1		STATES DISTRICT COURT
2	FOR THE WESTERN	DISTRICT OF PENNSYLVANIA
3	IN RE: PHILIPS RECALLED BI-LEVEL PAP, AND MECHANI	CAL No. 21-mc-1230
4	VENTILATOR PRODUCTS LIABI LITIGATION.	LITY MDL NO. 3014
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6	Transcript of Status Conference proceedings held on Thursday, December 14, 2023, in the United States District Court, 700 Grant Street, Pittsburgh, PA, 15219, before Senior Judge Joy Flowers Conti.	
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8	APPEARANCES:	
9	For the Plaintiffs: San	dra L. Duggan, Esq.
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11		istopher A. Seeger, Esq. Aaron Rihn, Esq.
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18		th Verrier, Esq.
19	-	a Dykstra, Esq. n P. Lavelle, Jr. Esq.
20	Defendants: Lau	ra McNally, Ésq. toria Peng-Rue, Esq.
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22		ron Siatkowski, RMR, CRR, CBC, CRI
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24	Proceedings recorded by mechanical stenography;	
25	transcript produced by comp	

1	Appearances Continued:	
2	For Other Philips	Michael H. Steinberg, Esq.
3	Defendants:	William B. Monahan, Esq. Tracy Richelle High, Esq.
4		Elizabeth N. Olsen, Esq. Bethany S. Labrinos, Esq.
5		Eric Scott Thompson, Esq.
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1	PROCEEDINGS
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3	THE COURT: This is the hearing, I should say a
4	status conference, in In Re: Philips Recalled CPAP, Bi-level
5	Pap, and Mechanical Ventilator Products Litigation, Master
6	Docket 21-1230 and MDL Number 3014.
7	The parties have entered their notice of the speakers
8	today. If anyone else wishes to enter their appearance, we'll
9	provide a pad of paper for you to note your appearance and it
10	will be included in this in the transcription of this
11	proceeding.
12	So at this stage, we are now going to have the
13	discovery update, status and proceedings with Special Master
14	Katz.
15	MS. ITRI: Good morning, Your Honor. Shauna Itri
16	from Seeger Weiss on behalf of the plaintiffs. To date, we've
17	had about nine depositions. We have nine more scheduled
18	throughout January and February. And we're continuing to get
19	the schedule built out through the rest of the first quarter
20	of 2024.
21	We have documents. Plaintiffs are continuing to
22	analyze those documents, send supplemental custodians, request
23	interrogatories. We have a handful of disputes that Special
24	Master Katz is actively managing and we're working
25	cooperatively to resolve those disputes.

MS. McNALLY: I think that was a great overview. This is Laura McNally for defendant Philips RS. And I agree with everything my friend, Ms. Itri, just said. Just this morning, we worked with Special Master Katz on one issue that we were able to resolve and move forward on that one. So again, I think we're working cooperatively and, you know, chugging along through this discovery process.

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THE COURT: Thank you.

9 MR. LAVELLE: Good afternoon, Your Honor. John 10 Lavelle from Morgan Lewis for Philips RS. I want to give Your 11 Honor a brief update on the progress with respect to plaintiff 12 fact sheets and the deficiency process. The parties have been 13 continuing to work through that deficiency process. It's 14 generally working well.

15 I can give you two specific points of data that might Last month, we sent a notice of intent to seek 16 be useful. 17 relief to an initial group of 46 plaintiffs who had failed to file plaintiff fact sheets and we got responses from the vast 18 19 majority of those. 21 of those plaintiffs voluntarily 20 dismissed their complaints. Another 20 plaintiffs did file 21 their plaintiff fact sheets. So we're doing follow-up with 22 the remaining five individuals.

23 We also last week served notices of letters of intent 24 to seek relief to two groups of plaintiffs who had filed 25 deficient plaintiff fact sheets. We're working through the 1 process of notifying them now. We have received requests for 2 additional information from some of them and we are responding 3 to those on an individual basis, and we expect to have a group 4 of deficiencies to present to Special Master Katz early in the 5 new year.

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THE COURT: Thank you.

