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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
HONORABLE MICHAEL M. ANELLO, DISTRICT JUDGE

_____)	
UNITED STATES OF AMERICA,)	
)	CASE NO. 14 CR 388
PLAINTIFF,)	
)	JUNE 2, 2014
VS.)	
)	MONDAY, 2:00
JOSE SUSUMO AZANO MATSURA,)	
)	
DEFENDANT.)	EX PARTE HEARING
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFF:	LAURA E. DUFFY
	UNITED STATES ATTORNEY
	BY: WILLIAM P. COLE
	ASSISTANT US ATTORNEY
	880 FRONT STREET
	SAN DIEGO, CA 92101

FOR THE DEFENDANT:	KNUT JOHNSON
	ATTORNEY AT LAW
	1010 SECOND AVE.
	SUITE 1850
	SAN DIEGO, CA 92101

1 SAN DIEGO, CALIFORNIA, JUNE 2, 2014, MONDAY, 2:50 PM

2 --000--

3 THE COURT: GOOD AFTERNOON, FOLKS. I SEE MR. COLE
4 HAS FINALLY FOUND HIS WAY HERE.

5 MR. COLE: THANK YOU FOR YOUR PATIENCE, YOUR
6 HONOR.

7 THE CLERK: FOR THE RECORD, 14 CR 388, JOSE SUSUMO
8 AZANO MATSURA.

9 THE COURT: WHY DON'T WE HAVE THE APPEARANCES
10 AGAIN, FOR THE RECORD.

11 MR. JOHNSON: KNUT JOHNSON FOR MR. AZANO, YOUR
12 HONOR.

13 MR. COLE: WILLIAM COLE FOR THE UNITED STATES.

14 THE COURT: GOOD AFTERNOON.

15 MR. BREWER: ROBERT BREWER APPEARING PRO PER.

16 THE COURT: AND DO YOU HAVE WITH YOU, I HAVE THE
17 LETTER BUT I DON'T HAVE IT WITH ME IN MY LITTLE HAND, DID I
18 LEAVE IT ON MY DESK?

19 MR. JOHNSON: THE COURT MENTIONED THE LETTER. I
20 THINK THAT IS A FOIA REQUEST PREVIOUSLY PROVIDED BY
21 MR. BREWER FROM THE OFFICE OF THE UNITED STATES ATTORNEY.

22 THE COURT: THAT'S JUNE 2.

23 MR. JOHNSON: YES, YOUR HONOR.

24 THE COURT: YOU HAVE SEEN IT, RIGHT?

25 MR. JOHNSON: YES, YOUR HONOR. I HAVE SEEN IT.

1 JUST TO SHORT CIRCUIT SOME OF THIS, THIS IS RELATED TO A
2 LETTER THAT I RECEIVED IN DISCOVERY. IT IS DATED SEPTEMBER
3 28, 2012, FROM A BONNIE DUMANIS TO THE UNIVERSITY OF SAN
4 DIEGO. I HAVE RECEIVED NUMEROUS PRESS CALLS REGARDING THAT
5 LETTER TODAY BECAUSE ITS RELEVANT TO AN ELECTION THAT IS
6 TOMORROW. WE HAVE A PROTECTIVE ORDER.

7 I HAVE LOOKED AT THE PROTECTIVE ORDER. I THINK UNDER
8 THE TERMS OF IT, I CAN DISCUSS THE LETTER. I HAVE NO DESIRE
9 TO TALK TO THE PUBLIC ABOUT IT OR TO BECOME A PART OF THE
10 ELECTION PROCESS OTHER THAN VOTING.

11 ON THE OTHER HAND, IT IS A PIECE OF INFORMATION THAT
12 IS, SOME MAY VIEW AS BEING IMPORTANT TO THE ELECTORATE
13 PROCESS AND WHAT THE VOTERS DECIDE. IN ANY EVENT, IT'S MY
14 REQUEST, I DON'T MEAN TO RESPOND TO THE PRESS. I WOULD LIKE
15 TO SIMPLY GIVE THEM THIS LETTER. I WOULD LIKE THE
16 PROTECTIVE ORDER MODIFIED TO ALLOW ME TO RELEASE THIS SINGLE
17 LETTER TO PERSONS OUTSIDE OF THE DEFENSE CAMP AND THAT'S ALL
18 MY REQUEST IS. AND IT'S VERY TIMELY. I THINK MR. BREWER
19 WILL ADDRESS.

20 THE COURT: ALL RIGHT. FROM YOUR STANDPOINT, WE
21 DON'T HAVE TO GET INVOLVED WITH FOIA AND ALL THAT. IT IS A
22 SIMPLE PROTECTIVE ORDER ISSUE?

23 MR. JOHNSON: YEAH. SIMPLE PROTECTIVE ORDER
24 UNLESS THE COURT WANTED TO ORDER THE GOVERNMENT TO COMPLY
25 WITH THE FOIA REQUEST. THE OTHER, THIS PARTICULAR DOCUMENT

1 TOO, I BELIEVE IS IN A COPY OF IT IS IN THE POSSESSION OF
2 THE PERSON ON WHOSE BEHALF IT IS WRITTEN, THAT IS NOT MY
3 CLIENT HOWEVER. THAT'S A MEMBER OF HIS FAMILY. SO IT WAS
4 CERTAINLY, IT'S NOT A GRAND JURY TRANSCRIPT, INFORMATION
5 REGARDING A FOREMAN, IT IS SIMPLY A LETTER OF
6 RECOMMENDATION WRITTEN TO THE UNIVERSITY OF SAN DIEGO.

