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1 and research, which is the name of our plaintiff in this case.  
2 So we of course think that that would be highly relevant even  
3 if there are two false positives.

4 Just as a broader point, they are asserting that we  
5 are being in some way unreasonable on certain terms. We have  
6 explained to the defendants on our call that we weren't going  
7 to review certain terms because we also think they are overly  
8 broad and they have said that they dispute that and will be  
9 taking them up with the court.

10 So we are following the process that we believe has  
11 been agreed upon by both parties. So I think that there is a  
12 little bit of a disconnect here.

13 THE COURT: OK. Here's what I'm going to do. What is  
14 the physical distance from 2525 Ponce de Leon Boulevard to 101  
15 Southeast 2nd Street?

16 MS. MARKOE: Probably about 8 and a half miles.

17 THE COURT: I am going to order the parties to meet in  
18 person in a conference room either at 2525 Ponce de Leon  
19 Boulevard, suite 1000, or 100 Southeast 2nd Street, suite 2800,  
20 before 5:00 on Thursday to resolve these issues of search  
21 terms. You are to start in that office and in that conference  
22 room until these issues are resolved.

23 You can decide amongst yourselves or flip a coin as to  
24 whether it is going to be at 2525 Ponce de Leon or at 100  
25 Southeast 2nd Street.

1 I am not refereeing this issue because if I am asked  
2 to referee this issue, I'm going to tell you how I'm going to  
3 do it. I am going to order each side to submit their proposed

4 order and I am going to pick one. The way that I pick it may  
-  
9 search terms. I never had a case in my career where I had to  
10 do tar, but I will make the decision for you. You won't like  
11 it, but I will make the decision.

12 So that is my order. By 5:00 on Thursday I want this  
13 resolved.

14 MS. MCGOVERN: Your Honor, would you mind if we add  
15 just both sides' search terms, that both sides resolve all  
16 disputes regarding both sides' search terms?

17 THE COURT: Yes.

18 MS. MCGOVERN: Perfect. Thank you, your Honor.

19 THE COURT: Start as early in the day as you have to,  
20 but I want it done. I'm tired of this.

21 OK. Let's turn to F, the remaining issues from the  
22 last go-around.

23 So a number of these, 16 through -- 16 and then 18  
24 through 27 all had to do with the Appendix N, which I have now  
25 had a chance to review. First of all, I couldn't find some of

1 these references in Exhibit N. They were buried so far deep in  
2 the appendix. I think all those issues are best dealt with  
3 after Dr. Wright's deposition.

4 Mr. Freedman, if you want to ask Dr. Wright about  
5 these things, I think that's the best way to deal with it  
6 rather than by a request for production. Because I do think  
7 there's been some objection to time frame and some of these  
8 things don't relate at all to Bitcoin and other things. So I  
9 think the best way -- my ruling would be as to 16 and 18  
10 through 27 that we will deal with all of that after his  
11 deposition.

12 MR. FREEDMAN: Just because, your Honor, I know that  
13 there's going to be issues at the deposition, the court's

14 authorizing us to ask about those issues at the deposition?

15 THE COURT: Yes.

16 MR. FREEDMAN: Thank you.

17 THE COURT: Yes. Yes. And to a reasonable level of  
18 depth. Obviously a logical question might be, for example, 21,  
19 right, there is a reference to a loan from Lynn Wright. What  
20 was the loan for, how much was it, when did it occur, did it  
21 have anything to do with Dave Kleiman. No. Thank you. Let's  
22 move on.

23 Or if it is yes, that was money Dave loaned to Liam,  
24 then you can drill a little deeper than that.

25 Yes, you can ask about those topics to a reasonable

1 level.

2 All right. 36 and 37. This I think gets back to what  
3 I was saying a second ago about the Australian tax office and  
4 what really should be relevant there, which is statements made  
5 either by -- statements made by Dr. Kleiman -- Dr. Wright or  
6 attributable to Dr. Wright relating to W&K and Mr. Kleiman, the  
7 IP, Bitcoin, etc. So deal with it substantively like that.

8 Again, I think 36 and 37 should pretty much resolve  
9 themselves once you all get the search terms resolved, I would  
10 think.

11 Ms. Markoe, you are looking at me as if I'm missing  
12 something.

13 MS. MARKOE: No. I just wanted to clarify what you  
14 are saying because I could see it being interpreted one of two  
15 ways.

