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12  
13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

16  
17 IN RE: BABY FOOD PRODUCTS LIABILITY  
LITIGATION

Case No. 3:24-md-3101-JSC

MDL 3101

Hon. Jacqueline Scott Corley

18  
19  
20 This Document Relates to:  
21 ALL ACTIONS

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION FOR SUMMARY  
JUDGMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF THEIR MOTION FOR  
SUMMARY JUDGMENT**

Date: July 9, 2026

Time: 2:30 p.m.

Location: Courtroom 8

19th Floor 450 Golden Gate Ave.  
San Francisco, CA 94102

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 9, 2026, at 2:30 p.m., or as soon thereafter as the  
3 matter may be heard, in the courtroom of the Honorable Jacqueline Scott Corley in the United States  
4 Courthouse, Courtroom 8, 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102,  
5 Defendants Beech-Nut Nutrition Company, Gerber Products Company, The Hain Celestial Group,  
6 Inc., Nurture, LLC, Plum, PBC, Sprout Foods, Inc., The Campbell’s Company, Walmart Inc.,  
7 Amazon.com Services LLC, and Whole Foods Market Services, Inc. (collectively, “Defendants”)  
8 will and hereby do move the Court pursuant to Federal Rule of Civil Procedure 56 for an Order  
9 granting summary judgment to Defendants as to all claims in this MDL in all cases listed in Exhibit  
10 2 to the Declaration of Livia Kiser.

11 This motion is based upon the pleadings and papers on file in this action, this Notice of  
12 Motion and Motion, the accompanying Memorandum of Points and Authorities, and the Declaration  
13 of Livia M. Kiser submitted in support hereof.

14 Dated: May 1, 2026

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19 Dated: May 1, 2026

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*Attorneys for Amazon.com Services LLC*

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1 **I. INTRODUCTION**

2 As the Court recognized early in this MDL, a threshold legal question underlying all of  
3 Plaintiffs' claims is general causation: whether a child's consumption of each Defendant's baby  
4 food products is capable of causing autism spectrum disorder ("ASD" or "autism") and/or Attention-  
5 Deficit/Hyperactivity Disorder ("ADHD"). General causation is an essential element of all claims  
6 consolidated in this MDL, and admissible expert testimony is required to establish it. *In re Hanford*  
7 *Nuclear Rsrv. Litig.*, 292 F.3d 1124, 1133 (9th Cir. 2002); *Kennedy v. S. Cal. Edison Co.*, 268 F.3d  
8 763, 768 (9th Cir. 2001). The Court therefore structured the MDL to address that question first,  
9 requiring Plaintiffs to provide expert opinions purporting to establish general causation. The Court's  
10 February 27, 2026 Order finding that all of Plaintiffs' general causation experts' opinions are  
11 unreliable and inadmissible under Rule 702 means that Defendants are entitled to summary  
12 judgment. (*See* Dkt. No. 710, Rule 702 Order.)

13 As to which Plaintiffs and claims are subject to the Court's summary judgment order, in  
14 April 2025, the Court gave express notice before expert discovery on general causation began that  
15 all Plaintiffs who filed cases in the MDL on or before November 21, 2025, would be bound by the  
16 Court's rulings on the Rule 702 motions. (Dkt. No. 448 at 48:12-50:4, Mar. 27, 2025 Status Conf.  
17 Hr'g Tr.; Dkt. No. 466 at 23:20-24:20, 27:1-28:13, Apr. 24, 2025 Status Conf. Hr'g Tr; Dkt. No.  
18 467, Pretrial Order No. 16.); *see also In re: Zantac (Ranitidine) Litig.*, 2026 WL 1009008, at \*4, 7  
19 (Del. Super. Ct. Apr. 14, 2026) (rejecting the argument, in litigation involving the same Plaintiffs'  
20 counsel, that the Rule 702 ruling excluding plaintiffs' general causation experts did not apply to all  
21 75,000 plaintiffs, explaining that "[t]he record is clear that both the parties and this Court understood  
22 that any rulings on general causation would apply docket-wide"). Plaintiffs' leadership counsel  
23 consented to this process, and no Plaintiff objected to it. For the cases filed or transferred after that  
24 date, Defendants ask the Court to establish an Order to Show Cause process requiring any Plaintiffs  
25 who wish to avoid summary judgment to explain how they can do so in light of the Court's Rule  
26 702 order. This process is consistent with how other MDL courts have managed similar situations.  
27 The parties have agreed to address whether and how such a process should be established after the  
28 Court rules on summary judgment.

1 For these reasons and those set out below, Defendants request that the Court enter summary  
2 judgment for Defendants as to all claims in this MDL in all cases listed in Exhibit 2 to the  
3 Declaration of Livia Kiser.

## 4 **II. BACKGROUND**

5 On April 11, 2024, the Judicial Panel on Multidistrict Litigation created the *In re Baby Food*  
6 MDL and assigned it to this Court for pretrial coordination. (Dkt. No. 1.) The MDL centralizes all  
7 federal cases alleging that lead, arsenic, cadmium, and/or mercury in Defendants' baby food  
8 products were a cause of Plaintiffs' ASD and/or ADHD.<sup>1</sup> (*Id.*) More than 400 cases are now part  
9 of the MDL.

10 Consistent with its charge, and as is typical in virtually all MDLs, one of the Court's initial  
11 Orders appointed leadership counsel for all MDL Plaintiffs. (*See* Dkt. No. 147.) Leadership  
12 counsel's responsibilities include the duties to "determine ... and present to the Court and opposing  
13 parties the position of the Plaintiffs on all matters arising during pretrial proceedings," "coordinate  
14 the scheduling and conduct of discovery on behalf of Plaintiffs," and "suggest ... the ordering,  
15 priority, and response to pending and anticipated motions." (*Id.* at 1-2.) Because of the relatively  
16 small number of law firms that brought federal baby food cases, every firm serving as lead counsel  
17 on a filed federal case at the time these appointments were made was given some leadership position.  
18 (*Id.* at 1.) No Plaintiff has ever objected to the Court's appointment Order or sought to withdraw  
19 from leadership.

20 The Court also recognized early on that Plaintiffs' ability to meet their general causation  
21 burden with admissible expert testimony presented a threshold, cross-cutting issue which impacted  
22 the litigation. As a result, the Court implemented a phased approach to discovery and motions  
23 practice. Under this process, the parties would first address whether consumption of each  
24 Defendant's baby food products is capable of causing ASD or ADHD because of the levels of lead,

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25  
26 <sup>1</sup> Several Plaintiffs in this MDL have also pleaded claims related to infant formula. Because the  
27 Court has held that those infant formula claims are not part of the MDL, (*see* Dkt. No. 440, Pretrial  
28 Order No. 15 (granting motion to strike infant-formula allegations and confirming they are not part  
of the MDL)), this summary judgment motion does not address those claims. After the Court rules  
on this motion, Defendants propose to meet and confer with Plaintiffs about how to address infant  
formula claims.

1 arsenic, cadmium, and mercury those products may have contained. (Dkt. Nos. 148 at ¶ 7, 188 at  
2 ¶ 3; *see also* Dkt. No. 710 at 12, 13.)

3 As the case was about to move into expert discovery on general causation, Plaintiffs’  
4 leadership counsel advised the Court that their firms and others had clients who intended to assert  
5 claims but had not yet filed complaints in the MDL. In response, the Court notified the parties that  
6 it would set a deadline for Plaintiffs to join the MDL, explaining that “because we’re doing general  
7 causation” there needed to be a deadline so that Plaintiffs would be “bound one way or the other.”  
8 (Dkt. No. 448 at 48:9-12.) Plaintiffs’ leadership counsel acknowledged that if Defendants prevailed  
9 on motions challenging Plaintiffs’ general causation experts, the ruling would apply “to the people  
10 who had filed in the MDL.” (*Id.* at 49:25-50:5.) The Court set the deadline as November 21, 2025,  
11 two weeks before the date for the hearings on Rule 702 motions. (Dkt. No. 466 at 27:1-3; Dkt. No.  
12 467 at 1.) No Plaintiff objected to that Order or deadline.

13 Thereafter, in accordance with the established case management schedule, Plaintiffs  
14 identified eight experts to support their claim of general causation: a dietician and an exposure  
15 scientist, three epidemiologists, two toxicologists, and a pediatric neurologist. (Dkt. No. 710 at 38-  
16 39.) Only five of those experts (the epidemiologists and toxicologists) offered a causation opinion,  
17 and they limited their opinions to lead and arsenic. None of Plaintiffs’ experts offered any opinions  
18 about cadmium or mercury exposure through Defendants’ baby foods. At the outset of the Rule 702  
19 hearing, Plaintiffs confirmed that they were abandoning these claims, recognizing that would result  
20 in entry of a summary judgment order as to those metals. (Dkt. No. 710 fn. 1 (highlighting that  
21 Plaintiffs’ lead counsel noted “that his clients were dismissing their claims as to those metals with  
22 prejudice.”); Dkt. No. 697 at 5:11-13 (Court: “Summary judgment would be granted [as to claims  
23 related to cadmium and mercury] because there’s no expert testimony.” Plaintiffs’ lead counsel:  
24 “Precisely.”).)

25 On February 27, 2026, following a multi-day hearing that included live testimony from four  
26 of Plaintiffs’ experts opining on lead and arsenic exposure, the Court issued a 43-page opinion  
27 granting Defendants’ Rule 702 motions as to all five of Plaintiffs’ experts who offered a general  
28

1 causation opinion and the two experts who offered exposure-related opinions.<sup>2</sup> The Court  
2 subsequently set a deadline for Defendants to file a summary judgment motion based on Plaintiffs’  
3 lack of admissible general causation evidence. (Dkt. No. 723, Pretrial Order No. 20.)

### 4 **III. LEGAL STANDARD**

5 Summary judgment is appropriate where “there is no genuine dispute as to any material fact  
6 and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). There “can be no  
7 genuine issue as to any material fact” where the non-moving party “fails to make a showing  
8 sufficient to establish the existence of an element essential to that party’s case, and on which that  
9 party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).  
10 “[A] complete failure of proof concerning an essential element of the nonmoving party’s case  
11 necessarily renders all other facts immaterial.” *Id.* If “the nonmoving party has failed to make a  
12 sufficient showing on an essential element of her case with respect to which she has the burden of  
13 proof,” “the moving party is entitled to a judgment as a matter of law.” *Id.* at 323.

### 14 **IV. ARGUMENT**

15 There is no legal or factual basis upon which Plaintiffs may now challenge Defendants’ right  
16 to summary judgment. Where, as here, general causation is a complex medical question, a plaintiff  
17 must introduce admissible expert testimony supporting general causation. Because the Court has  
18 excluded all such testimony, Plaintiffs lack proof of an essential component of their claims. Courts  
19 routinely grant summary judgment in these circumstances. The Court should do the same.

#### 20 **A. Plaintiffs’ Failure to Provide Admissible Expert Testimony on General 21 Causation Compels Entry of Summary Judgment.**

22 Proof of general causation is an essential element of all Plaintiffs’ claims—if consumption  
23 of Defendants’ baby foods is not capable of causing ASD or ADHD, then Plaintiffs cannot prevail  
24 on any cause of action pleaded in this MDL. *Hanford*, 292 F.3d at 1134 (to prevail on their claims,  
25 plaintiffs “must establish both gener[al] and individual causation”); (See Dkt. No. 451 ¶¶ 176, 188,  
26 203, 221, 233, 249, 258.) And to prove general causation, Plaintiffs must provide admissible expert

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27  
28 <sup>2</sup> The Court denied the motion as to Dr. Kevin Shapiro, a pediatric neurologist, who offered only a biological plausibility opinion.

1 testimony on the subject. *See Hardeman v. Monsanto Co.*, 997 F.3d 941, 963 (9th Cir. 2021);  
2 *Hanford*, 292 F.3d at 1130–31, 1137; *Kennedy*, 268 F.3d at 768 (general causation “must be proven  
3 within a reasonable medical probability based upon competent expert testimony”); *Lust By &*  
4 *Through Lust v. Merrell Dow Pharms., Inc.*, 89 F.3d 594, 598 (9th Cir. 1996) (“Summary judgment  
5 was appropriate since without [the expert’s] testimony, [Plaintiff] offered no evidence of causation,  
6 a necessary element of his personal injury action.”).

7 “Sequence matters: a plaintiff must establish general causation before moving to specific  
8 causation.” *Wells v. Smithkline Beecham Corp.*, 601 F.3d 375, 378 (5th Cir. 2010); *see also Norris*  
9 *v. Baxter Healthcare Corp.*, 397 F.3d 878, 881 (10th Cir. 2005) (“Plaintiff must first demonstrate  
10 general causation because without general causation, there can be no specific causation.”). In a  
11 toxic tort case, in order to satisfy the burden of proof on general causation, a plaintiff must offer  
12 expert evidence that the allegedly toxic product can cause the alleged injury at “levels people  
13 realistically may have experienced.” *Hardeman*, 997 F.3d at 963. In this MDL, therefore, Plaintiffs  
14 were required to provide admissible expert testimony that “a child’s consumption of each  
15 Defendant’s baby food—at realistic doses—is capable of causing ASD or ADHD.” (Dkt. No. 710  
16 at 12.)

17 As to the claims based on mercury and cadmium in Defendants’ baby foods, Plaintiffs chose  
18 not to offer any general causation expert testimony, thus abandoning those claims. (Dkt. No. 710  
19 fn. 1.) After the Court confirmed this at the December 8, 2025, Rule 702 hearing, Plaintiffs’ lead  
20 counsel agreed that summary judgment on claims related to cadmium and mercury would be  
21 granted. (Dkt. No. 697 at 5:11-13 (The Court: “Summary judgment would be granted [as to claims  
22 related to cadmium and mercury] because there’s no expert testimony.” Plaintiffs’ lead counsel:  
23 “Precisely.”)) Thus, no dispute exists that summary judgment should be entered for Defendants on  
24 Plaintiffs’ claims as to mercury and cadmium.

25 As to the claims based on lead and arsenic in Defendants’ baby foods, summary judgment  
26 must be granted because the Court’s Rule 702 Order leaves Plaintiffs with no admissible expert  
27 evidence of general causation. Many MDL courts in products liability matters have similarly  
28 granted summary judgment after granting Rule 702 motions on general causation. *See, e.g., In re*

1 *Viagra (Sildenafil Citrate) & Cialis (Tadalafil) Prods. Liab. Litig.*, 424 F. Supp. 3d 781, 798–99  
2 (N.D. Cal. 2020); *Zantac*, 2026 WL 1009008, at \*4, 7; *In re Zoloft (Sertralinehydrochloride) Prods.*  
3 *Liab. Litig.*, 176 F. Supp. 3d 483, 498–501 (E.D. Pa. 2016), *aff'd*, 858 F.3d 787, 800 (3d Cir. 2017)  
4 (excluding general causation opinions and entering summary judgment in numerous personal injury  
5 cases); *In re Lipitor (Atorvastatin Calcium) Mktg, Sales Pracs. & Prods. Liab. Litig.*, 227 F. Supp.  
6 3d 452, 469, 485 (D.S.C. 2017), *aff'd*, 892 F.3d 624, 638, 647–49 (4th Cir. 2018) (MDL court  
7 granting summary judgment in numerous personal injury cases, based on exclusion of general  
8 causation opinions); *In Re Mirena IUD Prods. Liab. Litig.*, 202 F. Supp. 3d 304, 327–28 (S.D.N.Y.  
9 2016), *aff'd*, 713 F. App'x 11, 14–16 (2d Cir. 2017) (same). Indeed, Plaintiffs' lead counsel  
10 recognized this risk early in this litigation, when he confirmed that the relevant question is whether  
11 Plaintiffs' "expert testimony is ... sufficient to defeat summary judgment." (Dkt. No. 194 at 34:25-  
12 35:7, Jun. 20, 2024 Status Conf. Hr'g Tr.) Because Plaintiffs have no admissible expert testimony  
13 to support their claims based on lead and arsenic, they cannot defeat summary judgment.

14 **B. Plaintiffs' Argument that No Plaintiff Is Subject to Summary Judgment Lacks**  
15 **Merit.**

16 Plaintiffs apparently intend to argue that the years-long general causation process should  
17 have no impact on any individual case because "the Court's *Daubert* order ... is based on excluding  
18 hypothetical menus that would not apply in an individual Plaintiff's case." (Dkt. No. 716 at 2.) In  
19 other words, Plaintiffs' position appears to be that each individual Plaintiff should be able to proceed  
20 with their case by showing the type and amounts of baby foods *he or she ate*, and seek to prove that  
21 the dose of lead or arsenic in those foods caused *him or her* to develop autism or ADHD, even in  
22 the absence of admissible general causation evidence, *i.e.*, population- level (epidemiological) data  
23 reliably showing a causal association at any realistic exposure dose.

24 This argument defies common sense and mischaracterizes the extensive Rule 702 general  
25 causation process that the Court oversaw for two-plus years. The entire purpose of the general  
26 causation undertaking (including general causation expert reports; expert depositions; extensive  
27 briefing to the Court; and a four-day Rule 702 hearing) was to avoid wasting time and effort  
28 engaging in discovery on specific causation if Plaintiffs could not provide scientific evidence

1 proving the threshold requirement of general causation. (*See* Dkt. No. 710 at 19-21.) Plaintiffs now  
2 claim that the general causation proceedings in which the parties actively engaged for the last two  
3 years mean nothing and were an exercise in futility. Tellingly, Plaintiffs never claimed that the  
4 general causation proceedings were futile until they lost, and, indeed, outside this courtroom  
5 Plaintiffs’ counsel readily conceded that the Court’s general causation order is dispositive of this  
6 litigation. (*See* Mar. 23, 2026 *Baby Food Litig. JCCP 5317* Hr’g Tr. before Judge Riff at 59:7-59:13,  
7 attached as Exhibit 1) (Plaintiffs’ counsel telling JCCP court that “Judge Corley granted the  
8 defendants’ *Daubert* motions with respect to all the plaintiffs’ experts, [except] with respect to Dr.  
9 Shapiro. But since Dr. Shapiro was not directly opining on general cause, that’s it with that case.”)).  
10 Having just lost the exact same argument in a different products liability mass tort proceeding,  
11 Plaintiffs’ counsel should be well aware of the consequences of the Court’s Rule 702 order. *In re:*  
12 *Zantac (Ranitidine) Litig.*, 2026 WL 1009008, at \*2, \*5 (rejecting plaintiffs’ counsel’s argument  
13 that they were entitled to present specific causation experts notwithstanding the exclusion of all  
14 general causation experts).

15       Moreover, Plaintiffs’ position fundamentally misapprehends the difference between general  
16 and specific causation and ignores governing Ninth Circuit law. In a toxic tort case, a plaintiff must  
17 prove both general causation (that the alleged toxic product is capable of causing a particular injury  
18 in any human being) and specific causation (that the alleged toxic product in fact caused the injury  
19 in the specific plaintiff). *Hanford*, 292 F.3d at 1134 (for Plaintiffs to prevail on their claims, they  
20 “must establish both gener[al] *and* individual causation”). There can be no specific causation  
21 without general causation: if a plaintiff can’t prove, with admissible expert evidence, that the  
22 product can cause the alleged injury in humans in the first place, then by definition the plaintiff can’t  
23 prove the product caused that injury in him. “If a plaintiff is not able to establish general causation,  
24 it is unnecessary to consider whether the plaintiff can establish specific causation.” *Newkirk v.*  
25 *ConAgra Foods, Inc.*, 727 F. Supp. 2d 1006, 1030 (E.D. Wash. 2010). Only “specific causation”  
26 requires having a “particular plaintiff before the Court.” *In re Bextra & Celebrex Mktg. Sales Pracs.*  
27 *& Prod. Liab. Litig.*, 524 F. Supp. 2d 1166, 1172 (N.D. Cal. 2007).

28       What Plaintiffs really argue is that, at the general causation stage, they are not required to

1 prove a dose or level at which the alleged exposure is capable of causing the injury. As the Court  
 2 has recognized, this is wrong. To prove general causation, Plaintiffs must show with admissible  
 3 expert evidence that the allegedly harmful agent “can cause [the injury] *at exposure levels people*  
 4 *realistically may have experienced.*” *Hardeman*, 997 F.3d at 963, 965 (emphasis added); *see also*  
 5 *Newkirk*, 727 F. Supp. 2d at 1029. This is a threshold inquiry that must be made before a court or  
 6 jury can even consider the question whether any individual’s exposure caused that individual’s  
 7 harm. *In re Deepwater Horizon BELO Cases*, 119 F.4th 937, 945 (11th Cir. 2024) (explaining that  
 8 “a plaintiff must demonstrate the level of exposure to the allegedly harmful chemical that is  
 9 hazardous to a human being” (citation modified)); *Mitchell v. Gencorp Inc.*, 165 F.3d 778, 781–83  
 10 (10th Cir. 1999) (same); *Wright v. Willamette Indus. Inc.*, 91 F.3d 1105, 1106 (8th Cir. 1996) (same).  
 11 Thus, there is no avoiding summary judgment after a general causation failure of proof. *Newkirk*,  
 12 727 F. Supp. 2d at 1034.<sup>3</sup>

13 To the extent Plaintiffs contend that issues of dose and realistic exposure are wholly  
 14 irrelevant at the general causation stage, the Court already assessed and rejected that argument. (*See*  
 15 Dkt. No. 710 at 19-21.) Moreover, Plaintiffs fully recognized that they needed to present expert  
 16 testimony on a “realistic menu” and represented that their expert dietician, Priscilla Barr, provided  
 17 this purported evidence:

18 **THE COURT:** It doesn’t have to be any plaintiff in this case, but it has to  
 19 fit. It has to be realistic, because if the menu you come up with isn’t realistic,  
 20 what’s the point of going forward, because no plaintiff will satisfy it, right?

21 **MR. WISNER:** That’s specific causation. And we opposed --

22 **THE COURT:** I understand that’s specific causation, but you don’t get  
 23 there if you can’t have general causation based -- look, you wouldn’t come  
 24 forward with a menu that had 50 jars being eaten a day, would you, because  
 25 that’s not realistic?

26 **MR. WISNER:** Sure.

---

27 <sup>3</sup> Notably, Plaintiffs told the Court from the very first status conference in May 2024 that Plaintiffs  
 28 stood ready to meet a general causation challenge: “[By Mr. Wisner]: ... we have a full roster of  
 experts. I have hundreds and hundreds of pages of expert reports ready to go.” (Dkt. No. 155 at  
 28:13-15, May 16, 2024 Status Conf. Hr’g Tr.)

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**THE COURT:** Right?

**MR. WISNER:** And Ms. Barr would have said, “Get out of here.”

**THE COURT:** That’s not realistic. So it has to be realistic. So at least we’re in agreement there.

**MR. WISNER:** Sure.

**THE COURT:** *So there’s no dispute you have to come up with a realistic menu.*

**MR. WISNER:** *Yes. And that’s why we engaged Ms. Barr, to address that issue.* And just to be candid, Your Honor, we opposed the bifurcation of GC --

(Dkt. No. 700 at 22:9-23:6, December 11, 2025 Hr’g Tr.) (emphasis added). Thus, the general causation phase fully afforded Plaintiffs the opportunity to meet the evidentiary burden that they knew existed.

As for the methodology that they employed, no one forced Plaintiffs’ counsel to concoct the “hypothetical menus” relied upon by Plaintiffs’ general causation experts or to use any other specific method for determining a realistic exposure dose. Plaintiffs’ counsel created those all on their own, and they alone controlled this approach. Having decided to create, use, and rely upon these “hypothetical menus” as the means to establish general causation, Plaintiffs cannot now cast aside this strategy by claiming that they could have done something different. Plaintiffs and their lawyers chose to use a flawed and unreliable methodology that could not withstand scrutiny under Rule 702, and they must live with the consequences.

Finally, the Court found that Plaintiffs’ experts’ general causation opinions were unreliable and inadmissible for reasons independent of the flaws with the hypothetical menus created by Plaintiffs’ counsel, relied upon by Ms. Barr, and used by their exposure scientist, Dr. Rachael Jones, in her calculations. (*See e.g.*, Dkt. No. 710 at 31 (“[E]ven if Plaintiffs had shown Dr. Jones’s calculations were reliable, the epidemiology and toxicology experts do not provide a scientific rationale for concluding those estimated exposure levels can cause ASD or ADHD.”))

For one, although Plaintiffs’ causation experts pointed to numerous epidemiological studies,

1 they all failed to satisfy the “non-discretionary” Bradford-Hill criterion of temporality and/or  
2 suffered from other critical flaws (*e.g.*, failed to look at the relevant exposure period or diagnosed  
3 ASD or ADHD). (*Id.* at 33, 37, 38.) In the end, Plaintiffs’ epidemiology experts could point to *no*  
4 *study* that looked at the relevant exposure window, satisfied temporality, and showed that lead or  
5 arsenic exposure statistically significantly increased the risk of ASD diagnosis. (*Id.* at 38.) As for  
6 ADHD, only one study (Ji et al. 2018) satisfied the temporality requirement, used a diagnosis of  
7 ADHD and assessed the relevant time-period. (*Id.* at 39.) That study observed a statistically  
8 significant increased risk only in boys, and only at blood levels over 5 micrograms per deciliter,  
9 which—as the Court noted—“is higher than all of Dr. Jones’ calculated mean blood lead levels, and  
10 higher than most of her maximum estimated levels.” (*Id.* (citing Dkt. No. 611-25 at 35, Dr. Jones  
11 Amended Rebuttal Expert Report.)) In short, as the Court found, Plaintiffs’ experts’ inability to  
12 point to any studies that could reliably support a general causation opinion is fatal to Plaintiffs’  
13 claims and independently supports summary judgment.

14 Additionally, the Court concluded that Plaintiffs’ experts lacked the hallmarks of reliability  
15 expected under Rule 702. For example, even when there were significant changes in the  
16 assumptions on which the experts purported to base their opinions, “Plaintiffs’ causation experts did  
17 not further engage with the literature to update their opinions.” (Dkt. No. 710 at 32.) “This kind of  
18 perfunctory analysis” was “common across Plaintiffs’ experts” and made it impossible to evaluate  
19 the experts’ methods or their reliability. (*Id.*)

20 In short, there is no way for Plaintiffs to avoid summary judgment. The notion that the  
21 parties’ two-year general causation process, week-long evidentiary hearing, and the Court’s Rule  
22 702 motion rulings apply to no one is unsupported by any law or precedent and should be rejected.  
23 All of Plaintiffs’ general causation experts—individually and collectively—failed to provide  
24 evidence sufficient to put the cases to a jury. Without such evidence, summary judgment should be  
25 entered as a matter of law. *Hanford*, 292 F.3d at 1130–31, 1134, 1137.

1           **C. Pursuant to Its Past Orders, the Court Should Grant Summary Judgment to**  
2           **Defendants on All Cases Filed on or Before November 21, 2025.**

3           When Plaintiffs' leadership counsel pointed out, before general causation expert discovery  
4 began, that they and other lawyers had clients who intended to file in the MDL but had not yet done  
5 so, the Court established a deadline for Plaintiffs to join the MDL to make clear who would be  
6 "bound one way or the other" by the Rule 702 rulings. (Dkt. No. 448 at 48:9-12); (*see also id.* at  
7 49:25-50:2 (Plaintiffs' co-lead counsel acknowledging that if defendants prevailed on general  
8 causation, the ruling would apply "to the people who had filed in the MDL")). That deadline was  
9 November 21, 2025. (Dkt. No. 466 at 27:1-3; Dkt. No. 467 at 1.) Thus, all Plaintiffs who filed  
10 cases on or before November 21, 2025 did so with notice that they would be subject to the Court's  
11 Rule 702 rulings. Summary judgment as to each of those Plaintiffs is appropriate.

12           In meet and confer discussions leading up to this motion, Plaintiffs suggested that the only  
13 Plaintiffs who could be bound by the Court's Rule 702 order are those who filed cases in the MDL  
14 on or before May 23, 2025, the date on which Plaintiffs served their general causation expert  
15 disclosures. There is no basis for this argument. For one thing, as noted above, the Court gave  
16 notice in late April 2025, a month before Plaintiffs' expert disclosures were due, that any Plaintiff  
17 who joined the MDL on or before November 21, 2025 would be bound (for better or worse) by the  
18 Court's Rule 702 rulings. So, for example, if the Court had denied Defendants' Rule 702 motions—  
19 and even granted Plaintiffs' Rule 702 motions—Defendants would not have been able to relitigate  
20 those issues as to any Plaintiff who had filed in the MDL by November 21. One can be sure that  
21 those Plaintiffs would have eagerly accepted the benefit of such rulings. Having filed in the MDL  
22 with full knowledge that they would be bound by the rulings, they cannot now seek to avoid the  
23 results.

