

on behalf of the Defendants.

1       THE COURT: Good morning. If everybody can hear me,  
2 this is on Dulberg versus Mast. If plaintiff counsel  
3 can identify himself.

4       MR. TALARICO: Good morning, Judge. My name is  
5 Alphonse Talarico and I represent the plaintiff, Paul  
6 Dulberg.

7       THE COURT: And defendant?

8       MR. FLYNN: Good morning, Your Honor. George Flynn  
9 on behalf of defendants Mast and Popovich firm.

10       THE COURT: Okay. And for the record I also note  
11 that Mr. Dulberg is attending via Zoom.

12               So what do you guys want to do today? What do  
13 you intend to do?

14       MR. TALARICO: Judge, I think both of us -- and I  
15 won't speak for Mr. Flynn, but it appears that Mr. Flynn  
16 has objections to my questions, and I have objections to  
17 his answers --

18       THE COURT: Well, I thought this was on  
19 interrogatories and a production request. Am I correct?

20       MR. TALARICO: That is correct.

21       THE COURT: I didn't get copies.

22       MR. TALARICO: Oh.

23       THE COURT: I got sent copies of exhibits from the  
24 deposition.

1 MR. FLYNN: Judge, my office actually sent copies of  
2 the discovery documents very early on, maybe even the  
3 day that we last appeared.

4 THE COURT: Hard copies?

5 MR. FLYNN: By email. Linda Walters, my secretary,  
6 sent those.

7 THE COURT: Do you know about when?

8 MR. FLYNN: I want to say -- I think I can pull it  
9 up here, actually.

10 THE COURT: I do have it.

11 MR. FLYNN: It was the afternoon after we appeared  
12 last.

13 THE COURT: Yeah, okay. I think I've got it.

14 MR. FLYNN: So, you know, I don't know that we  
15 actually have a motion pending, although I know the  
16 court would like to resolve these discovery differences.

17 THE COURT: We don't really have a motion pending.  
18 The way I interpret what's happened is plaintiff brought  
19 to my attention your objections, which I think satisfies  
20 his burden to resolve them, but it -- I hate to have  
21 people draft motions on these things because I end up  
22 doing the hearing this way anyway. So is there an  
23 objection to proceeding?

24 MR. TALARICO: Judge, since you haven't read --

1 THE COURT: Well, I have it --

2 MR. TALARICO: -- (indiscernible).

3 THE COURT: I have it now.

4 MR. TALARICO: I'm sorry.

5 THE COURT: It's okay.

6 MR. TALARICO: My understanding --

7 THE COURT: But I have what you sent me, which is  
8 deposition exhibits, and have not seen what the  
9 defendant had sent me.

10 MR. TALARICO: That's -- I'm just being -- I'm just  
11 being civil towards Mr. Flynn, my own office, and saying  
12 we should put this off for 30 days, give you a chance to  
13 read what he's filed.

14 THE COURT: Well, he just filed the interrogatories.  
15 I mean, I'm looking at this -- I don't see this -- I see  
16 this as time-consuming, but I don't see it as  
17 complicated.

18 MR. TALARICO: Well, -- excuse me, Your Honor. I'm  
19 sorry.

20 THE COURT: Go ahead.

21 MR. TALARICO: Well, one of the things I believe  
22 Mr. Flynn's office filed was my letter, my 201(k)  
23 letter, explaining why these questions -- why I'm saying  
24 they're nonresponsive. I'm pretty sure that was of part

1 of -- in fact, I am sure, it was part of what Mr. Flynn  
2 -- Mr. Flynn's office sent.

3 MR. FLYNN: I sent it; I did not file it. It was  
4 part of a courtesy copy package.

5 MR. TALARICO: I'm sorry, please repeat.

6 MR. FLYNN: I -- I included the -- what I guess  
7 could be described as a 201(k) letter from plaintiff to  
8 me in the package. I did not file what I sent. I  
9 provided it as a courtesy copy.

10 MR. TALARICO: All right. I stand corrected. He  
11 said, Judge, Mr. Flynn's office sent to you a six-page  
12 draft that I made that explained all of my -- my  
13 allegations of non- -- of Mr. Flynn's office being  
14 nonresponsive in the request to produce for both  
15 defendants and the interrogatories for both defendants.

16 MR. FLYNN: Well, these are my clients' answers and  
17 production responses, but I signed (indiscernible) for  
18 purposes of the objections.

19 THE COURT: Okay. So let's attempt to go through  
20 these. I'm not finding the letter, but --

21 MR. FLYNN: The letter is not on a letterhead,  
22 Judge. I think it might have been a Word document and  
23 that -- that was the manner in which I received it.