7 FOR ALL THOSE REASONS, I'D ASK TO BE RELIEVED FOR THAT
8 LETTER ALONE, FROM THE PROTECTIVE ORDER.

9 THE COURT: TELL ME AGAIN. A LETTER OF
10 RECOMMENDATION WRITTEN TO?

11 MR. JOHNSON: WRITTEN TO THE UNIVERSITY OF SAN
12 DIEGO BY BONNIE DUMANIS DATED SEPTEMBER 28, 2012.

13 THE COURT: SEPTEMBER 28, 2012.

14 MR. JOHNSON: RIGHT.

15 THE COURT: AND PRESUMABLY IT IS IN THE FILES OF
16 USD.

17 MR. JOHNSON: RIGHT.

18 THE COURT: WAS IT WRITTEN TO A PERSON, AN
19 ADMISSIONS OFFICER?

20 MR. JOHNSON: I THINK IT WAS WRITTEN TO MARY LYONS
21 WHO WAS AT THAT POINT, THE PRESIDENT OF USD.

22 THE COURT: HAS ANYONE ASKED HER FOR IT?

23 MR. BREWER: NO, YOUR HONOR. WE CAN GIVE YOU SOME
24 BACKGROUND AND I CAN EXPLAIN WHAT MR. JOHNSON JUST RELATED
25 TO THE COURT IS MORE THAN WE HAVE KNOWN PRIOR TO STANDING

1 RIGHT HERE.

2 THE COURT: SO YOU'RE LEARNING SOMETHING TOO, HUH?

3 MR. BREWER: EXACTLY. FIRST I WANT TO SAY, YOUR
4 HONOR, WE HEARD RUMORS OF THIS LETTER ON FRIDAY AFTERNOON.
5 I'M ROBERT BREWER A CANDIDATE FOR THE DISTRICT ATTORNEY FOR
6 THE COUNTY OF SAN DIEGO AND THE PRIMARY ELECTION IS
7 TOMORROW. WE LEARNED ABOUT THIS ON FRIDAY AFTERNOON. THIS
8 MORNING, I REQUESTED AN IMMEDIATE MEETING WITH MR. COLE,
9 HEAD OF THE CRIMINAL DIVISION OF THE U.S. ATTORNEY'S OFFICE
10 WITH THIS FOIA REQUEST. AT THE TIME I MET WITH HIM, WE
11 DIDN'T KNOW THE LETTER EXISTED, IT WAS ONLY IN RUMORS.

12 HE -- I MUST TELL YOU, HE IMMEDIATELY RESPONDED AND MET
13 WITH US IMMEDIATELY WHICH WE COULD NOT APPRECIATE MORE. WE
14 GAVE HIM THIS LETTER, THE FOIA REQUEST. WE TOLD HIM THIS
15 WAS VERY, VERY IMPORTANT. THAT THIS IS AN ISSUE THAT
16 DIRECTLY IMPACTS THE ELECTION AND WE NEED THIS LETTER AND WE
17 NEED TO PRODUCE IT TO THE PUBLIC IF IT EXISTS.

18 WHY THIS IS SO IMPORTANT TO THIS ELECTION IS, AS I
19 BELIEVE YOU KNOW, BUT JUST FOR THE RECORD, MS. DUMANIS WAS
20 ONE OF FOUR CANDIDATES FOR THE MAYORS RACE IN SAN DIEGO.
21 SHE ANNOUNCED HER CANDIDACY IN MARCH OF 2011 AND THE PRIMARY
22 FOR THAT OFFICE WAS HELD IN JUNE OF 2012.

23 SHE LOST THAT RACE ON THE SIXTH OF JUNE; HOWEVER, ON
24 THE 23rd OF JUNE -- STRIKE THAT. 23RD OF MAY 2012, TWO
25 WEEKS BEFORE THE PRIMARY, A PUBLICATION KNOWN AS THE "CITY

1 BEAT" ISSUED A PRESS STORY ABOUT MR. AZANO PROVIDING A
2 \$100,000 TO AN INDEPENDENT EXPENDITURE TO BENEFIT THE
3 CAMPAIGN OF BONNIE DUMANIS FOR MAYOR.

4 WE KNEW ABOUT THE \$100,000 ON THE 23RD OF MAY OF 2012.
5 TWO WEEKS LATER, THE PRIMARY OCCURS. MR. FILNER AND
6 MR. DEMAIO WERE THE TWO FINALISTS. MS. DUMANIS AND NATHAN
7 FLETCHER WERE OUT.

8 WE THEN FIND OUT FOR THE FIRST TIME ON THE 21ST OF
9 JANUARY OF THIS YEAR, THAT THE FEDERAL GOVERNMENT WAS
10 INVESTIGATING MR. AZANO FOR THE SOURCE OF \$200,000 THAT WENT
11 TO THE CAMPAIGN OF MS. DUMANIS FOR MAYOR. 100 TO THE IE
12 FIRST DISCLOSED IN MAY AND ANOTHER HUNDRED THOUSAND DOLLARS
13 THAT WENT TO SUPPORT A SOCIAL MEDIA.

14 WE ALSO KNOW NOW THAT MR. ENCINAS IS ONE OF FOUR
15 DEFENDANTS WHO HAS PLEAD GUILTY TO CHARGES BROUGHT TO THAT
16 INVESTIGATION ANNOUNCED FIRST ON JANUARY 21st TO THE
17 PUBLIC OF 2014. I BELIEVE MR. ENCINAS PLEAD GUILTY ON MARCH
18 18 BUT I'M NOT SURE.

19 IN HIS PLEA AGREEMENT THERE ARE FOUR REFERENCES TO
20 FACTUAL FOUNDATIONS WHICH TOUCH UPON MS. DUMANIS. ONE.
21 THAT AN INDIVIDUAL NAMED MARK CHASE PAID STRAW DONORS TO PAY
22 MONEY TO HER CAMPAIGN. MR. AZANO PAID MONEY TO STRAW DONORS
23 TO HER CAMPAIGN. THREE, THAT A HUNDRED THOUSAND DOLLARS
24 WENT TO AN INDEPENDENT EXPENDITURE THAT MR. AZANO FINANCED
25 AND FOUR, A HUNDRED THOUSAND DOLLARS WENT TO THE SOCIAL

1 MEDIA THAT HE FINANCED.

2 THOSE ARE UNDER OATH IN MR. ENCINA'S PLEA IN THIS
3 COURT. ON JANUARY 24TH, IN A UT SAN DIEGO ARTICLE WHICH I
4 HAVE CITED IN THE LETTER, WHICH I HAVE PROVIDED TO THE
5 COURT, IT STATES, QUOTE, "WHILE SHE," AND SHE IS
6 MS. DUMANIS, "SAID HER RECOLLECTION OF THE DETAILS ARE
7 SKETCHY, DUMANIS INSISTED IN AN INTERVIEW THAT NO REQUESTS
8 OR DEMANDS WERE MADE OF HER BY JOSE SUSUMO AZANO MATSURA
9 DURING THE MEETING THAT OCCURRED EARLY IN THE 2012
10 CAMPAIGN." UNQUOTE.