16 THE COURT: OK.

17 MS. MARKOE: I could see it being interpreted as  
18 anything regarding to IP and Bitcoin or anything regarding to  
19 IP and Bitcoin and Dave Kleiman and W&K.

20 THE COURT: Yes.

21 MS. MARKOE: So that was just, I just wanted  
22 clarification.

23 THE COURT: Yes. Obviously relevant to this case. If  
24 Dr. Wright made representations that he had somehow developed  
25 the IP for the brakes on a Mazda vehicle, that is IP but that

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1 has nothing to do with this case. Or if he has Bitcoin that he  
2 used to pay for the pizza at Dominoes, that's got nothing to do  
3 with Dave Kleiman. So yes.

4 My intention as to 36 and 37 is to get to the  
5 plaintiff what I think is the core, the relevant information,  
6 which is what I said earlier. Statements that presumably could

7 be used at trial to impute to Mr. Wright either -- Dr. Wright  
8 either admissions as to Mr. Kleiman's involvement in what is  
9 alleged in this case or knowledge by Dr. Wright about  
10 Mr. Kleiman's activities or things of that nature.

11 Discovery is supposed to be geared to helping the  
12 parties in their claims and defenses. So the idea is, I think  
13 that's what is relevant. Whether what Dr. Wright did with the  
14 IP interest had Australian tax consequences has nothing to do  
15 with this lawsuit. Whether he hid money in an offshore trust  
16 that he hid from the Australian tax office and had nothing to  
17 do with Mr. Kleiman, it has nothing to do with this lawsuit.

18 So yes, my purpose was to -- what Ms. Markoe said.  
19 That is a long way to say what Ms. Markoe said.

20 MS. MARKOE: Thank you, your Honor.

21 MR. FREEDMAN: Your Honor, only because you have  
22 adopted Ms. Markoe's statement, all parties are on the same  
23 page that it has to be relevant to the case. I think the  
24 fundamental disagreement between the plaintiffs and the  
25 defendants is that the defendant has taken the position that



1 the only thing that's relevant to the case is if it mentions  
2 Dave Kleiman or W&K and plaintiffs say, well, there are other  
3 entities that are relevant as demonstrated by the defendant's  
4 affidavit swearing that there are other companies that are  
5 relevant. So I just want to make sure you're --

6 THE COURT: Again, I think to the extent -- look, it's  
7 hard for me to look into a vacuum that I don't know. But, for  
8 example, if the allegation is that assets were devoided from  
9 W&K into another entity ABC, then clearly ABC becomes relevant  
10 because it ties back to W&K. Or if the allegation is that  
11 Mr. Kleiman's wife, girlfriend, brother, family member  
12 authorized something, that doesn't directly tie to Mr. Kleiman  
13 but it's close enough. It's relevant to this lawsuit.

14           You are all grownups. You know what I'm saying here  
15 about what I think is relevant and not relevant, and I don't  
16 think you all are that far apart on this. Again, I think this  
17 is going to be largely driven by the search terms that you are  
18 all going to agree to anyway.

19           So that is my ruling on that.

20           40 I think also deals with the ATO, and I've actually  
21 just ordered what you were talking about. Now 40 is  
22 conversations between Dr. Wright and people from the ATO.  
23 Again, to the extent he's talking to people at the ATO about  
24 Dave Kleiman, W&K, the transfers of Bitcoin IP, the mining of  
25 Bitcoin with Dave Kleiman or Dave Kleiman-related entities, I

1 think that's relevant. If it is other stuff, I don't think  
2 that's relevant.

3 MR. FREEDMAN: Your Honor, that is why plaintiffs'  
4 inherently limited the interrogatory. So I don't know if the  
5 court has docket entry 114 in front of it.

6 THE COURT: I do. Which number? 114 dash?

7 MR. FREEDMAN: No, actually just 114 itself.

8 THE COURT: What page?

9 MR. FREEDMAN: Page 5.

10 THE COURT: OK.

11 MR. FREEDMAN: This actually went for 36 and 37 as  
12 well. The plaintiffs have limited the request, both of these  
13 requests to basically adopt the court's limitations.