24           Drawing the line at May 23, 2025—rather than at the Court-ordered MDL participation  
25 deadline of November 21, 2025—also would undermine the purpose of the general causation  
26 proceedings and effectively exempt a majority of cases from the Court's ruling. Of the over 400  
27 cases currently pending in the MDL, more than half were filed after May 23, 2025. (*See generally*  
28 Dkt.) Excluding those cases would permit Plaintiffs who knowingly filed into the MDL before the

1 Court deadline and while general causation was being litigated to avoid the consequences of those  
2 proceedings and the Court’s rulings.

3 Such a result would undermine the structure of this MDL and contradict the Court’s  
4 leadership appointment Order, which authorized Plaintiffs’ leadership counsel to designate general  
5 causation experts and litigate Rule 702 motions on behalf of all Plaintiffs in the MDL, not only those  
6 with cases pending when expert reports were filed. No Plaintiff objected to that Order. With a  
7 single recent exception, each of the law firms representing Plaintiffs in this MDL has been actively  
8 involved since the outset, and the majority of those firms have at least one attorney on the Plaintiffs’  
9 Steering Committee established back in May 2024. The vast majority of cases filed between May  
10 24 and November 21, 2025 were filed by those same firms. These firms knew of the experts  
11 Plaintiffs’ leadership selected, many participated directly in the presentation of the experts, and all  
12 had the opportunity to review the experts’ reports, raise concerns about the experts’ opinions or  
13 methods, and propose alternative experts or reports. No Plaintiff who filed a case during this period  
14 sought to exclude his or her case from the general causation process, objected to the presented  
15 experts, or attempted to offer alternative experts. Having acquiesced in the process with full  
16 opportunity to participate, these Plaintiffs are bound by its outcome. (Dkt. No. 466 at 28:11-13.)<sup>4</sup>

17 **V. CONCLUSION**

18 For all the foregoing reasons, the Court should grant summary judgment in favor of  
19 Defendants on all Plaintiffs’ claims in MDL member actions filed on or before November 21, 2025.

20

21 Dated: May 1, 2026

KING & SPALDING LLP

22

By: /s/ Livia M. Kiser

23

Livia M. Kiser

24

Michael Anthony Lombardo

25

Todd P. Davis (*pro hac vice*)

26

*Attorneys for Defendants Beech-Nut Nutrition  
Company and Walmart Inc.*

27

28 <sup>4</sup> The parties will discuss a procedure to address summary judgment for later filed cases after the Court issues its order on this motion. (*See* Dkt. No. 723 at 2.)

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Dated: May 1, 2026

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Dated: May 1, 2026

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Dated: May 1, 2026

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**L.R. 5-1 ATTESTATION**

I, Livia M. Kiser, attest that all signatories listed herein, and on whose behalf this filing is submitted, concur in this filing's content and have authorized this filing.

/s/ Livia M. Kiser  
Livia M. Kiser

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13  
14 **UNITED STATES DISTRICT COURT**  
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN FRANCISCO DIVISION**

18 IN RE: BABY FOOD PRODUCTS LIABILITY  
19 LITIGATION

21 This Document Relates to:  
22 ALL ACTIONS

Case No. 3:24-md-3101-JSC

MDL 3101

Hon. Jacqueline Scott Corley

**DECLARATION OF LIVIA M. KISER IN  
SUPPORT OF DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

1 I, Livia M. Kiser, hereby declare as follows:

2 1. I am an attorney with the law firm of King & Spalding LLP, a member in good  
3 standing of the State Bar of California, and admitted to practice before this court. I am counsel of  
4 record in this action for Beech-Nut Nutrition Company and Walmart Inc.

5 2. I have personal knowledge of the facts set forth in this declaration and can testify  
6 competently to those facts.

7 3. I make this declaration in support of Defendants' Motion for Summary Judgment.

8 4. Attached as **Exhibit 1** is a true and correct copy of the full transcript of the hearing  
9 held on Monday, March 23, 2026 in *Baby Food Litig. JCCP 5317*, No. 23STCV24844 (Cal. Super.  
10 Ct.) before Judge Riff.

11 5. Attached as **Exhibit 2** is a true and accurate list of actions filed in or transferred to  
12 the MDL on or before November 21, 2025.

13 I hereby declare under penalty of perjury under the laws of the United States of America that  
14 the foregoing is true and correct to the best of my knowledge. Executed this 1st day of May, 2026,  
15 Chicago, Illinois.

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/s/ Livia M. Kiser  
LIVIA M. KISER

# **EXHIBIT 1**

**HRT**  
**HARTFORD**  
REPORTING & TECHNOLOGY

Status Conference

3/23/2026

Baby Food Litigation - JCCP 5317 (Landon R. v. Hain Celestial Group, Inc,  
et al)

**Hartford Reporting & Technology**

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**(855) 443-3767**

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 1

HON. LAWRENCE P. RIFF, JUDGE

4 -000-

5 COORDINATION PROCEEDING SPECIAL )  
TITLE (RULE 3.550) )

6 HAIN CELESTIAL BABY FOOD CASES )

7 ) CASE NUMBER  
23STCV24844

8 LONDON R, A MINOR, )

9 PLAINTIFF, )

10 VS. )

11 HAIN CELESTIAL GROUP, INC., )

12 NURTURE, INC., PLUM PBC, D.B.A. )

13 PLUM ORGANICS; BEECH-NUT )

NUTRITION COMPANY; GERGER )

14 PRODUCTS COMPANY, SPROUT FOODS, )

15 INC.; RALPHS GROCERY COMPANY; )

16 AND DOES 1 THROUGH 100, )

INCLUSIVE, )

DEFENDANTS. )

17  
18 REPORTER'S TRANSCRIPT OF PROCEEDINGS

19 MONDAY, MARCH 23, 2026

20  
21 (APPEARANCES ON THE NEXT PAGE.)  
22  
23  
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25

26 DEBBIE HINO-SPAAN  
27 CSR. NO. 7953, RPR, RMR, CRR, CRC  
28 OFFICIAL REPORTER PRO TEMPORE

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22 RENATO BLOOM, ESQ.  
23 MATT DART, ESQ.  
24 PETER M. RYAN, ESQ.  
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27  
28

1 CASE NUMBER: 23STCV24844  
 2 CASE NAME: LANDON R. VS. HAIN CELESTIAL  
 3 GROUP, INC., ET AL.  
 4 LOS ANGELES, CALIFORNIA MONDAY, MARCH 23, 2026  
 5 DEPARTMENT 1 HON. LAWRENCE P. RIFF, JUDGE  
 6 APPEARANCES: (AS HERETOFORE MENTIONED.)  
 7 REPORTER: DEBBIE HINO-SPAAN, CSR NO. 7953  
 8 TIME: 9:17 A.M.

9 -000-

10  
11 (THE FOLLOWING PROCEEDINGS WERE HELD  
12 IN OPEN COURT:)

13  
14 THE COURT: GOOD MORNING EVERYBODY.

15  
16 (THE PARTIES COLLECTIVELY RESPONDED  
17 "GOOD MORNING.")

18  
19 THE COURT: WE ARE HERE ON MATTER 2,  
20 JCCP5317, HAIN CELESTIAL GROUP CASES, DEBBIE HINO-SPAAN,  
21 CSR 7953, REPORTING IN PERSON.

22 YOU ALL HAVE CHECKED IN, I KNOW, SO THAT I  
23 WON'T TAKE FORMAL APPEARANCES, BUT DO IDENTIFY YOURSELF  
24 FOR THE RECORD BEFORE YOU BEGIN SPEAKING -- OR, YEAH, IF  
25 YOU HAVE SOMETHING TO SAY, JUST TELL US WHO YOU ARE  
26 BEFORE YOU DO.

27 I PROPOSE TO TALK ABOUT THE DISCOVERY  
28 BEFORE TALKING ABOUT THE STATUS CONFERENCE BECAUSE IT

1 SEEMS TO ME WHAT OCCURS RELATIVE TO THE DISCOVERY  
2 DISPUTES MAY WELL AFFECT WHAT HAPPENS WITH RESPECT TO  
3 THE STATUS CONFERENCE.

4 IS THAT OKAY WITH YOU, PLAINTIFF, IF WE DO  
5 IT THAT WAY?

6 MR. ESFANDIARY: GOOD MORNING, YOUR HONOR,  
7 PEDRAM ESFANDIARY FOR THE PLAINTIFF. I'M IN D.C. FOR  
8 BUSINESS. I'LL BE SPEAKING TO YOU REMOTELY TODAY.  
9 THAT'S FINE WITH PLAINTIFF.

10 THE COURT: OKAY. DEFENSE, OKAY WITH YOU?

11 MR. DAVIS: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT. ONE MOMENT. I HAVE  
13 A QUESTION FOR PLAINTIFF'S SIDE.

14 THE COURT'S ORDER EARLIER THIS WEEK I THINK  
15 MADE THE OBSERVATION THAT THE DISCOVERY ACT DOES NOT  
16 REQUIRE ANYBODY, I DON'T THINK, MUCH LESS THIRD PARTIES  
17 TO SIGN AUTHORIZATIONS FOR RELEASE OF MEDICAL AND  
18 EMPLOYMENT INFORMATION.

19 THAT SAID, I DO HAVE A QUESTION OF THE  
20 PLAINTIFF'S SIDE, WHICH IS WHY ARE YOU OPPOSED TO  
21 THAT -- WHY ARE YOU OPPOSED TO ACCEDING ON BEHALF OF  
22 YOUR CLIENTS AND THEIR PARENTS TO EXECUTING  
23 AUTHORIZATIONS WHEN THE ALTERNATIVE IS TO PROCEED BY  
24 SUBPOENAS, WHICH IS GOING TO SLOW DOWN EVERYTHING,  
25 PROBABLY, WHEN, IN THE SAME BREATH, YOU WANT A TRIAL  
26 DATE SOONER RATHER THAN LATER?

27 CAN ANYBODY TALK TO ME ABOUT THAT?

28 MR. ESFANDIARY: YES, YOUR HONOR, PEDRAM

1 ESFANDIARY FOR THE PLAINTIFF. GOOD MORNING.

2 WE'RE NOT CATEGORICALLY OPPOSED TO  
3 EXECUTING AUTHORIZATIONS. THE ISSUE IS THE  
4 AUTHORIZATIONS THAT THE DEFENDANTS REQUESTED SEEK EVERY  
5 SINGLE RECORD EVER PERTAINING TO THIRD PARTIES  
6 IRRESPECTIVE OF TIME, IRRESPECTIVE OF SCOPE.

7 ALSO, THE DEFENDANTS ARE OBJECTING TO  
8 ALLOWING US TO DO BASIC PRIVILEGE REVIEWS OF THOSE  
9 DOCUMENTS CULLED BY THE AUTHORIZATIONS BEFORE  
10 PRODUCTION, WHICH, YOUR HONOR, IT'S UNHEARD OF. BUT  
11 EVERYONE GETS TO DO IT AT LEAST -- PUTTING ASIDE OUR  
12 DIFFERENCES ABOUT THE PRIVACY REVIEW, WHICH I KNOW IN  
13 THE COURT'S OPINIONS ABOUT THAT, I KNOW WE TALKED ABOUT  
14 THAT, IT'S UNHEARD OF FOR PARTIES TO NOT BE PERMITTED TO  
15 DO PRIVILEGE REVIEWS, ESPECIALLY WHEN THE REQUESTED  
16 INFORMATION IS EVERY SINGLE MEDICAL RECORD UNDER THE  
17 SUN.

18 BECAUSE THE DEFENDANTS HAVE NOT AGREED TO  
19 PARAMETERS FOR THE AUTHORIZATIONS, WE HAVE NOT AGREED TO  
20 EXECUTE THEM AND HAVE CHOSEN INSTEAD TO PROCEED BY WAY  
21 OF SUBPOENA WHICH WE CAN -- WE HAVE A PROCEDURAL  
22 MECHANISM IN COURT, WHICH WE GET TO ASK THE QUESTION,  
23 GIVEN THE BREADTH AND GIVEN THAT THE DEFENDANTS WILL NOT  
24 AGREE TO US TO DO A PRIVILEGE AND PRIVACY REVIEW BEFORE  
25 PRODUCTION.

26 THE COURT: BUT IF YOU PROCEED BY SUBPOENA,  
27 THERE IS NO PREPRODUCTION, SO TO SPEAK, PRIVILEGE REVIEW  
28 ANYWAY; CORRECT? THAT ALL HAPPENS FOLLOWING THE

1 CUSTODIAN OF RECORDS PRODUCTION.

2 MR. ESFANDIARY: RIGHT. WELL, THE IDEA  
3 WOULD BE THAT THE SUBPOENAS WILL BE MODIFIED OR  
4 CONDITIONED TO ALLOW FOR THIS PROCESS OF US DOING A  
5 PRIVILEGE REVIEW BEFORE WE TURN OVER THE DOCUMENTS TO  
6 THE DEFENDANTS.

7 THE COURT: OKAY.

8 MR. ESFANDIARY: I CAN ADDRESS THE POINT  
9 ABOUT THE TRIAL DATE AS WELL, IF YOUR HONOR WANTS TO  
10 HEAR ABOUT THAT.

11 THE COURT: LET ME ASK THE DEFENSE. I'LL  
12 BE HONEST WITH YOU, I REALLY FOCUSED ON ONE OF THESE  
13 MOTIONS, THE SAMUEL R., ASSUMING CALEB R. IS PRETTY MUCH  
14 THE SAME THING, BUT I ONLY WANTED TO FOCUS ON ONE TO  
15 BEGIN WITH. SO THAT'S WHERE I FOCUSED. SO LET'S TALK  
16 ABOUT SAMUEL R.

17 YOU'VE SEEN WHAT I'VE SEEN WHICH ARE THE  
18 PROPOSED LIMITATIONS ON THE SCOPE OF THE SUBPOENAS IN  
19 QUESTION. I HAVE READ THE DECLARATION OF DR. FOMBONNE,  
20 F-O-M-B-O-N-N-E, I BELIEVE IT IS. SO I HAVE SOME  
21 EXPECTATION OF WHAT YOU'RE ABOUT TO SAY NEXT. BUT I  
22 WILL ASK, ARE YOU AMENABLE TO THEIR LIMITATIONS?

23 MR. DAVIS: YOUR HONOR, TODD DAVIS ON  
24 BEHALF OF DEFENDANTS. AND YOU ARE CORRECT IN TERMS OF  
25 THE FOCUSING ON ONE OF THE TWO MOTIONS. THE TWO MOTIONS  
26 AND THE OPPOSITIONS ARE VIRTUALLY IDENTICAL.

27 SPEAKING ON BEHALF OF BEECH-NUT AND WALMART  
28 IN THE CALEB R. CASE, I CAN TELL YOU THAT, NO, WE'RE

1 NOT. AND THE REASON WE'RE NOT AMENABLE TO THE TIME,  
2 SCOPE RESTRICTIONS IS BECAUSE WE KNOW THAT TIME -- THE  
3 TIME LIMIT DOES NOT CAPTURE ALL POTENTIAL ALTERNATIVE  
4 CAUSATION EVIDENCE. AND WE KNOW THAT BECAUSE WHAT WE'RE  
5 TALKING ABOUT HERE ARE DEVELOPMENTAL DISORDERS,  
6 PSYCHIATRIC DISORDERS WE CONTEND BEGAN BEFORE BIRTH,  
7 ADHD AND AUTISM.

8 AND WE KNOW THAT THERE IS A STRONG LINK AS  
9 DR. FOMBONNE SETS OUT IN HIS DECLARATION, THAT SHOWING  
10 THAT THERE'S A HOST OF PSYCHIATRIC AND MEDICAL DISORDERS  
11 THAT HAVE SHOWN A LINK IN THE SCIENTIFIC LITERATURE FOR  
12 INCREASING THE RISK OF HAVING A CHILD BORN WITH A  
13 PSYCHIATRIC DISORDER INCLUDING AUTISM AND ADHD.

14 SO IF WE CUT OFF THE ACCESS TO THE PARENTAL  
15 RECORDS, WHETHER IT BE MEDICAL OR PSYCHIATRY RECORDS OR  
16 EMPLOYMENT OR EDUCATIONAL, WHAT WE'RE DOING IS CUTTING  
17 OFF ACCESS TO INFORMATION ABOUT THE DEVELOPMENTAL  
18 HISTORIES OF THE PARENTS, WHICH IS CRITICAL. BECAUSE  
19 THE DEVELOPMENTAL HISTORIES, HOW THEY PERFORMED, ISSUES  
20 THAT AROSE DURING THEIR CHILDHOOD, ARE RELEVANT TO  
21 HELPING ANSWER THE QUESTION, AS DR. FOMBONNE OUTLINES,  
22 OF IS THIS CHILD THAT'S AT ISSUE HERE IN THE CASE, IS  
23 THAT CHILD AT RISK FOR HAVING A GENETIC DISORDER FROM  
24 AUTISM BECAUSE OF THE PARENTAL -- THE PARENTS' HISTORIES  
25 OF MEDICAL AND PSYCHIATRIC CONDITION.

26 SO THE SHORT ANSWER IS NO, WE'RE NOT  
27 AMENABLE TO THAT. AND I WOULD SAY ALSO THAT A NUMBER OF  
28 THIS HAS BEEN ADDRESSED BY THE COURT ALREADY. WE'RE

1     HERE NOW FOR THE FOURTH TIME ON A REQUEST FOR A  
2     FIRST-PASS ASSESSMENT.  THE COURT HAS HAD TWO IDCS ON  
3     THAT AND DECIDED THE ISSUE BACK ON FEBRUARY 26 ABOUT A  
4     FIRST PASS ISSUE.  AND ENCOMPASSED WITHIN THAT RULING IS  
5     YOUR HONOR TOOK INTO CONSIDERATION THE PRIVACY ISSUES OF  
6     THE PARENTS, TOOK INTO CONSIDERATION THE OBJECTIONS  
7     ABOUT THE BREADTH AND SCOPE OF THE REQUESTS THAT WERE AT  
8     ISSUE, AND YOU OVERRULED THOSE OBJECTIONS.  AND SO  
9     BECAUSE OF THE ISSUES HERE, WE KNOW THAT IT'S IMPORTANT  
10    TO HAVE ACCESS TO THOSE RECORDS.

11                   PLAINTIFF'S COUNSEL SAYS IT'S UNPRECEDENTED  
12    TO HAVE THIS TYPE OF REVIEW, BUT WE DID THIS EXACT  
13    REVIEW, TWO CASES THAT THEY HANDLED PRIOR, NC AND --

14                   THE COURT:  I'M SORRY, WHAT REVIEW ARE  
15    YOU --

16                   MR. DAVIS:  JUST THE ACCESS TO ALL THE  
17    PARENTS' MEDICAL RECORDS AND THE EDUCATIONAL RECORDS AND  
18    THE EMPLOYMENT RECORDS, WE HAD ACCESS TO THAT WITHOUT A  
19    LIMIT ON TIME OR SCOPE.  AND IT PROVED TO BE  
20    SIGNIFICANT.

21                   THE COURT:  OKAY.  I UNDERSTAND WHAT YOU'RE  
22    TELLING ME.

23                   IS THERE ANY PROCESS THAT YOU CAN CONCEIVE  
24    OF THAT WOULD SATISFY YOU THAT WOULD GIVE THE PLAINTIFFS  
25    THE FIRST LOOK THEY'RE LOOKING AT, LITERALLY LOOKING  
26    FOR?

27                   MS. KISER:  NO, YOUR HONOR.

28                   THE COURT:  LET ME PROPOSE ONE JUST FOR THE

1 ACADEMIC AND INTELLECTUAL EXERCISE OF DOING SO.

2 WHAT IF PLAINTIFFS GET A FIRST LOOK,  
3 ANYTHING THAT THEY SAY SHOULD NOT BE PRODUCED IS -- WHAT  
4 WOULD BE THE RIGHT WORD? -- SEQUESTERED, I SUPPOSE, AND  
5 SUBMITTED TO SOMEONE WHO IS A NEUTRAL TO DECIDE WHETHER  
6 IT SHOULD BE PRODUCED OR NOT?

7 MR. DAVIS: YOUR HONOR --

8 THE COURT: WHAT'S THE PROBLEM WITH THAT?

9 MR. DAVIS: WELL, A COUPLE PROBLEMS. AND I  
10 THINK YOUR HONOR HAS THOUGHT OF SOMETHING SIMILAR IN  
11 PRIOR DISCUSSIONS THAT WE'VE HAD WITH YOU OF HOW TO DO  
12 THIS -- IS THERE A WAY TO PARSE THIS OUT IN TERMS OF  
13 MAKING AN ASSESSMENT, AND AS DR. FOMBONNE SETS OUT IN  
14 HIS DECLARATION, HAVING THE FULL ACCESS TO UNREDACTED  
15 INFORMATION IS IMPORTANT BECAUSE EVEN EXPERTS IN THE  
16 FIELD CAN DISAGREE ABOUT THE SIGNIFICANCE OF DIFFERENT  
17 SYMPTOMS OR NOT. AND THAT'S AT ONE OF THE VERY LAST  
18 PARAGRAPHS IN HIS DECLARATION. I BELIEVE THAT'S  
19 PARAGRAPH 51 AND 52. AND SO --

20 THE COURT: OKAY, LET ME STOP YOU. I HEAR  
21 YOU. AND AGAIN, I'M NOT SURE ANY OF THIS IS A GOOD  
22 IDEA. AND YOU'RE ABSOLUTELY RIGHT, THAT I HAVE PLOWED  
23 THIS FURROW BEFORE. BUT I WANT TO PLOW IT AGAIN TODAY.

24 SO WHAT IF, UNDER THIS HYPOTHETICAL  
25 SCENARIO, THE COURT HOLDS A HEARING IN A CLOSED COURT  
26 SESSION, AND DEFENSE, YOU GET TO BRING IN DR. FOMBONNE  
27 OR ANYBODY ELSE WHO GETS TO LOOK AT THIS STUFF AND TELL  
28 THE COURT WHY IT IS OR IS NOT IMPORTANT.

1           NOW, THAT MAY OR MAY NOT SATISFY PLAINTIFF,  
2 BECAUSE IN A SENSE THAT IF THAT WERE TO OCCUR, THEN  
3 THE -- WELL, OBVIOUSLY, THE RECORDS AT THAT POINT HAVE  
4 BEEN DISCLOSED. BUT THEY'RE DISCLOSED IN A PRETTY  
5 PROTECTIVE KIND OF SETTING. AND THE PLAINTIFFS MIGHT  
6 FIND SOME SUCCOR, S-U-C-C-O-R -- NO, S-U-C-C-O-R, RIGHT,  
7 KNOWING THAT IF THE COURT SAYS, "WELL, DR. FOMBONNE, I  
8 HEAR YOU, BUT I DON'T AGREE. SO THE FOLLOWING RECORDS  
9 ARE NOT GOING TO BE -- YOU KNOW, SHOULD NOT HAVE BEEN  
10 PRODUCED" OR WORDS TO THAT EFFECT, THEN AT LEAST WE KNOW  
11 IN AN OPEN TRIAL SETTING THOSE RECORDS WOULD NOT BE THE  
12 SUBJECT OF THE TRIAL.

13           WHAT -- WHAT'S THE MATTER WITH THAT OTHER  
14 THAN THE FACT IT'S VERY EXPENSIVE?

15           MR. DAVIS: WELL, IT'S VERY EXPENSIVE AND  
16 THE OTHER THING IS WHAT WE'RE TALKING ABOUT HERE IS  
17 THEY'VE AGREED THAT PSYCHIATRIC INFORMATION OF THE  
18 PARENTS IS GERMANE TO THIS. THEY DO NOT CONTEST THAT.  
19 THEY DON'T CONTEST THAT THEIR MEDICAL --

20           THE COURT: LET ME STOP YOU AGAIN.  
21 BASICALLY WHAT YOU'RE NOW TELLING ME IS THAT WERE WE TO  
22 GO THROUGH THIS EXERCISE, WHEN PUSH COMES TO SHOVE,  
23 THERE WOULDN'T BE VERY MANY RECORDS IDENTIFIED BY THE  
24 PLAINTIFF AS OUTSIDE THE SCOPE OF APPROPRIATE DISCOVERY.

25           MR. DAVIS: I WAS ACTUALLY TRYING TO HIT ON  
26 A DIFFERENT POINT, WHICH WAS SIMPLY THAT GIVEN THAT THE  
27 PLAINTIFFS AGREE THAT PSYCHIATRIC AND OTHER MEDICAL  
28 CONDITIONS ARE RELEVANT IN THIS CASE, THE QUESTION THEN

1 BECOMES WHAT'S LEFT THAT IS SOMETHING OF A SENSITIVE OR  
2 PERSONAL NATURE TO -- THAT WOULD NOT -- THAT WOULD BE  
3 SOMETHING DIFFERENT OR OF MORE SEVERITY THAN WHAT THEY  
4 ALREADY AGREED TO HAVE ACCESS TO.

5 THE COURT: SO THEN WHEN YOU ARE SAYING  
6 THINGS LIKE "PSYCHIATRIC CONDITIONS," IF THAT'S THE WORD  
7 YOU USED, WHAT THE PLAINTIFFS POINT TO ARE THINGS LIKE  
8 SEXUAL PROCLIVITIES.

9 IS THAT A PSYCHIATRIC CONDITION?

10 MR. DAVIS: IT COULD BE, YES.

11 THE COURT: THE QUESTION BEING -- LET ME  
12 JUST ASK YOU, IF WE BRING IN DR. FOMBONNE, DO YOU  
13 THINK -- YOU KNOW, IF IT TURNS OUT HYPOTHETICALLY THAT  
14 THERE IS SOME PSYCHIATRIC RECORDS THAT REFER TO -- I  
15 CAN'T EVEN IMAGINE WHAT SEXUAL PROCLIVITIES WE MIGHT BE  
16 TALKING ABOUT, DO YOU THINK IF I SAID, "DO YOU THINK  
17 THAT HAS ANYTHING TO DO WITH ETIOLOGY OF AUTISM?" HE  
18 WOULD SAY "YES"?

19 MS. FREIWALD: YOUR HONOR, IF I MAY.

20 THE COURT: GET THE MIC. YOU MAY IF YOU  
21 GET THE MIC.

22 MS. FREIWALD: I JUST WANT TO REMIND --

23 THE COURT: YOU ARE?

24 MS. FREIWALD: I'M HOPE FREIWALD FOR  
25 DEFENDANT.

26 I JUST WANT TO REMIND THE COURT THAT IN THE  
27 PAST TWO CASES, AS OUR BRIEFS SAY, WE WENT THROUGH AN  
28 IN LIMINE PROCESS AFTER DISCOVERY WHERE THE PLAINTIFFS

1 DID CHALLENGE THE ADMISSIBILITY OF EVIDENCE. AND THAT'S  
2 APPROPRIATE. THEY CAN DO THAT AFTER WE HAVE OUR EXPERT  
3 REPORTS.

4 BUT IT SEEMS TO ME NOT APPROPRIATE,  
5 RESPECTFULLY, AND REALLY NOT WORKABLE FOR DEFENDANTS TO  
6 ASK OUR EXPERTS TO START TO FORMULATE REAL-TIME OPINIONS  
7 AS DISCOVERY IS EMERGING ABOUT PARTICULAR DOCUMENTS OR  
8 THINGS. WHAT IS GOING -- THEY NEED TO SEE THE TOTALITY  
9 OF WHAT COMES IN.

10 THE COURT: WELL, IF YOU'RE RIGHT, IF  
11 YOU'RE RIGHT, THEN POTENTIALLY DR. FOMBONNE WOULD SAY,  
12 "WELL, I DON'T KNOW, MAYBE. MAYBE THE SEXUAL  
13 PROCLIVITIES WILL BE RELEVANT TO MY OPINION ON ETIOLOGY  
14 WHEN CONSIDERED IN COMBINATION WITH SOMETHING ELSE."

15 MS. FREIWALD: RIGHT. AND WE SAW THAT IN  
16 ANOTHER CASE. WE SAW THAT THERE WAS A HISTORY OF  
17 SUBSTANCE ABUSE COMBINED WITH SOME CRIMINAL BEHAVIOR,  
18 COMBINED -- THERE WAS ALSO ISSUES OF TROUBLE IN SCHOOL,  
19 BEHAVIORAL ISSUES IN SCHOOL.