11 OBVIOUSLY THIS LETTER CONTRADICTS THAT STATEMENT.
12 NUMBER TWO, IT SHOWS ARGUABLY A QUID-PRO-QUO FOR THE
13 \$200,000 PLUS THAT HE PAID TO BENEFIT HER CAMPAIGN. SHE --
14 NOW I LEARNED THE DATE OF THE LETTER BEING SEPTEMBER 28 OF
15 2012. THE PRIMARY WAS ON THE SIXTH OF JUNE AND THE MONEY
16 WAS PROVIDED FROM MR. AZANO TO MS. DUMANIS' CAMPAIGN DURING
17 THE FIRST WEEK OF MAY AND THEN IT WAS REPORTED ON MAY
18 23rd.

19 SO THIS SHOWS ARGUABLY A QUID-PRO-QUO. IT CONTRADICTS
20 HER STATEMENT TO THE UT DIRECTLY. IT SHOWS A MUCH MORE
21 SUBSTANTIAL RELATIONSHIP THAN SHE HAS REPORTED OR HE HAS
22 STATED, AS IS RELATED IN THE OTHER QUOTES THAT I PROVIDED TO
23 THE COURT AND THIS IS SOMETHING THE VOTERS SHOULD KNOW.
24 THIS ELECTION IS TOMORROW AND SHE HAS IGNORED ALL QUESTIONS
25 ABOUT HER RELATIONSHIP WITH MR. AZANO. SHE'S NEVER ANSWERED

1 THE DIRECT QUESTIONS AND THIS LETTER IS ABSOLUTELY CRITICAL
2 TO THIS ELECTION. AND I UNDERSTAND THE GOVERNMENT'S VIEW
3 THAT THEY DON'T HAVE AN OBLIGATION TO THE ELECTORATE WHEN
4 THEY COME INTO CONTACT WITH INFORMATION THAT CONTRADICTS A
5 STATEMENT BY A CANDIDATE. WHILE I DID NOT KNOW IT EXISTED
6 AND THEY CERTAINLY DIDN'T HAVE THE OBLIGATION TO TELL ME,
7 NOW I KNOW IT EXISTS. AND THIS ELECTION TOMORROW, THE
8 PEOPLE WHO ARE GOING TO VOTE FOR DISTRICT ATTORNEY WHICH IS
9 A LAW ENFORCEMENT JOB, WHICH GOES TO INTEGRITY, WHICH GOES
10 TO EVERYTHING THAT WE STAND FOR AND THIS INDIVIDUAL WHO IS
11 THE INCUMBANT DISTRICT ATTORNEY RECEIVED \$200,000 ILLEGALLY.

12 SHE HASN'T BEEN CHARGED YET, BUT I'M JUST TELLING YOU
13 SHE'S IN THE MIDDLE OF THIS INVESTIGATION. THERE IS NO
14 MR. ENCINAS MADE SURE OF THAT WHEN HE GAVE FOUR DIFFERENT
15 POINTS TO HIS PLEA AGREEMENT OF MONEY GOING TO HER CAMPAIGN.
16 NOW THAT SHE'S DENIED ANY RELATIONSHIP WITH MR. AZANO. SHE
17 DENIED HE EVER ASKED HER TO DO ANYTHING. WE NOW KNOW THAT
18 SHE WROTE A LETTER IN SUPPORT OF HIS SON TO USD. THAT
19 LETTER AND I REQUEST YOU AGREE WITH MR. JOHNSON'S REQUEST,
20 THAT THE PROTECTIVE ORDER BE RELAXED FOR ONE DOCUMENT, IT BE
21 RELAXED IMMEDIATELY AND THAT THIS DOCUMENT BE PROVIDED TO US
22 FORTHWITH.

23 WE'RE DOWN NOW TO HOURS BEFORE THIS ELECTION AND IT
24 WILL BE UP TO US AS TO HOW THIS GETS DISSEMINATED IF WE CAN
25 DO IT. TOMORROW THIS ELECTION CAN BE OVER. IF THE

1 INCUMBANT DISTRICT ATTORNEY RECEIVES 50 PERCENT PLUS ONE,
2 SHE'LL BE THE DISTRICT ATTORNEY FOR THE NEXT FOUR YEARS.
3 THIS IS VERY IMPORTANT. THANK YOU.

4 AND I WANT TO ALSO THANK THE COURT FOR HEARING THIS ON
5 ZERO NOTICE.

6 THE COURT: OF COURSE, I APPRECIATE CERTAINLY WHY
7 IT'S IMPORTANT FROM YOUR STANDPOINT. I GUESS THE CONCERN I
8 HAVE IS WHAT EVERYBODY, I GUESS IN THE ROOM HAS, IS GETTING
9 INVOLVED AT THE 11th HOUR IN SOME ELECTION. SO I'M NOT
10 LOOKING AT IT FROM THAT STANDPOINT. I DON'T THINK I SHOULD
11 LOOK AT IT FROM THAT STANDPOINT BUT WHAT I'M HEARING IS, I
12 THINK WHAT I NEED TO THINK ABOUT IS THE PROTECTIVE ORDER
13 AND WE HAVE ONE PARTY TO THE PROTECTIVE ORDER SAYING,
14 "OKAY", AS I UNDERSTAND IT. "IT'S OKAY WITH ME" --

15 MR. JOHNSON: THAT'S CORRECT.

16 THE COURT: IF IT BE MODIFIED IN THIS MINOR
17 RESPECT AS TO THIS ONE DOCUMENT AND WHAT I MULL OVER IN MY
18 OWN MIND IS WHAT IF ANYBODY CAME IN HERE AND SAID WE HAVE
19 THIS PROTECTIVE ORDER, CAME IN HERE AT ANY TIME IN ANY CASE
20 AND SAID WE HAVE THIS PROTECTIVE ORDER, AT LEAST ONE SIDE
21 OF IT, I HAVEN'T HEARD FROM THE OTHER SIDE, IS SAYING OKAY
22 WITH ME IF YOU MODIFY IT FOR THE PURPOSES OF ONE DOCUMENT.