14 THE COURT: Give me the language that you've got in  
15 here, Mr. Freedman, if you could.

16 MR. FREEDMAN: Any document that makes a record of a  
17 conversation between Craig and/or his agents and the ATO that  
18 also references any of the individuals or entities listed in  
19 numbers 36 and 37. Those are the entities, primarily the

20 entities that Dr. Wright has sworn were relevant to the case in  
21 the affidavit or entities that are patently relevant, like the  
22 Tulip trading trust or the Seychelles trust and things like  
23 that.

24 THE COURT: OK. Ms. Markoe, Ms. McGovern, any  
25 objection to that being the scope of what you will look for?

1 MS. MARKOE: Yes.

2 THE COURT: OK.

3 MS. MARKOE: First of all, we have told them that they  
4 are getting everything regarding Tulip.

5 THE COURT: OK.

6 MS. MARKOE: So they are getting that.

7           What we would limit this request to is what our  
8 response was to these requests, which was anything that  
9 references Dave Kleiman or any trust which Dave Kleiman had any  
10 involvement either as beneficiary or trustee. Ira Kleiman,  
11 Louis Kleiman, Coin Exchange Party, Ltd. or WK or W&K, which is  
12 also WKID, and that's what we're -- those are the topics that  
13 we think are relevant.

14           If it references an entity that we have discovered now  
15 that Dave Kleiman was involved in, they're getting that too.  
16 We're not trying to hide the ball from them.

17           To open this up to every single entity or every  
18 single -- or a whole bunch of entities that don't, there's no  
19 direct connection with at this point just is unduly burdensome  
20 and not relevant to getting to the heart of this matter.

21           THE COURT: But how do you deal with the fact that  
22 your client swore they were relevant to the lawsuit?

23           MS. MARKOE: Well, your Honor, I think -- I was not  
24 involved in the case at that time.

25           THE COURT: I understand.

1 MS. MARKOE: So I don't know about the genesis of that  
2 affidavit.

3 THE COURT: Well, I think your client is stuck with  
4 what he said.

5 I am going to order what Mr. Freedman has asked for.

6 Maybe your client will be a little more careful in the  
7 future when he swears out an affidavit. But he swore these  
8 entities are relevant to the lawsuit and that's what I am going  
9 to order.

10 MS. MARKOE: OK.

11 MR. FREEDMAN: Your Honor, that is for -- there's a  
12 lot of these interrogatories.

13 THE COURT: 36, 37, all the ones relating to the ATO.  
14 36, 37, 40, 41, I think were the ones.

15 MR. FREEDMAN: Your Honor, 45, which is also in front  
16 of the court now --

17 THE COURT: I haven't gotten to that one yet. Hold  
18 on.

19 MR. FREEDMAN: -- has the same limitation. Ties back  
20 to these entities.

21 Your Honor, just for clarity, there's only eleven  
22 entities.

23 MS. MCGOVERN: Your Honor, we understand the ruling.

24 THE COURT: On 45, I will issue the same ruling then.

25 Did we resolve those -- 88 is the only one left that I

1 think is here.

2 I will be candid. I don't remember this. I think at  
3 the last meeting Mr. Rivero said, Ms. McGovern, you were the  
4 one that had been dealing with this.

5 MS. MCGOVERN: I apologize. Can I just see 88 really  
6 quick, your Honor?

7 THE COURT: It is documents related to the agreement  
8 involving Dr. Wright and Robert McCray or referenced in the  
9 Satoshi affair.

10 Mr. Freedman, help me out. Educate me again on what  
11 this is.

12 MR. FREEDMAN: Yes, your Honor. The Satoshi affair is  
13 an article written by Andrew O'Hagan, or story written by  
14 Andrew O'Hagan that chronicles kind of the creation of Bitcoin,  
15 the Satoshi Nakamoto story.

16 THE COURT: Right.

17 MR. FREEDMAN: As part of that story, Mr. O'Hagan  
18 receives a call letting him know that the person on the other



19 end of the line had been contracted to sell the life rights of  
20 Satoshi Nakamoto and Satoshi Nakamoto's intellectual property.

21 The entire engagement of Mr. O'Hagan and the entire  
22 story that he tells in the story is basically an attempt by the  
23 defendant to come out as Satoshi Nakamoto, use that fame and  
24 celebrity status to then sell his intellectual property that  
25 Satoshi Nakamoto created for billions of dollars, the article

1 says.

