

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

CHRISTOPHER M. RUSSELL, ET AL .

vs. . 08-CV-2468-DKC

ERIN KROWNE, ET AL . GREENBELT, MARYLAND

. NOVEMBER 11, 2008

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE DEBORAH K. CHASANOW
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S :

FOR THE PLAINTIFFS: GARY E. MASON, ESQ.
MICHAEL L. BRAUNSTEIN, ESQ.

FOR THE DEFENDANTS: JULIE TURNER, ESQ.

Court Reporter: Sharon O'Neill, RMR
Official Court Reporter
United States District Court
6500 Cherrywood Lane
Greenbelt, Maryland 20770
301-344-3227

1 THE COURT: Good afternoon.

2 VOICES: Good afternoon, Your Honor.

3 THE COURT: Please be seated.

4 THE CLERK: The matter now pending before the Court
5 is DKC 2008-2468, Christopher M. Russel, et al vs. Erin Krowne,
6 et al. The matter now comes before the Court for a motions
7 hearing. Counsel, please identify yourselves for the record.

8 MR. BRAUNSTEIN: Michael Braunstein from the law firm
9 of Kantrowitz, Goldhamer & Graifman, along with Gary Mason from
10 The Mason Law firm, for the Plaintiffs.

11 MS. TURNER: Julie Turner from Turner Boyd LLP,
12 formerly The Turner Law Firm until last Saturday, and we're
13 making a special appearance on behalf of Defendants.

14 THE COURT: Thanks for your patience with me. It's
15 been a typical Monday where scheduling didn't go as planned,
16 but I don't think I have anything else to interfere today, so
17 you have any undivided attention.

18 We are here, Plaintiff filed the complaint and I
19 believe the parties have agreed to a stipulation of extension
20 of time for the Defendants to respond formally, but Plaintiffs
21 also filed a motion, I guess it was called for a Temporary
22 Restraining Order, at least in the Notice, but the motion is
23 really for a Preliminary injunction.

24 In any event, there has been notice to the
25 Defendants. I have received the written opposition and a

1 reply. I think there is, perhaps, some requests for further
2 briefing, but because we are here now, I don't think any of
3 that really is all that significant. That is, I can hear fully
4 from everybody here and everyone will have an opportunity to
5 say what they need.

6 Let me begin with a preliminary matter. The
7 Defendants had requested some sort of opportunity to
8 participate by phone. I do not believe they are on the phone.
9 Is that necessary?

10 MS. TURNER: No, Your Honor. Actually what we
11 requested was to be excused from the hearing all together, but
12 we're here and there will be nobody participating by phone.

13 THE COURT: All right. I have read the papers,
14 looked at the case law, done some thinking about everything
15 and, Mr. Braunstein, the requested relief seems to be rather
16 general, and it's somewhat problematic, I suppose, to me in
17 that sense.

18 I mean, you generally are asking me to sign an order
19 prohibiting them from disseminating false or misleading
20 statements, without me telling them, if I could, what that
21 might be, and that's really quite extraordinary to me.

22 It seems that ordinarily if I'm requested to do
23 something in an emergency or a preliminary injunction type of
24 situation, it needs to be extremely pointed, limited and
25 justified. So I'll tell you that I'm not -- I'm certainly not

1 going to enter any such order as has been drafted, and I would
2 invite you to focus any request for preliminary injunctive
3 relief quite narrowly and tell me why you think any such relief
4 would be justified.

5 MR. BRAUNSTEIN: Certainly, Your Honor. As the
6 Supreme Court stated in *Gertz vs. Robert Welch*, 418 U.S. 323,
7 and Your Honor noted in *Biospherics, Inc. vs. Forbes, Inc.* 989
8 F. Sup 748, there is no constitutional value in false
9 statements of fact.

10 This case is about the defendant publishing a false
11 and defamatory statements of fact after the plaintiffs refused
12 to advertise on their website.

13 That's why plaintiffs commenced this action and
14 that's why we are here seeking to have these matters enjoined
15 pending a resolution of the case. While I believe my motion
16 papers specified each action that we believe is false and
17 defamatory, and a statement of fact that should be enjoined, I
18 do concede in reviewing the motion papers that the order
19 proposed is overly general. That's certainly a matter that can
20 be resolved with my submission of another order.

21 However, it is the statement of facts that we do set
22 forth in both our moving and reply papers that are false and
23 defamatory and interfere with plaintiffs' business that we are
24 seeking to enjoin.

25 In seeking a preliminary injunction --

1 THE COURT: Tell me what you think you have set forth
2 as something that is false.

3 MR. BRAUNSTEIN: Certain false statements such as the
4 Penobscot Indian Nation are merely laundering a downpayment for
5 a fee. There is no question that HUD, which determines and
6 oversees all these down payment assistance programs, has
7 expressly acknowledged that the plaintiff and that the
8 Penobscot --

9 THE COURT: Do you want to tell me what evidence I
10 have in terms of how this works, what exactly it is that gets
11 done.

12 MR. BRAUNSTEIN: In terms of how the down payment?

13 THE COURT: Yeah. Tell me what this is. I mean, I
14 have some suggestions as to how some of it might happen, but
15 I'm not sure I even know.

16 I mean, I know your client has gone under oath saying
17 these are false, but I need evidence. I don't need his
18 conclusions.

19 MR. BRAUNSTEIN: Okay. Even outside of the
20 conclusions, the stipulation with the United States Government,
21 including a stipulation with HUD, whereby HUD expressly
22 acknowledges that the Penobscot's down payment assistance
23 program complies with all their rules and relations, is in
24 itself enough to establish that their plan complies with all
25 the rules and regulations that regulate them.

1 No other -- no one else governs their down payment
2 assistance program.

3 THE COURT: Okay. Just tell me -- Back up and tell
4 me how it works.

5 MR. BRAUNSTEIN: Okay. Sure. The down payment
6 assistance works, someone who is looking for a home and can
7 qualify for FHA mortgage but does not have the requisite amount
8 for a fee. They find a down payment assistance provider such
9 as the plaintiffs' Grant America Program.

10 The Grant America Program gifts them the money for a
11 down payment. FHA requires at least three percent for a down
12 payment, and they're given that money from the charity, or in
13 this case the Tribe.

14 THE COURT: Where does the Tribe get the money?

15 MR. BRAUNSTEIN: The Tribe has a pre-existing pool of
16 money already.

17 THE COURT: Um hum.

18 MR. BRAUNSTEIN: And then as part of, the seller of
19 the home also signs up with the Grant America Program, and
20 after the money is already provided to the buyer by GAP, Grant
21 American Program, then at the closing the seller makes a
22 donation that can be used for other prospective buyers that
23 will seek down payment assistance in the future.