7 MS. REICHARD: Good morning, Your Honor. Joyce 8 Reichard for plaintiffs. I agree with counsel's assessment of 9 the plaintiff fact sheets and the deficiency notices. We have been working well together. And we have identified some 10 11 individuals who may have corrected those deficiencies. And 12 counsel for individual plaintiffs have been addressing those 13 specifically with counsel for defense. So we do agree, and I 14 believe we are working collectively together, to make sure 15 that those are resolved efficiently. Thank you.

MS. POLLOCK-AVERY: Good afternoon, Your Honor. Elizabeth Pollock-Avery for the plaintiffs. I just wanted to update the Court on the number of documents produced by the plaintiffs so far. We have produced over 80,000 documents and this comprises over 430,000 pages.

THE COURT: Thank you.

MS. POLLOCK-AVERY: Thank you, Your Honor.

23 MS. WEST FEINSTEIN: Good afternoon, Your Honor. 24 Wendy West Feinstein for Philips RS. Just to note that the 25 parties are also working through depositions and third-party

1 discovery as well. Special Master Katz has been very helpful. 2 The parties have been working very collaboratively throughout 3 both third-party discovery and depositions of defendants. And we will be looking to depose the medical monitoring plaintiffs 4 5 too once we work through these discovery issues. Thank you. 6 THE COURT: Anything else on that matter? 7 (No response.) 8 THE COURT: The next item on the agenda is the update 9 on the economic loss class settlement notice, which includes the joint motion to publish the notice. I did grant that 10 motion. 11 12 I also want to say that the Court does receive calls 13 from various individuals who have received the notice. And 14 when the Court receives those, we just tell them to call Mr. Rihn. So wherever he is, I'm sure his phone is ringing 15 off the hook. 16 17 MS. DUGGAN: Good afternoon, Your Honor. Sandra 18 Duggan for the plaintiffs. We did receive the Court's order 19 and that notice is now up on the Court's website and we 20 appreciate that. 21 As everyone knows, the class period opened on Monday, 22 December 11th. We understand from the settlement 23 administrator and GM group that all of the long form the notices have been sent through the direct mail to all 24

known class members, both users and payers. In addition, all

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of the summary email notices have gone out to users and payers. The DME notices have gone out. These are all notices that the Court approved. And the settlement website is up and running.

And I understand that in the first 24 hours, the settlement administrator received over 9,000 calls to the call center. And there are also inquiries that trickle down to myself, to the other class counsel, and we're working very hard in conjunction with Philips to resolve any issues that are raised or brought to our attention and to respond as quickly as possible.

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THE COURT: Okay.

13 MR. LAVELLE: Your Honor, John Lavelle again for 14 Philips RS. I confirm with Ms. Duggan that the parties are 15 working closely together as issues come up. And we've certainly had a number of inquiries that have come to our 16 attention over the past several days as the website has gone 17 live and as there's been a lot of attention from class members 18 19 about the settlement that we've been working collaboratively 20 to try to identify and resolve issues. And I think that has 21 been working very well.

THE COURT: Thank you. Okay. The findings of fact and conclusions of law concerning Rule 12(b)(2) motion to dismiss, the briefing is all in. There is just the hyperlink portion that's going to be coming shortly.

1 That's correct, Your Honor. MR. MONAHAN: I think 2 it's coming on Tuesday of next week. And during our lovely 3 morning session with bagels and whatnot, we did have a chance to speak to your clerks and talk about what that process looks 4 5 like to make sure you get exactly the hyperlinks you need. The record is so voluminous. I don't 6 THE COURT: 7 require this in every case, but looking at the number of 8 proposed findings, it's going to be very important that the 9 Court can pinpoint the facts that are referenced as part of the record. 10 11 MR. MONAHAN: For sure, Your Honor. And that's 12 coming Tuesday. 13 THE COURT: Thank you for doing that. It's going to 14 make our job easier. 15 MR. SCHWARTZ: Good afternoon, Your Honor. Steve Schwartz for the plaintiffs. Exactly right, we haven't gotten 16 17 everything in front of the Court. And we'll get the 18 hyperlinks. It is a large record. The one wrinkle was 19 defendants did file a request for judicial notice of documents 20 which were discussed at the hearing or identified before. We 21 will file a response. We're analyzing that. So we'll get a 22 response in in due course. 23 THE COURT: My understanding is docket entries that are a matter of public record, the Court can take judicial 24