20 WE'VE SEEN THESE ISSUES DEVELOP IN  
21 TOTALITY. AND WE'VE ALSO SEEN THAT YOU DON'T  
22 NECESSARILY HAVE A FORMAL DIAGNOSIS. YOU HAVE BEHAVIORS  
23 THAT MAY BE SELF-REPORTED, BEHAVIORS THAT MAY BE  
24 REPORTED BY PEOPLE WHO AREN'T NECESSARILY MEDICAL  
25 EXPERTS. AND THE DOCTORS TAKE THIS IN TOTALITY WHICH  
26 THEY WOULD DO IF THEY HAD A PATIENT IN FRONT OF THEM IN  
27 THE REAL WORLD. AND WHAT PLAINTIFFS -- AND YOUR HONOR  
28 WAS SPOT ON WHEN YOU RULED IN OUR FAVOR ON THIS ALREADY

1 IN THE CONTEXT OF THE AUTHORIZATIONS, THAT WE HAVE A  
2 TWO-TIER PROTECTIVE ORDER, AND FOR PLAINTIFF TO START TO  
3 PICK AND CHOOSE IS GOING TO BE AN UNWORKABLE PROCESS  
4 THAT'S GOING TO BOG DOWN THE CASE FOREVER, AND --

5 THE COURT: WELL, THAT'S ON THEM. I MEAN,  
6 I SAY THAT, KIND OF, IN A FLIP FASHION. THEY ARE VERY  
7 KEEN TO GET TO TRIAL VERY QUICKLY. AND IF AS A  
8 CONSEQUENCE OF A PROCESS THAT'S NECESSARY TO PROTECT  
9 EVERYBODY'S RIGHTS, THERE IS A SLOWING DOWN OF FORWARD  
10 PROGRESS, WELL, THEN THAT IS A CONSEQUENCE THAT THE  
11 COURT CAN'T DO MUCH ABOUT.

12 MS. FREIWALD: BUT IT CAN'T BE A PROCESS  
13 THAT FORCES ALL EXPERTS INTO A POSITION WHERE THEY'RE  
14 GIVING ITERATIVE OPINIONS BEFORE THEY HAVE THE WHOLE  
15 VIEW. AND WHAT WE HAD THE LAST TIME WAS A PROCESS THAT  
16 ALLOWED FOR THE PRODUCTION OF THE RECORDS, KEPT THOSE  
17 RECORDS CONFIDENTIAL, AND THEN AS WE APPROACHED TRIAL,  
18 THE COURT MADE DECISIONS ABOUT WHAT WAS IN AND WHAT WAS  
19 OUT BASED UPON WHAT EXPERTS WERE PREPARED TO STAND  
20 BEHIND.

21 THE COURT: YOU KNOW, THERE'S A MIRROR  
22 IMAGE THING HAPPENING HERE, I THINK. LET ME SEE IF I  
23 CAN ARTICULATE IT.

24 DEFENSE, YOU SAY, "WELL, PLAINTIFF'S  
25 COUNSEL REALLY ARE NOT IN A POSITION TO IDENTIFY WHAT'S  
26 CLEARLY RELEVANT AND NOT CLEARLY RELEVANT BECAUSE WHAT  
27 DO THEY KNOW? THEY MAY BE VERY GOOD LAWYERS, BUT THEY  
28 ARE NOT EXPERT WITNESSES IN THE AREA OF THE ETIOLOGY OF

1 THESE CONDITIONS."

2 THE MIRROR IMAGE IS THAT NOBODY ON THE  
3 DEFENSE SIDE, EXPERT OR PLAINTIFF, IN THE DISCOVERY  
4 STAGE CAN SAY THAT SOMETHING IS NOT CLEARLY RELEVANT.  
5 BECAUSE MAYBE ANYTHING IS POTENTIALLY RELEVANT.

6 MAYBE THAT'S NOT SUCH A GREAT MIRROR IMAGE  
7 POINT TO BE MADE. BUT BASICALLY, DEFENSE, YOU'RE  
8 TELLING ME THERE IS NO LINE TO BE DRAWN, THAT ANY AND  
9 ALL RECORDS NEED TO BE CAUGHT UP IN WHAT THE PLAINTIFFS  
10 SAY IS A DRAGNET, AND WE'LL SORT IT OUT LATER. I MEAN,  
11 THAT'S THE DEFENSE POSITION. THERE IS NO LINE TO BE  
12 DRAWN AT THIS POINT. AND I JUST WONDER IS THAT REALLY  
13 WHAT THE HILL COURT HAS TAUGHT US ABOUT THESE PRIVACY  
14 MATTERS IN DISCOVERY?

15 MR. DAVIS: WELL --

16 MR. ESFANDIARY: YOUR HONOR, MAY I BE  
17 HEARD?

18 THE COURT: IN A MINUTE.

19 MR. DAVIS: YOUR HONOR, I THINK THE PROBLEM  
20 IS, IS JUST THE VERY NATURE OF THE PSYCHIATRIC DISORDERS  
21 THAT ARE IN PLAY. AND THE FACT THAT THERE ARE SO MANY  
22 DIFFERENT PLACES IN THE SCIENTIFIC LITERATURE THAT SAY  
23 DIFFERENT MEDICAL CONDITIONS, DIFFERENT PSYCHIATRIC  
24 DISORDERS ALL ARE ALTERNATIVE -- POTENTIAL ALTERNATIVE  
25 CAUSES FOR WHAT THE PLAINTIFFS SAY IS, "NO, IT'S BABY  
26 FOOD AND HEAVY METAL EXPOSURE. THAT'S WHAT CAUSED THE  
27 AUTISM OR THE ADHD."

28 AND THE ABILITY TO TRY TO PARSE OUT PAGE BY

1 PAGE, DOCUMENT BY DOCUMENT FOR A PROCESS THAT HAS NOT  
2 BEEN -- THAT HAS NOT SHOWN TO BE UNWORKABLE OR UNFAIR TO  
3 THE PLAINTIFF IN TWO PRIOR CASES --

4 THE COURT: HARD TO KNOW. I MEAN,  
5 MS. ALARCON WAS PRETTY ANIMATED IN PRIOR PROCEEDINGS, IN  
6 LONDON R., WITH RESPECT TO PRIVACY ISSUES. I'M NOT SURE  
7 SHE WOULD AGREE WITH YOU THAT EVERYTHING WAS SO  
8 HUNKY-DORY ALL THE WAY ALONG.

9 MS. FREIWALD: WELL, THAT WAS --  
10 YOUR HONOR, THAT WAS ABOUT THE NAME OF THE PLAINTIFF.

11 THE COURT: I AGREE.

12 MS. FREIWALD: I MEAN, THAT WASN'T ABOUT  
13 ANYTHING SPECIFIC, WHICH IS PART OF THE PROBLEM WE HAVE  
14 HERE, WHICH IS THAT THEIR EXAMPLES ARE ENTIRELY  
15 THEORETICAL. AND -- I MEAN, THERE'S NO REASON TO THINK  
16 THAT ANY OF THE THINGS THAT THEY'RE SPECULATING ABOUT  
17 ARE, FOR EXAMPLE, IN THE PRIVILEGE SIDE ARE IN THERE.

18 WE ALSO HAVE PARENTS, FRANKLY, YOUR HONOR,  
19 AS WE SAID IN OUR PAPERS, WHO HAVE PUT A GREAT DEAL OF  
20 THEIR OWN LIVES, INCLUDING IN RELATION TO THEIR CHILDREN  
21 HAVING AUTISM, OUT IN THE PUBLIC ALREADY. NOT THIS  
22 LAWSUIT, BUT ON SOCIAL MEDIA, ON PUBLIC PLATFORMS.

23 SO WE'RE -- WE ARE WILLING TO ADHERE TO  
24 THIS -- TO THE PROTECTIVE ORDERS THAT WE HAVE, EVEN FOR  
25 STUFF THAT THE PARENTS HAVE PUT OUT PUBLICLY, WHICH IS A  
26 GREAT DEAL ABOUT THEMSELVES ALREADY. BUT WE NEED TO  
27 BE -- WE NEED TO BE ABLE TO HAVE THEIR MEDICAL RECORDS  
28 BECAUSE THE NATURE OF THIS LITIGATION, AS YOUR HONOR HAS

1 RECOGNIZED, IS THAT IT PUTS THE FAMILY MEDICAL AND  
2 SOCIAL HISTORY AT ISSUE.

3 THE COURT: MR. ESFANDIARY, DO YOU WANT TO  
4 SAY SOMETHING?

5 MR. ESFANDIARY: YES.

6 THE COURT: GO AHEAD.

7 MR. ESFANDIARY: THERE IS A LOT OF THINGS  
8 LOST IN THIS CONVERSATION. THERE IS TWO MAJOR ISSUES IN  
9 FRONT OF US. NUMBER 1 IS PRIVILEGE. I'M JUST GOING TO  
10 START THERE.

11 THE DEFENDANTS' REQUESTS, AS WE OBJECT, ARE  
12 SO ALL-ENCOMPASSING THAT BY DEFINITION THEY PUT IN  
13 PRIVILEGED MATERIALS. PRIVILEGED TEXT RECORDS,  
14 PRIVILEGED EMPLOYMENT RECORDS, MARITAL COMMUNICATIONS,  
15 ATTORNEY-CLIENT COMMUNICATIONS. AND THIS COURT OF  
16 APPEAL IS VERY CLEAR, YOU CANNOT DEPRIVE A PARTY DURING  
17 A PRIVILEGE REVIEW PRIOR TO THE PRODUCTION OF DOCUMENTS  
18 BECAUSE OTHERWISE IT'S WAIVED.

19 THE DEFENDANTS' NOTION THAT "IT'S OKAY,  
20 WE'LL DEAL WITH THEM ON THE BACK END" IS MOOT. BECAUSE  
21 WHEN IT COMES TO PRIVILEGE, WHEN THAT DOCUMENT FROM THAT  
22 THIRD-PARTY PROVIDER IS GIVEN TO DEFENDANTS WITHOUT US  
23 HAVING REVIEWED IT AND THERE'S PRIVILEGED COMMUNICATION  
24 MATERIAL IN THERE, THAT IS WAIVED. AND THAT IS WHY WE  
25 MADE THE OBJECTION, AND THAT'S WHY EVERY SINGLE PARTY  
26 LITIGATION, YOUR HONOR -- I MEAN, I'VE BEEN DOING THIS,  
27 NOT AS LONG AS YOU HAVE, TEN YEARS, I'VE NEVER HEARD OF  
28 A PARTY NOT BEING ALLOWED TO DO A PRIVILEGE REVIEW,

1 ESPECIALLY WHEN IT COMES TO HIGHLY SENSITIVE PSYCHIATRIC  
2 AND MEDICAL RECORDS, AS WELL AS EMPLOYMENT RECORDS AND  
3 LITIGATION RECORDS OF THIRD PARTIES.

4 SO THAT'S JUST -- THAT'S THE THRESHOLD  
5 ISSUE THAT, PUTTING ASIDE THE PRIVACY DISPUTE, WE SHOULD  
6 BE ALLOWED TO DO A FIRST PASS REVIEW TO SCREEN FOR  
7 PRIVILEGE. AND IF THERE IS SOMETHING PRIVILEGED, WE  
8 WOULD FOLLOW THE PO AND THE REPORT.

9 THE COURT: CAN I ASK A QUESTION ABOUT  
10 THAT?

11 MR. ESFANDIARY: YES, YOUR HONOR.

12 THE COURT: DOES IT SOLVE THE PROBLEM IF  
13 THE SUBPOENA SAYS "AND ANY AND ALL RECORDS EXCEPT FOR  
14 THE FOLLOWING POTENTIALLY PRIVILEGED KINDS OF  
15 COMMUNICATION"?

16 MR. ESFANDIARY: YES, IN PART. AND  
17 ACTUALLY OUR NOTICE OF MOTION AND THE REQUEST THAT WE  
18 HAVE, IN THE MOTION TO QUASH, CONTEMPLATES THAT. WE  
19 SPECIFICALLY CRAFTED A REVISED VERSION OF DEFENDANTS'  
20 REQUEST THAT EXPLICITLY -- EXPLICITLY IN THE SUBPOENA  
21 EXCLUDES PRIVILEGED MATERIAL.

22 THE COURT: ALL RIGHT. SO HOW IS THE  
23 CUSTODIAN OF RECORDS AT, YOU KNOW, GENERAL PRACTITIONER  
24 DR. SO-AND-SO'S OFFICE SUPPOSED TO DEAL WITH THAT? HOW  
25 DO THEY KNOW WHAT'S PRIVILEGED AND WHAT'S NOT?

26 MR. ESFANDIARY: WELL, I'M GOING TO SAY IT  
27 VARIES PER INSTITUTION. FOR EXAMPLE, THE LEGAL  
28 DEPARTMENT OF AN EMPLOYER WHEN SUBPOENAED FOR EMPLOYMENT

1 RECORDS, ALSO LITIGATION RECORDS, WOULD OBVIOUSLY BE  
2 ABLE TO MAKE THAT DISTINCTION, AND HOUSE COUNSEL --  
3 IN-HOUSE COUNSEL OF THOSE INSTITUTIONS WOULD KNOW WHAT  
4 TO DO. BUT I AGREE. THAT'S NOT ALWAYS FEASIBLE OR  
5 PRACTICAL FOR THE INSTITUTION TO DO THAT, TO MAKE THAT  
6 DISTINCTION. THAT IS WHY WE TRUST LAWYERS IN LITIGATION  
7 TO DO THAT.

8 THAT'S WHAT WE DO AS LAWYERS, WE MAKE  
9 PRIVILEGE ASSESSMENTS. AND WHEN WE COME ACROSS  
10 SOMETHING THAT'S PRIVILEGED, WE FOLLOW THE PROTOCOL,  
11 PRODUCE THE PRIVILEGE LOG, IDENTIFY SUFFICIENT  
12 INFORMATION IN THERE SO THE DEFENDANTS KNOW WHAT IS  
13 BEING WITHHELD AND WHAT PRIVILEGE GROUND, ACCORDING TO  
14 THE CODE, AND THEN THEY CAN MOVE TO COMPEL DISCLOSURE OF  
15 THAT PRIVILEGE IF THEY BELIEVE IT IS WARRANTED AND NOT  
16 SUPPORTED BY THE LAW.

17 I MEAN, THE DEFENDANTS HAVE DONE THIS.  
18 THEY'VE PRODUCED TO US PRIVILEGE LOGS AND WE HAVE  
19 FOLLOWED THE PROTOCOL ACCORDINGLY. THEY'VE DONE THEIR  
20 PRIVILEGE REVIEWS. WE'RE SIMPLY ASKING FOR THE  
21 OPPORTUNITY TO -- FOR THIRD PARTIES TO DO THEIR  
22 PRIVILEGE REVIEWS. I WOULD ALSO SAY, YOUR HONOR, THAT'S  
23 WITH RESPECT TO PRIVILEGE.

24 WITH RESPECT TO THE PRIVACY, NOT EVEN  
25 DR. FOMBONNE'S LENGTHY DECLARATION -- I READ EVERY  
26 SINGLE WORD OF IT LAST NIGHT -- NOWHERE DOES IT SAY  
27 EVERY SINGLE RECORD IS NEEDED FOR ME TO DO WHAT I NEED  
28 TO DO IN THIS CASE. IT JUST DOESN'T. HE DOESN'T SAY

1 WHY TAX RECORDS ARE NEEDED, WHY RECORDS RELATING TO A  
2 BROKEN ARM IN A MEDICAL RECORDS FROM 30 YEARS AGO ARE  
3 NEEDED.

4 THIS DRAGNET THAT THE DEFENDANTS ARE  
5 REQUESTING IS NOT SUPPORTED BY THEIR OWN EXPERT'S  
6 DECLARATION FOR GOOD REASON BECAUSE IT WOULD BE INSANE  
7 TO SUGGEST THAT A REFERENCE, FOR EXAMPLE, TO SOMEONE  
8 ENJOYING BESTIALITY IN A MEDICAL RECORD THAT IS SOMEHOW  
9 RELEVANT TO THE CHILD HAVING AUTISM. I MEAN, THAT'S  
10 PREPOSTEROUS. DR. FOMBONNE WOULD NEVER SAY THAT.

11 I'LL ALSO ADDRESS MS. FREIWALD'S COMMENT  
12 ABOUT THIS CANNOT BE DEALT WITH WITH AN MIL, THAT ISN'T  
13 THE ISSUE. THE ISSUE THAT THE HILL COURT VERY  
14 EXPLICITLY LAYS OUT IS A MATTER OF CAN PARTIES TO BEGIN  
15 WITH BE ALLOWED TO INTRUDE UPON THE PRIVACY RIGHTS OF  
16 THE THIRD PARTIES AND DISCOVERY MATTER.

17 WE'RE NOT AT THE MIL STAGE. THAT'S A WHOLE  
18 DIFFERENT ARGUMENT AND A DIFFERENT -- AND A DIFFERENT  
19 STANDARD. THE INQUIRY THE COURT NEEDS TO GRAPPLE WITH  
20 IS I DO NEED TO DRAW LINES, BECAUSE WHEN IT COMES TO THE  
21 RECORDS OF THIRD PARTIES, THE CALIFORNIA COURT OF  
22 APPEALS MADE IT VERY CLEAR, WE DON'T KNOW WHETHER  
23 SOMETHING IS RELEVANT IS NOT GOOD ENOUGH. CAN'T DO IT.  
24 MAYBE YOU CAN WITH RESPECT TO PARTY DISCOVERY, THE  
25 OFFICIAL EXPEDITIONS IN THE GREYHOUND CASE, I READ THE  
26 LAW, I KNOW THE LAW, THAT'S ALLOWED TO SOME EXTENT. BUT  
27 THE COURT OF APPEALS MADE IT VERY CLEAR, WHEN IT COMES  
28 TO THIRD-PARTY PRIVACY INTERESTS, WE DON'T KNOW, THAT

1 THIS MAY LEAD TO SOMETHING, AND WE'RE JUST GOING TO  
2 THROW IN THE KITCHEN SINK AND SEE WHAT STICKS, THAT'S  
3 NOT GOOD ENOUGH. THE COURTS RULE IN DISCRETIONAL  
4 MANDATES THAT YOU DRAW SOME LINES. AND OUR NOTICE OF  
5 MOTION PROPOSES VERY REASONABLE AND RATIONAL LINES TO BE  
6 DRAWN THAT PROTECTS PRIVILEGE AND PRIVACY AT THE OUTSET,  
7 BEFORE THE DEFENDANTS SEE THE RECORDS AND THE PRIVACY  
8 AND PRIVILEGE AND RIGHTS ARE VIOLATED.

9 THE COURT: LET ME ASK A COUPLE QUESTIONS.

10 FIRST OF ALL, A POINT I THINK THE DEFENSE  
11 MAKES, IS THERE A CALIFORNIA CASE, A PUBLISHED CASE THAT  
12 RECOGNIZES A FIRST LOOK/FIRST PASS PROCESS RELATIVE TO A  
13 SUBPOENA SERVED ON CUSTODIAN OF RECORDS RELATIVE TO  
14 THIRD PARTIES?

15 MR. ESFANDIARY: I CAN'T, SITTING HERE,  
16 THINK OF A CASE, YOUR HONOR.

17 THE COURT: IS THERE SUCH A THING IN THE  
18 FEDERAL COURT?

19 MR. ESFANDIARY: I DON'T KNOW.

20 THE COURT: OKAY.

21 MR. ESFANDIARY: BUT REMEMBER, THAT -- I  
22 THINK THAT GETS MOST OF THE PRIVACY POINT. WHEN IT  
23 COMES TO A PRIVILEGE, THERE IS AN ABUNDANCE OF CASE LAW.

24 THE COURT: THAT SAYS WHAT? I MEAN WITH  
25 RESPECT TO -- SO, I MEAN, WHAT WE'RE TALKING ABOUT  
26 NOW -- LET'S SAY IT'S A PARTY, TO MAKE IT A LITTLE  
27 EASIER.

28 MR. ESFANDIARY: SURE.

1 THE COURT: SO A DEFENDANT SERVES A  
2 DEPOSITION SUBPOENA ON THE CUSTODIAN OF RECORDS FOR ANY  
3 AND ALL EMPLOYMENT RECORDS FOR SOME REASON. AND THE  
4 DEFENDANT SAYS, "OH, THAT'S -- THAT IS VERY LIKELY TO  
5 LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE."

6 HOW IS THERE A PRIVILEGE REVIEW BEFORE  
7 THOSE DOCUMENTS ARE PRODUCED BY THE CUSTODIAN OF  
8 RECORDS? WHEN DOES THAT HAPPEN AND HOW DOES THAT  
9 HAPPEN?

10 MR. ESFANDIARY: WELL, I THINK THERE IS --  
11 I THINK THERE IS TWO THINGS. SO, NUMBER ONE, YOU'RE  
12 RIGHT, THE SUBPOENA ITSELF, TECHNICALLY, AS SERVED,  
13 UNLESS IT EXPLICITLY EXCLUDES SPECIFIC PRIVILEGES AND  
14 CONTENT, WILL NOT ALLOW FOR THAT PROCESS.

15 THAT'S WHY WE HAVE A PROCEDURE IN PLACE FOR  
16 THE MOTION TO QUASH -- I FORGET THE STATUTORY CODE THAT  
17 ALLOWS THIRD PARTIES TO BRING THIS MOTION -- THAT WILL  
18 ALLOW US TO CONDITION OR MODIFY THE SUBPOENA. AND THAT  
19 STATUTORY PROCESS IS WHAT GRANTS THE COURT, WITH THE  
20 DISCRETION, BECAUSE THE LANGUAGE IS VERY BROAD.  
21 MODIFIED -- QUASH, MODIFY, OR CONDITION TO SUBPOENAS.  
22 AND I WOULD ARGUE THAT THE MODIFY AND CONDITION LANGUAGE  
23 IS WHAT GRANTS THE COURT WITH THE DISCRETION TO CONFER  
24 THAT THE RELIEF THAT THE THIRD PARTIES ARE SEEKING --  
25 WHICH WOULD BE TO DO A PRIVILEGE REVIEW.

26 THERE MAY NOT BE A CASE OUT THERE THAT SAYS  
27 IT. THE STATUTE ITSELF PROVIDES FOR THAT WORLD, FOR  
28 THAT ABILITY. BECAUSE THE LEGISLATURE IS -- RECOGNIZES

1 THAT WHEN PARTIES ENGAGE WITH THIRD-PARTY DISCOVERY,  
2 INEVITABLY THEY ARE GOING TO MAKE A REQUEST THAT A PARTY  
3 LITIGATION OR THIRD PARTIES OBJECTED ON THE GROUNDS OF  
4 PRIVILEGE OR PRIVACY, WHAT HAVE YOU.

5 AND THAT'S WHY THEY GAVE THE COURT THAT  
6 BROAD STATUTORY DISCRETION TO CONDITION THE SUBPOENAS  
7 BY, FOR EXAMPLE, ALLOW YOUR FIRST PASS REVIEW FOR  
8 PRIVILEGE. IT'S BALANCING BETWEEN PARTIES' RIGHT TO  
9 DISCOVERY AND ENSURING THAT PRIVILEGES AND PRIVACIES ARE  
10 PROTECTED.

11 THE COURT: LET ME ASK THE DEFENSE A  
12 QUESTION.

13 IS OR ARE YOUR SUBPOENAS BROAD ENOUGH TO  
14 CAPTURE PRIVILEGED INFORMATION?

15 MR. DAVIS: YOUR HONOR, TODD DAVIS FOR  
16 BEECH-NUT AND WALMART.

17 BEFORE I ANSWER THAT QUESTION, LET ME TELL  
18 YOU SPECIFICALLY WHAT THE SUBPOENAS ARE DIRECTED AT.  
19 MEDICAL RECORDS, EMPLOYMENT RECORDS, EDUCATIONAL  
20 RECORDS, PSYCHIATRIC RECORDS, OKAY, IN THE POSSESSION OF  
21 THOSE HEALTHCARE PROVIDERS OR SCHOOLS OR EMPLOYERS,  
22 RIGHT?

23 THE COURT: RIGHT.

24 MR. DAVIS: WE ARE NOT TALKING ABOUT PLACES  
25 OR ENTITIES THAT ARE GOING TO HAVE ATTORNEY-CLIENT  
26 COMMUNICATION INFORMATION AS PART OF THE DAY-TO-DAY WORK  
27 THAT THEY DO IN ANY OF THOSE PARTICULAR FIELDS. WE'RE  
28 NOT TALKING -- AND, IN FACT, THE PLAINTIFF HAS NEVER

1 IDENTIFIED ANY DOCUMENT THAT MAY BE SUBJECT TO ANY  
2 PRIVILEGE THAT THEY'VE ASSERTED.

3 SECOND -- AND THINK ABOUT THAT FOR A  
4 SECOND --

5 THE COURT: WELL, I HAVE THOUGHT ABOUT IT.  
6 I KNOW WHAT YOU'RE SAYING, BUT YOU'RE NOT -- SO LET'S  
7 SAY HYPOTHETICALLY THERE IS A COMMUNICATION FROM, YOU  
8 KNOW, A SPIRITUAL LEADER TO, YOU KNOW, TO ONE OF THESE  
9 PARENTS, YOU KNOW, GIVING IN A SPIRITUAL COUNSELING AND  
10 ADVICE, OKAY, AND I'M ASKING YOU JUST HYPOTHETICALLY TO  
11 GO WITH ME ON THAT. AND FOR SOME REASON IT'S IN THE  
12 EMPLOYER'S FILE.

13 IS YOUR SUBPOENA BROAD ENOUGH TO DRAGNET  
14 THAT IN?

15 MR. DAVIS: THE EMPLOYEE THEY ASKED FOR --  
16 THE SUBPOENAS ASKED FOR EMPLOYMENT RECORDS --

17 THE COURT: RIGHT. SO IT'S IN THE -- I'M  
18 ASKING YOU TO ASSUME, PER THE HYPO, THAT IT'S IN THE  
19 EMPLOYEE'S PERSONNEL FILE.

20 MR. DAVIS: LET'S ASSUME THAT. THERE IS A  
21 CALLBACK PROVISION IN THE PROTECTIVE ORDER --

22 MS. FREIWALD: JUST A MINUTE. JUST A  
23 MINUTE.

24 THE COURT: ALL RIGHT. HE'S GOT THE FLOOR.

25 MR. DAVIS: JUST LET ME GET THROUGH IT.  
26 GIVE ME A LITTLE BIT OF TIME.

27 THE COURT: WE'VE GOT ALL DAY.

28 MR. DAVIS: YEAH, THANK YOU, YOUR HONOR.

1 THANK YOU FOR YOUR PATIENCE.

2 FIRST OF ALL, THAT THERE'S A CLAWBACK  
3 PROVISION IF THERE'S SOMETHING THAT'S POTENTIALLY  
4 PRIVILEGED. THE PROTECTIVE ORDER PROVIDES FOR THAT.

5 SECOND OF ALL, THINK ABOUT THAT FOR A  
6 SECOND IN TERMS OF HOW IT PLAYS OUT IN PRACTICALITY,  
7 THAT THERE IS A PRIVILEGED COMMUNICATION THAT'S BEEN --  
8 THAT THE PLAINTIFFS HAVE THAT HAVE BEEN GIVEN TO A THIRD  
9 PERSON. THERE IS NO PRIVILEGE ANY LONGER.

10 THIRD, THEY HAVE NOT COME FORWARD IN THEIR  
11 MOTION TO QUASH WITH ANY SPECIFIC CIRCUMSTANCES TO SAY  
12 THAT ANY SUCH DOCUMENT EXISTS OR THEY EVEN HAVE A  
13 SUSPICION THAT THEY ACTUALLY EXIST.

14 FOURTH, YOUR HONOR, WHEN WE -- YOUR HONOR  
15 ADDRESSED THE PRIOR OBJECTIONS BACK -- IN YOUR MARCH 2ND  
16 ORDER. ONE OF THE OBJECTIONS THEY MADE WAS THAT -- AND  
17 I'LL READ IT TO YOU, IT SAYS THAT THEY WANTED THIS FIRST  
18 PASS REVIEW BECAUSE THEY WANTED THE OPPORTUNITY TO  
19 REVIEW, DETERMINE RELEVANCE, MATERIALITY, AND ANY  
20 APPLICABLE PRIVILEGE OR IMMUNITY FROM PRODUCTION.