23 OFTEN TIMES, AS YOU KNOW, WE HEAR ARGUMENT ABOUT
24 PROTECTIVE ORDERS THAT THEY SHOULD NOT HAVE BEEN GRANTED IN
25 THE FIRST PLACE OR THEY SHOULD MODIFIED, TYPICALLY, WE HAVE

1 GUYLYN CUMMINS OR SOMEBODY FROM THE PRESS COMING IN HERE AND
2 TELLING ME I SHOULDN'T HAVE SIGNED IT IN THE FIRST PLACE.
3 SO WE'RE USED TO MODIFYING THESE AND ALLOWING SOME DOCUMENTS
4 TO BE DISCLOSED UPON A PROPER SHOWING. I GUESS WHAT I'M
5 SAYING, I DON'T THINK IT'S APPROPRIATE FOR ME TO LOOK AT IT
6 IN TERMS OF AN ELECTION, RIGHT? OR SOMETHING THAT IS GOING
7 HAPPEN TOMORROW. I DON'T THINK SOME JUDGE SHOULD GET
8 INVOLVED IN DOING SOMETHING THAT MAY OR MAY NOT AFFECT AN
9 ELECTION. SO I'M LOOKING AT IT JUST LIKE IN ANY CASE.
10 SOMEBODY COMES IN HERE AND THERE IS A PROTECTIVE ORDER AND
11 SOMEBODY SAYS, "HEY, IT'S OKAY WITH ME IF YOU RELEASE ONE OF
12 THESE DOCUMENTS."

13 SO I'M THINKING OFF THE TOP OF MY HEAD NOW BECAUSE THIS
14 IS NEW TO ME BUT THAT'S MY CURRENT FRAME OF MIND THAT
15 SOMEBODY MAY TELL ME THAT'S WRONG.

16 MR. BREWER: YOUR HONOR, JUST IF I CAN THANK YOU
17 FOR YOUR THOUGHTS. IF I CAN JUST EXPAND MY THOUGHTS ON
18 THAT. I THINK YOU HAVE TO LOOK AT THE DOCUMENT ITSELF.
19 WE'RE NOT ASKING FOR GRAND JURY TESTIMONY. WE'RE NOT
20 ASKING FOR SOME PROTECTED DOCUMENT, FOR SOME PRIVILEGED
21 DOCUMENT. WE'RE ASKING FOR A LETTER WHICH WAS WRITTEN BY A
22 NON PARTY TO A NON PARTY ABOUT A NON PARTY. IT'S ARGUABLE
23 IT SHOULD NOT EVEN BE COVERED BY THE PROTECTIVE ORDER.

24 THE COURT: I THINK MAYBE THAT'S WHERE I WAS
25 GOING. MAYBE THAT'S WHERE THIS DEBATE SHOULD FOCUS. NOT

1 WHETHER IT'S GOING TO HAVE SOME IMPACT ON SOME ELECTION.

2 MR. BREWER: WELL, I WANT YOU TO KNOW WHY I'M HERE
3 AND WHY WE'RE HEARING IT WITHOUT FILED DOCUMENTS AND IN AN
4 EX PARTE, WHICH I KNOW THE FEDERAL COURT DOESN'T EVEN
5 ACKNOWLEDGE EXISTS, THAT'S WHY I'M JUSTIFYING WHY I AM
6 HERE, I APPRECIATE IT VERY MUCH. WHEN YOU LOOK AT THE
7 SUBSTANCE, WHEN YOU LOOK AT THIS LETTER IN RELATIONSHIP TO
8 YOUR CASE, WHEN YOU LOOK AT THIS LETTER IN RELATIONSHIP FOR
9 THE PURPOSE OF A PROTECTIVE ORDER, THIS IS A RELEVANT PIECE
10 OF DOCUMENT TO YOUR CASE. IT'S NOT EVEN WRITTEN BY A
11 DEFENDANT OR A PARTY OR PROBABLY AT THIS TIME, A WITNESS
12 AND IT'S WRITTEN TO USD. IT HAS NOTHING TO DO WITH THIS
13 AND IT'S WRITTEN ABOUT SOMEONE WHO ISN'T A PARTY TO THIS
14 CASE.

15 SO WHEN YOU TAKE A LOOK AT ALL THAT, I WOULD THINK IT
16 WOULD BE APPROPRIATE FOR YOU TO SAY THIS ONE DOCUMENT CAN BE
17 EXCISED FROM THIS PROTECTIVE ORDER AND PROVIDED. I'VE GIVEN
18 YOU THE CONTEXT OF WHY I AM HERE.

19 THE COURT: NO. I KNOW WHY YOU ARE HERE AND YOU
20 SEE AS GOOD LAWYERS DO, THEY COME AROUND TO TRY TO PUT THE
21 ARGUMENT IN THE TERMS THAT THE JUDGE CAN UNDERSTAND.
22 RIGHT. I MEAN I KNOW WHY YOU ARE HERE, OBVIOUSLY.

23 SO MR. COLE, WE HAVE HEARD FROM ONE SIDE HERE. HE SAYS
24 HE DOESN'T CARE. I DON'T MEAN TO SAY HE DOESN'T CARE. HE'S
25 OKAY MODIFYING THE PROTECTIVE ORDER WITH RESPECT TO THIS ONE

1 DOCUMENT. SO WHAT'S THE GOVERNMENT'S POSITION?

2 MR. COLE: YOUR HONOR, WE OPPOSE MODIFYING THE
3 PROTECTIVE ORDER AND WE OPPOSE IT FOR THE FOLLOWING
4 REASONS:

5 LIKE YOUR HONOR MENTIONED, IT REALLY IS THE POSTURE OF
6 YOU COME TO THE CASE THINKING ABOUT WHAT MAY OR MAY NOT
7 HAPPEN TOMORROW, NEITHER DO WE. AS THE PROSECUTION, U.S.
8 ATTORNEY'S OFFICE, OUR DESIRE IS SIMPLY TO CONDUCT THIS
9 INVESTIGATION, THE PROSECUTION, CONSISTENT WITH OUR
10 OBLIGATIONS AND OUR COMMON PRACTICE, NOT MAKE EXCEPTIONS
11 BECAUSE OF AN IMPACT IT MAY OR MAY NOT HAVE OUTSIDE THE
12 COURTROOM OR OUTSIDE THIS CASE AND THEREFORE, WE ARE SIMPLY
13 FOLLOWING WHAT IS OUR VERY STANDARD PRACTICE. WHEN WE
14 OBTAIN DOCUMENTS, NOW AGAIN, THIS OF COURSE IS ALL JUST
15 ABOUT WHETHER TO MODIFY A PROTECTIVE ORDER WITH RESPECT TO A
16 DOCUMENT THAT WE OBTAINED IN OUR INVESTIGATION AND PROVIDED
17 IN DISCOVERY.

