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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * * MDL NO. 13-2472-PAS
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IN RE: *
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LOESTRIN 24 Fe * JUNE 26, 2018
ANTITRUST LITIGATION *
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* * * * * PROVIDENCE, RI

BEFORE THE HONORABLE PATRICIA A. SULLIVAN
MAGISTRATE JUDGE
(Telephone Conference)

APPEARANCES:

FOR THE END-PAYOR CLASS DONNA M. EVANS, ESQ.
PLAINTIFFS: Cohen Milstein Sellers & Toll
(via telephone) 88 Pine Street, 14th Floor
New York, NY 10005

MICHELLE C. ZOLNOSKI, ESQ.
Motley Rice
600 Third Avenue
New York, NY 10016

FOR THE CVS and RITE AID ERIC L. BLOOM, ESQ.
PLAINTIFFS: Hangley Aronchick Segal Pudlin
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Suite 200
Harrisburg, PA 17110

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FOR THE WARNER CHILCOTT
AND WATSON DEFENDANTS:

KATHERINE DYSON, ESQ.
JULIAN CANZONERI, ESQ.
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75 State Street
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Court Reporter:

Denise P. Veitch, RPR
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Providence, RI 02903

1 26 JUNE 2018 -- 2:06 P.M.

2 THE COURT: Motion of the Plaintiffs for
3 production of documents, focusing on documents withheld
4 and instead listed on the privilege log. The motion --
5 I'm actually looking at a copy where I can't read the
6 ECF number and so I'm not sure what it is; however,
7 Ms. Saucier may clue me in in a minute. It's
8 obliterated because the sealing ends up putting the
9 ECF number so that I can't read it.

10 Probably the most material thing that I've now,
11 I hope, correctly focused on is that what is now in
12 issue is 29 so-called business communications,
13 communications among various business individuals.
14 Twenty-nine is a reasonably-sized set, and so I want to
15 discuss with the parties whether it makes sense at this
16 point to step to an *in camera* inspection of that set of
17 29, unless 29 really understates the volume and is
18 actually nine boxes of material, in which case I'd like
19 to discuss something less than all of them.

20 And then, second, we have 196 marketing
21 consultant communications. My understanding is that
22 those are principally -- although the Plaintiffs argue
23 that Ms. Hara left Warner Chilcott and was therefore no
24 longer functioning as counsel, yet there are documents
25 logged after she ceased to be counsel. But my

1 impression is that that set essentially consists of her
2 communications, what the Defendants allege is legal
3 advice being provided to certain marketing consultants
4 because Warner Chilcott didn't have an in-house
5 department performing those functions. So my
6 impression is that the Defendants are asserting what
7 appears to be in the nature of a functional equivalence
8 argument. 129-96 (sic) is a lot, so my hope would be
9 that this call would yield an approach to a sampling,
10 perhaps three to be chosen by each side so that we can
11 get to the bottom of whether or not examination of the
12 actual communications reveals that these are truly in
13 their essence the conveying of legal advice which
14 happens to be going to a consultant because the
15 consultant is fulfilling a role that otherwise would
16 have been played by an employee, but the company hadn't
17 built out that department.

18 So the goal is to discuss what that approach
19 should be, including -- in some instances when I've
20 done *in camera* review, if the business
21 communications/legal communications topics are
22 sufficiently obscure, that a very minimal explanation
23 is required to permit the party submitting the
24 documents for *in camera* review to provide a written
25 explanation, with the ability to redact such portions

1 of the written explanation as actually reveal the
2 attorney-client content so that I'm not totally
3 befuddled by the use of words and phrases that I don't
4 understand.

5 So with that, I'd like to have the people who
6 are on the line just identify yourselves quickly.
7 We'll go through who is on the line, who is the
8 spokesperson for Plaintiffs on this motion, who is the
9 spokesperson for the Watson and Warner Defendants, and
10 then we can figure out how to move forward to, I hope,
11 a prompt resolution of the challenge raised by the
12 motion.

13 So if people could clearly and distinctly say
14 who you are and who you represent, and I realize people
15 have to scream and whoever gets heard gets recorded.
16 Go ahead, Plaintiff.