21 YOUR HONOR ASSESSED THIS CLAIM OF PRIVILEGE  
22 OR IMMUNITY AND OVERRULED THE OBJECTION.

23 THE COURT: IN THE CONTEXT OF A FIRST-PASS  
24 REQUEST.

25 MR. DAVIS: YES. WHICH IS EXACTLY WHAT  
26 THEY'RE ASKING FOR HERE.

27 SO THE IDEA THAT THERE IS SOME PRIVILEGED  
28 COMMUNICATION THAT WOULD EVEN EXIST IN THESE CUSTODIAL

1 FILES FOR MEDICAL OR PHARMACY OR INSURANCE RECORDS IS  
2 REALLY -- IT'S NOT SUSTAINABLE, BUT HOW THESE ENTITIES  
3 OPERATE IN WHAT THEY DO OR THEY DON'T. AND LAWYERS  
4 AREN'T INVOLVED IN THAT. AND TO THE EXTENT THE  
5 PLAINTIFF ASSERTS THERE IS SOMETHING, THAT THE  
6 DISCLOSURE OF THAT TYPE OF INFORMATION TO THIRD PARTIES  
7 DESTROYS THE CONFIDENTIAL COMMUNICATION, DESTROYS THE  
8 PRIVILEGE. AND EVEN IF IT DID NOT, THEY STILL HAVE THE  
9 MECHANISM OF A CLAWBACK WHERE WE COULD CONTEST THAT  
10 ISSUE UNDER THE PROTECTIVE ORDER.

11 SO THIS DOESN'T -- THIS GROUNDS FOR A "WE  
12 NEED TO DO THIS BECAUSE IT'S PRIVILEGED," TO DO A REVIEW  
13 FOR MEDICAL AND INSURANCE, PHARMACY RECORDS, I'LL BE  
14 HONEST WITH YOU, I'VE NEVER HEARD OF THAT ANYWHERE IN  
15 KIND OF MASS COURT WORK WHERE THAT KIND OF -- THAT KIND  
16 OF REVIEW IS DONE. AND THE REASON IT'S NOT DONE IS  
17 OBVIOUS. THOSE AREN'T THE ENTITIES THAT HAVE THIS KIND  
18 OF INFORMATION.

19 THE COURT: ALL RIGHT.

20 MR. ESFANDIARY: YOUR HONOR?

21 THE COURT: HOLD ON. HOLD ON.

22 MR. ESFANDIARY, LET'S TALK ABOUT PRIVILEGE,  
23 OKAY? THE POSSIBILITY THAT THERE ARE PRIVILEGED  
24 MATERIALS IN THESE RECORDS THAT NEED TO BE SCREENED FOR  
25 IN ADVANCE.

26 WHAT ARE YOU TALKING ABOUT? WHAT KIND OF  
27 PRIVILEGED DOCUMENTS ARE YOU IDENTIFYING IN YOUR MIND?

28 MR. ESFANDIARY: FOR SURE. AND JUST FOR

1 CONTEXT, THE DEFENDANTS' REQUEST IS FOR ANY AND ALL. IN  
2 EVERY SINGLE REQUEST IT'S ANY AND ALL EMPLOYMENT,  
3 MEDICAL, AND EDUCATIONAL RECORDS THROUGHOUT TIME GOING  
4 BACK TO DAY ONE.

5 WE'RE TALKING ABOUT TAX RECORDS PRIVILEGE.  
6 REQUESTING THE PARTIES TAX -- THIRD PARTIES' TAX  
7 RECORDS, WHICH THEY'VE DONE, THAT IMPLICATES THE TAX  
8 RECORD PRIVILEGE, WITH NO EXCEPTION.

9 REQUESTING THE ENTIRE EMPLOYMENT FILE,  
10 INCLUDING CLAIMS RELATED TO LITIGATION, WORKERS' COMP,  
11 SO ON, THAT IMPLICATES ATTORNEY-CLIENT AND WORK PRODUCT  
12 PRIVILEGES WITH NO APPLICABLE EXCEPTION.

13 THERE IS THE PSYCHOTHERAPIST-PATIENT  
14 PRIVILEGE. REQUESTING A THIRD PARTIES' ENTIRE  
15 PSYCHIATRIC HISTORY RECORDS, THAT IMPLICATES AND  
16 VIOLATES THE PSYCHOTHERAPIST-PATIENT PRIVILEGE WITH NO  
17 APPLICABLE EXCEPTION.

18 THE DEFENDANTS WILL SAY THAT RIGHT HAS BEEN  
19 WAIVED, THAT PRIVILEGE HAS BEEN WAIVED BECAUSE OF THE  
20 PARTY LITIGANT EXCEPTION. I SUBMIT, YOUR HONOR, WE  
21 SUBMITTED IN OUR PAPERS IT'S NOT ACCURATE. THE PARTY  
22 LITIGANT EXCEPTION IS LIMITED TO WHAT THE NAMES ON IT  
23 HAS, PARTY LITIGANTS.

24 THESE PARENTS ARE NOT PARTY LITIGANTS,  
25 THEY'RE THIRD PARTIES. SO THE NOTION THAT THEY SOMEHOW  
26 WAIVED THEIR PSYCHOTHERAPIST-PATIENT PRIVILEGE OR THEIR  
27 PHYSICIAN-PATIENT PRIVILEGE UNDER CALIFORNIA LAW, IS NOT  
28 SUPPORTED BY THE LAW IN THE STATUTE.

1 I WILL SAY TO THE EXTENT THERE IS ANY KIND  
2 OF PARTY LITIGANT WAIVER THAT'S OCCURRED BY VIRTUE OF  
3 THE FILING OF THIS CASE, THE STATUE IS VERY CLEAR, THE  
4 CONDITION HAS TO BE RELATED TO WHAT IS BEING LITIGATED.  
5 RANDOM CONDITIONS AND OFFHAND REFERENCES TO A PARTY'S  
6 PAST, YOU KNOW, ARE NOT -- BY DEFINITION DO NOT ALWAYS  
7 MEAN RELATED TO AUTISM.

8 I GAVE A PRETTY EXPLICIT EXAMPLE EARLIER.  
9 NO ONE IS GOING TO COME AND SAY THAT CAUSED AUTISM.  
10 THAT'S PRECISELY THE KIND OF SITUATION THAT THE  
11 PSYCHOTHERAPIST PRIVILEGE RIGHT IS TRIGGERED TO THE  
12 EXTENT THAT PARTY LITIGANT EXCEPTION HAS BEEN RECOGNIZED  
13 AND THAT PIECE OF INFORMATION IS STILL PROTECTED UNDER  
14 PRIVILEGE.

15 THE COURT: WHAT ABOUT --

16 MR. ESFANDIARY: I'LL ALSO SAY --

17 THE COURT: HOLD ON. WHAT ABOUT -- WHAT IF  
18 THERE WERE A SUBPOENA DIRECTED TO SAMUEL R.'S PARENTS'  
19 DERMATOLOGIST. IT SAYS, "HEY, I WANT ANY AND ALL  
20 RECORDS REGARDING YOUR DERMATOLOGICAL CONDITION." IS  
21 THAT OKAY OR NOT OKAY?

22 MR. ESFANDIARY: ANY AND ALL RECORDS  
23 RELATED TO -- DOES THE SUBPOENA SPECIFY DERMATOLOGIC --  
24 I CAN'T PRONOUNCE THE WORD.

25 THE COURT: ANY AND ALL RECORDS RELATING TO  
26 YOUR CARE AND TREATMENT OF, YOU KNOW, MR. R.

27 MR. ESFANDIARY: YEAH. TO THE EXTENT  
28 THAT'S SEEKING THE PARENTS' RECORDS, THE

1 PHYSICIAN-PATIENT PRIVILEGE WILL PROTECT THOSE,  
2 ABSOLUTELY, UNDER CALIFORNIA LAW. JUST BY DEFINITION IT  
3 WOULD.

4 THE COURT: SO THE REASON I PICK ON THAT IS  
5 BECAUSE DR. FOMBONNE TELLS ME IN PARAGRAPH 44 OF HIS  
6 DECLARATION THAT PSORIASIS IS A RELEVANT THING. HE  
7 NEEDS TO KNOW ABOUT PSORIASIS.

8 MR. ESFANDIARY: RELEVANCE DOES NOT  
9 OVERCOME PRIVILEGE.

10 THE COURT: WELL, OKAY. BUT WE'RE --  
11 RELEVANCE DOES NOT OVERCOME PRIVILEGE.

12 MR. ESFANDIARY: IF SOMETHING IS  
13 PRIVILEGED, IT'S PRIVILEGED. IF THESE COMPANIES HAVE  
14 INTERNAL MEMOS BETWEEN THEM AND THEIR LAWYER'S SAYING,  
15 "WE BELIEVE HEAVY METALS IN A BABY CAUSES AUTISM," IT  
16 SURE AS HECK IS RELEVANT TO MY CLIENT. BUT I CAN'T SEE  
17 IT BECAUSE OF ATTORNEY-CLIENT COMMUNICATIONS.

18 THE COURT: WELL, IT'S INTERESTING. YOU  
19 KNOW, I THINK THE PARENTS HERE ARE NEITHER -- LET ME SAY  
20 THAT DIFFERENTLY.

21 I DON'T THINK IT IS ACCURATE TO DESCRIBE  
22 THE PARENTS' PARTICIPATION IN THIS LAWSUIT EITHER AS  
23 PARTY LITIGANTS OR TRUE THIRD PARTY -- THIRD PARTIES.  
24 THEY'RE SOMEWHERE IN BETWEEN, TO BE HONEST WITH YOU.  
25 PRESUMABLY, THEY ARE PARTICIPATING IN THIS LITIGATION BY  
26 CONSENT. NOBODY -- NOBODY IS SEEKING TO FORCE THEM TO  
27 PARTICIPATE IN THIS LITIGATION, YET HERE THEY ARE.

28 MAYBE I'M WRONG ON THAT. MAYBE, YOU KNOW,

1 MRS. R., ONE OF THE MRS. R.'S OR MR. R. IS SAYING, YOU  
2 KNOW, "I DON'T WANT ANY PART OF THIS, BUT THE GUARDIAN  
3 AD LITEM IS PROCEEDING ANYWAY." BUT I HAVEN'T SEEN  
4 ANYTHING LIKE THAT. AND WE HAVE A SITUATION WHERE I  
5 THINK EVERYBODY AGREES THE GENETICS IS A FUNDAMENTAL  
6 QUESTION WITH WHICH THE COURT, THE PARTIES, AND THE JURY  
7 MUST GRAPPLE.

8 SO YEAH, YOU'RE RIGHT -- WELL, I'M NOT SURE  
9 YOU'RE RIGHT WHEN YOU SAY THAT RELEVANCE NEVER OVERCOMES  
10 PRIVILEGE. PRIVILEGE, LET'S SEE.

11 SO THE PATIENT TELLS THE DOCTOR SOMETHING  
12 IN CONFIDENCE AND IT GOES INTO A MEDICAL RECORD.  
13 DOESN'T THAT HAPPEN ALL THE TIME IN PERSONAL INJURY  
14 LITIGATION WHERE THEN THE RECORD IS OBTAINED IN  
15 DISCOVERY AND THE THOUGHT IS THAT THE PARTY PUT THAT  
16 IN -- THAT MEDICAL CONDITION AT ISSUE AND THEREFORE...  
17 I'M WONDERING WHAT "THEREFORE" IS. IS IT THE PRIVILEGE  
18 NO LONGER APPLIES OR IS IT THE PRIVACY NO LONGER  
19 APPLIES?

20 MR. ESFANDIARY: YOUR HONOR, THERE'S TWO  
21 ANSWERS TO THAT QUESTION.

22 NUMBER ONE, I WOULD JUST SAY ABSOLUTELY  
23 THERE IS A DIFFERENCE BETWEEN PARTIES AND THESE PARENTS.  
24 THESE PARENTS ARE NOT GOING TO BE ON THE VERDICT FORM AT  
25 TRIAL. THEY ARE NOT PARTIES TO THE LITIGATION. THEIR  
26 RIGHTS ARE NOT BEING AFFECTED BY JUDGMENTS AND ORDERS  
27 THIS COURT MAKES OUTSIDE THE CURRENT DISPUTE WE'RE  
28 HAVING OVER THEIR THIRD-PARTY RECORDS.

1 SO ABSOLUTELY THERE IS A DISTINCTION  
2 BETWEEN PARTIES AND THESE PARENTS AS OPPOSED TO  
3 NONPARTIES IN THIS LITIGATION. AND COURT OF APPEALS IS  
4 VERY CLEAR, SERVING AS A GUARDIAN AD LITEM FOR A CHILD  
5 IN LITIGATION DOES NOT MAKE YOU A PARTY TO THAT  
6 LITIGATION. WE HAVE CLEAR CASE LAW THAT WE CITED IN OUR  
7 BRIEF.

8 THE COURT: I TAKE YOUR POINT ON THAT.  
9 YOU'RE RIGHT ABOUT THAT, BUT WHAT'S UNIQUE HERE, AT  
10 LEAST AMONG THE CASES CITED TO ME, IS THAT THE  
11 PARENTS -- THE PARENTS' GENOMES AND THE PARENTS' LIVES  
12 ARE THE SOURCE OF THE RELEVANT INFORMATION.

13 NOW, THAT DOESN'T MEAN THEY DON'T HAVE ANY  
14 RIGHTS, PRIVACY, PRIVILEGE, OR OTHERWISE, BUT THIS IS  
15 NOT A SITUATION WHERE A THIRD PARTY THAT IS ABSOLUTELY  
16 REMOTE AND ATTENUATED FROM THE UNDERLYING DISPUTE IS  
17 BEING DRAGGED IN AGAINST ITS WILL. I THINK WE HAVE TO  
18 RECOGNIZE THAT.

19 MR. ESFANDIARY: ABSOLUTELY. AND THAT'S  
20 EXACTLY WHY THE COURT OF APPEALS INSTRUCTS TRIAL COURTS  
21 TO DRAW LINES. THAT IS WHY DEFENDANTS' ALL-OR-NOTHING  
22 APPROACH DOESN'T WORK BECAUSE THE COURT, USING ITS  
23 DISCRETION, HAS TO GRAPPLE WITH, OKAY, WHERE DO I DRAW  
24 THE LINES RESPECTIVE TO WHAT THE GERMANE FACTS OF THIS  
25 CASE ARE, RECOGNIZING THAT THIRD PARTIES AUGMENTED A  
26 HIGH PROTECTION AGAINST DISCOVERY, AND RECOGNIZING THAT  
27 PRIVILEGES ARE BEING IMPLICATED.

28 SO WHEN IT COMES --

1 THE COURT: LET ME JUST SAY I MIGHT HAVE  
2 MADE A MISTAKE BY AGREEING TO ADVANCING THIS MOTION FROM  
3 ITS ORIGINAL DATE, WHICH I THINK WAS APRIL 2 OR  
4 SOMETHING. BECAUSE WHAT I SAID IS, "YEAH, YEAH, YEAH,  
5 I'LL DO THAT IF YOU ALL WANT, AND I'LL JUST GIVE THE  
6 PLAINTIFFS AN ORAL REPLY."

7 THE PROBLEM IS I SURE WOULD LOVE TO SEE A  
8 DECLARATION FROM THE PLAINTIFF'S SIDE'S EXPERT IN  
9 RESPONSE TO FOMBONNE TELLING ME WHERE THE LINE SHOULD BE  
10 DRAWN. BECAUSE ALL I'VE GOT RIGHT NOW IN FRONT OF ME IS  
11 AN EXPERT TELLING ME "DON'T DRAW ANY LINES." AND I'VE  
12 GOT LAWYERS TELLING ME, "NO, NO, NO, YOU HAVE TO DRAW  
13 LINES."

14 IT WOULD HELP ME TREMENDOUSLY TO HEAR FROM  
15 A PLAINTIFF'S EXPERT SAYING, "HERE'S WHERE FOMBONNE IS  
16 WRONG, AND HERE ARE THE LINES YOU SHOULD DRAW." AND LET  
17 ME JUST SAY ONE OTHER THING TO GET IT OUT IN THE OPEN.

18 YOU KNOW, PLAINTIFF SAYS, "WELL, IF YOU  
19 DON'T BASICALLY GRANT OUR MOTION, WE'RE GOING TO SEEK A  
20 WRIT REVIEW," I INVITE THAT. I HOPE YOU DO. OR I HOPE  
21 MAYBE BOTH SIDES DO. IT WOULD BE GREAT TO GET SOME  
22 COURT OF APPEAL GUIDANCE ON THIS BECAUSE I DON'T THINK  
23 EXISTING LAW PROVIDES MUCH GUIDANCE TO A TRIAL COURT IN  
24 THIS SITUATION.

25 SO I WOULD LIKE TO HAVE A RECORD THAT YOU  
26 ALL WANT IF YOU WANT TO GO UP ON A WRIT REVIEW. AND  
27 FRANKLY, THE RECORD ON THE MOTION TO OVERRULE OBJECTIONS  
28 TO THE AUTHORIZATIONS IS A CRUMMY RECORD. RESPECTFULLY

1 TO ALL INVOLVED, I DON'T THINK IT WAS A VERY  
2 WELL-THOUGHT-OUT MOTION, EITHER SIDE.

3 YOU KNOW, THE DEFENSE THOUGHT THAT THE  
4 WHOLE DISPUTE WAS ABOUT THIRD PARTY -- I'M SORRY, A  
5 FIRST PASS. THAT'S WHAT I SHOULD HAVE SAID, THAT THE  
6 WHOLE DISPUTE IS JUST, WELL, PLAINTIFFS WANT A FIRST  
7 PASS, AND THEY DON'T GET A FIRST PASS, AND THEREFORE,  
8 THE MOTION'S OVER. AND THE PLAINTIFF SAYS TO ME, "OH,  
9 NO, NO, WE HAVE ALL THESE OTHER OBJECTIONS THAT WE WANT  
10 YOU TO RULE ON," TO WHICH THE DEFENDANTS HAVE PUT IN  
11 BASICALLY NOTHING IN OPPOSITION.

12 SO I DON'T LOVE THE RECORD, AND I HOPE  
13 MY -- I HOPE THAT CAME ACROSS IN MY, WHAT IS IT, MARCH 2  
14 ORDER, WHERE I SAID, "WELL, YOU KNOW, I GUESS I HAVE TO  
15 RULE ON THESE." I DON'T -- AND SO HERE I HAVE.

16 I AM NOT UNHAPPY, I'LL PUT IT THAT WAY,  
17 THAT THE PLAINTIFFS ARE TEEING THIS UP AFRESH WITH  
18 RESPECT TO THE DEPOSITION SUBPOENAS. BECAUSE I THINK WE  
19 NOW HAVE A MORE FOCUSED PROCEEDING.

20 MR. DAVIS: YOUR HONOR, MAY I RESPOND?

21 MR. ESFANDIARY: IN RESPONSE TO THE POINT  
22 ABOUT GETTING A DECLARATION FROM OUR EXPERT, I THINK  
23 THIS IS WHERE THE NUANCE COMES IN.

24 YES, THAT COULD POTENTIALLY FURTHER  
25 ELUCIDATE YOUR HONOR WHEN IT COMES TO THE PRIVACY ISSUE.  
26 I DON'T THINK IT'S NECESSARILY THAT MUCH MORE  
27 INFORMATIVE ONE WAY OR ANOTHER WHEN IT COMES TO  
28 PRIVILEGE. BECAUSE WHEN IT COMES TO MAKING A PRIVILEGE

1 OBJECTION, YOUR HONOR, I THINK IT'S VERY CLEAR THAT IT  
2 MAKES SENSE THAT THE STATUTE AT ISSUE THAT WE'RE  
3 LITIGATING WOULD CONFIRM WITH THE COURT THE DISCRETION  
4 TO ALLOW A NONPARTY TO DO A PRIVILEGE REVIEW BEFORE  
5 DOCUMENTS ARE PRODUCED TO PRESERVE ANY POTENTIAL  
6 PRIVILEGE BECAUSE OTHERWISE, THEY'VE WAIVED.

7 THE COURT: HOLD ON.

8 YOU ARE -- LOOK, MR. ESFANDIARY, YOU ARE  
9 ARGUING FOR, IN GOOD FAITH, A MAJOR EXTENSION OF THE  
10 LAW. BECAUSE NOBODY HAS TOLD ME, INCLUDING YOU, THAT  
11 THERE IS ANY LAW PROVIDING FOR WHAT YOU'RE ASKING FOR.

12 NOW, I'M NOT SAYING THAT A COURT OF APPEAL  
13 COULD NOT CREATE A NEW PROCESS AND ENGRAFT IT ONTO THE  
14 DISCOVERY ACT, BUT THEY HAVEN'T YET. SO, I MEAN, IT IS  
15 NOT A MINOR POINT, A MINOR THING THAT THE PLAINTIFFS ARE  
16 CONTENDING HERE FOR. AND I DON'T -- HOLD ON. AND I  
17 DON'T THINK IT WILL SATISFY YOU, MR. ESFANDIARY, IF I  
18 SIMPLY SAY TO THE DEFENDANTS, "REISSUE YOUR SUBPOENA AND  
19 PUT IN THE FOLLOWING APPOSITIVE CLAUSE, COMMA, EXCLUDING  
20 ALL PRIVILEGED MATERIAL, COMMA."

21 YOU'RE NOT GOING TO BE VERY HAPPY WITH  
22 THAT, ARE YOU?

23 MR. ESFANDIARY: I AGREE, BUT HERE'S THE  
24 THING. THE LAW, YOUR HONOR, WHEN IT COMES TO PRIVILEGE,  
25 IS VERY CLEAR. THERE IS A REASON THE COURT OF APPEALS  
26 SAYS IT CANNOT FORCE A PARTY TO PRODUCE DOCUMENTS  
27 CLAIMING PRIVILEGE OVER, EVEN IF IT MEANS TO DO AN  
28 IN-CAMERA REVIEW.

1 THE PARTY HAS TO BE ALLOWED TO DO THEIR  
2 PRIVILEGE REVIEW. IF THEY ASSERTED A PRIVILEGE  
3 OBJECTION OVER A DOCUMENT, IT SHOULD BE ALLOWED TO DO  
4 PRIVILEGE REVIEW EVEN BEFORE THE COURT GETS TO DO  
5 IN-CAMERA REVIEW OF THE DOCUMENTS TO DETERMINE WHETHER A  
6 PRIVILEGE ACTUALLY EXISTS OR DOESN'T EXIST.

7 THE COURT: AND YOU SAY IT'S VERY CLEAR,  
8 YET I ASKED YOU, SHOW ME THE STATUTE OR THE CASE THAT  
9 SAYS IT'S VERY CLEAR THAT IN A DEPOSITION SUBPOENA GOING  
10 TO A THIRD-PARTY DOCTOR, THAT THERE IS A PRIVILEGE  
11 REVIEW PRIOR TO THE PRODUCTION OF THOSE RECORDS. NOW,  
12 MAYBE THAT WOULD BE A GREAT LAW FOR THE LEGISLATURE TO  
13 ENACT OR THE COURT OF APPEAL TO CREATE A JUDGE-MADE LAW.  
14 BUT I DON'T SEE THAT LAW YET.

15 MR. ESFANDIARY: YOUR HONOR, IF THE RECORDS  
16 BELONG -- HERE, THE MEDICAL RECORDS BELONG TO THE PARTY  
17 MAKING THE OBJECTION, THERE ISN'T MUCH DIFFERENCE  
18 BETWEEN THE PARTY MAKING THE OBJECTION IN THE CONTEXT OF  
19 THE THIRD-PARTY SUBPOENA TO THE PARTY MAKING THE  
20 OBJECTION WHEN IT ITSELF IS IN POSSESSION OF THE RECORDS  
21 THAT IS GOING TO REQUEST FOR PRODUCTION AND BEFORE  
22 TURNING THEM OVER IT MAKES AN OBJECTION ON PRIVILEGE.

23 THE RECORDS FUNDAMENTALLY BELONG TO THAT  
24 PARTY. I THINK THIS IS A PROCEDURAL NUANCE THAT'S KIND  
25 OF GETTING LOST IN THE CONVERSATION ABOUT THE  
26 SUBSTANTIVE RIGHT. THE SUBSTANTIVE RIGHT OF PRIVILEGE  
27 IT EXTENDS TO DOCUMENTS BELONGING TO THAT PARTY.

28 THE COURT: IT'S NOT A NUANCE. I AGREE

1 WITH YOU WHAT YOU JUST SAID. SO THE NOTICE TO CONSUMER  
2 GOES OUT. THE CONSUMER SAYS, "OH, MY GOSH, THIS IS  
3 OVERBROAD. THERE IS PRIVILEGED STUFF IN THERE, I  
4 OBJECT." AND THEREFORE, I DIRECT THE THIRD-PARTY  
5 CUSTODIAN OF RECORDS, DON'T PRODUCE RECORDS THAT I  
6 OBJECT TO OR DON'T PRODUCE ANYTHING. AND THEN EVERYBODY  
7 COMES TO COURT, AND PRIOR TO PRODUCTION THERE IS SOME  
8 TAILORING THAT PERHAPS -- ON THE SCOPE OF THE SUBPOENA.

9 BUT FOR YOU TO SAY, WELL, IT'S JUST A MERE  
10 NUANCE BETWEEN THAT AND A FIRST-LOOK REVIEW BY THE  
11 CONSUMER, I DON'T AGREE WITH YOU. THAT IS NOT A MERE  
12 NUANCE. THAT IS A WHOLE NEW PROCEDURE THAT YOU ARE  
13 CALLING FOR.

14 MR. ESFANDIARY: BUT IT'S THE PROCEDURE  
15 THAT IS SUPPORTED BY THE DISCRETION GIVEN TO THE COURT  
16 IN A STATUTE THAT SAYS THE COURT CAN CONDITION, MODIFY,  
17 OR QUASH THE SUBPOENA.

18 THE COURT: YOU MIGHT BE RIGHT. LET ME ASK  
19 THE DEFENSE.

20 IS HE RIGHT? IS IT WITHIN MY DISCRETION TO  
21 SAY, YOU KNOW WHAT, THERE IS ABSOLUTELY NO LAW IN THIS,  
22 BUT IN THIS CASE, I THINK THAT'S A REALLY GOOD IDEA AND  
23 I'M GOING TO ALLOW IT?

24 WOULD THAT BE AN ABUSE OF DISCRETION?

25 MR. DAVIS: YOU MEAN, IN TERMS OF -- JUST  
26 SO I'M CLEAR, YOUR HONOR, WHAT YOU'RE ASKING --

27 THE COURT: FIRST LOOK.

28 MR. DAVIS: FIRST LOOK.

1 THE COURT: THE HYPOTHETICAL IS THERE IS NO  
2 LAW ON THIS THAT I CAN FIND IN THE STATE. I HAVEN'T  
3 LOOKED IN OTHER STATES OR THE FEDERAL SYSTEM, BUT, YOU  
4 KNOW, I'M LOOKING FOR BINDING OF CALIFORNIA AUTHORITY,  
5 AND I DON'T FIND ANY, BUT, YOU KNOW WHAT, IN THIS  
6 CIRCUMSTANCE, I THINK IT'S A REALLY GOOD IDEA TO LET  
7 PLAINTIFF'S COUNSEL HAVE A FIRST LOOK AND HOLD BACK  
8 THINGS THAT THEY CONTEND ARE PRIVILEGED AND ARE  
9 PRIVATE -- SUFFICIENTLY PRIVATE THAT THEY OUGHT NOT BE  
10 PRODUCED IN LIGHT OF THE SCOPE OF DISCOVERY.

11 COULD I DO THAT OR IS THAT -- WOULD THAT BE  
12 AN ABUSE OF DISCRETION?

13 MR. DAVIS: WE DON'T KNOW -- WE DON'T HAVE  
14 THE CASES. JUST --

15 THE COURT: YOU GOT A LOT OF HELP DOWN  
16 THERE.

17 MR. DAVIS: I'M GETTING A LOT OF HELP. I'M  
18 COMING BACK TO YOUR POINT THAT YOU'VE ALREADY MADE, YOUR  
19 HONOR, WHICH IS THERE IS NO CASE LAW, THERE IS NO  
20 STATUTE, THERE IS NO PROVISION THAT ALLOWS THE COURT TO  
21 DO THIS KIND OF FIRST PASS REVIEW.