2 THE COURT: OK.

3 MR. FREEDMAN: And so the plaintiffs' position is that  
4 admissions with regard to who owned the intellectual property  
5 created by Satoshi Nakamoto and the story of Satoshi Nakamoto  
6 are relevant to the case because it is plaintiffs' theory that

7 Satoshi Nakamoto is the name of a partnership between Craig  
8 Wright and Dave Kleiman.

9 MS. MCGOVERN: I recall the issue now. For some  
10 reason I didn't focus on No. 88 when I was looking at this.

11 I think our position is a sound position, your Honor,  
12 that we have stated in response to the plaintiffs' request  
13 here. Essentially what we say is that there's nothing before  
14 this court that suggests that the documents that they have  
15 requested here relate to Dave Kleiman or W&K. Nothing.

16 They are saying we have scoured the internet and we  
17 have discovered certain things regarding Satoshi and we're  
18 going to ask for all documents related to that to see whether  
19 there's something that comes out of that that makes the Dave  
20 Kleiman or Ira Kleiman, actually, argument regarding the  
21 partnership sound.

22 What we have said in response to that is we disagree.  
23 However, we will search for communications and documents that  
24 relate to this alleged agreement to the extent that they  
25 reference or in any way relate to Dave or WKID or W&K.

1           The reason that we believe that's a good compromise,  
2 your Honor, is because if it doesn't reference W&K or Dave  
3 Kleiman, they can argue anything they want to argue, that it  
4 was expressly eliminated or this just goes to show you that  
5 he's been cut out. I don't know what they're going to say.  
6 But it would only support their case if he were in fact  
7 referenced in connection with this alleged agreement.

8           So to dive into another agreement with another person  
9 simply because it refers to Satoshi and they've got at this  
10 point a completely unsubstantiated partnership claim which is  
11 the Satoshi partnership is a stretch that goes beyond anything  
12 relevant to their claims in this case.

13 THE COURT: OK. I think at this point the first group  
14 of the production they are asking for is disproportionate now,  
15 today.

16 Ask Dr. Wright at his deposition if he ever  
17 communicated with the author, whether he was in fact the person  
18 who made these representations and he was the one who talked to  
19 the author, and let's see where that takes us.

20 If he denies ever talking to this person, you will  
21 have to go at it a different way. If he admits it, maybe it  
22 becomes more proportionate to try to value it.

23 MR. FREEDMAN: Your Honor, Mr. O'Hagan writes in the  
24 article that he has hours of the defendant on tape talking to  
25 him about Satoshi in the early assessment, and that will be the

1 subject of a letters rogatory request because we don't want to  
2 come to the court and then the English courts multiple times.  
3 But that is with the author.

4 This is a targeted request that goes to the individual  
5 who was buying the partnership's life rights. So Robert McCray  
6 is the individual referenced in 85 was the money man behind the  
7 deal to buy the partnership's rights and the partnership's  
8 intellectual property and then capitalize on the partnership's  
9 fame and notoriety by selling it.

10 THE COURT: Did the sale ever go through?

11 MR. FREEDMAN: No, because when Dr. Wright was  
12 supposed to come forward -- according to the article, when  
13 Dr. Wright was supposed to come forward and prove that he was  
14 Satoshi Nakamoto with cryptographic proof, he failed to do so  
15 and the world turned on him as being a fraud.

16 THE COURT: OK. I will stand by my ruling.

17 You can ask Dr. Wright about all this when you depose  
18 him and depending on his answers, we will take the next step at

19 | that point if we need to.

20 | MR. FREEDMAN: Thank you, your Honor.

21 | THE COURT: Sure.

22 | Have I now dealt with all of the discovery matters for  
23 | today?

24 | MS. MCGOVERN: Yes, your Honor.

25 | THE COURT: So a couple of things I want to just

1 | follow up on. I am going to set another date, but I am going  
2 | to sort of invite -- I think Ms. McGovern makes a good point,  
3 | and, again, I'm not pointing fingers at either side here. I am  
4 | trying to balance making myself available to rule on what needs  
5 | to be ruled on but not inviting you all to not go through the  
6 | full process you need to go through and not giving you enough

7 time to go through the full process.

8           What I was going to suggest is that we set another  
9 date just to have it on the calendar but that either side can  
10 unilaterally cancel it if you don't believe there's been  
11 sufficient time to meet and confer. So that way we won't have  
12 a situation where one side or the other feels like why are you  
13 dragging me in front of the judge, we haven't really had a  
14 chance to talk about that, or before I spend the time to write  
15 up this joint memo we should talk some more.