25 notice. So if you feel that there's something, you know, that

the Court shouldn't take notice of, you know, I'll wait for 1 2 your response. 3 MR. SCHWARTZ: Right. We're still analyzing it because we just got it. So I just wanted to give you a heads 4 5 up that that response will be coming. 6 THE COURT: Thank you. 7 MR. SCHWARTZ: One other, and I don't want to steal 8 thunder --9 I hope there's a hyperlink to those when THE COURT: you're relying on --10 11 MR. MONAHAN: We'll add a hyperlink for sure. 12 THE COURT: Yes, to those. Because I don't want to 13 have to go searching another docket somewhere or because of 14 the voluminous exhibits, you know, for me to troll through 15 those to try to find them when you're discussing them in the context of your findings, it would be more helpful for 16 17 hyperlinks to those as well. MR. MONAHAN: For sure, Your Honor. We'll make that 18 19 And these are consent decrees and complaints and happen. other FDA enforcement actions. 20 21 MR. SCHWARTZ: And I don't want to steal any thunder 22 from the leadership development report. I will say on our 23 end, some less experienced lawyers, particularly Mr. Seeley of the Seeger Weiss firm, Mr. Kashurba of my firm, took a very 24 25 large role in our proposed findings. And so I just wanted to

call that to Your Honor's attention. We do have younger 1 2 lawyers and diverse lawyers working throughout the case on a 3 lot of different issues and taking big roles, making our lives 4 easier and also doing a great job. THE COURT: 5 Thank you. 6 MR. SCHWARTZ: Thank you. 7 THE COURT: Objections to report and recommendation 8 of Special Master Vanaskie, re: motions to dismiss. It's my 9 understanding that all of those objections and the briefing is in, you know, and the Court will be working on that. We're 10 11 working on them now. 12 Do you wish to be heard any further on those? 13 MR. LAVELLE: No, Your Honor. We just wanted to 14 confirm that everything that was going to be filed has been 15 filed before, Your Honor. 16 THE COURT: That's my understanding. 17 MR. VERRIER: Yes. Nothing further from the 18 plaintiffs, Your Honor. 19 THE COURT: The next item, objections to report and 20 recommendations of Special Master Katz re: monitoring 21 discovery. And I think there's one thing left to be filed on 22 that before the briefing would be completed for the Court to 23 analyze it. 24 MS. IVERSON: Kelly Iverson on behalf of plaintiffs. 25 You're correct, Your Honor. I believe the parties agreed to

December 21st for oppositions. Both parties filed objections.
 And we were not sure if you wanted to schedule a time in
 January or at the January 25th conference to hear from the
 parties with respect to those filings.

5 THE COURT: You can put them on the agenda if you'd 6 like. Thank you.

MS. WEST FEINSTEIN: Thanks, Your Honor. Wendy West
8 Feinstein.

9 THE COURT: I just want to say, my practice is, if I 10 can rule on something on the record and everybody understands 11 clearly what the Court's ruling is, then I -- you know, I can 12 do that. If it's something that I need to really sit down and 13 have a more intensive analyzation and address something, I'll 14 write an opinion. I will be writing opinions on the motions 15 to dismiss.

MS. IVERSON: Yeah. Absolutely, Your Honor. Thank you for that clarification. I think that was what we were asking, is if you foresaw that we would have argument or not. And maybe that's something you can, once we have the full briefing in --

THE COURT: I'll just take a look at it.