22 THE COURT: SOMEBODY'S GOT TO BE THE FIRST.

23 MR. DAVIS: WELL, THE CASE LAW IS --

24 MR. MERRYMAN: YOUR HONOR, BRYAN MERRYMAN  
25 FOR GERBER.

26 THERE IS A CCP SECTION THAT WE CITE IN THE  
27 MOTION TO QUASH AND WE CITED -- IN OUR OPPOSITION AND WE  
28 CITED IN OUR LAST MOTION THAT SPECIFICALLY REQUIRES THE

1 THIRD PARTY. AND WE'RE TALKING ABOUT THIRD PARTIES HERE  
2 WHERE WE CAN'T GET OVER THE WAIVER ISSUE THAT REQUIRES A  
3 THIRD PARTY TO SEND THE PRODUCTION TO THE DOCUMENT -- TO  
4 THE LITIGATION -- THE -- IN THE SUBPOENA THERE'S AN  
5 ADDRESS TO WHOMEVER IS IN THE -- IDENTIFIED ON THE  
6 SUBPOENA AND THE CCP SECTION REQUIRES THE DOCUMENTS BE  
7 SENT THERE.

8 THERE IS NO PROVISION OR ALLOWANCE IN THE  
9 CODE TO DEVIATE FROM THAT. SO THERE IS A CCP SECTION  
10 THAT TELLS US HOW THIS IS SUPPOSED TO HAPPEN AND MUST  
11 HAPPEN.

12 THE COURT: SO WHAT'S THE ANSWER TO MY  
13 QUESTION? IF I ORDER IT ANYWAY, IS THAT AN ABUSE OF  
14 DISCRETION?

15 MR. MERRYMAN: YES, YOUR HONOR, BECAUSE YOU  
16 WOULD BE IN -- CONTRADICTING THE CCP SECTION ON POINT  
17 HERE.

18 THE COURT: OKAY.

19 MR. ESFANDIARY: YOUR HONOR, THAT'S  
20 NOT ACCURATE.

21 CCP 1987.1, IT SPECIFICALLY SAYS THE COURT  
22 CAN MAKE ANY ORDER TO QUASH, AMEND, OR CONDITION THE  
23 SUBPOENA. THAT IS A DISCRETION GIVEN TO THE TRIAL  
24 COURT. YOU CAN REWRITE THE SUBPOENA COMPLETELY. YOU  
25 CAN IMPOSE TIME RESTRICTIONS. YOU CAN IMPOSE A FIRST  
26 PASS REVIEW PROCESS FOR PRIVILEGE. IT DOESN'T -- THE  
27 COURT IS NOT CONFINED TO AN ALL-OR-NOTHING APPROACH.  
28 THAT'S THE DISCRETION GIVEN TO YOU UNDER THAT SECTION OF

1 THE CODE PARTICULARLY AS IT RELATES TO THIRD-PARTY  
2 SUBPOENAS AND THEIR OBJECTIONS TO THOSE.

3 THE COURT: OKAY. I HEAR YOU.

4 SO LET ME ASK THE PLAINTIFF'S SIDE. I'M  
5 OFFERING YOU AN OPPORTUNITY TO HAVE A MORE EXPANDED  
6 RECORD IF YOU WANT IT FOR ANY WRIT REVIEW.

7 DO YOU WANT ME TO GIVE YOU A CHANCE TO PUT  
8 IN A REPLY WITH A DECLARATION FROM YOUR EXPERT, ONE OR  
9 MORE EXPERTS IN SUPPORT OF YOUR LINE DRAWING?

10 MR. ESFANDIARY: WELL, MY IMMEDIATE  
11 RESPONSE IS YES, BUT MAY I JUST QUICKLY CONFER BY  
12 ELECTRONIC MEANS BY MS. ALARCON?

13 YES, YOUR HONOR, WE'RE FINE WITH THAT.

14 MR. DAVIS: YOUR HONOR, MAY I ADD SOMETHING  
15 TO THAT?

16 MS. ALARCON: JUST BEFORE YOU MOVE OVER TO  
17 DEFENSE, YOUR HONOR, NOT ONLY WOULD WE TAKE THE  
18 OPPORTUNITY TO SUBMIT A REPLY, BUT WE COULD ALSO ADDRESS  
19 YOUR HONOR'S QUESTION REGARDING WHAT AUTHORITY YOU HAVE  
20 TO ORDER IT TO BE PRODUCED TO PLAINTIFF'S COUNSEL, FOR  
21 EXAMPLE.

22 THE COURT: WELL, I'D LOVE YOU TO CITE ME A  
23 CASE THAT SAYS I CAN DO IT.

24 MR. DAVIS: YOUR HONOR, JUST TO CIRCLE BACK  
25 ON THIS POINT ABOUT AN EXPERT'S DECLARATION, RIGHT, AND  
26 JUST TO RECYCLE, WE GOT HERE BECAUSE THIS WAS THE  
27 PROCESS THAT THE PLAINTIFFS WANTED.

28 THEY WANTED TO WAIVE THEIR REPLY AND THEY

1 CERTAINLY HAD THE OPPORTUNITY TO PRESENT A DECLARATION  
2 AT ANY OF THE OTHER OPPORTUNITIES THAT WE'VE ADDRESSED  
3 THIS ISSUE ON MULTIPLE OCCASIONS.

4 BUT SETTING THAT ASIDE, I WOULD POINT THE  
5 COURT TO PARAGRAPH 52 OF DR. FOMBONNE'S DECLARATION  
6 WHERE HE SAYS THAT IF REDACTIONS ARE MADE TO THESE  
7 RECORDS BY ANY PERSON, PHYSICIAN OR OTHERWISE,  
8 UNFAMILIAR WITH THE MYRIAD OF POTENTIAL ISSUES AT PLAY,  
9 INFORMATION THAT ALLOWS A MEDICAL REVIEWER TO ASSESS A  
10 FULL MEDICAL PSYCHIATRIC PICTURE MAY BE OMITTED. AND  
11 EVEN IF A PHYSICIAN WERE INVOLVED, THERE COULD BE  
12 REASONABLE DISAGREEMENTS ABOUT WHAT INFORMATION IS  
13 INFORMATIVE TO THE PARENTS' POTENTIAL RISK FACTORS FOR  
14 ASD OR ADHD.

15 THE COURT: OKAY.

16 MR. DAVIS: THIS ALSO APPLIES TO SIBLING  
17 RECORDS.

18 THE COURT: WHAT'S YOUR POINT?

19 MR. DAVIS: MY POINT IS THAT EVEN IF WE GET  
20 INTO THIS DISAGREEMENT BY EXPERTS ABOUT WHAT IS OR IS  
21 NOT RELEVANT, WE HAVEN'T BEEN ABLE TO DISPOSITIVELY SAY  
22 THAT THE INFORMATION THAT COULD BE POTENTIALLY REDACTED  
23 IS NOT INFORMATIVE AND SPEAKS TO THE VERY ISSUE OF  
24 ALTERNATIVE CAUSATION.

25 THE COURT: I HEAR YOU, BUT DO YOU SEE THE  
26 SITUATION I'M IN -- THE COURT, THAT IS -- IS IN?

27 THE PROPOSITION IS PUT TO ME THAT THE COURT  
28 SHOULD DRAW SOME LINES. AND THAT IS NOT A REMARKABLE

1 PROPOSITION. I DO THINK THAT THE LAW IS CLEAR, THE  
2 LEGAL CULTURE OF DISCOVERY IS CLEAR THAT COURTS DO DRAW  
3 LINES WHEN IT COMES TO THINGS LIKE PRIVACY.

4 I AGREE WITH YOU, MR. ESFANDIARY, THERE'S  
5 NOT MUCH LINE DRAWN TO BE HAD WITH PRIVILEGE. PRIVILEGE  
6 IS KIND OF A CATEGORICAL THING THAT IT EITHER IS OR  
7 ISN'T. BUT THE PLAINTIFF IS SAYING TO ME YOU NEED TO  
8 DRAW SOME LINES AND THE DEFENSE IS SAYING THERE ARE NO  
9 LINES THAT CAN BE DRAWN AND HERE'S A VERY  
10 HIGHLY-QUALIFIED EXPERT WHO, IN 53 PARAGRAPHS, EXPLAINS  
11 WHY. AND, YOU KNOW, IT'S A VERY GOOD DECLARATION, AND I  
12 BELIEVE DR. FOMBONNE IS VERY WELL-CREDENTIALLED.

13 IN RESPONSE TO THAT, I HAVE LAWYERS FROM  
14 THE PLAINTIFF SAYING YOU SHOULD DRAW LINES ANYWAY, AND  
15 HERE ARE THE LINES YOU SHOULD DRAW. AND I'VE ALREADY  
16 SAID I RESPECT PLAINTIFF'S COUNSEL VERY MUCH, BUT THEY  
17 ARE NOT AS WELL-QUALIFIED AS DR. FOMBONNE, BUT THEY  
18 PROBABLY HAVE AN EXPERT WHO IS. SO I WOULD BE  
19 INTERESTED TO SEE WHAT THAT EXPERT HAS TO SAY ON THE  
20 LINE DRAWING PROPOSITION.

21 I TAKE YOUR POINT THAT THOSE EXPERTS MAY  
22 DISAGREE. I WAS GOING TO SAY PROBABLY. I DON'T KNOW.  
23 MAYBE THEY WON'T. I MEAN, IF, YOU KNOW, MAYBE BOTH  
24 WOULD SAY, YOU KNOW WHAT, IF MR. R. BROKE HIS ARM WHEN  
25 HE WAS 13 YEARS OLD, NO, I DON'T REALLY NEED THOSE  
26 RECORDS, AT WHICH POINT YOU MIGHT COME TO ME AND SAY  
27 REALLY, YOU WANT THE CUSTODIAN OF RECORDS TO NOW TAKE  
28 OUT THE BROKEN ARM FROM -- WHEN THIS 48-YEAR-OLD

1 GENTLEMAN WAS 13 YEARS OLD?

2 MR. DAVIS: THAT HARDLY QUALIFIES AS HIGHLY  
3 SENSITIVE INFORMATION COMPARED TO EVERYTHING ELSE. I  
4 AGREE.

5 MS. FREIWALD: MAY I --

6 MR. DAVIS: SO TO THE POINT -- YOUR HONOR,  
7 THE ISSUE KIND OF -- THIS IS AN ISSUE YOU HAVE KIND OF  
8 SET OUT WAY BACK IN AUGUST OF 2022, WHEN YOU WERE  
9 ASSESSING THIS VERY FIRST -- FOR THE VERY FIRST TIME AT  
10 THE IDC AND NC. AND YOUR HONOR HEARD ARGUMENTS ALMOST  
11 PARALLEL TO ALL OF WHAT YOU'VE HEARD TODAY ABOUT THE  
12 ACCESS TO THE PARENTAL RECORDS AND YOU DECIDED, ON  
13 BALANCE, BECAUSE OF THE REASONS FOR SPEAKING TO  
14 ALTERNATIVE CAUSATION, THOSE SHOULD BE PRODUCED. AND  
15 THEY WERE IN THAT CASE, AND THEN THEY WERE AGAIN IN THE  
16 LANDON R. CASE. AND THEN WE'VE HEARD ISSUES AGAIN ABOUT  
17 THESE TWO CASES.

18 AND, YOUR HONOR, I THINK THE REITERATION OF  
19 THE PRIVILEGE ARGUMENT, I'M GOING TO SET ASIDE  
20 ATTORNEY-CLIENT PRIVILEGE BECAUSE THAT TO ME IS KIND OF  
21 A DIFFERENT ISSUE, BUT WE'VE SPOKEN TO AS TO ANY  
22 PRIVILEGE AS TO THOSE PSYCHIATRIC AND MEDICAL RECORDS  
23 AND THE MEDICAL HISTORIES OF THE PLAINTIFF, TO THE  
24 EXTENT THAT'S THE PRIVILEGE THAT PLAINTIFFS ARE TALKING  
25 ABOUT, YOUR HONOR HAS ADDRESSED THIS OVER AND OVER  
26 AGAIN. AND YOU DID IT -- YOU DID IT AT THAT TIME  
27 UNDERSTANDING OF WHAT THE CAUSATION ISSUES WERE IN PLAY,  
28 AND THAT'S PROVEN BY THE HISTORY OF THESE CASES THAT

1 THAT WAS A RESULT THAT WAS FULLY SUPPORTED BY THE  
2 SCIENCE. AND DR. FOMBONNE'S EXPERT DECLARATION OUTLINES  
3 THOSE -- ALL THOSE ISSUES IN SPADES.

4 AND SO HERE WE ARE AGAIN, SEVERAL YEARS  
5 LATER, WRESTLING -- YOU KNOW, WRESTLING WITH THE SAME  
6 ARGUMENT AND NOTHING HAS REALLY CHANGED.

7 THE COURT: WELL, SOMETHING'S CHANGED, AND  
8 THAT IS THAT AT LEAST IN SOME OF THESE PRIOR OCCASIONS,  
9 IT WAS AN IDC. AND I HAVE NO RECORD. AND --

10 MR. ESFANDIARY: YOUR HONOR.

11 THE COURT: HOLD ON. AND I SAID WHAT I  
12 SAID IN THE IDC AND THE PARENTS APPARENTLY ACQUIESCED TO  
13 IT BECAUSE THERE WAS NO MOTION PRACTICE THEREAFTER. BUT  
14 NOW THIS MAY BE DIFFERENT. THERE IS A RECORD.

15 AND I MEAN, LOOK, I THINK IT'S -- I GIVE  
16 AWAY NOTHING WHEN I TELL YOU THAT -- WITHDRAWN.  
17 WITHDRAWN.

18 MS. FREIWALD: MAY I --

19 THE COURT: I'M GOING TO GIVE YOU A CHANCE,  
20 MS. FREIWALD. LET ME JUST SEE IF I CAN FINISH MY  
21 THOUGHT HERE.

22 I THINK THE COURT OF APPEAL WOULD EXPECT OF  
23 A TRIAL JUDGE IN THIS CIRCUMSTANCE TO REALLY PRESS AND  
24 PROBE THE ASSERTION THAT ALL RECORDS ARE NECESSARY.

25 BECAUSE IT IS -- THE "ANY AND ALL" RECORDS  
26 GOING -- WE'LL JUST TALK ABOUT, SAY, MEDICAL RECORDS AND  
27 PSYCHIATRIC RECORDS INVOLVING THESE PARENTS, WHETHER WE  
28 CHOOSE TO CALL THEM THIRD PARTIES OR IN SOME, YOU KNOW,

1 ARE QUASI-NONPARTY, NONTHIRD-PARTY STATUS, WHICH I  
2 SUGGESTED MIGHT EXIST HERE, IT IS A -- IT'S PRETTY  
3 BROAD, "ANY AND ALL."

4 GENERALLY SPEAKING, I'M NOT A BIG FAN OF  
5 "ANY AND ALL" DOCUMENT REQUESTS. SO I DO THINK THAT THE  
6 COURTS OF APPEAL WOULD EXPECT ME TO DIG DEEPER.

7 SO I WANT TO GIVE THE PLAINTIFF A CHANCE TO  
8 TELL ME THROUGH AN EXPERT WHERE THE LINE SHOULD BE  
9 DRAWN. AND LOOK, I'M LOOKING FOR SPECIFICS. IF --  
10 PLAINTIFF'S SIDE, I MEAN, YOU HAVE ARGUED IN YOUR MOTION  
11 THAT THIS IS WHERE THE LINE SHOULD BE DRAWN. SO MAYBE  
12 YOU'LL WANT TO DIVERT FROM THAT A LITTLE BIT, DIVERGE  
13 FROM THAT A LITTLE BIT BASED ON WHAT YOUR EXPERTS CITE,  
14 BUT I NEED CLEAR GUIDANCE, NOT -- I WAS GOING TO SAY  
15 PLATITUDES. THAT'S THE WRONG WORD.

16 I DON'T NEED BROAD STATEMENTS OF DISCOVERY  
17 POLICY, OKAY? I KNOW WHAT TO -- I KNOW THAT THERE IS A  
18 RIGHT OF PRIVACY IN THE CALIFORNIA CONSTITUTION. I'VE  
19 READ HILL AND ITS PROGENY. I UNDERSTAND THAT. WHAT I  
20 NEED IS HELP APPLYING IT SPECIFICALLY IN THIS CASE -- IN  
21 THESE TWO CASES.

22 THE OTHER THING I REALLY WANT TO KNOW MORE  
23 ABOUT IS YOUR PRIVILEGE CLAIM. I'LL BE HONEST WITH YOU.  
24 I DON'T REALLY SEE IT.

25 I HEAR YOU ON TAX RECORDS, WONDERS IF  
26 CALIFORNIA LAW ON CIVIL DISCOVERY OF TAX RECORDS IS A  
27 PRIVILEGE OR NOT. I THINK IT'S DESCRIBED AS SUCH.  
28 ALTHOUGH IT'S VERY INTERESTING. I WILL TELL YOU AS A

1 FORMER FAMILY LAW JUDGE, THAT THE FAMILY LAW BAR WOULD  
2 BE AGHAST TO HEAR THAT THERE IS ANY PROHIBITION ON THE  
3 PRODUCTION OF TAX RECORDS.

4 IN FACT, THERE'S A STATUTE REQUIRING THE  
5 PRODUCTION OF TWO YEARS OF TAX RECORDS WITHIN 60 DAYS OF  
6 THE FILING OF ANY PETITION FOR DISSOLUTION. SO THERE'S  
7 THAT. BUT CIVIL, I UNDERSTAND IS A LITTLE DIFFERENT.

8 WORKERS' COMP RECORDS AND MEDICAL AND  
9 PSYCHIATRIC RECORDS ARE CUSTOMARILY PRODUCED RELATIVE TO  
10 THE PLAINTIFF, AND I TAKE THE PLAINTIFF'S POINT HERE  
11 THAT THESE RECORDS AREN'T DIRECTED TO A PLAINTIFF, BUT  
12 TO THE PARENTS OF THE PLAINTIFF. I UNDERSTAND THAT.  
13 AND I UNDERSTAND THAT MAYBE A DIFFERENT RULE NEEDS TO  
14 APPLY OR MAYBE IT DOESN'T.

15 SO IS THERE ANYTHING ELSE THE DEFENSE WANTS  
16 TO SAY?

17 MS. KISER: YES, YOUR HONOR. THANK YOU,  
18 THIS IS LIV KISER ON BEHALF OF BEECH-NUT WALMART.

19 I JUST WANT TO CREATE A RECORD ON THE  
20 CONCEPT OF A BROKEN ARM BECAUSE I DO REPRESENT A LOT OF  
21 AUTISTIC KIDS IN MY PRO BONO PRACTICE.

22 THE CONTEXT IN WHICH THAT OCCURRED COULD BE  
23 RELEVANT. IF A CHILD, SAY, JUMPED 20 FEET FROM THE TOP  
24 OF A TREE, IT'S IMPULSIVITY. SOME OF THESE CHILDREN,  
25 THEY INJURE THEMSELVES. THESE ARE THINGS THAT COULD BE  
26 RELEVANT AND I THINK THE THING THAT THE DEFENSE IS  
27 STRUGGLING WITH IS THE IDEA THAT YOU COULD SOMEHOW DRAW  
28 THESE LINES WITHOUT THE CONTEXT BECAUSE THE CONTEXT IS

1 EVERYTHING.

2 THE COURT: OKAY. I UNDERSTAND THE POINT.

3 MR. MERRYMAN: YOUR HONOR, BRYAN MERRYMAN  
4 FOR GERBER.

5 PRIVILEGE OBJECTIONS, AS YOUR HONOR STATED  
6 IN YOUR MARCH 2 ORDER, NEED TO BE MADE WITH SPECIFICITY,  
7 AND WE'VE HEARD A LOT OF TYPES OF PRIVILEGED DOCUMENTS  
8 THROWN OUT HERE AT THIS HEARING, AND YOUR HONOR JUST  
9 MENTIONED TAX RECORDS.

10 I LOOKED AT -- THE ONLY SUBPOENA WHERE I  
11 CAN THINK OF THAT MIGHT HAVE COME UP WOULD BE THE  
12 EMPLOYER SUBPOENAS, AND I JUST LOOKED AT ONE. THERE'S  
13 NO REQUEST FOR TAX RECORDS. THERE'S NOT EVEN A REQUEST  
14 FOR INCOME. THE REQUEST ASKS FOR A LOT OF OTHER THINGS,  
15 AND IT'S POSSIBLE THAT --

16 THE COURT: THAT THERE'S A W-9 IN THERE.

17 MR. MERRYMAN: EXACTLY, WHICH IS  
18 DISCOVERABLE. BUT IF THE PLAINTIFFS ARE CONCERNED THAT  
19 THEY GAVE A TAX RETURN, PUTTING ASIDE WHAT YOUR HONOR  
20 SAID ABOUT WHETHER OR NOT IT'S DISCOVERABLE, THEN THE  
21 LAW REQUIRES THEM TO MAKE A SPECIFIC OBJECTION BASED ON  
22 PRIVILEGE AND SAY WE GAVE OUR TAX -- EMPLOYER X MAY HAVE  
23 OUR TAX RETURNS AND WE OBJECT TO THE PRODUCTION OF THE  
24 TAX RETURN.

25 THE COURT: AND YOUR POINT TO ME IS YOU  
26 DON'T THINK THAT THAT WAS -- THAT THE OBJECTIONS ARE  
27 SPECIFIC ENOUGH HERE TO THESE SUBPOENAS RELATIVE TO  
28 PRIVILEGE?

1 MR. MERRYMAN: YES, YOUR HONOR. AND THAT'S  
2 AFTER YOU GET BY THE WAIVER ISSUE, WHICH THE COURT  
3 SHOULD JUST ADDRESS FIRST IN TOTAL ON THESE. THESE ARE  
4 THIRD-PARTY SUBPOENAS.

5 SO GENERALLY, WHEN INFORMATION IS SHARED  
6 WITH A THIRD PARTY, THE PRIVILEGE IS WAIVED.

7 THE COURT: YOU KNOW, GENERALLY, YOU'RE  
8 RIGHT. ALTHOUGH IT'S NOT ALWAYS THE CASE. YOU KNOW,  
9 MARITAL PRIVILEGE STUFF THAT IS SHARED WITH A THIRD  
10 PARTY ISN'T NECESSARILY ALWAYS WAIVED.

11 MR. MERRYMAN: I'M NOT -- I AGREE, YOUR  
12 HONOR. THERE ARE EXCEPTIONS. BUT THAT'S MY POINT. THE  
13 PLAINTIFFS -- OR THE PARENTS HERE WERE REQUIRED TO HAVE  
14 OBJECTED, IF THEY'RE OBJECTING ON PRIVILEGE WITH  
15 SPECIFICITY.

16 SO IN RULING ON THAT OBJECTION, I'M JUST  
17 ASKING THAT THE COURT LOOK AT WHETHER THE OBJECTIONS  
18 WERE WITH SUFFICIENT SPECIFICITY. THANK YOU.

19 MR. ESFANDIARY: YOUR HONOR, CONCLUDING  
20 REMARKS?

21 THE COURT: HOLD ON. HOLD ON.

22 LET ME GET THE DEFENSE CONCLUDING REMARKS  
23 AND THEN I'LL GET THE PLAINTIFF CONCLUDING REMARKS.

24 MS. FREIWALD: JUST -- HOPE FREIWALD. JUST  
25 FOR THE RECORD, YOUR HONOR, I THINK IT'S IMPORTANT TO  
26 NOTE THAT YOU HAVE MORE THAN TWO IDCS FROM THE PRIOR  
27 LITIGATION.

28 YOU HAVE THE EXPERIENCE OF THOSE

1 LITIGATIONS WHICH WENT START TO FINISH, AND IN THOSE  
2 CASES, IN FACT, THERE WAS SOME INFORMATION THAT THE  
3 PLAINTIFF PARENTS THOUGHT WAS SENSITIVE.

4 IT WAS ALSO NOT BLACK AND WHITE THE WAY THE  
5 PLAINTIFFS ARE TRYING TO SUGGEST THE LINES WOULD BE  
6 DRAWN. FOR EXAMPLE, THERE WASN'T A CLEAR DIAGNOSIS OF X  
7 OR Y, OR A CLEAR ADMISSION OF A OR B. THERE WERE  
8 BEHAVIORS THAT WERE OBSERVED.

9 THERE WAS HISTORY OF TROUBLE OF VARIOUS  
10 KIND THAT EXPERTS THEN USED TO CREATE A PICTURE. AND WE  
11 HAD THOSE RECORDS. AND THEN THERE WAS AN OPPORTUNITY  
12 PRIOR TO TRIAL FOR THE PLAINTIFFS TO FILE MOTIONS  
13 IN LIMINE, AND THE COURT ACTUALLY DENIED THOSE MOTIONS  
14 IN LIMINE AS WE SAID IN OUR PAPERS.

15 THE COURT: WHERE DO THEY DO THAT? IN NC?

16 MS. FREIWALD: IN NC AND IN LANDON, I  
17 BELIEVE.

18 THE COURT: I'M NOT SURE I GOT TO --

19 MS. FREIWALD: MAYBE NOT, MAYBE -- NO, I'M  
20 SORRY, LANDON, WE DIDN'T GET THERE. YOU'RE CORRECT. IT  
21 WAS IN NC. BUT WE DID COLLECT THE RECORDS IN BOTH  
22 CASES. IN BOTH CASES IT WAS IMPORTANT TO OUR ABILITY TO  
23 UNDERSTAND THE FAMILY HISTORY, THE FAMILY GENETIC  
24 HISTORY, THE FAMILY PSYCHOSOCIAL HISTORY, AND WHAT WE'RE  
25 DOING HERE IS NO DIFFERENT FROM WHAT WE DID SUCCESSFULLY  
26 IN THOSE CASES, SUBJECT TO THE TWO-TIER PROTECTIVE  
27 ORDER.

28 AND IT'S EXACTLY WHAT WE LITIGATED AND WHAT

1 YOUR HONOR RULED ON ON MARCH 2ND. BECAUSE AS YOUR HONOR  
2 RECOGNIZED ON MARCH 2ND, THE SUBSTANTIVE ANALYSIS IS THE  
3 SAME, WHETHER YOU'RE DOING IT THROUGH AN AUTHORIZATION  
4 OR THROUGH A SUBPOENA. THE PLAINTIFF'S ARGUMENTS ARE  
5 FUNCTIONALLY THE SAME.

6 SO WHAT WE HAVE HERE IS JUST KIND OF, YOU  
7 KNOW, THE FOURTH BITE AT THE APPLE TO SOME DEGREE  
8 DRESSING UP THE PRIVACY LINE THAT THE PLAINTIFFS WANT TO  
9 NAVIGATE BY THEIR OWN SAY-SO UNDER THE HEADER OF  
10 PRIVILEGE.

11 THE COURT: ALL RIGHT. MR. ESFANDIARY  
12 AND/OR MS. ALARCON.

13 MR. ESFANDIARY: YES, YOUR HONOR.

14 I WILL SAY THIS PRIOR HISTORY THAT WE HAD  
15 WITH NC AND LANDON IS VERY INFORMATIVE. YOUR HONOR  
16 ALLOWED US TO DO A FIRST PASS REVIEW OF EDUCATIONAL AND  
17 EMPLOYMENT RECORDS IN THOSE TWO CASES. IT DID NOT CLIMB  
18 UP THE CASE, IT DID NOT LEAD TO ANY DISPUTES. WE DID  
19 SOME REDACTIONS. WE WITHHELD SOME STUFF. WE REACHED  
20 OUT TO THE DEFENDANTS AND WE WORKED IT OUT. PRACTICALLY  
21 SPEAKING, ON THIS FIRST PASS, NOT MUCH IS GOING TO COME  
22 OF IT.