24 THE COURT: And the seller has to sign up before the
25 down payment is paid to the buyer to be -- to use to purchase

1 the home?

2 MR. BRAUNSTEIN: I believe that the seller signs up
3 but does not make any contribution.

4 THE COURT: But has to agree to.

5 MR. BRAUNSTEIN: What?

6 THE COURT: But has to agree to.

7 MR. BRAUNSTEIN: That he does have to sign up for the
8 program, correct.

9 THE COURT: Okay.

10 MR. BRAUNSTEIN: That is how the entire program
11 works, Your Honor.

12 THE COURT: Is there any fee?

13 MR. BRAUNSTEIN: Yes, there is a processing fee.

14 THE COURT: Um hum. And who pays that.

15 MR. BRAUNSTEIN: It is paid by the seller, as part of
16 their contribution.

17 THE COURT: Okay. Go ahead.

18 MR. BRAUNSTEIN: In terms of the program, that is
19 essentially all there is to the program.

20 THE COURT: Um hum.

21 MR. BRAUNSTEIN: Now, first, HUD has expressly
22 recognized that plaintiffs' program complies with all the rules
23 and regulations. So there is certainly no justification for
24 defendants' allegation of laundering.

25 Importantly, no one has ever accused Penobscot of

1 laundering and, additionally, all parts of the transactions are
2 documented and transparent and fully disclosed. An essentially
3 element of laundering is that it's done in disguise.

4 Another false statement contained in their articles
5 is that Plaintiff Russell had a copycat website of AmeriDream
6 and attempted to extort AmeriDream.

7 There has never been any allegation by anyone,
8 including AmeriDream, that Christopher Russell has attempted to
9 extort them.

10 Tellingly, when defendants put in their opposition
11 papers and attempted to put in sites for some of the statements
12 they made, they didn't attempt to find a site for that. They
13 did not at any point attempt to cite to how AmeriDream had
14 accused Christopher Russell of extorting them.

15 Second, if you look at the arbitration decision that
16 they cite as their basis for this allegation regarding the
17 copycat website, AmeriDream did not allege that there was a
18 copycat website. The arbitrator did not find that there was a
19 copycat website.

20 The only thing they found was that the domain name
21 was confusingly similar. There was no allegation by AmeriDream
22 or finding by the arbitrator that when you went to Christopher
23 Russell's website, it looked like AmeriDream and he was
24 attempting to deceive the public.

25 Further, defendants published that the stipulation

1 with HUD does not specifically approve the Grant America
2 Program grants. And, quite frankly, just a simple reading of
3 the stipulation shows that to be false. The stipulation
4 provides that PIN's Grant American Program meets HUD's current
5 policies pertaining to the source of gift funds for the
6 borrowers required cash investment for obtaining FHA insured
7 mortgage financing.

8 There cannot be a more clear explanation by HUD that
9 the plaintiffs' program complied with all their rules and
10 regulations than that. And, also, in related, expressly to
11 GAP, is that plaintiff says that these grants are sales
12 concessions. By calling them sales concessions, they're
13 essentially, not essentially, they are accusing the plaintiffs
14 of committing mortgage fraud.

15 If the money is considered a sales concession, what
16 they're saying is that it has to be disclosed, it can't be used
17 by down payment and it can't be use as a down payment portion
18 of an FHA mortgage, and that each and every one of these
19 transactions is an act of mortgage fraud to obtain an FHA
20 mortgage.

21 Well, we know that HUD already said that this program
22 complies with all their rules and relations. Accordingly, that
23 statement is factually false.

24 Other factually false statements were set forth in
25 Christopher Russell's certification, but I believe these are

1 the primary aspects which we are seeking relief on, accusations
2 of extortion and laundering and accusations that the Grant
3 America Program did not comply, or does not comply with HUD's
4 rules and regulations.

5 THE COURT: Go ahead.

6 MR. BRAUNSTEIN: Plaintiffs have the likelihood of
7 success on the merits. Prima facie case of defamation consists
8 of showing that the defendant made a defamatory statement, the
9 statement was false, that they communicated the statement and
10 that plaintiff has suffered harm.

11 We have already discussed what we believe establishes
12 the defamation of falsehood. I don't think there is any
13 possible argument that accusing someone of laundering,
14 extortion and committing mortgage fraud would not be considered
15 defamatory and, as we have stated, I think we have established
16 that those comments are false.

17 As there is no issue regarding the fact that
18 defendant communicated them and in their opposition brief they
19 also don't contest that the plaintiff would suffer harm. So I
20 don't think there is anything further --

21 THE COURT: Will, I might. Tell me the harm. I know
22 you've gotten telephone calls, but has anybody stopped doing
23 business? Tell me what your harm that you have established
24 here. I mean, I know telephone calls, but beyond that do I
25 have any evidence of harm?

1 MR. BRAUNSTEIN: Well, you have the unrefuted
2 statement by Christopher Russell that, in addition to telephone
3 calls, that people have questioned his other business dealing.
4 This is a point in time where, in light of the mortgage crisis
5 in general, all these programs are being specifically looked at
6 with a keener eye.

7 The fact that now someone is accusing him of
8 committing mortgage fraud in compared to the use of other
9 programs is clearly injurious.

10 THE COURT: Um hum.

11 MR. BRAUNSTEIN: With regard to the success on the
12 merits, another issue that was raised by defendants is whether
13 or not the plaintiffs are public figures. Two things. First,
14 I think it's clear that they are not. The plaintiffs have not
15 thrust themselves into the public eye or otherwise invited
16 attention and comments.

17 They don't enjoy significantly greater access to
18 effective channels of communication. They don't have a more
19 realistic opportunity to dispute these falsehoods in the public
20 eye and, importantly, they haven't engaged the public in
21 attempting to reach a resolution on any particular issue,
22 including the issue regarding down payment seller's assistance.

23 They point to one Forbes articles and a handful of
24 press releases that were only found on Plaintiffs' own website.
25 That does not provide them with greater access to dispute these

1 falsehoods and does not make them a public figure.

2 Secondly, even assuming for argument purposes that
3 they were deemed a public figure, there is little question that
4 defendants' conduct evidences actual malice.

5 Defendants don't dispute that they scrutinize each
6 and every entity that they consider for advertising beforehand.
7 They don't dispute that they solicited the plaintiffs for
8 advertising repeatedly.