17 MS. EVANS: Your Honor, you have Donna Evans for
18 the End-Payor Plaintiffs but on this call representing
19 all of the Plaintiffs.

20 THE COURT: I'm sorry, say your name again.

21 MS. EVANS: Donna Evans.

22 THE COURT: Ah, Ms. Evans. Okay.

23 MS. EVANS: For the End-Payor Plaintiffs but
24 speaking for all of the Plaintiffs. And I will, after
25 everyone has introduced themselves, want to address the

1 number of documents that you referenced.

2 THE COURT: Okay.

3 All right. Anyone else for the End-Payors?

4 MS. ZOLNOSKI: Yes. Michelle Zolnoski of Motley
5 Rice, LLC on behalf of the End-Payor Plaintiffs.

6 THE COURT: Anybody else for End-Payors?

7 How about Direct Plaintiffs?

8 (No response)

9 THE COURT: Sounds like you're carrying
10 everyone's water, Ms. Evans.

11 Do we have anyone on the line for the Retailers?

12 MR. BLOOM: Your Honor, this is Eric Bloom from
13 Hangley Aronchick on behalf of CVS and the Rite Aid
14 Plaintiffs.

15 THE COURT: Good afternoon.

16 Anyone else for any Plaintiffs?

17 (No response)

18 THE COURT: And on the Defendants' side?

19 MS. DYSON: This is Kate Dyson for the Warner
20 and Watson Defendants, your Honor.

21 THE COURT: All righty. Anybody else?

22 (No response)

23 THE COURT: Okay.

24 (Unintelligible)

25 THE COURT: I'm sorry, I missed that.

1 MR. CANZONERI: Julian Canzoneri for the Warner
2 and Watson Defendants.

3 THE COURT: Okay. Thank you.

4 All right. I'm not hearing any other people
5 introducing themselves.

6 So I think I would like to start then,
7 Ms. Evans, with first of all a correction, if there is
8 a correction, of my understanding of the scope of what
9 we're dealing with.

10 MS. EVANS: Yes, your Honor. There are 29
11 business communications, as we call them, entries that
12 we are challenging. But in addition to that, we are
13 challenging their family members. There are to our
14 best count 63 family members, and so the total for that
15 group would be somewhat tighter than you mentioned. I
16 think that approximates about 92, if I've got my math
17 right.

18 THE COURT: Okay.

19 MS. EVANS: So you've got the parents and then
20 their family members that drop down from that.

21 With respect to -- the same is true with respect
22 to the marketing advisers. Two things I'd like to
23 mention there. One, there are 13 separate marketing
24 advisers, so they're in 13 individual groups, and we
25 can talk more about that in a moment, but I just wanted

1 to clarify that it's not a list of 196 related to any
2 one particular marketing adviser. So they all, you
3 know, may have some different role, I don't know.

4 In addition to that there are, among those 196
5 parent entries, an attendant 241 family members
6 (unintelligible). That's 196 parents, 241 family
7 members, which is a total of 437 entries in all. We
8 did not include the family members because we felt that
9 it was easier for the Court to see the parents' entries
10 only without volumes and volumes of paper.

11 THE COURT: I appreciate that.

12 Ms. Evans, from your perspective, let me just
13 sort of throw an idea up on the wall and then you can
14 react. If your view that the parent communication is
15 sufficient for the purpose of meaningful *in camera*
16 review, does it make sense for it to be the 29 parents
17 in the business communication category, and then the
18 fact that you've got 13 advisers; I wonder if that
19 means that the Plaintiffs get to designate let's say
20 20, and the Defendants, who of course know the content,
21 can designate a different 20, so that I would be
22 looking at a total of 40 parents in the marketing
23 category. I'm thinking of 20. That's more than I
24 wanted to look at frankly, but with 13 different
25 advisers it's possible that the nature of the

1 communication with one adviser might be crisply and
2 clearly an attorney-client communication and another
3 very different. So it might change adviser by adviser,
4 so I would want the Plaintiffs to be allowed to
5 designate. And then you would get to choose what you
6 want to do with your 20, you know, what you think is
7 going to give me the best array to make a judgment.