16           So that is what I am going to do going forward. I  
17 will set dates and I will allow either side to unilaterally  
18 cancel them. And if it turns out you need me, we can get you  
19 back on a fast track pursuant to my normal protocol.

20           So how soon do you all think it would be helpful to  
21 have a call?

22           MS. MCGOVERN: Your Honor, if I could jump in on that.

23           THE COURT: Sure.

24           MS. MCGOVERN: So we have the deposition of Ira  
25 Kleiman that's been scheduled for April 8th.

1 THE COURT: OK.

2 MS. MCGOVERN: I think it would be a good idea for us  
3 to see you before then. We haven't heard from plaintiffs as to  
4 whether our proposed topics are OK.

5 THE COURT: OK.

6 MS. MCGOVERN: We just want to make sure that all  
7 issues related to Ira Kleiman's deposition are fleshed out  
8 before we go forward on the --

9 THE COURT: Dr. Wright's deposition is the 4th?

10 MS. MCGOVERN: It is.

11 THE COURT: In London?

12 MS. MCGOVERN: In London.



13 THE COURT: When are you all leaving for London?

14 MS. MCGOVERN: I am not going to be going --

15 THE COURT: You get the free trip, Ms. Markoe.

16 MS. MARKOE: Yes. My daughter is thrilled. Her  
17 birthday is that weekend.

18 So I am leaving the night of April 2nd and coming back  
19 on April 5th.

20 THE COURT: Mr. Freedman, when are you heading  
21 overseas?

22 MR. FREEDMAN: April 2nd, but I am coming back on  
23 Friday, I believe.

24 MS. MARKOE: April 5th. We will be on the same  
25 flight.

1 THE COURT: You are going to be on the same plane.  
2 You will get back for shabbat, I hope.

3 MR. FREEDMAN: Yes, your Honor.

4 MS. MARKOE: Yes. Back in time for shabbat and my  
5 daughter's birthday party on Sunday.

6 THE COURT: That's important.

7 I was going to say, does it make sense for us to do  
8 something even -- I know it is really soon. It would be next  
9 Monday, the 1st. But if anything is acute -- that is one word,  
10 A-C-U-T-E, not two words -- anything is acute relating to  
11 either of those depositions, I can address it before you all  
12 fly off to England.

13 I also told you on the 4th I would make myself  
14 available at a preset time if you all need me to rule on  
15 particular objections. I can never remember, is it later or  
16 earlier in the day in London? If you wait until the end of the  
17 day in London to contact me, is it going to be --

18 MS. MARKOE: It is four hours ahead of us.

19 THE COURT: So 4:00 London --

20 MS. MARKOE: It is 4 because they don't have Daylight  
21 Savings Time.

22 THE COURT: So 4:00 London time would be 8 p.m.  
23 Florida time?

24 MS. MARKOE: No. 4:00 London time would be noon  
25 Florida time.

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1 THE COURT: That works for me.

2 All right. So you all can let me know whether we need  
3 to get together on the 1st. If we get together on the 1st,  
4 what time on the 4th you would like me to make myself  
5 available? Thursday I'm pretty much available all day. I just  
6 have a couple of status conferences that I can work around with

7 you.

8 Give me a sense of what time of day on the -- not that  
9 you are going to need me because you are going to resolve all  
10 these issues, but I can be available on the 4th.

11 MR. FREEDMAN: Maybe like 10 a.m. your time.

12 THE COURT: 10 a.m. my time, which is 2 p.m. your  
13 time. Is that's fine?

14 MS. MARKOE: You have the deposition starting at 11:30  
15 a.m.

16 MR. FREEDMAN: We can do it earlier. I wanted to make  
17 sure there was time to get through a chunk of it so when the  
18 court is available --

19 MS. MARKOE: What I was suggesting is I don't know two  
20 and a half hours into the deposition with lunch and everything  
21 would really make sense. I would do it later in the day.

22 THE COURT: That's fine.

23 MS. MARKOE: I would say 5 --

24 MR. FREEDMAN: Do you want to start earlier?

25 MS. MARKOE: It's your depo.

1 MR. FREEDMAN: I'm happy to work with you.

2 MS. MARKOE: I would suggest 5 p.m. perhaps London  
3 time, which would be 1 p.m. Florida time.

4 THE COURT: That is fine. Start early and get as much  
5 time as you can.

6 MR. FREEDMAN: Sure.

7 MS. MARKOE: Then we would have like a few hours and  
8 whatever issues that have arisen we can resolve without it  
9 getting too late.

