 9/19 9/21 10/3 10/5 10/6 20/25 29/16 34/2 38/5 43/8 asked [4] 7/10 8/7 8/9 43/18 asking [9] 8/1 13/3 20/17 22/6 24/25 24/25 25/10 29/11 32/14 aspect [1] 35/2 assert [1] 22/15 assertion [1] 24/7 assess [1] 32/18 assessment [1] 37/8 assignment [1] 38/19 assist [1] 6/18 assistant [5] 7/23 7/23 12/1 16/19 21/21 assume [7] 11/18 12/24 18/14 35/22 35/23 38/25 39/6 assuming [1] 28/3 assumption [1] 28/4 attach [1] 43/24 attached [2] 28/24 39/19 attaching [1] 6/11 attempt [1] 12/12 attention [1] 5/15 attorney [4] 12/1 16/19 38/12 41/5 attorney/client [1] 41/5 August [22] August 1 [1] 9/10 August 12 [1] 29/17 August 12th [3] 21/16 22/12 30/18 August 19th [1] 6/21 August 20th [1] 24/19 August 21 [1] 23/3 August 21st [1] 5/22 August 22 [2] 8/15 29/18 August 22nd [6] 5/19 5/23 6/4 7/15 9/8 10/18 August 26th [2] 6/11 10/19 August 31 [1] 29/20 August 4 [1] 23/3 August 4th [1] 10/11 AUSA [2] 6/10 12/8 authority [2] 10/10 10/12 available [1] 31/2 Avenue [2] 2/6 2/9 await [1] 33/25 awarded [1] 25/11 aware [1] 6/15 away [1] 9/2	background's [1] 14/6 bag [1] 40/4 Baker [7] 6/14 6/23 7/1 7/5 10/24 25/18 27/25 Baker's [8] 7/13 9/11 11/24 21/7 21/18 21/21 22/17 30/21 bankruptcy [1] 23/10 base [1] 17/17 based [10] 13/9 17/6 21/9 32/10 32/19 33/9 34/15 35/11 42/22 44/9 basically [1] 26/8 basing [1] 15/11 basis [4] 13/2 17/3 22/4 29/8 Beach [1] 1/17 because [23] beeping [1] 3/6 before [8] 1/11 6/21 6/21 18/4 18/21 23/24 34/12 42/18 beginning [1] 28/10 behalf [3] 24/18 26/20 30/25 being [5] 4/14 11/12 12/17 24/14 42/17 believe [10] 3/12 20/14 21/8 24/13 34/9 36/14 41/24 42/22 43/10 43/11 believed [1] 42/21 below [1] 29/16 benefit [1] 32/13 best [3] 11/10 24/5 31/2 between [4] 21/3 28/2 30/12 34/16 big [1] 28/3 Bloomberg [1] 13/11 bogus [1] 28/8 Bohrer [2] 2/8 5/10 book [5] 13/13 13/14 17/17 17/24 18/18 both [7] 9/10 12/3 19/5 21/18 32/11 43/12 43/14 bottom [1] 14/5 Boulevard [1] 4/1 bound [2] 40/19 40/22 Brickell [1] 2/9 brief [1] 9/1 briefed [1] 23/3 bring [4] 5/14 28/11 28/13 35/7 brought [3] 17/11 25/4 28/10 burden [2] 18/9 18/20 burdens [1] 18/8
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