18 WE'RE NOT SEEKING TO CONTROL ANY POSSIBLE SOURCE OF
19 THIS DOCUMENT, IF THERE ARE THIRD PARTIES OUT IN THE WORLD
20 WHO HAVE THIS DOCUMENT THEMSELVES; OBVIOUSLY, WE HAVE NO
21 CONTROL OVER THAT. BUT TO THE EXTENT THIS IS DIRECTED AT
22 THE DOCUMENT WE OBTAINED THROUGH OUR INVESTIGATION, OUR
23 POSITION IS CONSISTENT WITH WHAT IT IS USUALLY AND
24 TYPICALLY, WHICH IS, NO. IT'S UNDER PROTECTIVE ORDER. IT
25 WAS OBTAINED IN THE COURSE OF ONGOING INVESTIGATION. IT

1 INVOLVES THIRD PARTIES. WE ARE NOT IN A POSITION OF
2 RELEASING TO THE PUBLIC A DOCUMENT THAT MAY OR MAY NOT CAST
3 NEGATIVELY ON A PERSON WHO IS NOT A PARTY TO THE LITIGATION,
4 THAT WE ARE NOT PROSECUTING, JUST BECAUSE THE PUBLIC WOULD
5 LOVE TO SEE WHAT WE HAVE. THAT CAN BECOME PROBLEMATIC IN
6 ANY NUMBER OF CASES WHERE THE PUBLIC MIGHT WANT TO SEE WHAT
7 WE HAVE ON A NUMBER OF PEOPLE WHO WE ARE INVESTIGATING OR
8 NOT INVESTIGATING.

9 WE'RE TRYING TO TREAT THIS MATTER FAIRLY AND
10 CONSISTENTLY WITH THE WAY WE TRY TO PROTECT THIRD PARTIES'
11 INTERESTS AND PROTECT THE INTEGRITY OF THE INVESTIGATION AND
12 TREAT THIS DOCUMENT AND THIS INVESTIGATION THE SAME AS ANY
13 OTHER AND THEREFORE, THIS WAS OBTAINED BY US IN OUR
14 INVESTIGATION. THERE WAS A PROTECTIVE ORDER AGREED AND
15 ENTERED BY THE COURT AND WE BELIEVE IT OUGHT TO STAND AS TO
16 THIS DOCUMENT.

17 THE COURT: YOU KNOW THE SPECIFIC DOCUMENT HE'S
18 TALKING ABOUT? YOU HAVE SEEN IT?

19 MR. COLE: I DO.

20 THE COURT: SO I GATHER FROM WHAT YOU SAID, THAT
21 THERE'S NOTHING REALLY SPECIAL, THAT'S NOT A GOOD TERM, I
22 GUESS, ABOUT THIS DOCUMENT IN TERMS OF CONFIDENTIALITY OR
23 LAWYER ATTORNEY/CLIENT PRIVILEGE. IT IS JUST ONE OF THE
24 MANY DOCUMENTS THAT WERE OBTAINED BY YOUR OFFICE DURING THE
25 PROCESS, THE PROSECUTION AND/OR SUBPOENA AND/OR DISCOVERY

1 PROCESS, TURNED IT OVER FOR THE DEFENSE TO THE DEFENSE AND
2 YOU WOULD MAKE THE SAME ARGUMENT WITH REGARD TO ANY
3 DOCUMENT THAT YOU HAVE TURNED OVER TO THE DEFENSE. YOU
4 WOULD SAY THEY'RE ALL SUBJECT TO THE PROTECTIVE ORDER AND
5 THAT'S IT.

6 MR. COLE: RIGHT. WE'RE NOT SINGLING THIS
7 DOCUMENT OUT FOR ANY PARTICULAR PRIVILEGE.

8 I WILL TELL YOU, YOUR HONOR, THIS DEVELOPED RELATIVELY
9 QUICKLY THIS MORNING AND I HAVE NOT HAD A CHANCE, I WISH I
10 HAD BUT I HAVE NOT HAD A CHANCE TO UNRAVEL AND REMIND MYSELF
11 IN MY OWN MIND HOW WE OBTAINED IT FIRST. THE ONE WE TURNED
12 OVER TO HIM, WHAT PROCESS DID WE USE TO GET IT? I CAN'T
13 RECALL RIGHT NOW AND SAY WITH CERTAINLY. I SUPPOSE IT DOES
14 NOT MATTER SO MUCH BECAUSE THE NATURE OF THE DOCUMENT, IS
15 WHAT IT'S REPRESENTED TO BE. IT'S A LETTER FROM A THIRD
16 PARTY TO ANOTHER THIRD PARTY. IT'S NOT AN ATTORNEY CLIENT
17 PRIVILEGE. IT'S NOT A TRANSCRIPT OF A GRAND JURY PROCEEDING
18 SO IN THAT SENSE, IT DOESN'T FOLLOW A REAL BRIGHT LINE
19 CATEGORY OF THINGS THAT STATUTES WOULD PROHIBIT ME FROM
20 TURNING OVER.