23 PRACTICALLY SPEAKING, WE'RE NOT GOING TO  
24 WITHHOLD, FOR EXAMPLE, DERMATOLOGY RECORDS ON SOME  
25 PRIVILEGE OBJECTION. THE POINT IS THAT THE THIRD  
26 PARTIES HAVE TO BE GIVEN THE OPPORTUNITY TO SCREEN FOR  
27 THAT PRIVILEGE. THAT'S WHAT EACH -- EVERY PARTY IS  
28 ENTITLED TO DO. WE SHOULD BE ABLE TO SCREEN FOR THE

1 PRIVILEGE BEFORE PRODUCING IT.

2 OF COURSE THE DEFENDANTS ARE GOING TO GET  
3 PARENTS' PSYCHIATRIC RECORDS. OF COURSE THEY'RE GOING  
4 TO GET THE MEDICAL RECORDS. IT'S ABOUT THE PROCESS BY  
5 WHICH TO DO SO, SO THAT THE THIRD PARTIES DON'T WAIVE  
6 THEIR PRIVILEGE OBJECTIONS, THEIR POTENTIAL PRIVILEGE  
7 OBJECTIONS GIVEN HOW BROAD THESE SUBPOENAS ARE.

8 SO I WANT TO LAY THAT OUT THERE THAT,  
9 PRACTICALLY SPEAKING, THIS IS NOT GOING TO HAVE THE  
10 DOOMSDAY RESULTS THAT THE DEFENDANTS AND THE COURT HAVE  
11 ALLUDED TO BECAUSE WE'VE DONE IT PREVIOUSLY AND IT  
12 HASN'T LED TO ANY ISSUES.

13 WE'RE ALREADY COLLECTING CERTAIN PARENTS'  
14 RECORDS AND WE'RE GOING TO SCREEN THOSE FOR PRIVILEGE  
15 AND PRIVACY UNDER OBJECTIONS AND WE'LL PRODUCE THOSE,  
16 AND I THINK THAT WAS GOING TO DEMONSTRATE THAT WE'RE  
17 JUST MAKING A MOUNTAIN OUT OF A MOLEHILL, THAT THIS IS  
18 GOING TO SOMEHOW LEAD TO PROTRACTED LITIGATION AND THIS  
19 CASE IS NEVER GOING TO GET TO TRIAL. THIS IS NOT  
20 ACCURATE.

21 I WOULD ALSO SAY WITHOUT -- I CAN'T TELL  
22 YOU THE CASE RIGHT NOW, BUT FIRST PASS REVIEW, YOUR  
23 HONOR, IS CONTINUING IN THE MASS TORTS AND EXCHANGE  
24 AUTHORIZATIONS.

25 MR. DAVIS STARTED HERE BY SAYING, LOOK,  
26 THEY'RE NOT GOING TO DO THE AUTHORIZATIONS AND THEY'RE  
27 GOING TO SUBPOENA US. THE AUTHORIZATIONS USUALLY COME  
28 IN EXCHANGE FOR THE THIRD PARTIES OF THE PLAINTIFF

1 DURING THE SCREEN. FULL PRIVILEGE AND PRIVACY BEFORE  
2 PRODUCTION. WE'RE DOING IT IN ZANTAC, WE DID IT IN  
3 ROUNDUP. I DON'T KNOW WHY THE DEFENDANTS ARE TAKING AN  
4 APPROACH THAT WE CAN'T FOLLOW THE SAME PROCEDURE. IF  
5 THE DEFENSE WANTS TO BE REASONABLE AND DRAW LINES, WE  
6 CAN REACH AN AGREEMENT, I THINK, ON A LOT OF THIS.

7 THE COURT: OKAY.

8 MR. ESFANDIARY: AND I THINK THAT THE  
9 ALL-OR-NOTHING APPROACH IS NOT PRODUCTIVE AND NOT GOING  
10 TO GET US ANYWHERE.

11 THE COURT: LET ME ASK THE DEFENSE  
12 SOMETHING.

13 WE'RE GOING TO TAKE A BREAK SHORTLY FOR  
14 EVERYBODY'S BENEFIT, INCLUDING MINE, BUT BEFORE WE DO, I  
15 THINK MR. ESFANDIARY IS CORRECT THAT AT LEAST IN NC,  
16 THERE WAS A FIRST PASS PROCESS THAT APPARENTLY YOU ALL  
17 ACCEDED TO.

18 MR. DAVIS: THAT WAS IN CONNECTION WITH  
19 EMPLOYMENT RECORDS ONLY.

20 MR. ESFANDIARY: AND EDUCATIONAL.

21 MR. DAVIS: I THINK IT WAS -- WELL, IT WAS  
22 ONE OR THE OTHER. EVEN IF IT WAS BOTH, IT WAS NOT THE  
23 PSYCHIATRIC AND THE MEDICAL RECORDS.

24 AND I THINK AS WE TALKED ABOUT LAST TIME,  
25 WHAT HAPPENED THERE IS WE WERE ONLY ABLE TO IDENTIFY TWO  
26 REDACTIONS OVER TWO CASES WHERE THAT HAPPENED. AND SO  
27 AGAIN, IT SPEAKS TO THE ISSUE ABOUT WHY THE INFORMATION  
28 THAT WAS PRODUCED IN THE CASE WAS RELEVANT, WAS

1 INFORMATION THAT WAS NOT OBJECTED AS BEING IRRELEVANT OR  
2 HIGHLY SENSITIVE.

3 AND I ALSO WOULD KIND OF CIRCLE BACK IF  
4 YOUR HONOR COULD CIRCLE BACK TO MR. ESFANDIARY'S  
5 EXPLANATION THAT HE JUST OFFERED BECAUSE I THINK IT  
6 ENCAPSULATES EXACTLY WHY LINES CAN'T BE DRAWN.

7 HE SAYS, "WE'RE GOING TO GET PSYCHIATRIC  
8 RECORDS. WE'RE GOING TO GET MEDICAL RECORDS." IN OTHER  
9 WORDS, THEY ARE SAYING THAT THOSE ARE INFORMATION THAT  
10 IS NOT OFF LIMITS. THAT IS NOT SOMETHING THAT IS NOT  
11 DISCOVERABLE AND GERMANE TO THE CASE. THEY'RE  
12 ACKNOWLEDGING THAT. AND AT THE SAME TIME, THEY'RE ALSO  
13 NOT GIVING YOUR HONOR ANY PLACES TO DRAW THE LINES,  
14 WHICH IS SUPPORTIVE OF WHY WE THINK WE HAVE TO HAVE THE  
15 INFORMATION IN TOTAL TO BE ABLE TO PUT THE CONTEXT OF  
16 THE SYMPTOMS, THE ASSESSMENTS, IN THE CONTEXT OF THE  
17 BROADER PICTURE OF ALL THE RECORDS FOR THE PARENTS TO BE  
18 ABLE TO PIECE TOGETHER WHAT THEIR MEDICAL, PSYCHIATRIC,  
19 AND SOCIAL HISTORIES ARE AND HOW THAT PLAYS OUT AS  
20 DR. FOMBONNE GOES INTO EXCRUCIATING DETAIL IN HIS  
21 DECLARATION.

22 THE COURT: OKAY.

23 MR. ESFANDIARY: ONE POINT -- LAST FINAL  
24 POINT ON THE PRIVILEGE. THIS IS REALLY IMPORTANT FOR  
25 APPELLATE PURPOSES. THE RECORD IS SAFER, YOUR HONOR,  
26 FOR YOU TO ALLOW A THIRD PARTY UNDER 1987 STATUTE TO DO  
27 A FIRST PASS REVIEW FOR PRIVILEGE THAN IT IS IF YOU  
28 DON'T ALLOW THEM TO DO THAT AS A MATTER OF ABUSE OF

1 DISCRETION.

2 YOU'RE NOT GOING TO GET REVERSED IF A THIRD  
3 PARTY IS ALLOWED TO DO A SCREENING FOR PRIVILEGE,  
4 OBJECTS TO SOMETHING THAT'S PRIVILEGED AND IF YOU RULE  
5 THAT PRIVILEGE, I THINK THE CHANCE OF REVERSAL ARE WAY  
6 HIGHER FOR NOT ALLOWING A THIRD PARTY TO DO A SCREENING  
7 FOR PRIVILEGE AND THAT PRIVILEGE IS, OVER YOUR  
8 OBJECTION, WAIVED BEFORE IT HAD A CHANCE TO SCREEN FOR  
9 IT AND WITHHOLD INFORMATION.

10 THE COURT: GIVE ME A MINUTE, PLEASE.

11 DO YOU ATTACH, PLAINTIFF'S SIDE, YOUR  
12 OBJECTIONS TO ANY OF THESE DEPOSITION SUBPOENAS TO ANY  
13 OF THE PAPERS HERE?

14 MR. ESFANDIARY: SO WHEN WE FILED THIS  
15 MOTION, WE HADN'T YET SUBMITTED THE OBJECTION. THE  
16 DEADLINE FOR THAT HADN'T COME UP. WE HAVE NOW. I'M  
17 HAPPY TO SUPPLEMENT THE RECORD WITH THOSE OBJECTIONS.

18 BECAUSE IN THE STATUTE THE PARTIES -- THIRD  
19 PARTIES GET AN OPTION OR RIGHT OF OBJECTING AND WILL  
20 MOVE TO QUASH AND WE MOVE TO QUASH -- LITERALLY THREE  
21 DAYS WITHIN GETTING THE SUBPOENAS, AND WE'VE OBJECTED  
22 SINCE THEY WERE SUBMITTED FOR OBJECTIONS AND WE'RE HAPPY  
23 TO PROVIDE THE COURT WITH THOSE OBJECTIONS.

24 THE COURT: ONE MOMENT, PLEASE.

25 WELL, IN YOUR REPLY, I'D LIKE TO KNOW MORE  
26 ABOUT YOUR POSITION ON PRIVILEGE, BECAUSE I'M  
27 STRUGGLING.

28 HOW LONG DO YOU NEED TO GET A DECLARATION

1 AND YOUR REPLY ON FILE?

2 MR. ESFANDIARY: YOUR HONOR, I HATE TO BE  
3 AMBIGUOUS, ESPECIALLY WHEN IT COMES TO SCHEDULING THINGS  
4 LIKE THAT, AND I'LL GET RIGHT TO THE POINT, BUT IF I  
5 HAVE TO CONSULT MY EXPERT AND GET A DECLARATION FROM  
6 THEM, THAT COULD TAKE -- I'M NOT SURE WHAT THE  
7 AVAILABILITY IS. DR. SHAPIRO IS VERY -- HE'S A TRAINED  
8 PHYSICIAN. HE'S VERY BUSY DAY IN AND DAY OUT. BUT I  
9 CAN -- A WEEKEND WOULDN'T BE A PROBLEM. IT'S JUST TO  
10 GET A DECLARATION. IF -- ONE SECOND.

11 THE COURT: TELL YOU WHAT, LET'S TAKE A  
12 BREAK AND YOU CAN TAKE COUNSEL WITH THE WISE, MEANING  
13 MS. ALARCON. AND YOU CAN TELL ME WHAT YOU WANT TO DO.

14 LET ME JUST BE CLEAR ON THIS. I AM  
15 OFFERING THE PLAINTIFF AN OPPORTUNITY TO PUT IN A REPLY  
16 AFTER ALL, EVEN THOUGH, AS COUNSEL HAS POINTED OUT FOR  
17 THE DEFENSE, I ACCEDED TO THE REQUEST TO ADVANCE THIS  
18 HEARING, AND PLAINTIFF'S OFFER TO WAIVE A REPLY. BUT I,  
19 THE COURT, I WANT A REPLY AT THIS POINT.

20 SO I WILL SAY, PLAINTIFF'S SIDE, IF ON  
21 REFLECTION YOU DECIDE, YOU KNOW WHAT, WE DON'T WANT A  
22 REPLY, WE LIKE THE RECORD AS IT IS, OKAY. I WON'T  
23 INSIST. BUT IF YOU DO WANT A REPLY, WELL, THEN I'LL SET  
24 A DATE.

25 MR. DAVIS: YOUR HONOR, MAY I ASK A  
26 QUESTION OF THE COURT THAT RELATES TO THAT ISSUE?

27 USUALLY HOW THIS IS -- WE WOULD TYPICALLY  
28 GET THIS STRUCTURED IS THAT THERE WOULD BE -- THE

1 OPPOSITION WOULD KIND OF SET OUT THE GROUNDS FOR THE  
2 BASES OF WHATEVER THE LINES ARE GOING TO BE DRAWN, AND  
3 WE WOULD RESPOND TO THAT THROUGH OUR OPPOSITION.

4 BECAUSE THEY ARE FILING A REPLY THAT NOW DOES THAT. WE  
5 WOULD ASK THAT WE BE ALLOWED TIME TO SUBMIT A RESPONSE.

6 THE COURT: I'LL GIVE YOU AN ORAL SURREPLY.

7 MR. DAVIS: WELL, WE MAY HAVE TO DO A  
8 DECLARATION, TOO. THAT'S MY -- DEPENDING ON WHAT  
9 DR. SHAPIRO PUTS IN.

10 THE COURT: WELL, MAYBE.

11 LOOK, I DO WANT TO FOLLOW THE GENERAL RULE.  
12 THIS IS THEIR MOTION. YOU FILE AN OPPOSITION AND I'M  
13 GOING TO GIVE THEM A REPLY. AND THEN WE'LL SEE.

14 MR. DAVIS: IT'S --

15 THE COURT: WE'LL SEE.

16 MR. DAVIS: I UNDERSTAND, YOUR HONOR. WE  
17 CAN TAKE THIS UP, BECAUSE I KNOW YOU HAVE SOMEBODY  
18 BEHIND US, BUT I WOULD WANT TO ADD SOMETHING TO THAT  
19 DISCUSSION WHEN WE COME BACK.

20 THE COURT: ALL RIGHT. I'LL SEE YOU IN TEN  
21 MINUTES. ABOUT 10:50. THANK YOU.

22  
23 (RECESS FROM 10:39 A.M. TO 11:04 A.M.)

24  
25 THE COURT: HAIN BABY FOOD CASE. HOPE  
26 EVERYBODY'S BACK.

27 MR. DAVIS, YOU HAD SOMETHING YOU WANTED TO  
28 SAY?

1 MR. DAVIS: YES, YOUR HONOR. THANK YOU.  
2 TODD DAVIS FOR BEECH-NUT AND WALMART.

3 YOUR HONOR, IN LIGHT OF THE FACT IF  
4 PLAINTIFFS ARE GOING TO SUBMIT NEW EVIDENCE, WE WOULD  
5 LIKE THE OPPORTUNITY TO -- WE REQUEST THE OPPORTUNITY TO  
6 RESPOND TO IT BECAUSE WE HAVEN'T HAD THE OPPORTUNITY TO  
7 DO THAT. BECAUSE IF THEY'RE -- THEY HAVEN'T DRAWN THE  
8 LINES YET IN TERMS OF THEIR ORIGINAL MOTION, AND IF  
9 THEY'RE GOING TO NOW DRAW LINES ABOUT WHERE THE  
10 PARAMETERS AND THE SCOPE OF THE SUBPOENA SHOULD BE, WE  
11 WANT THE OPPORTUNITY TO BE ABLE TO HAVE A WRITTEN  
12 SUBMISSION TO RESPOND TO THAT AS WELL AS PUT IN A  
13 DECLARATION POTENTIALLY FROM OUR OWN EXPERT.

14 THE COURT: OKAY. SO LET ME JUST FIND OUT  
15 FROM THE PLAINTIFF'S SIDE.

16 ARE YOU STILL OF A MIND THAT YOU WOULD LIKE  
17 THE REPLY AND DECLARATION OPPORTUNITY?

18 MR. ESFANDIARY: DEFINITELY THE REPLY, YOUR  
19 HONOR. AND I WOULD JUST SAY WE DID LAY OUT LINES IN OUR  
20 EIGHT-PAGE NOTICE OF MOTION. WE DID DRAW THE LINES.

21 NOW, IT'S A MATTER OF YOUR HONOR ASKED  
22 FOR -- I ALSO SUBMIT A POTENTIAL EXPERT DECLARATION AND  
23 CITE SOME LAW HAVING TO DO THAT, BUT IN THE ORDINARY  
24 COURSE, THAT'S WHERE THE TRAIN STOPS, RIGHT?

25 WE GET A REPLY AND THE DEFENDANTS DON'T GET  
26 A SURREPLY BY CODE. SINCE YOU'RE NOT GIVING US THE  
27 OPPORTUNITY TO FILE A REPLY WE SHOULD FOLLOW THE SAME  
28 PROCEDURE WE WOULD AS IF WE HAD FILED A REPLY TO BEGIN

1 WITH.

2 THE COURT: HOW LONG DO YOU NEED TO GET  
3 THESE PAPERS ON FILE?

4 MR. ESFANDIARY: I REQUEST BY APRIL 1ST,  
5 YOUR HONOR. AND WE HAVE A HEARING ON APRIL 3RD.

6 MS. FREIWALD: YEAH, YOUR HONOR, THAT'S --  
7 APRIL 3RD IS NOT A DATE THAT I THINK IS REALLY WORKABLE.

8 THE COURT: OKAY. WE'LL WORRY ABOUT THE  
9 HEARING IN A MINUTE.

10 OKAY. PLAINTIFFS, YOU CAN HAVE TO APRIL 1,  
11 2026, TO FILE A REPLY, WHICH MAY INCLUDE A DECLARATION,  
12 ONE OR MORE DECLARATIONS, I SUPPOSE. AND AT PRESENT,  
13 I'M NOT GOING TO PERMIT A SURREPLY. NOT YET. IF I NEED  
14 TO, I'LL KEEP AN OPEN MIND. BUT I AGREE WITH  
15 MR. ESFANDIARY, WE'LL -- THEY DID -- THEY DID SET SOME  
16 GOALPOSTS IN THEIR ORIGINAL MOTION AND -- ANYWAY, I  
17 DON'T WANT TO GIVE YOU A SURREPLY RIGHT NOW.

18 MR. DAVIS: WE APPRECIATE IT.

19 YOUR HONOR, I UNDERSTAND WE MAY BE COMING  
20 BACK TO YOU AND ASKING FOR ONE SIMPLY BECAUSE THE REASON  
21 OF, HERE, WE'RE GOING TO HAVE A DECLARATION PUT IN BY AN  
22 EXPERT THAT IS SUPPOSEDLY GOING TO PROVIDE EVIDENCE, NEW  
23 EVIDENCE THAT HASN'T BEEN CONSIDERED YET BY US, HAVEN'T  
24 HAD AN OPPORTUNITY TO REVIEW, ASSESS IT, AND WE THINK  
25 IT'S IMPORTANT ENOUGH IF THE PLAINTIFFS GET THE  
26 OPPORTUNITY TO PUT SOMETHING IN WHICH WE SUBMIT THEY  
27 SHOULD HAVE PUT IN ORIGINALLY TO SUPPORT THE MOTION  
28 BECAUSE IT WAS THEIR EFFORT TO PROVIDE THE EVIDENCE

1 ABOUT WHY THE MOTION TO QUASH SHOULD BE GRANTED BY THE  
2 SUBPOENA, SHOULD BE EITHER QUASHED OR MODIFIED. AND  
3 HERE, THEY'RE NOW HAVING THE OPPORTUNITY TO PUT IN NEW  
4 EVIDENCE IN A REPLY. THAT'S NOT HOW THE PROCESS  
5 TYPICALLY WORKS.

6 THE COURT: LET ME ASK YOU A HYPOTHETICAL.  
7 IF THE COURT WERE TO GRANT YOU A SURREPLY, HOW MUCH TIME  
8 WOULD YOU WANT FOR THAT?

9 MR. DAVIS: I THINK WE COULD DO IT IN TEN  
10 DAYS BECAUSE WE HAVE TO DO A DECLARATION.

11 THE COURT: ALL RIGHT. NO SURREPLY YET.  
12 THAT'S MY VIEW.

13 OKAY. AND SO NOW LET US -- LET US GO OFF  
14 THE RECORD ON SCHEDULING.

15  
16 (DISCUSSION OFF THE RECORD.)

17  
18 THE COURT: LET'S GO BACK ON THE RECORD.  
19 WHAT WE JUST DID OFF THE RECORD IS I NOTED THAT THE  
20 APRIL 14 STATUS CONFERENCE HAS BEEN ADVANCED TO TODAY.  
21 THERE'S NOTHING ON APRIL 14. AND TODAY'S HEARINGS ON  
22 THE MOTION TO QUASH IN CALEB R. AND SAMUEL R. ARE  
23 CONTINUED TO APRIL 17, 9:00 A.M.

24 OKAY. OFF THE RECORD.

25  
26 (DISCUSSION OFF THE RECORD.)

27  
28 THE COURT: BACK ON THE RECORD, PLEASE, IN

1 THE BABY FOOD CASES.

2 ALL RIGHT. WE ARE NOW GOING TO OUR STATUS  
3 CONFERENCE. WITHOUT TRYING TO GET TOO BOGGED DOWN IN  
4 THINGS THAT REALLY DON'T CONCERN ME, I AM INTERESTED,  
5 DID JUDGE CORLEY RULE?

6 MR. ESFANDIARY: YES, YOUR HONOR.

7 THE COURT: LET ME FIND OUT IN A SENTENCE,  
8 PLAINTIFF, WHAT WAS THE OUTCOME OF THAT RULING?

9 MR. ESFANDIARY: JUDGE CORLEY GRANTED THE  
10 DEFENDANTS' DAUBERT MOTIONS WITH RESPECT TO ALL THE  
11 PLAINTIFF'S EXPERTS WITH RESPECT TO DR. SHAPIRO. BUT  
12 SINCE DR. SHAPIRO WAS NOT DIRECTLY OPINING ON GENERAL  
13 CAUSE, THAT'S IT WITH THAT CASE.

14 THE COURT: OKAY. SO THE -- SHE TOOK UP A  
15 GENERAL CAUSATION DAUBERT PROCEEDING?

16 MR. ESFANDIARY: CORRECT.

17 THE COURT: OKAY. I UNDERSTAND. AND  
18 DEFENSE, IN A WORD OR TWO, IS THAT ACCURATE?

19 MR. DAVIS: YES, YOUR HONOR. THE COURT  
20 ASSESSED THE PLAINTIFF'S CAUSATION EVIDENCE AND EXCLUDED  
21 IT, AND WE SUBMITTED THAT RULING BY WAY OF A NOTICE OF  
22 RULING, I BELIEVE, IN THE JCCP.

23 THE COURT: OH, YOU DID?

24 MS. GATELY: YEAH, RIGHT AFTER IT CAME OUT.

25 MR. MERRYMAN: I THINK THE ORDER CAME OUT  
26 ON A FRIDAY AND WE FILED IT IN THE JCCP IN ALL CASES THE  
27 FOLLOWING MONDAY. IT'S A 46-PAGE OPINION JUST SIMPLY  
28 ATTACHED TO A NOTICE OF MDL ORDER.

1 THE COURT: I DO SEE THAT. NOTICE OF  
2 RULING IN MARCH 11, 2020 -- NO, THAT'S NOT IT. OKAY.  
3 WELL, I'LL FIND IT.

4 SO HERE'S MY IDEA. GIVE ME A MOMENT.

5  
6 (PAUSE IN PROCEEDINGS.)

7  
8 THE COURT: LET ME ASK THE PLAINTIFF. I'M  
9 NOT SURE I UNDERSTAND YOUR PROPOSAL. THE PARTIES WOULD  
10 FIRST LITIGATE SPECIFIC CAUSATION AND SHOULD PLAINTIFFS  
11 OVERCOME DEFENDANTS' CHALLENGES TO SPECIFIC CAUSATION,  
12 PROCEED TO GENERAL CAUSATION.

13 I DON'T GET THAT. IF PLAINTIFFS OVERCOME  
14 SPECIFIC CAUSATION, DOESN'T THAT IMPLY THAT GENERAL  
15 CAUSATION HAS BEEN SATISFIED?

16 MR. ESFANDIARY: WELL, YOUR HONOR, THAT  
17 IDEA STEMS FROM THE FACT THAT LAST TIME LANDON, AND ALSO  
18 IN NC, THE CASES WERE DISMISSED BASED ON THE COURT'S  
19 ADJUDICATION OF CASE-SPECIFIC EXPOSURE, AND THOSE  
20 CALCULATIONS WAS MADE IN THOSE TWO CASES.

21 SO WE THOUGHT THAT IT MADE MORE SENSE TO  
22 LITIGATE AND GET RULINGS FROM THE COURT ON THOSE CASE  
23 DISPOSITIVE ISSUES PERTAINING TO THOSE SPECIFIC  
24 CAUSATION FIRST, BEFORE WE WORK UP EXPERTS AND DO FULL  
25 BRIEFING, DEPOSITIONS ON GENERAL CAUSE IF THAT FIRST  
26 ISSUE IS IN FACT GOING TO BE CASE DISPOSITIVE, WHICH IT  
27 WASN'T IN LANDON IF YOU RECALL. WE DID ALL THE WORKUP  
28 ACROSS, YOU KNOW, GENERAL AND SPECIFIC, BUT THE COURT

1 ONLY ADJUDICATED SPECIFIC CAUSATION, AND THE COURT DID  
2 NOT WISH TO OBTAIN -- TAKE ON THE CHALLENGES OF GENERAL  
3 CAUSATION AFTER YOU GRANTED THEIR MOTION WITH RESPECT TO  
4 MR. JOHNSON.

5 SO WE THOUGHT IT MAKES MORE SENSE  
6 RESOURCEWISE, EXPENDITUREWISE, TO SIMPLY HAVE THE COURT  
7 ADJUDICATE CASE-SPECIFIC -- SPECIFIC CAUSATION FIRST  
8 BEFORE WE DEVOTE PRECIOUS TIME AND RESOURCES WORKING UP  
9 THE GENERAL CAUSATION.

10 THE COURT: OKAY. YOUR IDEA AND MY IDEA IS  
11 THE SAME IDEA. I JUST WOULD USE DIFFERENT LANGUAGE.  
12 MY --

13 MR. ESFANDIARY: OH, SURE.

14 THE COURT: -- MY IDEA IS WHY DON'T WE SEE  
15 IF THE PLAINTIFFS CAN PRESENT A SARGON-COMPLIANT  
16 EXPOSURE ASSESSMENT.

17 MR. ESFANDIARY: THAT'S RIGHT.

18 THE COURT: AND BECAUSE THAT IS WHERE, YOU  
19 KNOW, PRIOR CASES HAVE RESOLVED ON THAT QUESTION. AND  
20 IF THEY CAN, WELL, THEN OBVIOUSLY THE CASE PROCEEDS.

21 LET'S JUST STOP THE MUSIC THERE AND LET ME  
22 FIND OUT, PLAINTIFF, IS THAT WHAT YOU HAVE IN MIND?

23 MR. ESFANDIARY: YES, YOUR HONOR, THAT'S A  
24 MORE ARTICULATE WAY OF SAYING WHAT I JUST SAID.

25 THE COURT: AND WHAT DO YOU ALL THINK ABOUT  
26 THAT?

27 MR. DAVIS: YOUR HONOR, YEAH, WE DON'T  
28 AGREE TO THAT PROCESS.

1 THE COURT: WHY?

2 MR. DAVIS: WELL, THE EXPERTS THAT HAVE  
3 BEEN INVOLVED ON THE GENERAL CAUSATION ISSUE HAVE TAKEN  
4 INTO ACCOUNT EXPOSURE ASSESSMENTS TO REACH THEIR  
5 OPINIONS.

6 SO THE IDEA THAT THIS IS GOING TO SAVE US  
7 TIME IN SOME WAY, SHAPE, OR FORM WITHOUT HAVING TO DO  
8 GENERAL CAUSATION AS WE'VE DONE IT IN THE PAST, AND  
9 CONDUCT THAT TYPE OF DISCOVERY, WE DON'T SEE HOW WE SAVE  
10 TIME, EFFORT, OR MONEY BECAUSE IT WILL ALL HAVE TO BE  
11 DONE AND WE'RE KIND OF FLIPPING THE PROCESS WHERE WE  
12 DON'T HAVE THE BENEFIT OF SEEING WHAT THE SUPPOSED  
13 SARGON-COMPLIANT EXPOSURE ASSESSMENT IS COMPARED TO WHAT  
14 THE GENERAL CAUSATION EXPERTS WILL SAY.

15 THE COURT: I DON'T GET THAT. I DON'T  
16 FOLLOW YOU.

17 SO IN LANDON R. AND IN NC, ULTIMATELY THE  
18 DEFENSE PREVAILED BECAUSE I FOUND PLAINTIFF'S EXPOSURE  
19 ASSESSMENT WAS NOT SARGON-COMPLIANT. AGREED?