22 MS. IVERSON: -- and you can let us know with a 23 docket entry whether it will be prepared.

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THE COURT: Right. Sometimes I need argument just so I can understand exactly what the problem is and try to

resolve it. Other times I can clearly see and I can either 1 2 announce it, you know, on the record. Sometimes if it's a 3 discovery issue, I like to keep it moving. I don't want to have 60-day delays, you know, just try to polish up an 4 5 opinion. If I can review it and I have a resolved decision in 6 my mind, you know, I can announce it. And if you need an 7 opinion, I can write it later. 8 MS. IVERSON: Thank you, Your Honor. 9 THE COURT: Okay. 10 MS. WEST FEINSTEIN: Thank you, Your Honor. Very 11 briefly. Wendy West Feinstein on behalf of Philips RS. The 12 defendants don't believe that oral argument is necessary on 13 the medical monitoring objections. But of course, we'd be 14 happy to discuss --15 THE COURT: I don't know yet. 16 MS. WEST FEINSTEIN: Yeah, discuss with the Court any 17 issues. And we would welcome expedited ruling and assessment 18 of that. So from the defense perspective, a verbal ruling at 19 the next status conference would be welcome if the Court is so 20 inclined. Thank you. 21 THE COURT: Okay. 22 MS. IVERSON: On behalf of plaintiffs, we certainly defer to Your Honor if you don't think oral argument is 23 necessary. We think with the privacy interest involved, that 24 25 it might be something that would be helpful to have discussion

1 with the Court, and certainly we'd be open to do that sooner than the January 25th conference, if the Court would prefer 2 3 and would seek and ask for that. THE COURT: 4 Thank you. 5 MS. WEST FEINSTEIN: Thank you. 6 THE COURT: The update on the census registry. 7 MR. LAVELLE: Your Honor, John Lavelle again for 8 Philips RS. First, in terms of the number of potential 9 claimants on the census registry, as of yesterday, there were 56,397 individuals on there. 10 11 There were two other points with respect to the 12 census registry I did want to bring to Your Honor's attention. 13 One is that we have also been working through the deficiency 14 process on an ongoing basis. 15 With respect to the census registry, there are a fair number, I have to say even a substantial number, of census 16 17 registrants who have not given us everything that is required. 18 So we are working through the deficiency process and are 19 continuing to do that on an ongoing basis. 20 We have also, in addition, have started discussions 21 with plaintiff's counsel of some potential revisions to the 22 census registry form in order to collect some additional information concerning potential claimants. There's nothing 23 to present to Your Honor on this point today. But we did want 24 25 to make Your Honor aware that that is something we have

started discussions on and we may be presenting to Your Honor early next year.

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THE COURT: Thank you.

MS. REICHARD: Thank you. Joyce Reichard again, Your Honor. That number is a little bit more than what plaintiffs have. But obviously, I believe that defense would have a better idea of that number. That's approximately a little over a thousand more than last month.

9 I would say with respect to deficiencies, it is my understanding that plaintiff's counsel individually has 10 reached out to defense counsel and are working with them to 11 12 make sure that those deficiencies are cured. I think there 13 was some misunderstanding, which was the reason for the 14 revisions to the pretrial order. So I do believe that those 15 deficiencies will be resolved quickly and will probably not take place after this first round is completed. 16

17 THE COURT: Thank you. The update on the state court18 litigation.

19 MR. LAVELLE: Yes, Your Honor. John Lavelle for 20 Philips RS again. I have a brief update on one matter that we 21 mentioned to Your Honor at the last case management 22 conference. This is a case called Lis, L-I-S, that is currently pending in the Western District of New York. It was 23 originally removed to that court from state court Niagara 24 25 County, New York. As we reported last month to Your Honor,

that is a case where there's a motion to remand that was filed in that court. A magistrate judge in that court had issued a report and recommendation for remand of the case.

4 The development in that matter, since last month, is 5 that the judicial panel multidistrict litigation has withdrawn the conditional transfer order in that case, essentially 6 7 saying that because the magistrate judge has decided or has 8 recommended remand, that they believe that the Western 9 District of New York should decide the motion to remand rather than have the case transferred at this time. So the Western 10 District of New York will decide that. And if the Court 11 12 denies the motion to remand, then we will renew the request 13 for transferring to the Court before Your Honor. If the Court 14 grants remand, then there will be a case pending in Niagara 15 County that we'll be moving forward on. So we will have to see how that goes. 16

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THE COURT: Thank you.