8 Does that make sense from the Plaintiffs'
9 perspective?

10 MS. EVANS: Yes and no. I guess as to the yes
11 part that may make sense on the marketing consultants
12 which I'll (unintelligible) in just a moment. But I
13 will mention as to family members in both categories,
14 the family members will not automatically be privileged
15 or non-privileged based on the parent.

16 THE COURT: Right.

17 MS. EVANS: For example, you may have a
18 parent -- well, first off, you know, it's obvious you
19 may have a memo that says or sends some other document
20 with financial information in the business documents
21 that should be only redacted. So just to clarify, what
22 I wouldn't want to happen is whether documents get
23 produced or not depends solely on that analysis of say
24 29 or three or six business parent members. I'm trying
25 to think of the best way to resolve that. It might be

1 that three family members as well, but I don't want to
2 overload you. That would end up being approximately
3 six and six per party, perhaps. But that's my concern
4 about family members. Otherwise, I think it might make
5 sense.

6 The only other thing that I would add about the
7 *in camera* review -- well, two things. One, it might be
8 helpful if Defendants would highlight for you what they
9 think is privileged about them so that it might help
10 you to distinguish between is there any information
11 that could become privileged if you're looking at it.

12 The second, I'll also say what I think I'm
13 hearing what you're saying, which is that you're
14 looking as far as deposition -- I'm sorry --
15 declarations, but not requiring any engagement
16 agreements, and I'm just, you know --

17 THE COURT: I'm sorry, your words just got
18 muddled on that sentence. You said I'm looking at the
19 declaration but...

20 MS. EVANS: But as I understand it you're not
21 asking for any further information, including
22 engagement agreements or anything else that might
23 enlighten what's going on (unintelligible). You know,
24 our view would be, without getting into argument, that
25 Ms. Hara's declarations doesn't particularly describe

1 any particular relationship that would create an
2 exception to what is now a non-privileged document
3 based on sharing with third parties.

4 So as I understand what you're saying is you're
5 going directly into *in camera* review at this point.

6 THE COURT: Yes, I think I want to go directly
7 to *in camera* review and to have -- I mean, for example,
8 if Ms. Hara is saying thank you for the draft of the
9 ad, my legal advice is that the first sentence is
10 defamatory and should be altered, my legal advice is
11 further that the second sentence is contrary to CFR
12 blah blah blah, if you have any questions about my
13 legal advice please call me, best regards, Attorney
14 Hara. And I mean that just screams that this is an
15 attorney-client privilege to a marketing consultant who
16 is serving as the marketing arm of the company. I
17 don't think I need to spend three weeks worrying about
18 finding all the engagement letters. And if that's the
19 communication, if it's muddy, then maybe more
20 information would be required.

21 What I like to do, which has worked well in
22 other situations, is to have the Defendants file a
23 supplemental, very tight, very short document by
24 document memorandum in which they explain to me why
25 this is privileged. And often when they're really

1 privileged it's really clear, it's really easy. And if
2 that supplemental very short, tight document-specific
3 memorandum necessarily and it will contain privileged
4 information itself, then what I am telling the
5 Defendants to do is to file that document, to redact it
6 so that the Plaintiffs can't see the portion of the
7 filing that says in my hypothetical case Ms. Hara is
8 obviously providing legal advice to the ABC advertising
9 agency, that sentence. Well, actually that sentence
10 probably gets redacted, but if there's more discussion
11 of what's in the sentence it would get redacted. And
12 then if the Defendants say that the ABC advertising
13 agency, you know, did prepare all Warner Watson
14 advertisements from, you know, during Ms. Hara's time
15 as counsel for the company, then I think we can --
16 that's pretty simple. I don't think we need to spend
17 layers and layers of time to get to the bottom of it.

18 If the Plaintiffs, if what I see inside the
19 documents is ambiguous and I can't figure out whether
20 this is really privileged or not without knowing dates
21 of engagement and all that sort of detailed stuff, I'll
22 ask for more information.