21 BUT AGAIN, IT IS CERTAINLY NOT THE WAY WE FEEL WE
22 SHOULD HANDLE DOCUMENTS OBTAINED DURING THE COURSE OF THE
23 INVESTIGATION. WE WOULD JUST SIMPLY RELEASE THEM TO THE
24 PUBLIC BECAUSE THEY MAY BE OF INTEREST GENERALLY TO SOMEONE
25 OUT THERE IN THE PUBLIC AND FOR THAT REASON, WE ARE TREATING

1 THIS SIMPLY THE SAME AS WE WOULD ANY OTHER CASE. JUST
2 ASKING THE PROTECTIVE ORDER BE HELD IN EFFECT. THERE IS A
3 FOIA REQUEST. IT CERTAINLY WON'T DO MR. BREWER ANY GOOD IN
4 THE TIMELINE. WE SENT IT OFF AS FAST AS WE COULD TO OUR
5 FOIA OFFICE. THE WAYS THOSE ARE HANDLED IS THERE IS AN
6 OFFICE IN DC THAT CLEARS FOIA REQUESTS. WE SENT IT OFF
7 IMMEDIATELY TO THEM. BUT CERTAINLY THERE WILL BE NO WAY
8 THAT THE FOIA PROCESS UNFOLDS, EVEN ON AN EXPEDITED BASIS,
9 IN TIME BEFORE TOMORROW. BUT THERE IS A FOIA REQUEST THAT
10 HAS BEEN SENT ON. THAT PROCESS WOULD UNFOLD WHETHER THE
11 PUBLIC HAS A RIGHT TO THE DOCUMENT OR NOT. THAT WILL BE
12 DETERMINED BY THE FOIA OFFICE IN CONSULTATION WITH OUR
13 OFFICE ONCE THEY PROCESS IT. AND IF THE PUBLIC HAS A RIGHT
14 UNDER FOIA, CERTAINLY THE GOVERNMENT WILL BE TURNING IT OVER
15 UNDER THAT PROCESS BUT WE DON'T FEEL COMFORTABLE SIMPLY
16 AGREEING TO A MODIFICATION OF THE PROTECTIVE ORDER.

17 THE COURT: WHAT WOULD YOU EXPECT TO SEE IN THE
18 NORMAL COURSE LIKE THIS IF SOMEBODY COMES IN ON A REQUEST
19 JUST LIKE THIS, THEY WANT TO YOU AGREE AND MODIFY THE
20 PROTECTIVE ORDER TO EXEMPT A PARTICULAR DOCUMENT. YOU
21 WOULD EXPECT TO SEE WHAT? A WRITTEN MOTION OR DOES IT
22 HAPPEN FROM TIME TO TIME IN YOUR OFFICE, WHEN SOMEBODY
23 COMES IN AND SAYS, I WANT TO MODIFY THE PROTECTIVE ORDER SO
24 ONE OR TWO DOCUMENTS CAN BE RELEASED?

25 MR. COLE: I CAN SPEAK FROM MY EXPERIENCE AND WHAT

1 I HAVE SEEN, YOUR HONOR, IS TYPICALLY A MODIFICATION OF THE
2 PROTECTIVE ORDER COMES UP IN THE CONTEXT OF US FINDING OUT
3 DOWN THE ROAD THE ORDER WAS TOO RESTRICTIVE FOR COUNSEL TO
4 ADEQUATELY PREPARE FOR TRIAL. AND SOMEHOW A PROVISION FOR
5 THE PLAYER BECAME ONEROUS TO HIS ABILITY TO CONSULT WITH
6 IT'S INVESTIGATORS OR TO THE CONSULTANTS OR TO GET THE
7 DOCUMENT INTO MCC OR SOMETHING THAT IS IMPEDING THE ABILITY
8 TO USE THE DOCUMENT FOR THE PURPOSES IT WAS RELEASED.

9 WE DO MAKE MODIFICATIONS OR WE AGREE, I SHOULD SAY, TO
10 RECOMMEND MODIFICATIONS IN THOSE CIRCUMSTANCES BECAUSE
11 PROTECTIVE ORDERS SHOULD NOT STOP THE DEFENSE FROM PREPARING
12 FOR TRIAL OR INVESTIGATING A DEFENSE. BUT I DO NOT HAVE ANY
13 PERSONAL EXPERIENCE WITH SOMEONE SEEKING A MODIFICATION OF A
14 PROTECTIVE ORDER FOR THIS TYPE OF A PURPOSE. WHICH IS
15 SIMPLY TO NOT AID IN THE PREPARATION OF A CASE, BUT SIMPLY
16 TO RELEASE IT TO THE PUBLIC. I CAN'T SAY THIS HAS NEVER
17 HAPPENED. I HAVE NOT HAD THAT EXPERIENCE PERSONALLY.

18 THE COURT: MR. BREWER, I GUESS TO MAKE IT CLEAR,
19 I ASSUME YOU DON'T KNOW WHAT THIS LETTER SAYS?

20 MR. BREWER: CORRECT.

21 THE COURT: HOW IS IT THAT YOU EVEN LEARNED OF ITS
22 EXISTENCE?

23 MR. BREWER: IT WAS A RUMOR.

24 THE COURT: AND --

25 MR. BREWER: AND I CAN'T GO INTO ANY MORE DETAIL.

1 LET'S LISTEN TO WHAT MR. COLE SAID. THERE IS NO ALLEGATION
2 THAT WE'VE BEEN SITTING ON THIS INFORMATION. THERE IS NO
3 ALLEGATION WE HAVE WAITED TO THE LAST MINUTE ON PURPOSE.
4 OBVIOUSLY, WE WOULD NEVER DO THAT GIVEN THE CIRCUMSTANCES.
5 THERE IS NO THIRD PARTY INTEREST THAT HE'S TRYING TO
6 PROTECT. THERE'S NO PRIVILEGE. THERE IS NO PRIVACY ISSUE.
7 THERE IS NO HEALTH RECORD. THERE IS NO GRAND JURY INVOLVED
8 BUT TO LISTEN TO EVERYBODY SAY, "WELL, WE CAN'T PUT THIS IN
9 THE CONTEXT OF WHAT'S HAPPENING OUTSIDE THIS COURTROOM," IS
10 VERY TROUBLING TO ME. I UNDERSTAND WE CAN'T COME IN HERE
11 AND SAY, "WE HAVE TO RELEASE THIS FOR THE ELECTION AND IT
12 COULD BE ONE OF THESE CATEGORIES," AND YOU SAY, "WELL, WE
13 JUST CAN'T DO THAT BECAUSE IT'S PRIVILEGED." I UNDERSTAND
14 THAT. THIS IS WHAT SOUNDS LIKE A TOTALLY IRRELEVANT
15 DOCUMENT TO THIS CASE.