24 THE COURT: Your volume dropped.

1           Okay. I have Hans Mast's response to Dulberg,  
2 defendants' nonresponsive answers -- These are how they  
3 are titled -- Hans Mast's dep miniscript, letter to  
4 judge -- Let me just check -- No, that's Mr. Flynn's  
5 letter. But in the list of attachments, I'm not seeing  
6 that's readily identifiable as plaintiff's letter.

7           MR. FLYNN: I think it was described in the PDFs as  
8 a 201(k) letter perhaps.

9           THE COURT: Here's what I -- Well, let me just -- I  
10 didn't pull this up.

11           All right. Here's the list of items: Notice  
12 of service, Law Office Popovich answers, Law Office  
13 Popovich response, Hans Mast answer additional, Hans  
14 Mast response to Dulberg court-ordered -- I'm just  
15 reading the titles -- defendants' nonresponsive answers,  
16 PDF --

17           MR. FLYNN: That's probably it.

18           THE COURT: All right. Let me pull that up.

19           MR. TALARICO: Additionally, Your Honor, there was a  
20 deposition that Mr. Flynn's office sent that -- that  
21 corresponds to my adding the exhibits to that  
22 deposition.

23           THE COURT: All right.

24           MR. TALARICO: So --

1 THE COURT: Yeah, this isn't the --

2 MR. TALARICO: -- I do --

3 THE COURT: -- letter, what I am looking at. It  
4 appears to be -- the document that you said might be the  
5 letter does not have a cover page. It starts with  
6 Defendants' answers to Plaintiff's court-allowed  
7 additional -- ten additional interrogatories and ten  
8 additional Request to Produce are nonresponsive as  
9 follows. Looks like page two of a -- perhaps a letter.  
10 Could that be --

11 MR. FLYNN: It does, but --

12 MR. TALARICO: If I might, Judge. Initially, in the  
13 spirit of cooperation, I sent a 201(k) letter to  
14 Mr. Flynn saying, you know, I have a problem, this is a  
15 201(k) letter. I think your -- I think your answers are  
16 nonresponsive. He said, okay, send me -- you know, send  
17 me your documents, send me something to show me why  
18 they're not.

19 That's what I did. I just -- That was an  
20 attachment. That wasn't meant to be the letter by its  
21 independent self. It was a six-page attachment.

22 THE COURT: All right. In any event, guide me  
23 through the interrogatories. Which one do you want to  
24 start with? And I'll find it.

1 MR. TALARICO: I'm sorry, Judge. I didn't hear you.

2 THE COURT: Which set of interrogatory or production  
3 requests do you want to start it off?

4 MR. TALARICO: Okay. I guess, Judge, the simplest  
5 one would be the response of Mr. Thomas J. Popovich to  
6 the court-ordered interrogatories.

7 THE COURT: All right. I'm looking at a document  
8 entitled The Law Office of Thomas J. Popovich PC Answers  
9 to Dulberg's Court-Ordered Additional Interrogatories.  
10 Is that the document you mean?

11 MR. TALARICO: Yes, Your Honor.

12 THE COURT: Okay. Tell me the first one that's at  
13 issue.

14 MR. TALARICO: Number one I say is nonresponsive.

15 THE COURT: Okay. I've seen -- read the  
16 interrogatory: Please identify with specificity any and  
17 all conflicts of interests checks performed pursuant,  
18 et cetera; an objection, irrelevant, not reasonably  
19 calculated, et cetera, that no allegation of a conflict  
20 of interest has ever been raised or alleged.

21 All right. Mr. Flynn, you want to add  
22 anything?

23 MR. FLYNN: I don't think I have anything to add.

24 THE COURT: Okay. Mr. Talarico, I'm reading this



1 interrogatory. It was my recollection as well that  
2 conflicts of interests was not an issue in this case.

3 MR. TALARICO: At this point it wasn't, Judge, by  
4 the -- by the pleadings that were filed by the Gooch  
5 office and the Clinton office, but, Judge, I would like  
6 an answer to that question because I can still amend the  
7 pleadings. It's relevant to whether or not there was  
8 legal malpractice or settlement malpractice.

9 THE COURT: Okay. But you have an answer.

10 MR. TALARICO: Judge, the answer is objection.  
11 There's an objection that needs to be ruled on.

12 THE COURT: He says Tom Popovich conducted a  
13 conflicts check by personal recollection as sole  
14 shareholder in the firm and -- I mean, do you have a  
15 problem with the information contained in that answer?