23 But it seems to me this stuff is going to fall
24 into one of three categories: Plainly not privileged,
25 crisply and clearly privileged, muddy as heck, and if

1 it's muddy as heck, then I may ask for more
2 information.

3 MS. EVANS: Okay. And your Honor, very
4 respectfully, Plaintiffs do not agree that Ms. Hara
5 providing legal advice to a third party is the test for
6 an exception. In fact we think that turns the
7 exception on its head. The test is that it would have
8 to be applied to be advice given to the client, which
9 is Warner Chilcott's marketing department, has to be
10 legal advice and that the third party has to be somehow
11 facilitating that legal advice, none of which we think
12 she's shown in her declarations. But we took the test
13 step, and that's why I asked about an agreement, if not
14 met.

15 THE COURT: Right. Well, if I'm
16 understanding -- and I'm sure Ms. Dyson is going to
17 help us with this in a minute.

18 If I'm understanding the position that Ms. Hara
19 is taking, she is the legal adviser to the marketing
20 department at Warner Chilcott. Actually let's see if
21 she was Watson, yes -- no; Warner Chilcott, and that
22 Warner Chilcott didn't hire employees for marketing, it
23 used an outside vendor. So this isn't analogous to
24 what's in most of the cases where the attorney is
25 communicating with the client and then the third party

1 is in the mix and the analysis of the court is why is
2 that third party in the mix. If the third party is a,
3 you know, a language interpreter and the attorney
4 doesn't speak the client's language, we don't spend any
5 time on that. That's plainly absolutely necessary.

6 That's not what we're dealing with here. This
7 is different, and I think that the term that's been
8 used in the cases is functional equivalent.

9 So I understand that the Plaintiffs are
10 challenging that. I want to see what the
11 communications look like, and then I'll figure out
12 whether the communications are so clearly functionally
13 equivalent that I can rule, or they're not, in which
14 case I need more information.

15 MS. EVANS: Your Honor, one of our concerns is,
16 and I think we gave you the *Lynx* case, L-y-n-x, --

17 THE COURT: Yes. Actually I just read *Lynx*
18 about half an hour ago.

19 MS. EVANS: All right. The fact that says that
20 the functional equivalent is not recognized in the
21 First Circuit as a basis for the exception to third
22 party waiver, so I just wanted to supply that for you.
23 And based on that, we don't think even if the
24 functional equivalent might establish, which we don't
25 think it's met, they did have a marketing department,

1 and she says in her declaration that they were sort of
2 staffing marketing. But you will see on the actual
3 entries that there are marketing people inside Warner
4 Chilcott working at Warner Chilcott.

5 So we both don't think that the function at this
6 point has been met, but we also see that the First
7 Circuit has not recognized that as a basis for an
8 exception to third party waiver, again, through our
9 additional concerns.

10 THE COURT: Well, I think Judge O'Toole is not
11 saying that functional equivalent has been rejected in
12 the First Circuit. It simply says, as so many things
13 when your circuit is so tiny like ours, it just hasn't
14 been specifically adopted. And I think his analysis is
15 that he observes that it hasn't been adopted or
16 applied, but then he goes on and does the analysis and
17 finds that what was presented in the case that he was
18 looking at didn't hit, so therefore he found that the
19 communications were, the involvement of the third party
20 amounted to a waiver, and that was the basis for the
21 ruling. So --

22 MS. EVANS: Yes.

23 THE COURT: -- yes, I'm with you. I just don't
24 foreclose the possibility that an entity can use a
25 third party to perform a function and have

1 attorney-client communications conveyed not via the
2 client with the third party listening in, which is
3 which most of these cases are, but directly to the
4 third party acting as an alter ego of the client. I
5 think that's a possibility, and I think the
6 communications will tell me if that's what I'm looking
7 at or not.

8 MS. EVANS: One thing that I might also add.
9 She says in her declaration that she does this
10 communication via the third party in order to convey
11 legal information to the client, so clearly the client
12 marketing department is there, and our view is that if
13 that attorney to client communication for purposes of
14 legal advice that protected but not giving information
15 to say, yes, you need to remove that from the top of
16 your title in this marketing document, would not be the
17 kind of third party protected information.