9 They don't dispute that it was only weeks after
10 plaintiffs refused to advertise with them that they published
11 this defamatory article. And they also don't dispute that
12 after receipt of our cease and desist letter, not only did they
13 continue to publish the article, but Defendant Railey went to
14 other forums, web forums and blogs, and sought to have them
15 republish her article.

16 THE COURT: There were some changes made, weren't
17 there?

18 MR. BRAUNSTEIN: There were changes made from
19 September 10th to September 15th. The factually false
20 statements that we have discussed regarding the laundering,
21 extortion and GAP's performance are all contained in both
22 articles.

23 There were other basic accusations, such as treating
24 AmeriDream like its own personal piggy bank. That was removed.
25 Calling their business a scam, this was removed.

1 However, all the allegations regarding extortion,
2 laundering and mortgage fraud remain.

3 Additionally, I think the content of the allegations,
4 extortion, fraud and money laundering, show the malicious
5 nature of the publications.

6 And, lastly, this is not the defendants' first time
7 being sued for defamation. They attempt to raise the issue
8 that this was an accidental publication. I did not raise the
9 prior defamation in my initial motion papers, except it is
10 relevant to refute this claim that this defamation was by
11 accident.

12 They had already published that a mortgage lender in
13 California was out of business, which was certainly news to the
14 mortgage lender. Their Motion to Dismiss that case was denied
15 after that mortgage lender established a prima facie case of
16 defamation, and defendants admit settling that case after
17 plaintiffs were able to establish a prima facie case of
18 defamation.

19 Essentially defendant's only argument against the
20 preliminary injunction is that this speech is protected by the
21 First Amendment. However, as set forth in **Gertz**, there is no
22 constitutional value to false statements of fact. They are
23 free to say that down payment assistance is not good for the
24 country.

25 They are free to say this is not a good program.

1 They are not free to state false statements of fact.

2 We are free, and with the election coming up, we are
3 free to say that Barack Obama is the best presidential
4 candidate or the worst; that John McCain is the best or the
5 worst; that their economic programs are fascist or socialist or
6 communist or Marxist. We are not free to say that one of them
7 was convicted of a crime that he was not.

8 We're talking about false statements of fact that
9 were printed by the defendants. Their opposition papers have
10 not been able to provide a legitimate basis for any of the
11 things we have discussed as to false statements of fact, and
12 false statements of fact are not protected speech.

13 Plaintiffs will also suffer irreparable harm absent
14 the granting of an injunction. Defendants publicize that their
15 website has a core daily audience of 100,000 visitors a day.
16 They state that they seek to preserve their articles so that
17 they will be impossible to forget.

18 When they received our letter asking them to remove
19 their article, not only did they continue publishing it, they
20 sought to have other blogs publish the same article. And their
21 opposition papers doesn't even dispute that defendants are
22 being harmed by the publication of this article or will
23 continue to be harmed by the publication of this article.

24 Defendants certainly can't be harmed by the granting
25 of the injunction. They can't be harmed by being prohibited

1 from the publishing false information, false statements of fact
2 and, likewise, the public cannot be harmed by insuring that the
3 defendants do not publish false statements of fact. The public
4 benefits from the fruits of legitimate discussion, not
5 retaliatory publications of false statements of fact.

6 THE COURT: Anything else?

7 MR. BRAUNSTEIN: That's all I have, Your Honor,
8 unless you have any questions.

9 THE COURT: Ms. Turner.

10 MS. TURNER: Thank you, Your Honor. There are three
11 reasons to deny plaintiffs' motion, one of which the Court has
12 identified, which is that the requested relief is unheard of
13 and unconstitutional as a prior restraint.

14 There has been no showing of a compelling state
15 interest that would outweigh defendants' First Amendment rights
16 to speak. And the requested injunction is overbroad, and it's
17 a prior restraint that is literally unprecedented by any court.
18 No court has ever ordered and been sustained in ordering a
19 restraint of the nature that plaintiffs have requested.

20 The injunction that they request violates Federal
21 Rule 65D for being uncertain. And plaintiff hasn't carried
22 their burden to show likelihood of success on the merits, Your
23 Honor.

24 Starting with the unconstitutional prior restraint
25 issue, an injunction of a court is the essence of a prior

1 restraint, and there is a heavy presumption against the
2 validity of any prior restraint, and that's in **Organization for**
3 **a Better Austin against Keefe**, 402 U.S. 415 at 419.

4 The order prohibiting a party from making or
5 publishing false statements is a classic type of
6 unconstitutional prior restraint as held by the Second Circuit
7 in **Metropolitan Opera Association against Local 100**, and the
8 site on that is 239 F 3d, 172 at 176, Second Circuit, 2001.

9 There is a litney of courts that have refused to
10 issue or uphold injunctions against future speech to prevent
11 harms to personal rights, so speech such as defamation.

12 We have cited many of those in our papers, **Near**
13 **against Minnesota; American Malting Company against Keitel;**
14 **Organization for Better Austin.** In the Fourth Circuit there is
15 the **Alberti against Cruise** case, which says generally an
16 injunction will not issue to restrain torts such as defamation
17 or harassment against a person. There is usually an adequate
18 remedy at law which may be pursued in seeking redress from
19 harassment and defamation.

20 There have been a number of cases that have dealt
21 specifically with requests to enjoin false and defamatory, or
22 false and misleading statements, and in each and every case
23 either the trial court has refused to issue the injunction or
24 the trial court has been overruled as an abuse of discretion
25 for issuing such an injunction.

1 Some of those cases, and they are state cases,
2 because that's usually where defamation comes up, is **Evans**
3 **against Evans**, a 2008 California Appeals Court case, at 162
4 Cal. App. 4th at 1157. Parallel citation is 76 Cal Reporter
5 3d, 859. That's a dispute between ex-spouses.

6 A preliminary injunction prohibiting the former wife
7 from publishing any false and defamatory statements was held to
8 be constitutionally invalid as a prior restraint, and the
9 preliminary injunction prohibiting the former wife from
10 publishing those statements was considered unconstitutionally
11 vague and overbroad.

12 Similar to this case, where you have an entity that
13 is a commercial entity, is down in Florida, **The Animal Rights**
14 **Foundation of Florida against Siegel**, reported at 867 South 2d,
15 or Southern 2d 451, Florida Appellate, in the year 2004.