16 MR. TALARICO: All right. Judge, then -- then if  
17 that stands as the answer, then the objection is waived  
18 by Mr. Flynn?

19 THE COURT: The objection remains. It doesn't need  
20 to be ruled on because he's answered it, but it's not  
21 presently relevant, as near as I can tell, but he  
22 answered it. So I don't -- I don't see it as an issue.  
23 It's effectively waived.

24 MR. TALARICO: With all due respect, the question is

1 lead to -- evidence or lead to relevant also. Not just  
2 relevant, but could lead to.

3 THE COURT: It could, but it's not -- it's not an  
4 issue at this point because he answered the question.  
5 If he said I'm not answering, then I think you would  
6 have a point, but he did give an answer.

7 MR. FLYNN: After nearly five years of litigation in  
8 this case, there's never been an allegation of a  
9 conflict of interest (Zoom audio feed fading)  
10 (indiscernible) --

11 THE COURT: That's my recollection too, but --

12 MR. FLYNN: It seems -- I mean, it's almost the  
13 definition of a fishing expedition.

14 MR. TALARICO: Judge, the (indiscernible) -- I'm  
15 sorry.

16 THE COURT: We're beyond that. We have an answer.  
17 So, I mean, you made the objection. You objected on  
18 relevance. It's noted for the record. But you provided  
19 an answer. So is there a problem with the answer on the  
20 last line of -- in the last line of that statement?

21 MR. TALARICO: Sorry, Judge, are you addressing me?

22 THE COURT: I'm addressing you, Mr. Talarico.

23 MR. TALARICO: No, Judge.

24 THE COURT: Okay. Then I will -- I -- there is

1 nothing -- I will find that defendant's answer to  
2 additional interrogatory number one is responsive.

3 Next one?

4 MR. TALARICO: All right. My response is that that  
5 answer is nonresponsive.

6 THE COURT: Which one, number two?

7 MR. TALARICO: Number two, Judge, yes.

8 THE COURT: All right. My reading of number two, it  
9 says Popovich was the supervising partner in the firm  
10 and implicitly, as I'm reading this, that Mr. Popovich  
11 performed the supervisory role.

12 Is that a fair assessment, Mr. Flynn?

13 MR. FLYNN: That's to the extent necessary. The way  
14 that the interrogatory was phrased (indiscernible)  
15 leading to a legal conclusion.

16 THE COURT: Okay. You're breaking up a little, but  
17 go on.

18 MR. FLYNN: The way that the interrogatory reads, it  
19 finishes with a legal conclusion that there is a  
20 requirement under the rule of professional conduct 5.1  
21 that there is a necessity of supervision. In any event,  
22 Popovich is the owner of the firm. Hans Mast is someone  
23 that has practiced as a lawyer since 1991. Mast  
24 testified --

1 THE COURT: Your volume's going --

2 MR. FLYNN: That's strange. It's a brand new  
3 computer, brand new (indiscernible) camera.  
4 (Indiscernible).

5 THE COURT: Much better. Much better. I guess  
6 (indiscernible).

7 MR. FLYNN: (Zoom audio feed distortion) if I sit  
8 back.

9 I mean, Mast testified that he was responsible  
10 for the case, that he had been practicing for  
11 twenty-five -- seven years. I'm not sure what else we  
12 can say.

13 THE COURT: And am I correct in reading this that  
14 you're disclosing Tom Popovich was responsible as the --  
15 was the supervisor of Mr. Mast to the extent that there  
16 was any?

17 MR. FLYNN: For the factual standpoint in time  
18 Popovich owns the firm and Hans Mast was an associate.

19 THE COURT: Yeah.

20 MR. FLYNN: I think that we're getting into expert  
21 testimony if we go any further.

22 THE COURT: If -- Here's my take on this: Unless  
23 Mr. Mast is an independent contractor and not an  
24 employee or agent of the law firm, in some way, shape or

1 form his superior is a supervisor, technically, at least  
2 as far as the hierarchy of the firm is concerned.

3 What's involved in that I think is a separate issue,  
4 but, I mean, somebody's got to be responsible. So --

5 MR. FLYNN: Yes, again, Popovich owns the firm; Mast  
6 was an associate. I don't think there's any dispute  
7 about that.

8 THE COURT: Okay. Mr. Talarico?

9 MR. TALARICO: Judge, first of all, the answer of  
10 "Popovich" doesn't -- is non- -- I'm sorry,  
11 nonresponsive because under -- there was more than one  
12 Popovich attorneys, or more than one Popovich working at  
13 the firm at the time, and there were more than one  
14 Popovich licensed to practice law in the United States.  
15 I need a definite answer. I don't just need Popovich.