20 MR. DAVIS: THAT WAS ONE OF THE REASONS,  
21 YES.

22 THE COURT: OKAY. WELL, THAT'S THE ONE I  
23 WANT TO FOCUS ON.

24 IN -- I'M DOING THIS FROM MEMORY. BUT IN  
25 NC, AT LEAST A PROBLEM THAT I PERCEIVED WAS THAT THE  
26 EXPOSURE ASSESSOR USED -- I CAN'T REMEMBER WHETHER IT  
27 WAS MAXIMUM CONCENTRATIONS OR MAXIMUM DURATION OF  
28 EXPOSURE AS A DEFAULT WITHOUT EXPLAINING TO ME WHY THAT

1 WAS SCIENTIFICALLY VALID. AND IN LANDON, THE PROBLEM  
2 WAS THAT THE EXPOSURE ASSESSOR IN MY VIEW, AMALGAMATED,  
3 I THINK IS THE TERM THAT WE EVENTUALLY LANDED ON, THE  
4 EXPOSURES ACROSS MULTIPLE DEFENDANTS. AND THAT WAS A  
5 SARGON-COMPLIANCE PROBLEM THAT I KNOW THE PLAINTIFFS ARE  
6 SEEKING TO HAVE REVIEWED ON APPEAL.

7 SO MY IDEA IS I ADVANCE EXPERT DISCOVERY  
8 ON -- IN EXPOSURE ASSESSMENT FOR CALEB R. AND SAMUEL R.  
9 AND DEFENSE, IF YOU WISH TO CHALLENGE IT AS NOT BEING  
10 SARGON-COMPLIANT IN SOME PARTICULAR, WELL, WE'LL  
11 LITIGATE THAT.

12 NOW, I TAKE YOUR POINT THAT MAYBE YOUR  
13 EXPERT ON GENERAL CAUSATION WOULD DO MORE THAN THAT, BUT  
14 FOR AN EXPOSURE ASSESSMENT, I WOULDN'T BE HAVING TO  
15 CONSIDER SUCH THINGS AS WHETHER THERE IS OR IS NOT  
16 EPIDEMIOLOGY STUDIES ON BABY FOOD AND THE LIKE. IT  
17 WOULD JUST BE A -- IT WOULD BE AN EVALUATION OF THE  
18 LOGICAL -- THE LOGIC BEHIND THE EXPOSURE ASSESSMENT.

19 MR. DAVIS: YOUR HONOR, NC ALSO MADE THE  
20 DETERMINATION THAT NOBODY FOR THE PLAINTIFF HAD DONE AN  
21 ASSESSMENT TO DETERMINE WHETHER THE HEAVY METALS THAT  
22 EXPOSURE CONNECTED UP TO THE DEFENDANTS' PRODUCTS.

23 YOU MADE THE ASSESSMENT THAT NO ONE HAD  
24 DONE -- WE HAD THIS WHOLE DISCUSSION ABOUT THE PICKLE,  
25 YOU KNOW, AND THE -- YEAH, THE FIRST DECISION; RIGHT?  
26 AND WE HAD THE WHOLE CONVERSATION ABOUT WHETHER OR NOT  
27 THAT ANALYSIS HAD BEEN DONE. AND THAT WAS ONE OF THE  
28 REASONS WHY YOU RULED THAT THE NC PLAINTIFF'S EXPERTS

1 DIDN'T -- DID NOT SATISFY SARGON.

2 THE COURT: OKAY. I UNDERSTAND. BUT I  
3 UNDERSTAND THE PLAINTIFF THEORY OF THE CASE.

4 THE PLAINTIFF'S THEORY OF THE CASE IS THERE  
5 ARE HEAVY METALS IN THIS BABY FOOD. THE HEAVY METALS  
6 ARE THE CAUSATIVE TOXIC AGENT AND THAT IS WHAT MAKES THE  
7 PRODUCT DEFECTIVE. AND THEIR -- THAT IS TO SAY THE  
8 PLAINTIFF'S EXPOSURE ASSESSMENT TO DATE HAVE TALKED TO  
9 ME ABOUT, YOU KNOW, MICROGRAMS OF LEAD PER KILOGRAM BODY  
10 WEIGHT OF CHILDREN AND THINGS LIKE THAT.

11 AND I KNOW THAT DEFENSE SAYS, "WELL,  
12 THEY'RE TALKING ABOUT THE WRONG THING. I DON'T KNOW WHY  
13 THEY'RE TALKING ABOUT HEAVY METALS. THEY SHOULD BE  
14 TALKING ABOUT BABY FOOD." OKAY. I AGREE WITH YOU THAT  
15 IS A DISPUTE TO BE HAD.

16 I'LL BE INTERESTED TO SEE WHAT JUDGE CORLEY  
17 THOUGHT ABOUT THAT, ALTHOUGH WHAT ANOTHER JUDGE THINKS  
18 ABOUT SOMETHING IS ONLY A PASSING RELEVANCE, PROBABLY NO  
19 RELEVANCE. BUT MY POINT IS, WHY NOT LET THE PLAINTIFFS  
20 PUT UP THEIR EXPOSURE ASSESSMENT AS THEY DEEM IT SHOULD  
21 BE AND THEN SEE IF IT'S SARGON-COMPLIANT OR NOT? AS  
22 PRESENTED. AND YOU WOULD RESERVE YOUR ARGUMENT THAT,  
23 YOU KNOW, THEY'RE LOOKING AT THE WRONG -- THEY'RE ASKING  
24 THE WRONG QUESTION.

25 MR. DAVIS: WELL, ALL THE PLAINTIFF'S  
26 GENERAL CAUSATION EXPERTS SAY THAT IT'S A DOSE -- THEY  
27 HAVE TO ASSESS A DOSE; RIGHT? AND THEY'RE GETTING THAT  
28 INFORMATION FROM THE EXPOSURE ASSESSMENT THAT'S BEEN

1 DONE. THAT'S WHAT HAPPENED IN THE MDL, THAT'S WHAT  
2 HAPPENED PREVIOUSLY. AND SO WE THINK DIVORCING THOSE  
3 TWO ASPECTS INTO PUTTING A FOCUS ONLY ON DOSE, BUT ALSO  
4 NOT ALSO ALLOWING US DISCOVERY ABOUT THE GENERAL  
5 CAUSATION OPINIONS OF THE OTHER EXPERTS INVOLVED USING  
6 THAT INFORMATION.

7 THE COURT: OKAY, SO I'M NOT TALKING ABOUT  
8 LIMITING DISCOVERY AT THIS POINT. I'M TALKING ABOUT  
9 WHAT WE SHOULD TEE UP FIRST AS -- TO LITIGATE. AND IF  
10 THE PARTIES WANT TO DO EXPERT DISCOVERY ON SPECIFIC AND  
11 GENERAL CAUSATION OR ANYTHING ELSE, AT LEAST RIGHT NOW,  
12 IT'S FINE WITH ME. BUT, YOU KNOW, I DON'T, AGAIN, WANT  
13 TO BE PRESENTED WITH NINE OR TEN MOTIONS RELATIVE TO  
14 GENERAL AND SPECIFIC CAUSATION UNTIL I KNOW THAT THE  
15 PLAINTIFFS HAVE A SARGON-COMPLIANT DOSE ASSESSMENT.

16 MS. FREIWALD: YOUR HONOR, HOPE FREIWALD.

17 I THINK THAT MAY BE ANOTHER ISSUE FOR  
18 ANOTHER DAY THAT WE COULD DISCUSS WHEN THE TIME COMES.  
19 I THINK OUR ISSUE IS -- AND IT'S HELPFUL TO HEAR THAT  
20 YOU'RE NOT TALKING ABOUT DISCOVERY. OUR ISSUE IS THAT  
21 WE CAN'T -- WE SHOULDN'T BE DISAGGREGATING THE DOSE  
22 EXPERT AND THE DOSE PART OF THE CASE FROM EVERYTHING  
23 ELSE.

24 WE NEED TO HAVE THE CASE-SPECIFIC EXPERTS  
25 TALK ABOUT WHAT THE DOSE IS THAT THEY SAY IS CAUSATIVE.  
26 WE NEED TO SEE THE FULL PICTURE OF HOW THAT MARRIES UP  
27 WITH THE DOSE EXPOSURE ANALYSIS. WE NEED TO SEE HOW  
28 THAT FITS WITH WHATEVER THEY DO ON GENERAL CAUSATION,

1 INCLUDING POTENTIALLY TWEAKING THEIR GENERAL CAUSATION  
2 OPINIONS IN LIGHT OF JUDGE CORLEY'S DECISION.

3 IT MAY NOT BE RELEVANT TO YOU, BUT IT IS  
4 WELL WITHIN THE REALM OF POSSIBILITY THAT THEIR GENERAL  
5 CAUSATION EXPERT START TO SOUND A LITTLE DIFFERENTLY  
6 BECAUSE JUDGE CORLEY FOUND THAT ANALYZING FOOD DID  
7 MATTER AND THAT THERE ARE NO EPI -- YOU KNOW, THERE'S NO  
8 EPI ANYWHERE IN BABY FOOD, IN FOOD, OR IN ANYTHING AT A  
9 DOSE TIME PERIOD, DURATION, ET CETERA, THAT FITS THIS  
10 CASE.

11 SO WE NEED TO DO ALL THAT WORK. WE NEED TO  
12 DO THAT EXPERT WORK IN TOTALITY. THE QUESTION OF WHEN  
13 WE GET THROUGH THAT WITH EXPERT REPORTS AND EVERYTHING  
14 ELSE, WHAT IS THE ORDER FOR THE SARGON CHALLENGES, OR IF  
15 YOU WANT TO TAKE ONE FIRST, I WOULD SUBMIT THAT IT  
16 WAS -- THAT IT IS HELPFUL TO LOOK AT THEIR CASE-SPECIFIC  
17 EXPERT AT LEAST TOGETHER WITH THEIR DOSE EXPERT BECAUSE  
18 THOSE TWO ARE PART -- WERE PART OF YOUR ORDERS THE LAST  
19 TIME.

20 BUT I THINK THAT'S AN ISSUE WE COULD  
21 DISCUSS IN ANOTHER DAY. IT DOESN'T -- IT SHOULDN'T  
22 AFFECT THE DISCOVERY SCHEDULE THOUGH, BECAUSE WE NEED --  
23 WE'RE NOT GOING TO SAVE ANY TIME IF WE DON'T LOOK AT THE  
24 TOTALITY OF THE OPINIONS THAT THEY HAVE AND HOW IT FITS  
25 WITH THE EXPOSURE IN THIS CASE.

26 THE COURT: OKAY.

27 MR. ESFANDIARY: YOUR HONOR, TO BE CLEAR,  
28 WE WOULD DISCLOSE THE SPECIFIC AND GENERAL EXPERTS AT

1 THE SAME TIME. IT'S NOT BEING IN THE DARK ABOUT WHO THE  
2 GENERAL CAUSATION EXPERTS ARE AND WHAT THEY HAVE TO SAY.  
3 THEY ARE DISCLOSED AT THE SAME TIME. IT'S JUST --

4 MS. FREIWALD: YEAH, AND THEN WE WOULD NEED  
5 TO TAKE DEPOSITIONS OF THOSE CASE-SPECIFIC AND GENERAL  
6 CAUSE EXPERTS INCLUDING THE DOSE EXPERTS, AND THEN AT  
7 SOME POINT DOWN THE ROAD, WE CAN HAVE A CONVERSATION  
8 ABOUT WHAT THE ORDER IS FOR THE SARGON CHALLENGES. BUT  
9 THAT'S -- THAT DOESN'T MEANINGFULLY IMPACT THE  
10 OVERARCHING SCHEDULING ISSUES AT THIS POINT.

11 THE COURT: ALL RIGHT. HOLD ON. LET ME GO  
12 OFF THE RECORD.

13  
14 (DISCUSSION OFF THE RECORD.)

15  
16 THE COURT: BACK ON THE RECORD IN HAIN.

17 SO MAYBE I HAVE JUMPED THE GUN. THE  
18 PLAINTIFFS ARE HERE TO TALK ABOUT SCHEDULING ABOUT CASE  
19 MANAGEMENT ORDERS AND SCHEDULING MEETINGS WITH TRIAL  
20 DATES.

21 WHAT DO YOU WANT TO TALK ABOUT INSTEAD? I  
22 HAVE READ THE JOINT REPORT A COUPLE TIMES. BUT  
23 ARTICULATE, DEFENSE, WHAT SHOULD WE DO TODAY IN THE  
24 STATUS CONFERENCE?

25 MR. DAVIS: YOUR HONOR, GIVEN WHERE WE ARE  
26 AND HOW THE IMPACT OF WHAT'S GOING TO BE ALLOWED OR NOT  
27 WITH RESPECT TO THE DEFENDANTS' SUBPOENAS AND THE SCOPE  
28 OF DISCOVERY, WE ASK THAT WE JUST CONTINUE THIS

1 DISCUSSION TO THE NEXT STATUS CONFERENCE TO MAKE AN  
2 ASSESSMENT OF -- AND I'M NOT SURE -- AND TO MAKE AN  
3 ASSESSMENT OF AFTER THE COURT RULES ON THE PENDING  
4 MOTION TO DISCUSS WHAT THE SCHEDULE IS GOING TO BE  
5 BECAUSE RIGHT NOW WE CAN'T GET ACCESS AT ALL TO THE  
6 THIRD-PARTY RECORDS UNTIL THAT ISSUE IS DISPUTED. AND  
7 THAT'S GOING TO HAVE AN IMPACT OF WHAT IS A REALISTIC  
8 SCHEDULE BASED UPON WHAT'S LEFT TO BE DONE.

9 THE COURT: WHAT ABOUT THE RETAILER  
10 RECORDS? ARE YOU ACQUIRING THOSE?

11 MR. DAVIS: YES. THE SUBPOENAS HAVE BEEN,  
12 YES, ISSUED.

13 THE COURT: AND YOU DON'T WANT TO TAKE THE  
14 DEPOSITIONS OF THE PARENTS UNTIL YOU HAVE EMPLOYMENT,  
15 MEDICAL -- AND MEDICAL RECORDS?

16 MR. DAVIS: YES.

17 MS. GATELY: MARY GATELY FROM DLA PIPER FOR  
18 NURTURE, LLC.

19 WE'VE BEEN DOWN THIS ROAD MULTIPLE TIMES  
20 AND HAVE EXPERIENCED JUST WHAT THE COURT SAID, WE SHOULD  
21 APPLY OUR EXPERIENCE IN THIS. SO GETTING THESE OTHER  
22 RECORDS IS ABSOLUTELY CRITICAL TO BE ABLE TO TAKE THESE  
23 AS EFFICIENTLY AS WE CAN.

24 MS. FREIWALD: BUT THE IMPORTANT THING,  
25 YOUR HONOR -- HOPE FREIWALD -- MR. MERRYMAN SAID, IT'S  
26 NOT JUST THE THIRD-PARTY RECORDS, IT'S JUST THAT WE  
27 DON'T EVEN HAVE THE PLAINTIFF'S INITIALLY DISCOVERY  
28 RESPONSES.

1 SO WE DON'T HAVE WHAT THEY ARE SAYING  
2 LANDON ATE OR WHEN HE ATE THEM. THEY ASKED US FOR AN  
3 EXTENSION UNTIL MAY 16TH. WE TOLD THEM THAT THAT WOULD  
4 IMPACT OUR ABILITY TO HAVE A CONVERSATION WITH THEM  
5 ABOUT ANY KIND OF A TRIAL DATE. WE SAY THIS IN OUR  
6 JOINT STATEMENT. AND SO IT'S NOT JUST THE THIRD-PARTY  
7 RECORDS, IT'S ALSO THAT WE DON'T HAVE THE BASIC  
8 INFORMATION FROM THE PARENTS, AND WE WERE TOLD THAT  
9 COUNSEL COULDN'T GET IT BECAUSE THEIR TRIAL DATE, ABOUT  
10 FOODS EATEN, WHERE THEY LIVED, ALL KINDS OF REALLY BASIC  
11 STUFF THAT WE NEED TO ASK QUESTIONS.

12 AND IT'S NOT JUST IN ORDER TO TAKE  
13 DEPOSITIONS OF THE PARENTS, IT'S IN ORDER TO TAKE  
14 DEPOSITIONS OF THE TREATERS AS WELL. BECAUSE IF THERE'S  
15 INFORMATION IN, LET'S SAY, A PEDIATRICIAN'S RECORD ABOUT  
16 THE CHILD EATING TABLE FOOD, AND WE'VE HAD THINGS LIKE  
17 THIS BEFORE, AND THEN SOMETIMES WE GET INTO A DISPUTE  
18 ABOUT DOES THAT JUST TABLE FOOD REALLY MEAN TABLE FOOD  
19 OR COULD TABLE FOOD ALSO MEAN JARRED BABY FOOD. WHAT  
20 WAS THE CHILD EATING AT A PARTICULAR TIME.

21 HAVING NOT JUST THE MEDICAL RECORDS, BUT  
22 ALSO HAVING THE PARENTS' STATEMENTS OF WHAT THE CHILD  
23 WAS EATING AT THE TIME INFORMS HOW WE THEN QUESTION THE  
24 DOCTOR ABOUT THAT. SAME THING ABOUT QUESTIONS ABOUT  
25 BREASTFEEDING OR USING FORMULA. SAME THINGS ABOUT  
26 QUESTIONS ABOUT WHETHER THE CHILD MET CERTAIN  
27 DEVELOPMENTAL MILESTONES.

28 AND THIS GOES TO ALSO SEEING THE PHOTOS AND

1 VIDEOS WHICH WE ALSO DON'T HAVE AND THEY'RE ALSO  
2 OBJECTING TO PRODUCING. SO WE ARE -- WE HAVE FRANKLY,  
3 TO DEFENDANT'S CHAGRIN, KIND OF GROUND TO A HALT ON OUR  
4 ABILITY TO GET THE BASIC FACTUAL INFORMATION WE NEED.

5 THE COURT: WHEN DID YOU SERVE YOUR WRITTEN  
6 DISCOVERY ON PLAINTIFFS RELATIVE TO SEEKING WHAT YOU'RE  
7 CALLING BASIC INFORMATION ABOUT PLAINTIFF'S BACKGROUND,  
8 PRODUCT USAGE, FOOD CONSUMPTION AND THE LIKE?

9 MS. FREIWALD: FEBRUARY, YOUR HONOR.

10 MR. DAVIS: MIDDLE.

11 MS. FREIWALD: IT WOULD HAVE BEEN DUE  
12 MID-MARCH AND THEN WE GAVE THEM A 60-DAY EXTENSION.

13 MR. ESFANDIARY: YOUR HONOR, THE HISTORY OF  
14 THIS IS PRETTY IMPORTANT.

15 DEFENDANTS, DURING THE LANDON HEARINGS,  
16 SPECIFICALLY REACHED OUT TO MYSELF, MS. ALARCON, AND  
17 MR. WISNER ASKED THAT WE HOLD OFF CROSS-PARTY DISCOVERY  
18 IN BELLWETHER CASES UNTIL THE NEW YEAR. AND WE AGREED.  
19 OUT OF COURTESY TO THEIR CLIENTS NOT TO KEEP SPENDING  
20 MONEY RIGHT NOW, WE AGREED TO DO THAT.

21 NOTWITHSTANDING THAT AGREEMENT, THEY STILL  
22 WAITED UNTIL FEBRUARY TO SERVE DISCOVERY. I ASKED FOR A  
23 COURTESY EXTENSION TO RESPOND. I GRANTED THEM THE SAME  
24 COURTESY EXTENSION OF 60 DAYS, AND NOW THEY WANT TO USE  
25 THAT CONSOLATION FACT TO HOLD SETTING A TRIAL DATE IN  
26 ABEYANCE WHEN THE CODE SAYS YOU DO LITERALLY THE  
27 OPPOSITE.

28 THE CODE SAID -- THE CODES THAT CITED SAYS

1 YOU HOLD SETTING TRIAL IN ABEYANCE UNTIL YOU KNOW WHAT  
2 THE DISCOVERY DISPUTE IS GOING TO LOOK LIKE AND HOW IT  
3 WILL BE RESOLVED. IT SAYS YOU SET A TRIAL DATE BEARING  
4 IN MIND THE MAGNITUDE OF DISCOVERY.

5 YOU CONSIDER A TRIAL DATE BEARING ALL THAT  
6 IN MIND THAT THE TRIAL DATE WILL BE WHAT IT IS. WHAT  
7 YOU DON'T DO IS YOU DON'T KEEP THE TRIAL DATE OR SET A  
8 TRIAL DATE IN ABEYANCE UNTIL YOU KNOW WHAT THE DISCOVERY  
9 LANDSCAPE LOOKS LIKE. THAT'S NOT CONSISTENT WITH THE  
10 CODE.

11 WE'RE ASKING THE COURT TO EITHER SET A  
12 TRIAL DATE FOR FEBRUARY CONSISTENT WITH COURT-IMPOSED  
13 DEADLINES, OR IF WE'RE GOING TO DO THE APPROACH THAT  
14 YOUR HONOR IS ENTERTAINING AND THAT WE ARE ENTERTAINING  
15 ON LITIGATING THE MERITS OF THE SPECIFIC CAUSATION  
16 FIRST, A TRIAL DATE IN APRIL.

17 WHATEVER THE TRIAL DATE IS, FEBRUARY OR  
18 APRIL THEREAFTER, ONE SHOULD BE SET. AND WE'LL WORK  
19 WITHIN THE CONFINES OF THAT TRIAL DATE.

20 MR. MERRYMAN: YOUR HONOR, I HAVE A BRIEF  
21 RESPONSE WHEN READY.

22 THE COURT: HOLD ON.

23 MR. MERRYMAN: I FIGURED. THANK YOU.

24 MR. ESFANDIARY: YOUR HONOR, JUST TO LET  
25 THE COURT KNOW, I HAVE TO LEAVE IN ABOUT 15 MINUTES TO  
26 CATCH A CROSS-COUNTRY FLIGHT. I APOLOGIZE. MS. ALARCON  
27 IS GOING TO TAKE OVER FOR ME IF WE'RE STILL IN THE  
28 HEARING AT THAT POINT. MY APOLOGIES.

1 THE COURT: NO PROBLEM.

2 SO I'M ASKING AN INNOCENT QUESTION OF BOTH  
3 SIDES. LET'S START WITH THE DEFENSE.

4 WHAT IS YOUR VERSION OF HOW IT CAME TO PASS  
5 THAT YOU ALL AGREED YOU'D HOLD OFF ON DISCOVERY UNTIL  
6 THE NEW YEAR?

7 MR. MERRYMAN: I'M GOING TO HAND IT BACK.  
8 I WAS GOING TO ADDRESS A DIFFERENT ISSUE BECAUSE THAT  
9 WAS DECIDED BY THE LANDON R. PARTIES.

10 MS. FREIWALD: YOUR HONOR, HOPE FREIWALD.  
11 SO WHAT HAPPENED, AND MS. GATELY WILL  
12 SUPPLEMENT, IS THAT WE AGREED WE WOULD DO THIRD-PARTY  
13 DISCOVERY STARTING IN OCTOBER, MEANING WE WOULD START  
14 COLLECTING RETAILER RECORDS, WE WOULD START COLLECTING  
15 PLAINTIFF MEDICAL RECORDS. WE DID THAT. BUT BECAUSE OF  
16 THE -- BECAUSE OF THE TRIAL DATE AS WELL, SOME TRIAL  
17 CONFLICTS THAT PLAINTIFFS HAD, WE DID NOT SERVE --  
18 NEITHER SIDE SERVED INTERROGATORIES OR DOCUMENT  
19 REQUESTS.

20 DO YOU WANT TO ADD SOMETHING TO THAT?

21 MS. GATELY: YOUR HONOR, THE CONTEXT --  
22 MARY GATELY AGAIN, WAS -- IN THE CONTEXT OF THE LANDON  
23 CASE, THE PLAINTIFFS, IF YOU RECALL, ASKED FOR AN  
24 EXTENSION OF THE TRIAL DATE AND THAT WAS BEFORE THE  
25 MOTIONS HEARINGS IN LANDON. AND SO KNOWING THAT WE WERE  
26 GOING TO HAVE A REVISED TRIAL DATE, I BELIEVE IT WAS  
27 GOING TO BE FEBRUARY OR MARCH, WHATEVER THE DATE WAS  
28 GOING TO BE IN LANDON, THAT WAS SOMETHING THAT THE

1 PARTIES AGREED TO THAT YOU WOULDN'T HAVE ACTIVE  
2 DISCOVERY IN THE OTHER JCCP CASES UNTIL LANDON WAS DEALT  
3 WITH.

4 THE COURT: OKAY.

5 MS. GATELY: SO THAT'S THE CONTEXT THAT I  
6 THINK IS MISSING.

7 THE COURT: LET ME JUST ASK THE NEXT  
8 QUESTION, WHICH IS WHY DID YOU WAIT UNTIL FEBRUARY TO  
9 SERVE THE WRITTEN DISCOVERY?

10 MS. FREIWALD: I DON'T KNOW EXACTLY WHY IT  
11 WAS FEBRUARY VERSUS JANUARY, BUT WE SERVED -- I DO WANT  
12 TO SAY WE SERVED THE EXACT SAME DISCOVERY THAT WE SERVED  
13 IN EVERY CASE. AND THE PLAINTIFFS HAVE KNOWN SINCE THEY  
14 FILED THESE CASES WHAT QUESTIONS WE'RE GOING TO ASK  
15 ABOUT WHAT THE PLAINTIFFS ATE AND WHEN, AND WHAT THE  
16 DIFFERENT PHASES OF DEVELOPMENT WERE AND WHERE THEY  
17 LIVED AND WHERE THEY WENT TO SCHOOL. THOSE KINDS OF  
18 QUESTIONS. THEY KNEW WE WERE GOING TO ASK THOSE  
19 QUESTIONS. AND THEY CAME TO US AND SAID THEY COULDN'T  
20 ANSWER THOSE QUESTIONS BECAUSE THEY WEREN'T GOING TO BE  
21 ABLE TO TALK TO THEIR CLIENTS WITHIN 30 DAYS.

22 SO THE DIFFERENCE MAKER HERE IS THAT THE  
23 PLAINTIFFS ASKED US TO HAVE ESSENTIALLY 90 DAYS TO GIVE  
24 US THIS INFORMATION. IT'S NOT THAT WE HAVE DELAYED  
25 THIS. AND WE TOLD THEM AT THE TIME, YOU KNOW, WE'LL  
26 EXTEND THE PROFESSIONAL COURTESY, BUT THERE'S GOING TO  
27 BE RAMIFICATIONS ON WHEN WE CAN START OTHER THINGS IF WE  
28 DON'T EVEN HAVE BASIC CONSUMPTION INFORMATION FROM THE

1 PARENTS.

2 AND THE ONLY THING I WOULD LIKE TO SAY  
3 BEFORE HANDING THE MIC OFF, YOUR HONOR, IS THAT YOU'LL  
4 REMEMBER LAST TIME THE PARENTS MODIFIED THEIR RESPONSES  
5 SEVEN TIMES AS THEY WENT. AND SO WE NOW ARE GETTING IN  
6 RETAILER RECORDS. HOPEFULLY THE PARENTS WILL HAVE ONE  
7 SET OF ANSWERS. BUT WE ARE ALSO MINDFUL OF THAT  
8 HISTORY.

9 MR. DAVIS: I WOULD ALSO ADD, YOUR HONOR,  
10 YOU MAY RECALL THAT WE HAD TO FILE A MOTION TO COMPEL IN  
11 JANUARY OVER THE DISPUTE ABOUT THE PARENTS' RECORDS.

12 WE KNEW WE WEREN'T GOING TO GET ACCESS TO  
13 THOSE UNTIL THE COURT RULED. THE HEARING DATE ON THAT  
14 WAS FEBRUARY 26. WE SERVED THE DISCOVERY IN  
15 MID-FEBRUARY WITH THE ANTICIPATION THAT THAT ISSUE WOULD  
16 BE RESOLVED AND WE'D GET ACCESS SHORTLY THEREAFTER TO  
17 THE DISCOVERY RESPONSES FROM THE PLAINTIFF AFTER THE  
18 COURT RESOLVED THE ISSUE ABOUT OUR MOTION TO COMPEL.

19 THAT DIDN'T HAPPEN. AND AS A RESULT, THEY  
20 ALSO -- BECAUSE OF THE TRIAL CONFLICTS THAT PLAINTIFF  
21 HAD, THEY ASKED FOR THIS EXTENSION AND SAID THAT THEY  
22 COULD NOT EVEN BE ABLE TO GET ACCESS TO THEIR CLIENTS  
23 UNTIL AFTER THE 60 DAYS.