18 And if I might point you to what we did not cite
19 to in our brief, but there is a District of
20 New Hampshire case called Flagstaff (sic) in which a
21 bank gives the information to a marketing consultant,
22 and the court (unintelligible) analysis in the First
23 Circuit. So this is not privileged, (unintelligible)
24 virtually very similar if not exact circumstances to
25 this.

1 THE COURT: Do you have a citation for that
2 case?

3 MS. EVANS: I'm sorry?

4 THE COURT: The Flagstaff case, do you have a
5 citation?

6 MS. EVANS: Yes, I do. It's 2009 Westlaw, so
7 2009 WL 3756898.

8 THE COURT: 6898. Okay.

9 MS. EVANS: Sorry.

10 THE COURT: That sounds like something I should
11 definitely take a look at.

12 So Ms. Evans, I want to hear from the Defendants
13 so let me kind of wrap up here. It sounds like the
14 Plaintiffs, I mean I don't want to go down a long and
15 time-consuming and expensive path of having a little
16 mini trial on the nature of each of 13 consultants. It
17 feels to me like that may be the horse and the
18 substance of the communications may be the cart, but I
19 think the cart is going to tell us whether it's worth
20 engaging in an effort like that. And that's why I want
21 to jump -- to not have mini trials on who are the 13
22 advisers but, rather, go to an *in camera* review. I am
23 not unmindful of the arguments that you're making, and
24 I'm going to go add that Flagstaff case to my pile of
25 reading material and will be very conscious that if the

1 communications end up being as you're describing, that
2 is, in-house attorney to in-house employees with the
3 marketing consultant participating in the communication
4 and not particularly, you know, not necessary in the
5 way that the case has described necessity, so that
6 we're really in the more traditional third-party waiver
7 category, then I'm going to say it's waived, if that's
8 what they look like. But I'm going to see what they
9 look like, and what I'd like to do is limit that look
10 to 20 to be designated. And the Defendants can rest on
11 what the -- so the Defendants don't have to add more to
12 the pile unless they want to. I just want to give them
13 the option, if they feel that the Plaintiffs' 20 are
14 not a fair representation of the nature of the
15 communications, that you can have up to 20 more. I'd
16 just as soon get less. And what I'd like is for the
17 Defendants' submission to include with each document a
18 picture of the log entry for the document, and then the
19 Defendants' would have the opportunity, if they want,
20 to provide me with document specific, tightly worded,
21 not a lot, argument about why the document that I'm
22 looking at is covered by a privilege and is
23 appropriately logged.

24 I'm not sure exactly what I'm now asking for,
25 but I think this whole business of the parents and the

1 families, what I would ask simply is that in making the
2 presentation to me you are crystal clear in what's a
3 family member that's been withheld, what's a family
4 member that's not been withheld or redacted, or however
5 the family members are nuanced, so that I understand
6 very clearly what I'm looking at.

7 Anything else, Ms. Evans, that you'd like to
8 bring to my attention before I turn to the Defendants?

9 MS. EVANS: A couple of quick questions, your
10 Honor. Thank you. One, would it be possible or would
11 it be helpful, I think is the better way to ask it, to
12 you if the Plaintiffs can provide you with a picture of
13 the 20 entries that they're challenging for purposes of
14 the *in camera* review, to provide a single sentence as
15 to why we are challenging it?

16 THE COURT: Absolutely. I think that would be
17 helpful. So that would basically be a supplemental
18 submission by you on the documents that are actually
19 going to be the subject of the *in camera* review.

20 MS. EVANS: And the 20 that we're talking about
21 now are the marketing advisers; correct?

22 THE COURT: Correct. What I'm contemplating,
23 although your 53 family members are sounding
24 intimidating, so maybe we can do a sampling. Do you
25 think, Ms. Evans, that a sampling of the business

1 communications would be an effective device?