16 THE COURT: Okay.

17 MR. TALARICO: Also, --

18 THE COURT: I think that's reasonable. And I don't  
19 know the timeframe as to whether Kim Popovich was still  
20 working there, but, Mr. Flynn, could you clarify that.

21 MR. FLYNN: This was Tom Popovich --

22 THE COURT: Yeah.

23 MR. FLYNN: Tom Popovich.

24 THE COURT: I think it needs to be in writing, but I

1 think that -- yeah, just for clarification, if you could  
2 put it in writing. So if you could amend that to  
3 reflect that Tom Popovich was the supervising partner, I  
4 think that's adequately responsive.

5 Unless I'm missing something, Mr. Talarico.

6 MR. TALARICO: There's an additional answer there,  
7 Judge. It says see generally Hans Mast's deposition  
8 testimony, it being instructions. I believe that's the  
9 answer.

10 THE COURT: I'm sorry.

11 MR. TALARICO: If I'm misreading it, please correct  
12 me. It says see generally Hans (indiscernible) -- Hans'  
13 deposition testimony. My instruction says that when the  
14 response is to a document already submitted, a specific  
15 area or label or place should be noted. That's not  
16 responsive. It just says see generally. I don't know  
17 what he wants me to go look -- or not Mr. Flynn. I'm  
18 sorry. I don't mean Mr. Flynn. I mean the office that  
19 is representing --

20 THE COURT: Okay. Mr. Flynn, do you have any more  
21 specific answer as to where -- what you're referring to?

22 MR. FLYNN: I do not with respect to this particular  
23 interrogatory. I mean, --

24 THE COURT: I'm sorry?

1 MR. FLYNN: Not with respect to this particular  
2 interrogatory.

3 THE COURT: Can you identify where in Mr. Mast's  
4 deposition he discusses his -- how he's supervised, if  
5 anywhere?

6 MR. FLYNN: (Indiscernible) sure I can, Your Honor,  
7 but the answer is that it's Tom Popovich that owns the  
8 firm and who is responsible. (Indiscernible) if I need  
9 to amend the answer to include "Tom," I think that's the  
10 more efficient way to do this.

11 THE COURT: All right. I mean, you've answered, but  
12 you really do answer adequately by -- if you say Tom  
13 Popovich was the supervisor. I don't know that you need  
14 to identify it elsewhere, so -- All right.

15 Mr. Talarico, anything else on that?

16 MR. TALARICO: Well, I am unclear as to the --  
17 identifying where in the Mast deposition. Is Mr. Flynn  
18 or Mr. Flynn's office responsible for identifying where  
19 he is specifying the response to this question is within  
20 the deposition?

21 MR. FLYNN: I'm going to object to that. I'm going  
22 to answer the interrogatory -- the supplement, and  
23 anything else is duplicative. I was trying to be  
24 helpful, but I'm not going to go through this exercise

1 and waste time unnecessarily.

2 THE COURT: You don't have to. You don't have to.  
3 You've asked for -- Your question is, who is the  
4 supervisor, and he's answered it.

5 MR. TALARICO: Is the instruction to see the  
6 deposition stricken?

7 THE COURT: That -- I think he -- I assume that's  
8 what he was saying he was going to do and if he strikes  
9 that, then there is no need to identify where in the  
10 deposition it says it because he's answered it.

11 MR. TALARICO: That's fine. If he strikes that in  
12 his answer and if he gives me the correct Popovich, then  
13 that answer is acceptable and it is responsive.

14 THE COURT: Okay.

15 All right. Next one?

16 MR. TALARICO: Okay. Number three: It's objection,  
17 interrogatory three calls for a response which would be  
18 violative of the attorney-client privilege. I don't  
19 know what attorney-client privilege he's referring to.  
20 I don't have -- he hasn't included the privilege log or  
21 whatever information. I don't know if he's talking  
22 about a relationship between Mast and Popovich and  
23 Dulberg or is there another relationship? I don't know.  
24 What attorney-client privilege?