16 There you had some picketers in front of a business.
17 The business was trying to garner new customers by having some
18 sort of animal exhibit. The picketers were disgusted by this
19 and made statements such as Siegel abuses animals, Siegel
20 refuses to stop sponsoring animal cruelty, they condone animal
21 abuse.

22 Siegel, the plaintiff, brought this to court and the
23 court issued an injunction against the picketers, saying those
24 specific statements, not even just any false or misleading
25 statements, but those specific statements, and the appellate

1 court upheld that was an abuse of discretion.

2 They had a very clear analysis where they basically
3 said prior restrains are presumptively unconstitutional, and to
4 overcome that presumption one must satisfy the strict scrutiny
5 standard, a compelling state interest in the least restrictive
6 means. That was the analysis, they replied. And they found
7 that there is no compelling state interest in a dispute that
8 merely regulates the private rights of the parties. They cited
9 the **Keefe** case for that proposition.

10 So, there are instances where prior restraints are
11 permissible. There certainly are. We will not dispute that,
12 but none of those apply here. One of those is obviously a
13 threat to national security, which even the Pentagon Papers
14 didn't. I don't think we have that issue here.

15 Another one is restraints involving property rights,
16 such as trademark or copyright. We don't have that here.

17 We have arguments by plaintiff as to two exceptions,
18 one is a commercial speech exception, and the other is that the
19 court can somehow make an adjudication on the merits at this
20 preliminary stage, despite the fact that defendants haven't
21 even responded to the complaint, such that it can support a
22 prior restraint against this defamatory speech, and neither of
23 those apply.

24 As to commercial speech, commercial speech is
25 afforded less protection, because the general purpose of

1 commercial speech is to provide the consumer with truthful
2 information about products.

3 The, whether or not speech is commercial is
4 determined on the content of the speech, not the identity of
5 the speaker or the motivation of the speech.

6 It's the primary purpose of the expression, and you
7 can find that in the case of **Pittsburgh Press**, and also
8 **Friedman against Rogers**, 440 U.S. 1, a 1979 case, at pages 11
9 through 13.

10 So, pure speech is that in which society has an
11 interest wholly apart from the speaker's or listener's economic
12 interests, which the speech in this case is. It's a news
13 article about down payment assistance programs, about how
14 they're being done with indian nations at this point in order
15 to circumvent IRS regulations and HUD regulations outlawing
16 that activity through charitable organizations.

17 Okay. This is a matter of significant public
18 interest in this moment in time when the economic crisis has
19 been spurred like dominoes by the housing crisis in this
20 country due to mortgage lending practices which are
21 questionable at best.

22 Commercial speech, by contrast, predominately invites
23 a commercial transaction, and that's from **Central Hudson Gas**
24 **vs. Public Service Commission of New York**, 447 U.S. 557 at 563.
25 Excuse me, Your Honor, 561. Also the case of **Virginia State**

1 **Board of Pharmacy**, 425 U.S. 748.

2 This is not commercial speech. There is no
3 transaction invited. The fact that a news organization makes
4 money by selling advertisement cannot render news reports
5 commercial speech, or else everything in the New York Times and
6 everything in the Washington Post would be commercial speech.

7 The second argument that plaintiffs put forth is
8 "Well, this isn't really a prior injunction because the Court
9 can determine on the merits that this speech is, in fact,
10 defamatory at this point and therefore issue a restraint
11 against all false and misleading statements, but even against
12 the narrower repetition of the very statements at issue here,"
13 and this's just plain wrong.

14 The courts are very clear, the Supreme Court is very
15 clear, that there is a distinction between enjoining expressive
16 activity after a full trial on the merits and a verdict is
17 reached, versus a prior restraint. And you can see that in the
18 cases of **Kingsley Books vs. Brown**, which is at 354 U.S. 436, a
19 1957 case in which there was a law that enjoined the sale and
20 distribution of obscene written or printed materials.

21 The law was challenged as a prior restraint. The
22 Supreme Court said it's not a prior restraint because the law
23 required due process to a final adjudication. A final
24 adjudication after trial that the materials were in fact
25 unprotected.

1 The Court compared that to the **Near against Minnesota**
2 case, which involved a law that said any newspaper that's found
3 to be publishing malicious, scandalous or defamatory content
4 can be enjoined in the future from publishing malicious,
5 defamatory contents. That was struck down by the Supreme
6 Court, because it was a prior restraint.

7 And **Kingsley** specifically discusses that difference
8 and says that the injunction in **Kingsley** is "glaringly
9 different from the prior restraint in **Near**, because it
10 studiously withholds restraint upon matters not already
11 published and not yet found to be offensive."

12 This distinction between enjoining defamation that
13 has already been held and found after trial, after verdict, to
14 be unprotected and defamatory versus a prior restraint at the
15 preliminary stage, when there hasn't been discovery. In this
16 case there hasn't even been an answer or response, is found
17 throughout cases.

18 There is a very specific case on this from California
19 that I will cite to the Court. It's not obviously
20 authoritative here, but it's very, very well done and very
21 instructive on this very issue, and the case is called **Balboa**
22 **Island Village**, that's B A L B O A, **Island Village Inn against**
23 **Leman**, and it's reported at 40 Cal 4th, 1141 at 156 P 3d,
24 Pacific 3d, 339. It's a California Supreme Court case, issued
25 in 2007. And what it does is it reviews all these cases

1 concerning the appropriateness of enjoining specific defamatory
2 statements that have been found at trial to in fact be
3 defamatory, versus pretrial prior restraint injunctions. And I
4 invite the Court to take a look at that. It sets this out very
5 clearly.

6 Okay. So, plaintiffs provided a reply to our
7 opposition and they cited a plethora of cases which range from
8 the inapposite to the utterly amusing. Most of the cases had
9 nothing to do with First Amendment, with defamation. Any case
10 in which an injunction was ordered was after a full trial or
11 verdict, with one exception that I will get to.

12 They involve commercial speech, which we know we
13 don't have here, and they involve property rights and not
14 personal rights.

15 One of them, which was, I think, the most interesting
16 was a case from Texas. I think it was in the early 1920s,
17 involving an 18 year old nurse who had an affair with a married
18 doctor and she later spurned him, got engaged to somebody else,
19 and he harassed her. He sent letters to her, he sent letters
20 to others about her loose morals. He beat her up on a few
21 occasions. And the Court issued a temporary restraining order
22 against him coming near her. For some reason the plaintiffs
23 seem to think that that's instructive here.