Okay. So one other thing, before we get to the last matter on the agenda, would be the bellwether mediations. Where does that stand? I'm just not -- I'm not looking for the topics of the mediation, just the process to come to agree on how those mediations -- how the bellwether plaintiffs will be selected and then how you envision going forward with that mediation process.

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MR. LAVELLE: Your Honor, John Lavelle. I won't --

without get into too much detail here, we have had sessions 1 2 with the mediator relating to the personal injury cases and we 3 will continue to have those discussions. And one of the topics we have discussed is --

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5 THE COURT: Well, I want to be informed about the 6 bellwether mediation prospects and how you will go about 7 arranging for that. You know, I guess, a couple things. One, 8 if you feel it's not worthwhile, that it has to be done on a 9 global basis, or do you need these mediations to see if you 10 can resolve some of these cases to see then about going 11 forward with a more global resolution, if that's practical. 12 And that's what I need to know, if you're going to be -- how 13 you're going to do it. And then if you're going to do it, 14 what's the process. You know, are you going to be self-selecting one party, and one party -- or how will that 15 work out so that you can have meaningful mediations with 16 17 respect to the personal injury because that's a little different than -- quite different, I would think, than the 18 19 class actions where, you know, that you have a class, it's --20 it's going to resolve the entire class claims.

21 MR. MONAHAN: So, Judge, on that topic, I believe 22 there's a date in the schedule in January for Judge Welsh's, because we're talking about mediation, confidential report to 23 Your Honor --24

THE COURT: Right.

1 MR. MONAHAN: -- as to what's going on. And these 2 topics have all been discussed. And I think, just because of 3 the nature of the mediation and whatnot that, through Judge 4 Welsh's report to you, we can answer all of those questions. 5 THE COURT: Okay. Just so you know that I am 6 interested in that process to see if you're going to go 7 forward with it and just to know that that's being undertaken. 8 MS. DUGGAN: Your Honor, Sandra Duggan again. These 9 are all the issues that Your Honor has mentioned --10 THE COURT: Right. MS. DUGGAN: -- are issues that the parties are 11 12 I do believe the date for the special -- the discussing. 13 mediator's summit mediation report was extended. I don't 14 believe it's January on the current schedule. I think it's 15 either -- it's probably February or March. 16 THE COURT: Okay. Thank you. 17 MR. MONAHAN: Thank you, Your Honor. 18 THE COURT: Okay. The leadership development 19 committee update. 20 MS. FRESCO AGRAIT: Good morning, Your Honor. Miriam 21 Fresco Agrait from Rubenstein Law on behalf of the leadership 22 development committee on the plaintiff's side. Thank you 23 again, Your Honor, not only for the appointment to the leadership development committee but also for the ability to 24 25 speak on behalf of the other appointed members of the LDC at

1 these status conferences.

Since being appointed almost two years ago, the LDC has maintained several goals in mind. The top two being: one, to do our best to help those plaintiffs that have been affected by the defendant's defective device; and two, to learn as much as possible about how to successfully bring forth this type of litigation from the more experienced attorneys appointed to leadership.

9 Upon receiving the appointment, collectively, the LDC 10 was looking forward to working side by side with the other 11 appointed members of the PSC and leadership. And since then, 12 each member of the LDC can attest to being assigned some tasks 13 for a period of time.

14 However, earlier this year, when I came before this Court to report on behalf of the LDC, I reported that I had 15 been working on document review. After concluding my report, 16 another attorney, not appointed to the LDC but an associate at 17 18 the firm that had been working on this litigation, came to the 19 podium and he gave a report on his experience. He remarked 20 about his ability to draft pleadings and motions and discussed 21 his ability to attend hearings with the special master and to 22 even be involved with arguments on behalf of the plaintiffs 23 and so on. By comparison, his experience in this litigation was more extensive and had exposed him to more meaningful 24 25 moments of this litigation than any member of the LDC had

1 received.

During last month's status conference, Your Honor mentioned that you would like a mid-litigation report from the LDC. During our monthly LDC meetings, we did discuss this and we collectively spoke about how we would be very pleased to give you a report of our work to date. And, with the Court's permission, perhaps we could include our goals and our ideas for how to make those deals a reality.