16 I HAVEN'T HEARD THE DEFENDANT SAY IT'S RELEVANT TO HIS
17 DEFENSE AND I HAVEN'T HEARD THE GOVERNMENT SAY IT'S RELEVANT
18 TO THEIR CASE.

19 WHETHER IT'S EVEN ADMITTED INTO EVIDENCE IN THIS CASE
20 DOWN THE ROAD, WE'LL NEVER KNOW. BUT FROM THE SOUND OF WHAT
21 I HAVE HEARD, IT PROBABLY WON'T BE. IT'S PROBABLY ONE OF
22 THOSE DOCUMENTS THAT WAS INCLUDED JUST BECAUSE IT WAS
23 SOMETHING THE GOVERNMENT SEES. NOW WHEN YOU LOOK AT IT IN
24 THE CONTEXT OF WHAT THE REST OF THE WORLD IS THINKING ABOUT
25 THIS DOCUMENT, ITS PRETTY IMPORTANT.

1 TO KNOW THIS DOCUMENT EXISTS WHEN IT DOESN'T FIT INTO
2 ANY OF THESE CATEGORIES OF PRIVILEGE, OR PARTY INTERESTS OR
3 PROTECTING THE STATUS OF THE INVESTIGATION, THEN I THINK WE
4 HAVE TO LOOK TO WHAT IS THE CONTEXT OF THE REQUEST AND THE
5 CONTEXT OF THIS REQUEST IS HUGE.

6 THIS IS A VERY IMPORTANT DOCUMENT TO A VERY IMPORTANT
7 ELECTION WHICH OCCURS TOMORROW. I DON'T THINK WE CAN SHUT
8 OURSELF OUT. I THINK THIS BECOMES RELEVANT WHEN YOU LOOK AT
9 ALL THE OTHER CATEGORIES THAT IT DOESN'T TOUCH ON. THIS IS
10 A TOTALLY IRRELEVANT PIECE OF EVIDENCE TO THIS
11 INVESTIGATION.

12 MR. COLE: I DON'T KNOW THAT I EVER SAID THAT.

13 MR. BREWER: YOU DIDN'T SAY THE OPPOSITE, SO
14 THEREFORE --

15 MR. COLE: I AM NOT IN ANY POSITION TO TALK IN
16 THIS HEARING TO WHAT MAY OR MAY NOT BE RELEVANT TO OUR
17 THINKING IN THIS ONGOING INVESTIGATION. THE INVESTIGATION
18 CONTINUES AND OUR VIEW OF THAT LETTER OR WHAT RELEVANCE IT
19 MAY OR MAY NOT HAVE IS SOMETHING THAT I HAVE NO, I DON'T
20 THINK I HAVE ANY OBLIGATION TO DISCUSS IN OPEN COURT NOR DO
21 I INTEND TO. I WILL SAY THAT TO THE EXTENT THERE COULD BE
22 SOMEONE WHO IS INTERESTED IN THAT LETTER, IT MIGHT BE THE
23 PERSON ABOUT WHOM IT WAS WRITTEN. THERE IS A THIRD PARTY
24 OUT THERE AND IT WAS REFERENCED EARLIER BY MR. JOHNSON, THE
25 THIRD PARTY HAVING A COPY PERHAPS OF THE SAME LETTER.

1 AND FOR US TO PUT OUT A COPY OF A LETTER THAT WE
2 RECEIVED THROUGH LAWFUL PROCESS OF ONE KIND OR ANOTHER, I
3 DON'T RECALL HOW WE GOT IT RIGHT NOW. I APOLOGIZE. I
4 COULDN'T FIND THAT OUT THIS MORNING. IT DOES HAVE AN IMPACT
5 ON PEOPLE. I DON'T KNOW IF THAT PERSON WOULD CARE OR NOT
6 CARE. I DON'T KNOW IF THAT PERSON WOULD FEEL EMBARRASSED OR
7 NOT EMBARRASSED BUT WE IN OUR OFFICE SO OFTEN COME ACROSS
8 DOCUMENTS THAT INVOLVE THIRD PARTIES WHO HAVEN'T BEEN
9 CHARGED THAT MAY OR MAY NOT EMBARRASS THEM AND IT IS JUST
10 NOT OUR PRACTICE TO -- I KNOW MR. BREWER AND I UNDERSTAND
11 HIS POSITION. I'M NOT IN NO WAY INTENDING TO CRITICIZE IT.
12 I KNOW HE FEELS IT WOULD MAYBE REFLECT IN OUR OFFICE, OUR
13 JUDGMENT AND INTEGRITY NOT GETTING THE LETTER AT THIS
14 JUNCTURE. I THINK IN THE LONG VIEW IS IT COULD REFLECT MORE
15 IF WE DID AND THAT WE TREAT CASES THE SAME AND TREAT THIRD
16 PARTIES THE SAME.

17 THE COURT: MR. BREWER'S POSITION, I THINK IS
18 BASED ON HIS BELIEF THAT THIS DOCUMENT WILL DIRECTLY
19 CONTRADICT THE STATEMENT QUOTED BY MS. DUMANIS IN THE
20 JANUARY 24TH, 2013 ARTICLE?

21 MR. BREWER: THAT AND THE FACT THAT IT SHOWS MORE
22 OF A RELATIONSHIP SHE'S ADMITTED TO AND IT SHOWS ARGUABLY A
23 QUID PRO QUO FOR SOME OF THE MONEY SHE RECEIVED IN HER RACE
24 AND A LOT OF THE ISSUES.

25 THE COURT: THE STATEMENT YOU QUOTED OR REFERENCED

1 FROM THE PAPER INDICATED THAT SHE INSISTED THAT NO REQUESTS
2 OR DEMANDS WERE MADE OF HER BY MR. AZANO MATSURA DURING THE
3 MEETING THAT OCCURRED IN THE 2012 CAMPAIGN.