24 Let's take a look just at a couple of the cases where
25 courts have either rejected or been overruled for entering

1 injunctions on "false or misleading or defamatory statements in
2 the future."

3 One of those cases is called **Medical Graphics**
4 **Corporation against SensorMedics Corporation**. That's at 872 F.
5 Supp. 643, out of Minnesota, 1994. There you have commercial
6 speech too. It's, plaintiffs and defendants were medical
7 device manufacturers in competition with each other, and you
8 have a charge of trade disparagement under the Lanham Act and
9 the plaintiffs sought an injunction against "false or
10 misleading documents or statements about plaintiff or
11 plaintiff's product."

12 The Court refused, said it was not specific enough,
13 was overbroad, did not comply with Federal Rule 65 D.

14 There is the case in Virginia of **D'Ambrosio versus**
15 **D'Ambrosio**, that's D'AMBROSIO versus D'Ambrosio, at 45 Virginia
16 App 323. Parallel citation is 610 SE 2d 876. It's a 2005
17 case. Again ex-spouses, family dispute. An injunction against
18 the husband prohibiting "any defamatory comments about the
19 ex-wife to any third parties." The appellate court held that
20 the lower court abused its discretion in issuing such an order,
21 that this was a sweeping prohibition, that it didn't adequately
22 delineate what conduct was being proscribed under contempt of
23 court, and could not withstand scrutiny on appeal.

24 I mentioned, I believe, the **Evans against Evans** case
25 at 162 Cal App 4, 1157, 2008 case. Again, false and

1 defamatory, injunction against false and defamatory statements,
2 constitutionally invalid as a prior restraint.

3 Unconstitutionally vague and overbroad. The trial court was
4 reversed for abuse of discretion.

5 A couple of cases that are troubling and that we need
6 to talk about are the two hospital cases, the **San Antonio**
7 **Community Hospital** and the **Mercy Health Services** cases. I
8 believe plaintiff cited both of those in their reply, although
9 not in their opening papers.

10 The **Mercy Health Services** case involved, both cases
11 involved unions and hospital, and they're very interesting and
12 similar and not very much followed outside of their specific
13 facts.

14 In the case of San Antonio Community Hospital, you
15 had unions in a trade dispute with each other over work that
16 was being done in the hospital. One union stood outside the
17 hospital with large posters that said something to the effect
18 of "this hospital is full of rats," and people driving by would
19 see this.

20 The Court, the Ninth Circuit, held that the word
21 "rat," should not be used. Okay. They ordered a preliminary
22 injunction and then they were uncomfortable with it. There was
23 a dissent by Judge Kozinski, very well reasoned about the
24 dangers to the First Amendment that this type of decision would
25 present, and even the majority was very uncomfortable. They

1 kept referring to their restriction as a restriction on manner,
2 as if this was a time, place or manner issue.

3 They were very narrowly tailored the injunction to
4 the word "rat", saying that it was misleading to consumers.
5 So, again, it's in the nature of commercial speech. And they
6 found that later, when the defendants held up another sign
7 saying "Best Contractors is the rat," then this was okay.

8 So, it's a very unusual case. I don't think it
9 really is very instructive given the facts of this case. And
10 it's been rejected, as I mentioned in the **Metropolitan Opera**
11 **Association** in the Second Circuit squarely refused to follow
12 it.

13 The Mercy Hospital case dealt with advertising on TV
14 that was misleading to consumers, said that the hospital had
15 had nurses walk out of the operating room, had fired
16 experienced nurses, et cetera, et cetera. None of those were
17 true, and the union admitted those weren't true.

18 Similarly, in the San Antonio Community Hospital
19 case, the union admitted that the hospital was not filled with
20 rats literally.

21 So, very different from here. And, again, not
22 followed outside of those. And Mercy Hospital was a district
23 court case.

24 Even though the Supreme Court said in situations like
25 this we don't even get to the merits of the underlying matter,

1 and that's in the **Keefe** case, I would like to take a moment to
2 indicate why it is that plaintiffs have not shown a likelihood
3 of prevailing on the merits, or irreparable harm, or that harm
4 tips in their favor, or the public interest.

5 First of all, as I sat here listening to plaintiff's
6 argument, they mention a bunch of statements they claim are
7 defamatory. If you will give me a second, Your Honor. So one
8 statement they mentioned is the notion of a "copycat website,"
9 which they have taken out of context, and I will read from the
10 article which was submitted to this court, I believe as Exhibit
11 J to the Railey declaration.

12 The article specifically says "It is interesting to
13 note that in 2006 AmeriDream won an arbitration decision," and
14 there was a link to the actual decision, mind you, "won an
15 arbitration decision against Christopher Russell regarding
16 Russell's registration of the domain name AmeriDream
17 Program.com. According to the National Arbitration decision,
18 Russell registered the domain name one day prior to the
19 expiration of a binding non-compete agreement."

20 In addition to the copycat website, the decision
21 states Russell registered additional websites using the F word,
22 et cetera, et cetera. Copycat there is used exactly as the
23 arbitration decision indicated, namely a similar domain name.
24 That's exactly what's written here.

25 Nothing about "They copied the exact text," or

1 anything of the sort. And it's true. Plaintiffs just admitted
2 it's true. Then, regarding extortion, the same paragraph goes
3 on to say that Russell registered additional websites utilizing
4 the F word, along with the name AmeriDream as a "protest site,"
5 which accused AmeriDream of fiscally irresponsible policies in
6 squandering public benefit funds.

7 This is especially ironic coming from Russell, who
8 has been accused of the exact same thing with AmeriDream, in
9 addition to allegations that Russell acted in bad faith by
10 registering copycat and defamatory names, again domain names.
11 AmeriDream claims Russell attempted to extort \$5,000 per domain
12 from AmeriDream by requesting that AmeriDream purchase the
13 domains rather than incur thousand in legal defenses.

14 The actions of Russel were ultimately found to be
15 made in bad faith, and the decision rendered was in favor of
16 AmeriDream. Okay. That's fact and it's true. No just vague
17 allegations of extortion. It's fact and it's true.

18 They mention that the settlement agreement between
19 HUD and the plaintiffs was a form of approval of their program,
20 and it was not. The settlement agreement basically -- the case
21 there was about whether or not HUD had followed adequate
22 procedures under the APA to change it's rules to eliminate
23 programs such as the plaintiffs.

24 The Court found on summary judgment that HUD had not
25 lived up to those obligations under the APA and, therefore, a

1 settlement agreement was entered, stipulation was entered, that
2 the plaintiffs business complied with the earlier set of rules.
3 The new rules did not apply, in other words.