10 THE COURT: Then you still have time to go back in  
11 after I rule.

12 OK. 1:00 Eastern time.

13                   MR. FREEDMAN: Your Honor, April 1st is really tough  
14 for me because I'm leaving on the 2nd. So I packed like  
15 everything --

16                   THE COURT: I understand. Again, if you don't need  
17 me --

18                   MR. FREEDMAN: I'm hopeful we won't need you, but if  
19 you do need us, I'm not sure -- if the court orders it, the  
20 court orders it.

21                   THE COURT: No. I want to work with you all, but I'm  
22 looking at the calendar. You and Ms. Markoe aren't going to  
23 fly back until the 5th. Then the deposition of Ira Kleiman is  
24 on the 8th, which is Monday. So you're coming home on Friday,  
25 the deposition is on Monday. We're not going to really have a

1 window of time there if issues need to be resolved.

2 I mean --

3 MR. FREEDMAN: How about a telephonic hearing on the  
4 29th? I am not sure we are going to object to any of the  
5 topics, but I don't want to say that without reviewing it one  
6 last time.

7 THE COURT: The 29th would be this Friday.

8 MR. FREEDMAN: Yes. I don't think we need a lot of  
9 time.

10 THE COURT: Let me do this. Talk amongst yourselves  
11 and see if there is an issue. If you need me to make myself  
12 available, I have a settlement conference on Monday, but I can  
13 take a break from that. If you need to get together this  
14 Friday, I can do that. If you want to do it Tuesday morning  
15 before you go to the airport, I can do that. If you want to do  
16 it Wednesday once you're in London, we can do it then.

17 I will make myself available to accommodate you all.  
18 But maybe you don't need it. If you don't need it, you don't  
19 need it.

20 MS. MARKOE: Thank you, your Honor.

21 The only other thing I would suggest is if we do need  
22 you, perhaps given the tight nature of this, if it wouldn't be  
23 too burdensome on you to do a 24-hour joint submission to you  
24 rather than a 48 hour given the time frame.

25 THE COURT: You can do a nonjoint submission to me if

1 it is that quick and tight.

2 Again, you all have gotten very good at -- you know  
3 the questions I'm going to ask you. I always ask what you  
4 think is relevant, why is it disproportional, is it unduly  
5 burdensome. So you have my catechism down now.

6 Again, in the interest of time I would rather you all



7 spend the time talking to each other rather than writing joint  
8 memos. We can waive that for these purposes.

9 But that all being said, let's just set another date  
10 maybe for after Ira Kleiman's deposition to just have something  
11 on the calendar. How about the 11th? How about Thursday, the  
12 11th? That will give you a chance to take Ira Kleiman's depo,  
13 then talk amongst yourselves if there is any followup.  
14 Everybody can get back on U.S. time.

15 So Thursday, the 11th, at 3? Does that work?

16 Again, if either side feels like we don't need it,  
17 either side can unilaterally cancel. That's my way to try to  
18 balance it.

19 Then finally, and I will let you all go because I hope  
20 you took the train so you will have a nice relaxing trip back  
21 to Miami. I've looked at the motion to strike affirmative  
22 defenses. As I said, I'm not ruling on the merits at this  
23 time. I'm going to read it again and whether I will do oral  
24 argument or just rule. But I do have one question, I guess. I  
25 won't put an adjective in front of it.

1           It seems to me there is a general -- what discovery in  
2 the case goes away, Mr. Freedman, if your motion is granted?  
3 It seemed to me that sort of the big argument was that the  
4 court should rule on these because if certain affirmative  
5 defenses are stricken, then we don't have to spend time and  
6 money doing discovery on those. So I was just trying to get a  
7 sense, not that that's dispositive of my decision, but it would  
8 be helpful for me to understand better what the parties' sense  
9 is on that.

10           MR. FREEDMAN: With the caveat that I haven't read the  
11 motion in a while --

12           THE COURT: Understood.

13 MR. FREEDMAN: -- and that I'm not sure -- I think  
14 that it doesn't have to get rid of discovery to be stricken,  
15 but with that --

16 THE COURT: And I accept that. That's why I said it  
17 is not going to be dispositive, but it is helpful for me when I  
18 look at it to try to understand, particularly, for example, one  
19 of the claims there is an argument that it is sort of  
20 overlapping. If striking one and leaving one is going to still  
21 have the same amount of discovery, I just would like to know  
22 that.