4 MR. BREWER: YES.

5 THE COURT: I'M NOT SURE, IT SEEMS TO ME THERE'S A
6 LOT OF SPECULATION GOING IN THERE TO EVEN CONNECT OR TIE UP
7 THE LETTER YOU ARE TALKING ABOUT, AS I UNDERSTAND IT, IS A
8 LETTER OF RECOMMENDATION, I'M PRESUMING WRITTEN FOR SOME
9 RELATIVE OF THE DEFENDANT?

10 MR. BREWER: YES.

11 THE COURT: THAT'S YOU'RE UNDERSTANDING? THAT'S
12 WHAT THAT RUMOR IS, RIGHT?

13 MR. BREWER: YES.

14 THE COURT: SO LET'S SAY THAT IS THE FACT. I'M
15 NOT SEEING HOW THAT DIRECTLY CONTRADICTS THIS PARTICULAR
16 STATEMENT. BUT I GUESS MORE GENERALLY, YOUR THOUGHT IS
17 THAT IT'S EVIDENCE OF SOME ADDITIONAL RELATIONSHIP PERHAPS
18 QUID-PRO-QUO, AS YOU SAY THAT MAY BE WASN'T PROPERLY
19 DISCLOSED.

20 MR. BREWER: EXACTLY. EXACTLY. WHICH IS VERY
21 RELEVANT TO THIS ELECTION.

22 THE COURT: I AGREE. I SHOULD NOT SAY I AGREE, I
23 CAN UNDERSTAND YOUR POSITION. I THINK IT'S SOMEWHAT
24 TANGENTIAL OR SOMEWHAT SPECULATIVE, I'M SPEAKING BLINDLY
25 ABOUT THE LETTER BECAUSE I HAVEN'T SEEN IT.

1 MR. BREWER: NEITHER HAVE I.

2 THE COURT: I'M ASSUMING, AS YOU HAVE, BASED ON
3 THE RUMOR SIMPLY A LETTER RECOMMENDING SOMEONE TO COLLEGE.

4 MR. BREWER: A LETTER OF RECOMMENDATION IS ALL WE
5 HAVE EVER KNOWN.

6 THE COURT: ALL YOU HAVE EVER KNOWN.

7 MR. BREWER: AND AGAIN, IT GOES TO HER KNOWLEDGE
8 OF THE FAMILY. IF YOU ARE GOING TO WRITE A RECOMMENDATION
9 LETTER, YOU ARE GOING TO KNOW SOMEONE, IT SHOWS A
10 RELATIONSHIP, SHE HAS CLEARLY INDICATED IT DOESN'T EXIST.
11 IF YOU WRITE A LETTER OF RECOMMENDATION, YOU ARE GOING TO
12 KNOW THAT PERSON. YOU ARE GOING TO KNOW SOMETHING ABOUT
13 THE INDIVIDUAL YOU ARE WRITING ABOUT.

14 THE COURT: WELL YOU WOULD HOPE.

15 MR. BREWER: YOU WOULD HOPE.

16 THE COURT: I AM A OBVIOUSLY HAVING SOME
17 DIFFICULTY WITH THIS REQUEST. I AM JUST REALLY CONCERNED
18 ABOUT EITHER THE REALITY OR EVEN THE APPEARANCE OF THIS
19 COURT GETTING INVOLVED IN SOME ELECTION, DOING SOMETHING ON
20 THE NIGHT BEFORE AN ELECTION THAT MIGHT HAVE SOME POLITICAL
21 IMPACT ON THE ELECTION.

22 OBVIOUSLY THAT'S WHY YOU'RE HERE BECAUSE YOU THINK IT
23 WOULD, YOU WOULD NOT BE HERE IF IT WEREN'T FOR THAT. SO I'M
24 BEING ASKED NOW TO ORDER THE GOVERNMENT HERE ESSENTIALLY TO
25 TURN OVER OR MAYBE PUTTING IT ANOTHER WAY, I'M BEING ASKED

1 TO AMEND A PROTECTIVE ORDER AND SAME THING, I GUESS, TO
2 ORDER THE GOVERNMENT TO TURN THIS DOCUMENT OVER, OVER THEIR
3 OBJECTION. THE OBJECTION IS WELL TAKEN. I UNDERSTAND THE
4 REASON WHY THEY DON'T WANT TO DO IT.

5 THE FACT THAT ONE PARTY SAYS IT'S OKAY. THAT DOESN'T
6 SOLVE THE PROBLEM. SO I'M GOING TO HAVE TO TURN DOWN THE
7 REQUEST BASED ON THIS RECORD AND I APPRECIATE YOUR CONCERN.
8 I APPRECIATE THE REASONS FOR THE REQUEST. BUT IT JUST SEEMS
9 TO ME THAT A COURT, THIS COURT BASED ON THIS RECORD, SHOULD
10 NOT GET INVOLVED IN THIS REQUEST AT THIS TIME.

11 MR. BREWER: ALL RIGHT. THANK YOU. THANK YOU FOR
12 HEARING US. I REALLY APPRECIATE IT.

13 MR. COLE: THANK YOU, YOUR HONOR.

14 THE COURT: ANYTHING ELSE WE CAN DO TODAY? ALL
15 RIGHT. THANKS.

16 (END OF PROCEEDING)

17 C-E-R-T-I-F-I-C-A-T-E

18 I, ELIZABETH M. CESENA, CSR 12266, AN OFFICIAL
19 REPORTER OF THE UNITED STATES DISTRICT COURT, SOUTHERN
20 DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT I REPORTED IN
21 SHORTHAND THE PROCEEDINGS, TO THE BEST OF MY ABILITY, IN THE
22 ABOVE-ENTITLED CAUSE AND THAT THE FOREGOING TRANSCRIPT IS A
23 FULL, TRUE AND CORRECT TRANSCRIPT OF PROCEEDINGS HELD ON
24 JUNE 2, 2014.

25 SAN DIEGO, CALIFORNIA, DATED THIS 2ND DAY OF JUNE, 2014

/S/ ELIZABETH CESENA

ELIZABETH M. CESENA, CSR 12266
OFFICIAL COURT REPORTER