4 If you go to HUD's website, and we have supplied a
5 picture of this, a printout of this, as Exhibit Q to the Railey
6 declaration, the HUD website itself says "FHA does not
7 'approve' down payment assistance programs in the form of gifts
8 administered by charitable organizations." It's not something
9 they do. They don't go around approving programs. It's true.
10 It's fact.

11 As to sales concession, I think it would take more
12 time then the Court wants to spend on it today to explain what
13 that is, but in short the IRS has ruled that sellers who give
14 money to these down payment assistance programs may not deduct
15 that as a sales expense.

16 It's called a concession, under tax law it's called a
17 concession. This is acknowledged by the Penobscot Indian
18 Nation's GAP program, Grant America Program, on its very own
19 website, which says these are not tax deductible donations to a
20 charitable organization. In other words, they're concessions.

21 As to the use of the fact that the defendants here
22 were once before sued for defamation, besides the fact that
23 it's evidence that is inadmissible as tending to show bad past
24 acts and hence the likelihood of future bad acts.

25 First of all there were no bad acts, but the

1 settlement to which Mr. Braunstein refers, I being the attorney
2 in that case, happen to know the settlement there was the
3 plaintiff took a walk. No liability. No money. It's about as
4 good as it gets if you're a small media organization. It's
5 offensive that that's used here without any explaining of what
6 went on.

7 Let's talk a moment about actual malice. There is
8 the argument that these are private individuals who haven't
9 inserted themselves into public affairs and, therefore, actual
10 malice doesn't apply.

11 Well, Mr. Russell himself, as well as the other
12 plaintiffs, have, either as individuals or directly, inserted
13 themselves into the public spotlight on this issue. For
14 example, Mr. Russell has been known to lobby on behalf of the
15 industry as the interim chairman of an organization that
16 called, that he called HAND, H A N D, which is the Home
17 Ownership Alliance of Non-profit Downpayment Providers.

18 We produced the site to a letter that is on the
19 website of AmeriDream, that Mr. Russell signed, to Sean
20 Cassidy, the Deputy Federal Housing Commissioner at HUD, asking
21 him not to follow the Inspector General's report to outlaw the
22 kinds of programs that plaintiffs engage in.

23 The Penobscot Indian Nation is a Government. There
24 is no question that's a public figure, period. The other
25 plaintiffs have intentionally involved themselves with the

1 Penobscot Indian Nation to provide a program that has been at
2 the center of public controversy in housing for a couple years
3 now.

4 The -- Mr. Russell here, has been interviewed by any
5 number of news organization, including Forbes, which on
6 September 1st published a pretty long article about Mr. Russell
7 and about his program and, in fact, I believe they called it a
8 racket, although I haven't seen any lawsuit against Forbes yet.

9 They sued HUD. I don't know. I think that's putting
10 yourself into the public spotlight on this issue.

11 And they can't show actual malice because, as you see
12 in the declaration of Ms. Railey, she has no idea and did not
13 know that any of the plaintiffs had refused to advertise on the
14 website. She had been working on these articles since early in
15 June, before any communications with the plaintiffs.

16 Plaintiffs are just using a matter of timing to make
17 some assertion that there was actual malice here, but they
18 don't have facts to that. And the person who does have the
19 facts, Ms. Railey, has declared that she had no knowledge and
20 no idea.

21 The fact that the defendants "scrutinize" companies
22 that they will allow to advertise is true. They do not allow
23 to advertise on their websites companies that they believe are
24 shady. The evidence in this case as it has developed will show
25 that my clients had already made a determination they would not

1 actually sell advertising to the plaintiffs before plaintiffs
2 actually refused, as we developed the case, but we can't put
3 that in evidence yet because we haven't gotten there.

4 I do want to go back to the laundering comment,
5 because I find it fascinating. Plaintiffs took a moment to
6 explain to the Court that their program wasn't laundering; what
7 it was was that buyers are required to get an FHA insured
8 mortgage; they're required to put in three percent of their own
9 money, to have skin in the game.

10 Some buyers can't afford to do this. They shouldn't
11 be getting FHA insured mortgages and we're in trouble because
12 of that. What their business does is the seller gives the
13 buyer money to make the down payment. If the seller did it
14 directly to the buyer, it wouldn't count. You couldn't get FHA
15 insurance. That's barred, okay. So the seller needs a
16 convenient way to get that money to the buyer and the way they
17 do it is through organizations like the plaintiffs. I call
18 that laundering.

19 Laundering doesn't have to necessarily be drug money
20 or illegal or through a bank. It's a way of taking money that
21 might otherwise not be allowed to be used for something and to
22 scrub it so that it appears nice and clean and can then be
23 used. It's laundering.

24 Okay. Irreparable harm. There just hasn't been a
25 showing of any here. There is nothing that says that the

1 plaintiffs can't be compensated by monetary damages if and when
2 they ever prove their case. There is just a bald assertion
3 that the harm is irreparable because they got some phone calls
4 and they felt embarrassed. I don't think that rises to the
5 necessary level.

6 By contrast, the harm to the defendants is that as a
7 news journal they're going to be effectively prohibited from
8 publishing anything about the plaintiffs, lest they be brought
9 in for contempt charges that something they said is false and
10 misleading.

11 They're a press organization. The inability to
12 publish without seeking permission of the court beforehand is a
13 huge harm. I don't really know what other way to put it.

14 The plaintiffs have never once so far in pretty
15 exhaustive briefing come up with a single case that shows an
16 injunction of the nature they want has ever been ordered for
17 defamation.

18 Much less outside of the San Antonio, the hospital
19 cases, that there has been any preliminary injunction for
20 defamation. We have cited case after case after case that
21 there cannot be a preliminary injunction against defamation in
22 a non-commercial speech\news reporting environment. There is
23 just no basis for the relief defendants have requested or for a
24 narrower relief that defendants somehow could not repeat
25 comments they have already made at this stage in the

1 proceedings, Your Honor. Thank you.

2 THE COURT: Mr. Braunstein.

3 MR. BRAUNSTEIN: Your Honor, I'll attempt to be
4 brief.

5 First, with regard to -- and I'm going to also limit
6 myself just to the factual issue, as I am sure the Court has
7 read the papers and the read all the cases cited by both
8 parties.

9 While I appreciate counsel's definition of
10 laundering, hers is not the controlling definition. Laundering
11 is the process of cleaning illicitly gained money so that it
12 appears to others to have come from or to be going to a
13 legitimate source.