23 MR. FREEDMAN: Again, I want to think about it, but  
24 probably the overlapping ones have a reduced discovery  
25 component. For example, the one that comes to mind is the

1 defendant has asserted an unclean hands defense --

2 THE COURT: Right.

3 MR. FREEDMAN: -- arguing that Ira Kleiman misreported  
4 items on his tax returns and did other untoward things with the  
5 reporting of the estate's assets.

6 THE COURT: Right.

7 MR. FREEDMAN: And therefore can't collect against  
8 Dave Kleiman -- against Dr. Wright.

9 Without commenting on the merits of that, my client's  
10 position is there aren't any. But I mean, we've received  
11 discovery requests aimed at like all kinds of what did you do  
12 with all the estate's assets, what did you report, and we have  
13 agreed to give the tax returns to the estate just to get that  
14 out of the way.

15 But there are much broader questions about what was  
16 done with the estate, what was communicated about the estate.  
17 There are search terms that are targeted at like probate,  
18 administration, will, things like that. All that will go away  
19 if that is stricken.

20 THE COURT: OK.

21 MR. FREEDMAN: I don't have the motion in front of me  
22 so I can't recall the --

23 THE COURT: No, that is OK. I will just quickly --  
24 and again, I don't mean --

25 MS. MCGOVERN: Your Honor, I don't think that it would

1 go away.

2 THE COURT: You don't.

3 MS. MCGOVERN: No. In any event. Because this is an  
4 action brought by the estate, and how the estate was handled  
5 with respect to the assets in the estate are going to go to the  
6 basis for the claims. This is a claim that was brought many,

7 many years after he became personal representative of the  
8 estate and after Dave Kleiman died.

9 So there are issues related to why he opened and  
10 closed it, why he reopened it, why he reopened W&K. I mean, he  
11 is the personal representative. And while he certainly stands  
12 in the shoes of Dave Kleiman, he also stands in his own shoes  
13 and whether or not these assets were identified in the probate,  
14 whether they were pursued in the probate, why these claims are  
15 being pursued now, why they weren't being pursued earlier. So  
16 I'm not sure that the unclean hands, if it is stricken, which I  
17 don't believe it should be, but if it is stricken, I'm not sure  
18 that discovery goes away. In fact, we would argue that it  
19 doesn't.

20 THE COURT: OK. I guess it is not dispositive  
21 obviously of the ruling that I will make when I have a chance  
22 to review it. I was just curious as to whether the parties  
23 have a sense of that one way or the other. But I have heard  
24 you on that.

25 All right. Anything else this afternoon,

1 Mr. Freedman, from the plaintiffs' side that we need to deal  
2 with?

3 MR. FREEDMAN: I'm not going to respond to that last  
4 point unless the court wants me to.

5 THE COURT: No. As I said --

6 MR. FREEDMAN: I think we see that issue differently,  
7 and certainly there are some questions there that would be  
8 permitted, but we believe there are some that would not be  
9 permitted if it was struck.

10 THE COURT: Again, I'm going to deal with it as I must  
11 simply by applying the law under Rule 12, which is what I have  
12 to do. Like I said, I just was curious as to whether the

13 parties had a consensus on that or not.

14 Any ruling I make -- even if I strike, it doesn't mean  
15 defendants can't continue to seek discovery on certain topics  
16 under whatever theory they may have. And if I don't strike, it  
17 doesn't mean the defendants are going to get all the discovery  
18 that they ask for subject to whatever objections the plaintiffs  
19 want to make.

20 To the extent either side was concerned that I was  
21 prejudging the issue, I want you to understand I know how this  
22 works and I'm not prejudging it.

23 OK. Nothing else from the plaintiff then?

24 MR. FREEDMAN: No, your Honor.

25 THE COURT: From the defense, anything else?



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MS. MARKOE: No, your Honor.

THE COURT: All right. Well, thank you all very much.  
We will be in recess.

(Adjourned)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription to the best of my ability of the digital audio recording in the above-entitled matter.

March 28, 2019

s/ Joanne Mancari  
Joanne Mancari, RPR, CRR, CSR  
Court Reporter  
jemancari@gmail.com

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