9 Similar to sentiment that has been shared in the past on both sides by other -- by the other, I can call them LDC or 10 11 less-experienced attorneys on this litigation, the members of 12 the LDC have been grateful for the opportunity to build great 13 relationships and friendships among ourselves. And also, 14 we've enjoyed the moments that we've been able to work on this 15 litigation with the co-leads and the other members of the PSC and other members who have been working on this litigation. 16 17 However, we do feel that we would be doing a disservice to our appointment and future LDCs if we don't express to Your Honor 18 19 our desire to see our role in this litigation increased in 20 meaningful ways in which we believe that this could happen.

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We thank you for your time, Your Honor.

THE COURT: I'll look forward to that. And I would ask that, before you submit it to the Court, you meet with your leadership. And the leadership are going to have to respond to that because clearly it was the goal that meaningful work would be given to the members of the leadership development so that they can grow.

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3 I know some plaintiffs' firms and larger, they have more associates. So what those associates are doing, the 4 5 leadership development committee should also be involved in. 6 That's the whole goal here, is to grow this group of younger 7 lawyers by having meaningful work given to them. So I would 8 expect -- I think that's very helpful, that you're going to be 9 coming up with proposals and ways to make the leadership development committee really function and achieve the goals. 10

MS. FRESCO AGRAIT: Thank you, Your Honor.

12 THE COURT: But I want you to meet with the leaders 13 before the report is prepared so that the leaders can respond 14 as to how -- if changes are going to be needed, how they will 15 advance those changes that make these experiences really 16 meaningful and productive, both for the -- of the leadership 17 as -- of the regular leadership as well as the leadership 18 development committee.

MS. FRESCO AGRAIT: And I can say that on behalf of the LDC, we enjoy working with our leadership and our PSC. And, as you said, Your Honor, we just want more opportunities to grow.

THE COURT: Thank you.

24 MS. PENG-RUE: Good afternoon, Your Honor. Victoria 25 Peng-Rue of Morgan Lewis on behalf of Philips Respironics. I'm an eighth year associate from New York and have had the opportunity to be involved in various aspects of this case. If I tried to go through all of them today, Your Honor, we would be here all afternoon so I will not do that. But I will share a few examples to show highlights.

First, as you've heard today, we have a number of depositions scheduled in the case and I personally have been involved in preparing for these depositions, including by collaborating with other members of the defense team.

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10 Second, with respect to discovery, I have worked 11 closely with others to address certain discovery issues, 12 including responding to privileged challenges and production 13 inquiries from the plaintiffs as the parties continue to meet 14 and confer on document discovery.

Also, I have been actively managing a group of over a dozen associates who are completing the document review of productions by third parties.

And lastly, Your Honor, I am actively engaged in understanding the complexity of the science in this case, including analyzing both pre- and post-recalled testing with respect to the recalled devices to support the case team and our defenses.

Your Honor, the complexity of this case is not to be understated, and I have enjoyed the amount of information that I have been able to learn from working on this case.

Structurally, this case also involves multiple party entities 1 2 and their counsel and we've been working together 3 collaboratively to meet this Court's case schedule and deadlines and we will continue to do so. 4 5 I thank the Court for taking the time to hear from me 6 and other young attorneys appearing before you today. And we 7 are very grateful for the opportunity. 8 THE COURT: Thank you. Anyone else? 9 (No response.) 10 THE COURT: Well, thank you all for coming in today. 11 I hope you all have wonderful holidays, get the opportunity 12 for some rest coming up this last week in December before the 13 new year because it looks like we're going to have a very busy 14 year next year for all of us. So good luck to you and safe 15 travels home. 16 (Proceedings concluded at 12:34 p.m.) 17 18 19 CERTIFICATE 20 I, SHARON SIATKOWSKI, RMR, CRR, CBC, CRI, certify that the foregoing is a correct transcript from the 21 record of proceedings in the above-entitled matter. 22 s/Sharon Siatkowski SHARON SIATKOWSKI, RMR, CRR, CBC, CRI 23 Official Court Reporter 24 25