14 THE COURT: What are you reading from?

15 MR. BRAUNSTEIN: I am -- I do not have that cite,
16 unfortunately, Your Honor. It was from the dictionary, Your
17 Honor.

18 MR. MASON: We are just checking on the website, Your
19 Honor, to find it through Google.

20 MR. BRAUNSTEIN: The only Government entity that
21 controls whether or not the plaintiffs' down payment assistance
22 program was legitimate or was not is HUD. HUD in general
23 approved seller, these types of down payment programs and has
24 since 1998, and they have specifically approved the plaintiffs'
25 program. Nonetheless, the defendants say it's laundering.

1 With regard to the website, in addition, some of the
2 statements raised by counsel were interesting. They say Mr.
3 Russell had AmeriDream as a protest site which accused
4 AmeriDream of fiscally irresponsible policies and squandering
5 the public benefit funds.

6 This is especially ironic coming from Russell, who
7 has been accused of the exact same thing as AmeriDream, except
8 that he hasn't. He has never been accused by AmeriDream of
9 that type of activity. He has never been accused by the
10 Government of that type of activity. He has never been accused
11 by anyone of that type of activity.

12 Additionally, I would like to briefly go to the
13 stipulation and lawsuit that was referenced with the Penobscot
14 case against HUD, and in that case I was the handling attorney.
15 And, contrary to defendants' arguments, this was not just an
16 APA challenge.

17 In fact, we sued the Government prior to the issuing
18 of the new rule, seeking a declaration that the program
19 complied with all of HUD's guidelines. Prior to that, certain
20 underwriters in certain locations under HUD had been telling
21 certain mortgages that because it was an indian nation and not
22 a charity, that they didn't think that the program complied.

23 As a result of that we contacted HUD. We were unable
24 to reach a resolution, and we sought a declaratory judgment
25 action, stating that the program complied with all the

1 guidelines. While that case was ongoing they passed a new
2 rule. The complaint was amended to bring the APA challenge as
3 well.

4 So counsel's comments that this case had nothing to
5 do with plaintiffs' program in particular is absolutely false.
6 Any reading of the complaint and/or amended complaint and/or
7 stipulation which was attached to the papers clearly evidences
8 that the stipulation resolved that plaintiffs' program in
9 specific complied with all of HUD's rules and guidelines.

10 Likewise, defendants attempt to point to an IRS
11 revenue ruling which has absolutely nothing to do with
12 plaintiffs' program. The IRS revenue ruling deals exclusively
13 with whether or not an entity is a charity. The Penobscots
14 have never been a charity, have never presented themselves as a
15 charity, and they don't rely on being a charity for their
16 program to be successful or to be consistent with HUD
17 guidelines.

18 Accordingly, the IRS revenue ruling, and they also
19 don't govern whether something or not is a sales concession,
20 and has no impact on plaintiff's program in particular.

21 Tellingly, significantly after the IRS revenue ruling HUD
22 stipulated that GAP's program complies with all the rules and
23 regulation and, therefore, it is not a seller's concession.

24 And with regard to the other defamation suit, as I
25 stated in my opening arguments, it was not in my brief because

1 I agree it does not go to show whether or not they're -- this
2 is a defamatory act. I have to go through my elements, my
3 prima facie case of defamation and establish that. However,
4 it's relatively clear evidence ruling that other similar acts
5 do go to show when the other side raises accident or mistake.

6 I did not put this issue in play. It was defendants'
7 attempts to say that Railey accidentally published this article
8 to the world. That raises the other defamation case to say
9 "This is not their first case. This is not a mistake."

10 Lastly, with regard to the public figures. They
11 point to one letter that is on AmeriDream's websites that was
12 not written to the public but was written to a government
13 official regarding actions he was considering.

14 The point of being a public figure is that you have
15 access to the press so you can counter false statements, and
16 you can try to influence what's going on. That was not even
17 the conduct defendant thinks Christopher Russell was doing, or
18 any of the other plaintiffs.

19 They point to one Forbes article and some press
20 releases that they could only find on his website. That is not
21 attempting to influence the public to have an issue resolved
22 the way you want.

23 Lastly, we are here because they published false
24 statements of fact. The First Amendment arguments don't cover
25 those. As **Gertz** said, false statements of fact have no

1 constitutional protections. Thank you, Your Honor.

2 THE COURT: The standard in the Fourth Circuit for
3 considering issuance of a preliminary injunction requires
4 analysis of four factors:

5 The likelihood of success of the plaintiffs on the
6 merits, and then the balance of hardships, that is the harm to
7 the plaintiff if the injunction is denied, juxtaposed against
8 the harm to the defendants if an injunction is granted and it's
9 erroneous, and then the public interest.

10 The higher the irreparable harm to the plaintiff if
11 the injunction is denied, the lesser showing of likelihood of
12 success on the merits might be required.

13 The parties infuse the First Amendment into this
14 analysis and that does, indeed, cause some consternation on my
15 part in terms of what has happened and what relief it is that's
16 being requested.

17 This case arises in the context of an internet
18 website and not in the context of hard copy news article.
19 What's happened is it's been published. It was uploaded by the
20 author onto the website owned and controlled by some of the
21 other defendants.

22 If this were like a newspaper, printed, published, it
23 would be over with. Done. And in that sense it is up there,
24 over with and done. It cannot be unrun. It cannot be
25 unposted.

1 Nobody talks about the problem the plaintiffs already
2 have in that this is out there. It can't be -- I guess we in
3 another context call it claw back agreements -- you can't bring
4 it back. It's out there. Nothing anybody can do will bring it
5 back.

6 But it's still posted on the website, I gather. I
7 don't know. Nobody has told me what the policy is as to how
8 long any such article remains ordinarily, but I gather it's
9 still up there and what the plaintiff wants me to do is to
10 require them to change some of the words, delete some of the
11 phrases, although they had very broadly asked me to order them
12 not to publish anything that is false, which I pointed out at
13 the beginning is very, very broad and obviously not going to be
14 granted.

15 A court must be very circumspect in considering any
16 preliminary injunctive relief. It at the beginning is
17 extraordinary relief that a court is empowered to impose in
18 sufficiently egregious circumstances. Ordinarily it is to
19 maintain the status quo when a law suit goes forward.

20 Sometimes it can be used to alter the status quo,
21 that is a mandatory injunction requiring a defendant to do
22 something, and that's what is being requested here. This isn't
23 to maintain the status quo. It's not to prevent something from
24 happening while we determine the merits of this dispute. So
25 that makes it an even less ordinary situation that the

1 plaintiffs are infusing themselves in.