24 SO THAT'S WHY THEY ASKED FOR THE EXTENSION.  
25 THAT'S HOW WE GOT TO SERVING THE DISCOVERY IN FEBRUARY.

26 THE COURT: OKAY. AND PLAINTIFF, ARE YOU  
27 STILL CONTEMPLATING PRODUCING THE RESPONSES IN MAY?

28 MR. ESFANDIARY: YES, YOUR HONOR, FOR THE

1 60-DAY EXTENSION. WE HAVE -- I WOULD JUST SET THE STAGE  
2 A LITTLE BIT, YOUR HONOR. THE DEFENDANTS HAVE INITIAL  
3 DISCLOSURES FROM THE PLAINTIFF CONSISTENT WITH WHAT  
4 YOUR HONOR RULED AT THE START OF THE JCCP, WHERE WE  
5 STARTED WITH THE BELLWETHER SELECTION PROCESS.

6 WE DID THE FACT SHEET THAT IDENTIFIES THE  
7 BABY FOOD THAT THEY CONSUMED AS WELL AS ANY RECORDS  
8 PERTAINING TO UNDERLYING RISK FACTORS AND SO ON.

9 ALL THAT STUFF HAS BEEN DISCLOSED. THIS IS  
10 THE FORMAL DISCOVERY WE'RE TALKING ABOUT SERVED BY THE  
11 DEFENDANTS, HUNDREDS OF INTERROGATORIES. IN TERMS OF  
12 PRODUCTION, A LONG PERIOD OF PRODUCT USE WHERE WE NEEDED  
13 THE 60 DAYS TO RESPOND -- BUT, YOUR HONOR, THE POINT  
14 HERE IS THAT MIGHT IMPACT WHAT THE DATE FOR TRIAL MIGHT  
15 BE. IT DOESN'T JUSTIFY HOLD -- HOLD OFF SETTING A TRIAL  
16 DATE INDEFINITELY UNTIL WHATEVER DISCOVERY DISPUTES ARE  
17 RESOLVED TO DEFENDANTS' SATISFACTION.

18 THE COURT: GIVE ME A MINUTE.

19  
20 (PAUSE IN PROCEEDINGS.)

21  
22 THE COURT: ALL RIGHT. MR. ESFANDIARY AND  
23 MS. ALARCON, I'M JUST AFRAID I'D BE SHOOTING IN THE DARK  
24 IF I SET A DATE, A TRIAL DATE.

25 NOW, I'M NOT GOING TO INSIST ON THIS TODAY,  
26 BUT I AM TELLING YOU THAT I THINK I WOULD LIKE TO MOVE  
27 TO THE HEAD OF THE LINE THE QUESTION OF PLAINTIFF'S --  
28 WHETHER PLAINTIFF'S DOSE ASSESSMENT, EXPOSURE ASSESSMENT

1 IS OR IS NOT SARGON-COMPLIANT.

2 AT LEAST ON THE RECORD PRESENTED TO ME IN  
3 LANDON R., I FOUND THAT DR. SHAPIRO'S DIFFERENTIAL  
4 ETIOLOGY METHODOLOGY WAS SARGON-COMPLIANT, WHICH I GUESS  
5 IMPLIES, WHETHER OR NOT I SAID IT EXPLICITLY, THAT HE'S  
6 LOOKING AT THE CORRECT MATERIAL IN THE CASE. AND I  
7 REJECTED, I THINK, IN LANDON R., ON THE RECORD PRESENTED  
8 THERE, THE DEFENSE PROPOSITION THAT THE CASE FALLS AS A  
9 GENERAL -- A GENERAL CAUSATION PROPOSITION BECAUSE THE  
10 DEFENSE EXPERTS DID NOT ANALYZE BABY FOOD QUA BABY FOOD,  
11 BUT INSTEAD LEAD AND ARSENIC CONTAINED IN BABY FOOD.

12 MS. FREIWALD, I HEAR YOU BASICALLY SAYING I  
13 SHOULDN'T CONFRONT A DOSE ASSESSMENT SARGON-COMPLIANCE  
14 ISSUE WITHOUT TAKING UP THAT QUESTION AGAIN, WHETHER --  
15 PUT ANOTHER WAY, EXPOSURE TO WHAT -- RIGHT? -- WOULD BE  
16 YOUR QUESTION. IS IT EXPOSURE TO LEAD OR ARSENIC OR  
17 EXPOSURE TO BABY FOOD AND EXPOSURE TO ALL THE OTHER  
18 THINGS IN BABY FOOD?

19 I AM TELLING YOU ALL, AND I WANT YOU TO  
20 THINK ABOUT THIS, THAT I WANT TO FIGURE OUT HOW TO  
21 ADVANCE THE QUESTION OF SARGON COMPLIANCE WITH THE  
22 PLAINTIFF'S DOSE ASSESSMENT.

23 NOW, THAT -- I DON'T KNOW WHAT THE  
24 PLAINTIFFS NEED FOR PURPOSES OF THEIR DOSE ASSESSORS. I  
25 KNOW, DEFENSE, WHAT YOU CONTEND YOU NEED FOR YOUR DOSE  
26 ASSESSORS.

27 I AM OPEN TO THE PROPOSITION OF THE PARENTS  
28 SITTING FOR A DEPOSITION ON BASICALLY FOOD CONSUMPTION

1 ONLY --

2 SOMEBODY OUT THERE NEEDS TO MUTE, PLEASE.

3 THANK YOU.

4 -- UNDERSTANDING THAT THERE WOULD BE  
5 FURTHER THINGS TO BE -- NEED FOR THESE PARENTS TO BE  
6 DEPOSED UPON ONCE MEDICAL RECORDS AND EMPLOYMENT RECORDS  
7 ARE PRODUCED.

8 SO I'M OPEN TO THAT AS A PROPOSITION. I  
9 WANT THE DEFENSE TO USE ALL BEST EFFORTS TO GET THESE  
10 THIRD-PARTY RETAILER RECORDS. APPARENTLY YOU'RE DOING  
11 THAT. I GUESS MAYBE THE WRITTEN DISCOVERY RESPONSES  
12 YOU'LL GET IN MAY WILL IDENTIFY FURTHER RETAILERS. IF  
13 THAT'S GOING TO HAPPEN, WELL, THAT WILL SLOW THINGS DOWN  
14 A BIT.

15 THAT'S AS FAR AS I CAN GO IN MY THINKING  
16 TODAY IS HOW I'M THINKING ABOUT STRUCTURING YOUR CASE.  
17 BUT GIVING YOU A TRIAL DATE IN 2027, WHETHER IT'S  
18 FEBRUARY OR APRIL OR NOVEMBER, I HAVE NO BASIS TO DO  
19 THAT TODAY. I DON'T KNOW WHERE WE ARE.

20 YOU KNOW, BASIC WRITTEN DISCOVERY ISN'T  
21 GOING TO BE PRODUCED FOR ANOTHER TWO MONTHS. WE'RE IN  
22 THE MIDDLE OF LITIGATING THE METES AND BOUNDS OF BASIC  
23 DEPOSITION SUBPOENAS TO THIRD PARTIES. I'M TOLD THERE  
24 MAY BE WRIT PROCEEDINGS FOLLOWING THAT. SO I THINK IT  
25 WOULD BE FOOLISH FOR ME TO PICK A DATE AND SAY WELL,  
26 HERE'S YOUR TRIAL DATE. NOW WORK BACKWARDS FROM THERE.

27 AS YOU KNOW, THE ONLY TIME I'VE EVER HAD A  
28 DARK CLOUD CROSS MY OTHERWISE SUNNY COUNTENANCE WITH YOU

1 ALL IS WHEN YOU CAME TO ME AND ASKED ME TO CONTINUE A  
2 TRIAL DATE. I DON'T LIKE CONTINUING TRIAL DATES. I  
3 LIKE HAVING REAL TRIAL DATES AND PEOPLE ADHERING TO  
4 THEM.

5 SO I GUESS WHAT I'M GOING TO ASK YOU TO DO  
6 IS MEET AND CONFER ON THE PROPOSITION I JUST LAID OUT.  
7 WHAT WOULD GET US AS SOON AS REASONABLY POSSIBLE TO, I  
8 GUESS, A MOTION IN LIMINE/402 HEARING PROCEEDING TO TEST  
9 THE SARGON COMPLIANCE OF PLAINTIFF'S DOSE ASSESSMENT.  
10 WHAT WOULD NEED TO HAPPEN FOR THAT TO OCCUR?

11 BUT IN THE MEANTIME, I WOULD NOT STOP ANY  
12 OTHER DISCOVERY. I MEAN DISCOVERY IS WIDE OPEN. YOU  
13 CAN ALL DO WHATEVER YOU WANT BY WAY OF DISCOVERY.

14 SO WHY DON'T YOU MEET AND CONFER ON THAT.  
15 I'LL SEE YOU ON APRIL -- WHATEVER DATE THAT WAS,  
16 APRIL 17, AND GIVE ME A JOINT REPORT ON WHAT YOU THINK,  
17 EITHER JOINTLY OR SEVERALLY, SAY BY APRIL 14 ON THAT  
18 PROPOSITION.

19 ONCE I RULE ON THE DISCOVERY LITIGATION,  
20 LITIGATED ISSUES, AND MY THINKING IS BETTER CONCERNING A  
21 SARGON COMPLIANCE HEARING ON DOSE ASSESSMENT, I THINK I  
22 CAN INTELLIGENTLY THINK THROUGH WITH YOU ALL A PRETRIAL  
23 SCHEDULE LEADING TO A TRIAL IN 2027.

24 I THINK A TRIAL IN 2027 IS WELL WITHIN THE  
25 REALM OF POSSIBILITY. I'D BE SURPRISED VERY MUCH IF IT  
26 GOES LATER THAN THAT.

27 NOW, THE QUESTION IS, IS IT GOING TO BE A  
28 QUARTER TWO, QUARTER THREE, OR QUARTER FOUR TRIAL DATE.

1 AND DEFENSE, I KNOW YOU ARE OPPOSED TO THE PROPOSITION  
2 OF THESE TWO CASES BEING TRIED TOGETHER, A POSITION YOU  
3 CERTAINLY CAN ARGUE AND TALK TO ME ABOUT WHEN THE TIME  
4 IS RIGHT.

5 BUT THAT'S WHAT I PROPOSE TO DO. I PROPOSE  
6 TO SEND YOU OUT THE BACK DOOR RIGHT NOW WITH WHAT I JUST  
7 SAID AS THE COURT'S ORDERS. IF YOU WANT TO TALK MORE  
8 ABOUT IT I CAN ORDER YOU ALL BACK AT 1:30 OR I CAN CUT  
9 YOU LOOSE.

10 PLAINTIFF, WHAT DO YOU WANT TO DO?

11 MR. ESFANDIARY: YOUR HONOR, SENDING US  
12 BACK TO CHAT THAT'S FINE WITH US. I GOT TO TALK TO  
13 MS. ALARCON TO THINK THROUGH THE ISSUES.

14 I WILL SAY THERE'S ONE ISSUE I WOULD LIKE  
15 GUIDANCE FROM YOUR HONOR. GIVEN THAT WE ARE GOING TO  
16 REASSEMBLE ON THE HEARING ON THE MOTION TO QUASH  
17 APRIL 17, THE DEADLINE FOR THE THIRD PARTIES TO COMPLY  
18 WITH THE SUBPOENAS IS APRIL 2ND. THAT'S WHY WE SOUGHT  
19 TO HAVE THIS EXPEDITED TO TODAY. AND GIVEN THAT THE  
20 DISPUTE IS STILL PENDING, COULD WE GET SOME KIND OF  
21 ONE-SENTENCE WRITTEN ORDER FROM YOU -- FROM YOUR HONOR  
22 DIRECTING THE THIRD PARTIES TO NOT DISCLOSE ANYTHING  
23 UNTIL THIS DISPUTE IS RESOLVED SO THAT THE DEFENDANTS  
24 CAN, YOU KNOW, SUBMIT THAT TO THE VARIOUS THIRD PARTIES  
25 WE'RE SEEKING RECORDS FROM.

26 THE COURT: I THINK YOUR MOTION FOR  
27 PROTECTIVE ORDER OR MOTION TO QUASH STAYS PERFORMANCE ON  
28 THE CUSTODIANS OF RECORD. SO I DON'T THINK I NEED TO

1 MAKE SUCH AN ORDER.

2 MR. ESFANDIARY: OKAY. UNDERSTOOD. THEN  
3 ON THE SCHEDULING, YOUR HONOR, I THINK THAT THAT MAKES  
4 SENSE.

5 WE'RE HAPPY TO MEET AND CONFER. I DO ASK  
6 THE DEFENDANTS COME WITH SOME DATES IN MIND ON, YOU  
7 KNOW, WHEN THE SPECIFIC CAUSE ADJUDICATION SHOULD OCCUR  
8 OR WHEN THE TRIAL DATE SHOULD BE. BECAUSE LAST TIME ALL  
9 WE GOT WAS NO TRIAL DATE SHOULD BE SET, YOU KNOW,  
10 INDEFINITELY UNTIL WE'RE READY TO SET IT. SO I WOULD  
11 LIKE TO WORK WITH SOME DATES AND I'M HAPPY TO MEET AND  
12 CONFER.

13 THE COURT: I THINK THAT'S LEGITIMATE.  
14 DON'T COME BACK AND JUST SAY WE CAN'T POSSIBLY THINK  
15 ABOUT THE POSSIBILITY OF EVEN CONTEMPLATING A TRIAL  
16 DATE.

17 MS. FREIWALD: YEAH, I THINK WE WOULD JUST  
18 SAY WE RESPECTFULLY DISAGREE WITH MR. ESFANDIARY'S  
19 CHARACTERIZATION OF PRIOR CONVERSATIONS, BUT CERTAINLY  
20 WE'RE GOING TO APPROACH THIS IN GOOD FAITH, YOUR HONOR.

21 THE COURT: ANYTHING ELSE AT YOUR END?

22 MR. MERRYMAN: NO, YOUR HONOR.

23 THE COURT: OKAY. SO THE ORDER IS I'LL SEE  
24 YOU ON APRIL 17. GIVE ME A JOINT REPORT ON APRIL 14.  
25 MEET AND CONFER ON A DOSE EVALUATION SARGON COMPLIANCE  
26 PROCESS. AND PLAINTIFF GIVE NOTICE. GOOD-BYE.

27 MR. KLATT: MIKE KLATT FOR SPROUT FOODS,  
28 INC. WE'RE NOT INVOLVED IN THE SAMUEL R. OR THE

1 CALEB R. CASES, BUT I DO HAVE PENDING APPLICATIONS FOR  
2 PRO HAC VICE ADMISSIONS IN THE JOSUE G. AND THE PAUL L.  
3 CASES THAT HAVE BEEN SITTING THERE AND IF I -- IF WE CAN  
4 GET A RULING ON THOSE SOMETIME.

5 THE COURT: YEAH, I -- YOU KNOW, I ACT ON  
6 THOSE AS SOON AS THEY HIT MY QUEUE, SO, YOU KNOW, LATER  
7 TODAY AFTER THE LUNCH BREAK WHY DON'T YOU CHECK WITH THE  
8 COURT TO -- THE CLERK AND COURT ATTENDANT TO FIND OUT  
9 WHERE THOSE APPS ARE BECAUSE I'M NOT SITTING ON THEM. I  
10 GUARANTEE IT.

11 MR. MERRYMAN: YOUR HONOR.

12 THE COURT: WE'LL GO OFF THE RECORD.

13  
14 (PROCEEDINGS CONCLUDE AT 12:06 P.M.)

15 --000--  
16  
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28

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 1

HON. LAWRENCE P. RIFF, JUDGE

4 -000-

5 COORDINATION PROCEEDING SPECIAL )  
TITLE (RULE 3.550) )

6 HAIN CELESTIAL BABY FOOD CASES )

CASE NUMBER  
23STCV24844

7 \_\_\_\_\_ )  
8 LONDON R, A MINOR, )

REPORTER'S  
CERTIFICATE

9 PLAINTIFF, )

10 VS. )

11 HAIN CELESTIAL GROUP, INC., )  
12 NURTURE, INC., PLUM PBC, D.B.A. )  
13 PLUM ORGANICS; BEECH-NUT )  
14 NUTRITION COMPANY; GERGER )  
15 PRODUCTS COMPANY, SPROUT FOODS, )  
16 INC.; RALPHS GROCERY COMPANY; )  
AND DOES 1 THROUGH 100, )  
INCLUSIVE, )

DEFENDANTS. )  
\_\_\_\_\_ )

17 I, DEBBIE HINO-SPAAN, OFFICIAL REPORTER PRO  
18 TEMPORE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
19 FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
20 FOREGOING PAGES, 1 THROUGH 81, INCLUSIVE, COMPRISE A FULL,  
21 TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN  
22 DEPARTMENT 1 ON MARCH 26, 2026, IN THE MATTER OF THE  
23 ABOVE-ENTITLED CAUSE.

24 DATED THIS 26TH DAY OF MARCH, 2026.

26 \_\_\_\_\_  
DEBBIE HINO-SPAAN, CSR NO. 7953  
27 OFFICIAL REPORTER PRO TEMPORE  
28 LOS ANGELES SUPERIOR COURT

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L.W.	Williams	3:25-cv-09386	10/31/2025
L.W.	Wallace	3:25-cv-03243	4/10/2025
L.W.	Shelter	3:24-cv-07247	10/17/2024
L.W.	Wiseman	3:25-cv-04577	5/30/2025
L.W.	Waltz	3:25-cv-05435	6/29/2025
L.W.A.	Wright	3:25-cv-09250	10/28/2025
Lockwood, Elizabeth	Lockwood	3:25-cv-10066	11/21/2025
M.A. *	Ahmad	3:24-cv-07213	10/16/2024
M.B.	Tyeryar	3:25-cv-10000	11/20/2025
M.B.	Blanton	3:25-cv-03544	4/23/2025
M.B.	Brozana	3:25-cv-01590	2/14/2025

M.D.	Dominguez	3:25-cv-09987	11/20/2025
M.D.	Libardi	3:25-cv-03471	4/18/2025
M.D.	Palmer	3:24-cv-08103	11/18/2024
M.E.	Evans	3:25-cv-10057	11/21/2025
M.G.	Gilbert	3:25-cv-02481	3/12/2025
M.G.	Gurley	3:25-cv-02268	3/5/2025
M.H.	Amer	3:24-cv-02827	11/22/2023
M.H.	Henderson	3:25-cv-04612	5/30/2025
M.J.	Sinegal	3:25-cv-09287	10/29/2025
M.J.	Smith	3:25-cv-09351	10/30/2025
M.J.	Wright	3:25-cv-03354	4/15/2025
M.J.	Stewart	3:24-cv-07009	10/7/2024
M.M.	Mayfield	3:25-cv-04852	6/9/2025
M.M.	Mallory	3:25-cv-05701	3/8/2024
M.R.	Restrepo	3:25-cv-02918	3/8/2025
M.R., Jr.	Roese	3:24-cv-08927	12/10/2024
M.S.*	Wells	3:25-cv-09306	10/29/2025
M.S.	Gavidia	3:25-cv-09999	11/20/2025
M.S.	Stokes	3:24-cv-08085	11/18/2024
M.V.	Aldama	3:25-cv-10063	11/21/2025
M.W.	White	3:25-cv-02482	3/12/2025
M.Y.	Yates	3:25-cv-09693	11/11/2025
Miles, Matthew		3:25-cv-04898	6/10/2025
N.A.	Alexander	3:25-cv-04197	5/15/2025
N.A.	Howard	3:25-cv-09759	11/13/2025
N.B.	Wojtkowiak	3:25-cv-10102	11/21/2025
N.B.	Burnett	3:25-cv-09244	10/28/2025
N.C.	Hauserman	3:25-cv-09927	11/19/2025
N.C.	Catia	3:25-cv-09327	10/30/2025
N.C.	Chavez	3:24-cv-02483	3/22/2024
N.C.	Cain	3:25-cv-09384	10/31/2025
N.D.	Daniels	3:25-cv-07035	8/20/2025
N.D.H.*	Halverson	3:25-cv-02270	3/5/2025
N.G.	Valle	3:25-cv-09380	10/31/2025
N.G.	Gudar	3:25-cv-09951	11/19/2025
N.G.H.	Hernandez	3:25-cv-00852	3/8/2024
N.H.	Heins & Kawasaki	3:25-cv-10048	11/20/2025
N.J.B.	Barr	3:24-cv-07957	11/13/2024
N.N.M.	Martin	3:25-cv-05661	3/8/2024
N.O.	O'Keefe	3:25-cv-10126	11/21/2025
N.P.	Haddock	3:25-cv-09876	11/17/2025
N.R.	Robinson	3:24-cv-08105	11/18/2024

N.R.	Lawrence	3:25-cv-04116	5/13/2025
N.S.	Stoerzinger	3:25-cv-09035	10/21/2025
N.T.	Tchassem	3:25-cv-10021	11/20/2025
N.V.	Vazquez	3:25-cv-09968	11/19/2025
N.V.*	Viskovic	3:25-cv-09379	10/31/2025
N.W.	Wynn	3:24-cv-08519	11/26/2024
N.W.	Whitefield	3:25-cv-10120	11/21/2025
O.A.	Adewumi	3:25-cv-09545	11/5/2025
O.M.	Mualem	3:25-cv-06971	8/18/2025
O.S./T.S.	Stokes	3:25-cv-09419	10/31/2025
O.T.	Rodriguez	3:25-cv-10060	11/21/2025
O.V.	Vasquez	3:24-cv-01780	3/22/2024
P.A.	Hyden	3:24-cv-02484	1/9/2023
P.G.	Petersen	3:25-cv-05705	3/8/2024
P.G.	Getchius	3:25-cv-07113	8/22/2025
P.G. / L.G.	Seaton	3:25-cv-10116	11/21/2025
P.O.	Oyedele	3:25-cv-04578	5/30/2025
P.T.	Thomas	3:25-cv-09417	10/31/2025
P.T.	Thomas	3:25-cv-03455	4/18/2025
P.W.	Williams	3:25-cv-05401	6/27/2025
Pierce, Steven		3:25-cv-06210	7/23/2025
Q.N.	Gros	3:25-cv-09269	10/28/2025
R.D.	Duris	3:25-cv-01039	1/31/2025
R.D.I.	Isza	3:25-cv-05694	3/8/2024
R.E.	Epstein	3:25-cv-09948	11/19/2025
R.F.	Ferreira	3:25-cv-03825	5/2/2025
R.G.	Avila	3:25-cv-09695	11/11/2025
R.H.	McKenzie	3:25-cv-10071	11/21/2025
R.H.	Milner	3:25-cv-09300	10/29/2025
R.H.*	Cesaire	3:25-cv-09389	10/31/2025
R.J.	Abouelazm	3:25-cv-08020	9/20/2025
R.M.*	McDonald	3:25-cv-09285	10/29/2025
R.P.	Gajadhar	3:25-cv-10133	11/21/2025
R.R.	Vogt	3:25-cv-10134	11/21/2025
R.S.*	Frazier	3:25-cv-09308	10/29/2025
R.S.	Banks	3:25-cv-05706	7/7/2025
R.V.*	Velovic	3:25-cv-09282	10/29/2025
Ramczyk, Michael*		3:25-cv-10138	11/21/2025
S.B.	McDuffie-Burrell	3:25-cv-10136	11/21/2025
S.B.	Boone	3:25-cv-01158	2/4/2025
S.B.	Belliu	3:25-cv-10096	11/21/2025
S.C.	Kormoski	3:25-cv-05195	6/20/2025
S.D.	Daniels	3:25-cv-09034	10/21/2025

S.D.M.	Hamberlin	3:25-cv-01146	2/4/2025
S.F.	Fiore	3:25-cv-03197	4/9/2025
S.J.	Jones	3:24-cv-07215	10/16/2024
S.J.	Perri	3:25-cv-09985	11/20/2025
S.K.	Kashton	3:24-cv-06212	9/3/2024
S.O.	Sarria-Moscoso	3:25-cv-06200	7/23/2025
S.P.	Robuste	3:25-cv-10002	11/20/2025
S.P.	Polo	3:25-cv-10001	11/20/2025
S.P.T.	Thompson	3:25-cv-00731	1/22/2025
S.S.	Rembert	3:25-cv-09220	10/27/2025
S.S.	Simmons	3:25-cv-10087	11/21/2025
S.T.	Richmond	3:25-cv-09346	10/30/2025
S.T.*	Towe	3:25-cv-09395	10/31/2025
Saunders, Nisag		3:25-cv-06943	8/15/2025
Steans, Mya	Steans	3:25-cv-00804	1/23/2025
T.A.T.	Barnes	3:24-cv-08040	11/15/2024
T.B.	White	3:25-cv-10073	11/21/2025
T.B.	Ballard	3:25-cv-09344	10/30/2025
T.B.	Baker	3:24-cv-07189	10/15/2024
T.C.	Collier	3:25-cv-10004	11/20/2025
T.C.	Charite	3:25-cv-09592	11/6/2025
T.D.	Chaney	3:25-cv-10016	11/20/2025
T.D.L.	Snoday	3:24-cv-07751	11/6/2024
T.E.	Mosley	3:24-cv-02830	12/21/2023
T.E.	Edwards	3:24-cv-08291	11/21/2024
T.F.	Boyd	3:24-cv-02548	3/20/2024
T.G.	Gilliam-Garvins	3:25-cv-09954	11/19/2025
T.H.	Rivera	3:25-cv-04596	5/30/2025
T.I.	Gilmore	3:25-cv-09309	10/29/2025
T.J.	Buchanan	3:24-cv-09514	12/31/2024
T.M.	Kelley	3:25-cv-03352	4/15/2025
T.T.	Scott	3:25-cv-08534	10/6/2025
T.T.	Lamar	3:24-cv-07216	10/16/2024
Tircuit, Latavia		3:25-cv-07202	10/29/2025
V.C.	Coccia	3:25-cv-07120	8/22/2025
V.C.	Taylor	3:25-cv-10013	11/20/2025
V.D.	Jarrett	3:25-cv-09252	10/28/2025
V.G.*	Gonzalez	3:25-cv-09258	10/28/2025
V.H.	Chapman	3:25-cv-09761	11/13/2025
V.R.	Krizan	3:25-cv-08715	10/10/2025
W.C.	Thorne	3:25-cv-10006	11/20/2025
W.D.	Padilla	3:25-cv-07206	8/26/2025
W.K.	Correa	3:25-cv-08333	9/30/2025

Watson, Troy	Pittman	3:25-cv-06166	7/22/2025
X.D.	Conrad	3:25-cv-09256	10/28/2025
Y.F.	Fernandez	3:25-cv-01086	2/3/2025
Z.B.	Porter	3:25-cv-10008	11/20/2025
Z.D.D.	Davis	3:25-cv-05662	3/8/2024
Z.F.	Reemsnyder	3:25-cv-09851	11/15/2025
Z.J.	Jolicoeur	3:25-cv-01134	2/4/2025
Z.W.	Wadsworth	3:24-cv-02474	3/22/2024
Z.W.	Wilder	3:25-cv-04611	5/30/2025
Z.W.G.	Garner	3:24-cv-07958	11/13/2024
Z.Z.*	Zhang	3:25-cv-08596	10/8/2025

\* Defendants believe subject matter jurisdiction may be absent in these cases. The parties are meeting and conferring and will file a joint statement regarding cases potentially lacking in subject matter jurisdiction at a later date.

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: BABY FOOD PRODUCTS LIABILITY  
LITIGATION

Case No. 3:24-md-3101-JSC

MDL 3101

This Document Relates to:

Hon. Jacqueline Scott Corley

ALL ACTIONS

**[PROPOSED] ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

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**[PROPOSED] ORDER**

The Motion for Summary Judgment of Defendants Beech-Nut Nutrition Company, Gerber Products Company, Inc., The Hain Celestial Group, Inc., Nurture, LLC, Plum, PBC, Sprout Foods, Inc., The Campbell’s Company, Walmart Inc., Amazon.com Services LLC, and Whole Foods Market Services, Inc. came for hearing on July 9, in Courtroom 8, 19th Floor of the above-entitled Court. Upon consideration of the submissions and arguments by the parties and the record as a whole, the Defendants’ Motion for Summary Judgment as to all claims in this MDL in all the cases listed in Exhibit 2 to the Declaration of Livia Kiser is **GRANTED**.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Jacqueline S. Corley  
United States District Judge