2 My sense was this marketing set are going to
3 have some similarity and therefore a sampling makes
4 sense and can result in a ruling that applies to the
5 entire tranche, but that the business communications
6 are really going to turn on the individualized content
7 of the document as to whether it's actually dealing
8 exclusively with the conveyance of legal advice among
9 a -- as I understand it, we've got business people
10 communicating with each other. You know, there might
11 be an attorney on the list, but it's
12 business-to-business people, but the content is the
13 conveyance of legal advice and that's why the privilege
14 has been invoked.

15 So it feels to me like you kind of need to look
16 at each one. Do you have any more efficient
17 suggestions?

18 MS. EVANS: Maybe the four that we talked
19 about -- you were planning to look at the 29. If we
20 left that intact, if you did look at that, perhaps we'd
21 try to give you half a dozen or 10 at most family
22 members, but maybe we could limit it to, you know, to
23 half, six, and that would give you a feel for the
24 family members as well. And if in your view of that
25 selection from both sides you see a significant number

1 of documents that you think need to be redacted or are
2 not privileged then you may go further; but maybe as
3 the first step you get a good feel for the 29 parents
4 and, you know, combined, a dozen family members, and
5 that way you have a good sense of the document.

6 THE COURT: Okay. All right. That sounds like
7 a viable, potentially viable suggestion.

8 All right. Let's hear from Ms. Dyson.

9 MS. DYSON: Good afternoon, your Honor. This is
10 Kate Dyson.

11 THE COURT: Hello.

12 MS. DYSON: Hello. We are certainly happy to go
13 along with the Court's proposal. I would say that I
14 think we can probably tighten it up a bit for your
15 Honor, as we pointed out in our response brief.

16 For the marketing communications, a number of
17 the challenged entries are iterations of e-mail chains
18 where, you know, there are two distinct sections that
19 are redacted. For example, in each iteration of the
20 chain, and there're maybe 15 of, you know, these e-mail
21 exchanges going back and forth, so I think that we may
22 well be able to shrink of size of that. And similarly,
23 while Plaintiffs touched on communications with several
24 different vendors, a number of those vendors appear on
25 the same communications and so I think that we -- you

1 know, perhaps Ms. Evans and I can communicate offline,
2 but I'm hopeful that we could provide your Honor with
3 fewer than 40 examples, just to respect the Court's
4 time. So I just wanted to put that initially for the
5 marketing documents.

6 And similarly for the business documents, we're
7 happy to provide you with as many as you would like to
8 look at, but I do think that a number of them, as
9 reflected in their logged entries, are very similar.
10 You know, there are certain communications with
11 committees that are, you know, not identical
12 necessarily but other-themed, shall we say, and you
13 might not have to look at all of them. And so perhaps
14 we could ease the Court's burden a bit by identifying
15 those for the Court.

16 THE COURT: I'd really appreciate that. What it
17 feels to me like what would make some sense is let's
18 pick a deadline for the filing of a supplemental
19 memorandum by both sides, with the Defendants having
20 leave in advance to ask to have any portions of what
21 they have to say that actually would reveal the content
22 of something that's privileged, that would be redacted,
23 so that I can understand what I'm looking at. And I
24 think it would be very helpful for the Plaintiff to do
25 the same thing. And between now and when you actually

1 make those submissions with the actual documents, if
2 you guys could meet and confer to trim it down to a
3 set; recognizing that what I'm giving you leave to
4 submit is up to all of the 29 business communications,
5 up to 10 family members related to the business
6 communications, up to 20 chosen by the Plaintiffs, up
7 to 20 chosen by the Defendants of the third party
8 marketing consultant parents and then the associated
9 family members that go with those, with the hope and
10 expectation that the parties' meet and confer will
11 reduce significantly what's actually submitted.

12 And then your supplemental briefs and the
13 presentation will give me a really clear log entry by
14 log entry what am I looking at, what does the log entry
15 associated with this document actually say, so that I
16 have no ambiguity to go from this is the log entry,
17 here's the document; in the *in camera* set that I get
18 from the Defendants they're together, and then a
19 document by document, you know, whatever further
20 argument either side would like to submit, including on
21 the Plaintiffs' side to argue further that additional
22 information regarding the identity or the relationship
23 with the consultant who is involved in the
24 communication is essential in order for the Court to
25 make a determination as to whether one of these

1 exceptions to the basic third party rule applies.