2 At bottom, I conclude that the plaintiffs have not
3 established the grounds for the issuance of a preliminary
4 injunction, even of the lesser nature of requiring the
5 elimination of the word "laundering," "extortion," "sales
6 concession," or, frankly, any of the other "not HUD approved",
7 or any of the other dozen or so purported falsehoods in the
8 article.

9 The article itself is, I don't know, I didn't count
10 the number of words, but it's one, two, three, four, five, six
11 pages in one of the exhibits, another one with smaller type
12 that may not be quiet as long, but it's lengthy. It covers a
13 lot of material and plaintiffs have chosen to focus on some
14 phrases, sometimes taken out of context, but more
15 significantly, from my perspective, at a place where what's
16 being discussed provides a link to other information as well.

17 I mean, this is a comprehensive article and it is
18 simply not, I don't think, susceptible at this stage to the
19 conclusion that plaintiff wants me to draw, that they can have
20 proven that any of these terms or words are false.

21 The term "laundering" may have a certain definition
22 in the Criminal Code. It may not necessarily have that same
23 definition when used in this article.

24 In any event, I think the allegations of plaintiff
25 are simply not precise, focused enough to make a determination

1 that they can prove that any one or more of them necessarily
2 are false on the current record, never mind whether they can
3 make the, or have made sufficient showings of the other
4 elements of a defamation claim to show likelihood of success on
5 the merits.

6 Secondly, in terms of irreparable harm to the
7 plaintiff, all I am told is that some people have taken note
8 and that there have been some calls. There is no attempt to
9 quantify any harm and, as I indicated a moment ago, there is no
10 indication that the requested relief, that is telling them not
11 in the future to do anything, would prevent the harm, given the
12 nature of the internet.

13 This article is out there, has been and cannot be
14 eliminated from the internet. So I don't see the establishment
15 of irreparable harm.

16 Damages will be available should plaintiffs prevail
17 later, and I don't see how granting the injunction at this
18 point in any event would avoid the harm.

19 Damage to the defendant, if it's improperly granted,
20 here we are dealing with a website that provides an opportunity
21 for authors to post material -- I'm going to learn, I suppose,
22 a lot more about how it all works -- but to the extent to which
23 the plaintiff is asking me to prevent them from disseminating
24 material, it certainly, if it's an improper injunction, would
25 affect a First Amendment right of the defendants.

1 Public interest, this is an area where to say the
2 public has become more involved is an understatement. The
3 mortgage industry is in the news all the time. The economic
4 reality of this worldwide, I don't know whether -- well, the
5 whirlwind of international activity in terms of the financial
6 markets, many say prompted by a mortgage, subprime mortgage
7 crisis, there is probably little that's as much in the public
8 interest today as this.

9 And, to the extent to which this article furthers
10 discussion, debate, consideration of that situation, it is not
11 in the public interest for me to broadly order that this
12 article not be posted. The few sections that the plaintiffs
13 complain of do not detract from the overall public interest of
14 the nature of the article, and I think the public interest
15 would not be served in this case, given the subtlety of some of
16 the allegations of the plaintiff and the very, very broad
17 request for relief.

18 As indicated by Ms. Turner, any injunction in this
19 regard would chill the First Amendment rights of people like
20 the defendants, never mind just the defendants, and would
21 stifle rather than foster appropriate debate at this precise
22 time when it is so important.

23 So I conclude that the plaintiffs have not
24 established justification for the issuance of a preliminary
25 injunction and, therefore, I deny the motion which is contained

1 in paper 11 here.

2 We will leave for another day all of those wonderful
3 legal issues as to the nature of the speech, whether any
4 injunction under any circumstance can issue, because I find it
5 unnecessary to resolve those debates in the current context.

6 We have a schedule in terms of when the defendants
7 will be filing a response to the complaint.

8 MS. TURNER: I believe it's November 18th.

9 MR. BRAUNSTEIN: That's correct, Your Honor, it's
10 November 18th.

11 THE COURT: I just wanted to put my hands on that.
12 And we will wait to see -- November 18th, we will wait to see
13 the nature of that before going forward.

14 MS. TURNER: Yes, Your Honor.

15 MR. BRAUNSTEIN: Your Honor, very briefly, on your
16 docket entry number 19, it states that "replies are due by
17 November 4, 2008."

18 THE COURT: That happens automatically when the
19 computer receives something for filing. If you stipulate -- I
20 mean, there will be another docket generated when whatever they
21 file is filed.

22 MR. BRAUNSTEIN: I just wanted to make sure I wasn't
23 missing anything, Your Honor.

24 THE COURT: No. No. The computer, the CMECF system
25 automatically generates dates, so you can ignore them.

1 MS. TURNER: We don't plan to file a reply at this
2 point, Your Honor.

3 THE COURT: To?

4 MS. TURNER: To anything, at this moment.

5 THE COURT: No. No. You need to file a response to
6 the lawsuit.

7 MS. TURNER: Yes, Your Honor, we will be doing that.

8 THE COURT: Once that happens that will, that also
9 will generate, if it's a motion it will generate certain dates.

10 MS. TURNER: Yes.

11 THE COURT: But, again, it's an attempt by those who
12 wrote the program to be helpful and, unfortunately, it often
13 does just the opposite, so don't worry about that. But we'll
14 wait to see how the defendants, you represent all of them, is
15 that correct --

16 MS. TURNER: Yes, Your Honor.

17 THE COURT: -- at this point. See what they file and
18 then we'll see how we proceed.

19 All right. I believe that completes the proceedings.
20 I may enter -- do I need to enter a one line order?

21 THE CLERK: I'll take care of it, Your Honor.

22 THE COURT: We can do it in the docket entry. In the
23 CMECF world I'm never sure if I have to prepare an order any
24 longer. But you will see on the docket the denial of the
25 motion.

1 MS. TURNER: Will Your Honor be preparing any written
2 opinion or just --

3 THE COURT: What I just stated, the court reporter is
4 here and available. I hope it's not too disjointed, but that
5 will suffice if anybody needs further review.

6 MS. TURNER: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. BRAUNSTEIN: Thank you, very much, Your Honor.

9

10 COURT REPORTER'S CERTIFICATE

11 I certify that the foregoing is a correct transcript
12 from the record of proceedings in the above matter.

13

14 DATE:

15

/s/ _____

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Sharon O'Neill

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