2 So when should we set that deadline, recognizing
3 that we're rocking into the holiday land. Two weeks?

4 MS. DYSON: Two weeks should be fine, your
5 Honor.

6 MS. EVANS: That's fine, your Honor.

7 MS. DYSON: Your Honor, I have just a clarifying
8 question. When you said so many marketing parents and
9 their associated family members, I want to make sure I
10 understand, and I apologize that I'm not clear on this.

11 You would like the associated family members
12 with them or only a selection of family members?

13 THE COURT: I'd really prefer a selection of
14 family members.

15 MS. DYSON: Okay.

16 THE COURT: I basically want, would like this to
17 be as tight as possible, recognizing that the goal is
18 that I want to give a really fair review. I've got to
19 be able to understand what I'm looking at, understand
20 what the privilege asserted is, why, if there's a third
21 party why there's an exception, and what's the nature
22 of the legal advice. You know, I'm not -- I've never
23 worked in this particular industry, so the vocabulary,
24 I might need some help with why a term is actually a
25 legal term of art. If it is, I don't know, and so I

1 would be looking for help with that.

2 But to the extent that there are family members
3 that are not interesting and not in issue and can be
4 omitted, just let me know that there was something
5 omitted and that it's for a good reason, and I won't
6 worry about it; I'll be happy.

7 MS. EVANS: And I think Plaintiff can
8 (unintelligible) on the family member, and we will
9 certainly meet and confer about the other documents.
10 However, we are somewhat in the dark even more than you
11 will be after reviewing them *in camera*, and so I don't
12 want to limit the number much further other than we'll
13 discuss it and certainly, you know, speak with
14 Ms. Dyson, figure ways that maybe don't put us in the
15 dark.

16 But given there's been a lot of over-designation
17 in this case, more than 5,000 entries that come off the
18 logs, we want to make sure that you get to see and that
19 we are able to provide you with the representative
20 number, so we'll do our best.

21 THE COURT: Yes. I mean that's why I'm not
22 placing tighter limits on you, because I recognize that
23 you're, you know, your steering's aligned and the
24 Defendants know what they've got. That's why I don't
25 want to impose artificial limits. That said, the more

1 targeted what I receive, the better quality
2 decision-making you're going to get.

3 MS. DYSON: Understood. Thank you.

4 THE COURT: All right. A date in two weeks,
5 July 10th. Okay. July 10, does that work for
6 everybody?

7 MS. DYSON: Yes, your Honor.

8 MS. EVANS: Yes, your Honor.

9 THE COURT: Okay. So on July 10 we'll see a
10 filing from both sides in the form of supplemental
11 memoranda. The Defendants', doubtless, will be with a
12 motion to seal; and then I will receive presumably by
13 hand-delivery from I'm guessing Ms. Benjamin, who is
14 acting as local counsel for the Defendants, a set of
15 the documents arranged so that I don't have to guess
16 what log entry goes with what document, it's all very
17 very clear.

18 MS. EVANS: We will make it abundantly clear,
19 your Honor.

20 THE COURT: All right. Thank you very much.
21 And I will try to rule as quickly as I can after -- I'm
22 not sure I'm going to need further argument. I'll see.
23 I'll look at the *in camera* review set very quickly and
24 you may get a decision; you may get a text order
25 decision; you may get a more worked-through decision;

1 or you may get a notice for a hearing, depending on
2 what I see. Okay?

3 MS. EVANS: Thank you.

4 THE COURT: Anything else?

5 (No response)

6 THE COURT: Court is in recess.

7 MS. EVANS: Not from the Plaintiff.

8 (Adjourned)

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C E R T I F I C A T I O N

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I, Denise P. Veitch, RPR, do hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes from the official digital sound recording of the proceedings in the above-entitled case.

/s/ Denise P. Veitch
Denise P. Veitch, RPR

July 2, 2018
Date