1 THE COURT: I think that's reasonable.

2 Mr. Flynn?

3 MR. FLYNN: The attorney-client privilege between my  
4 office and --

5 THE COURT: Okay.

6 MR. FLYNN: -- my clients. The majority of the work  
7 (indiscernible) done here.

8 THE COURT: Could you identify that. Could you  
9 specify that is the privilege you're referring to.

10 MR. FLYNN: Yes.

11 THE COURT: Anything else on number three?

12 MR. TALARICO: That's all that's in that group, Your  
13 Honor.

14 THE COURT: All right. The next one -- Let me just  
15 close this out.

16 MR. TALARICO: The next one would be the -- excuse  
17 me, Judge, -- the interrogatory answers by Hans Mast.

18 THE COURT: All right. Hang on. Interrogatory  
19 answers?

20 MR. TALARICO: Yes, Judge.

21 THE COURT: I have a document entitled Defendant  
22 Hans Mast's Answer to Plaintiff's Court-Ordered  
23 Additional Interrogatories to Hans Mast. Is that the  
24 one?

1 MR. TALARICO: It is, Judge.

2 THE COURT: All right. Tell me the first one that's  
3 at issue.

4 MR. TALARICO: Well, let me go down the line, Judge.  
5 I'm saying that all seven are nonresponsive.

6 The first one is please identify the nonparty  
7 witness or potential nonparty witness in the underlying  
8 matter that you or someone under your control and  
9 direction interviewed or attempted to interview.

10 THE COURT: Okay. So what -- where is it deficient?  
11 Tell me what's missing.

12 MR. TALARICO: I will, Judge. My note's saying what  
13 specific deposition, Judge. There is no related --  
14 there is nothing there that says as -- in the second  
15 sentence, it says see also Mast's response to  
16 supplemental request to produce number two relative to  
17 discovery which was conducted in the underlying case  
18 including the depositions of various treating  
19 physicians.

20 I need something more specific. I have to know  
21 what he's referring me to.

22 THE COURT: He's told you what he's referring to in  
23 the supplemental request number two, so he's directed  
24 you and he's stuck with that, whatever the answer is.

1 There is no question about that.

2 With respect to various treating physicians,  
3 what -- what is -- were there any doctor deps?

4 MR. FLYNN: Yes, Judge, there was a handful of  
5 doctors' deps. I think four or five are identified in  
6 response to (Zoom audio feed fading).

7 MR. TALARICO: Judge, those depositions --  
8 (Cross talking.)

9 THE COURT: Hang on. Mr. Flynn, you cut off again.

10 MR. FLYNN: Well, those discovery depositions were  
11 identified in the supplemental production response. I  
12 consider the discovery deposition to be an interview. I  
13 think that is responsive to this (Zoom audio feed  
14 fading).

15 THE COURT: Yeah, I would agree with that.

16 Mr. Talarico?

17 MR. TALARICO: Just please keep in mind, Your Honor,  
18 that those discovery responses were not included in the  
19 1455 documents that were -- that later on in a response  
20 that those were all included and that's all the  
21 documents. All of the depositions of the doctors were  
22 not included.

23 THE COURT: They don't have to. They don't have to  
24 give you all those deps. You asked for the names.

1           MR. TALARICO: Judge, -- Okay. If I might, Judge,  
2 just to make it as simple as possible, there have been  
3 questions before by the Clinton firm give me all your  
4 documents, give me all your documents. Answer's here  
5 are all my documents.

6           The last time we were up before Your Honor,  
7 Mr. Flynn indicated that Julia Williams also agreed to  
8 not take settlement documents, so that the answer give  
9 me all your documents, here are all my documents, that's  
10 -- it's not correct. It has to be another agreement  
11 between Mr. Flynn's office and the Clinton office.

12          THE COURT: That's a different issue.

13          Mr. Flynn, do you have a response?

14          MR. FLYNN: I don't understand the point, but if  
15 there's a question about whether Popovich ordered the  
16 transcripts of the doctors, I don't think that they did.  
17 And, matter of fact, when I got this case years ago, I  
18 went out and ordered the transcripts of the fact  
19 witnesses which were not contained in the file and we  
20 paid for them, so, you know, the plaintiff is welcome to  
21 contact court reporters for depositions that have not  
22 been written. It's not our job to do that work for  
23 them.

24          THE COURT: Okay. Well, that's a different issue.

1 I'm not going down that road yet.

2 MR. FLYNN: I think that's what the point is that's  
3 being made.

4 THE COURT: I'm sorry?

5 MR. FLYNN: I think that's the point. I think that  
6 he believes that there are transcripts that are not in  
7 our possession that were not produced and we don't have  
8 them.

9 THE COURT: Well, I mean, I'm looking at the  
10 interrogatory and it just says give me the names.

11 MR. FLYNN: Right.

12 THE COURT: And whether or not you produced  
13 documents isn't, I don't think, relevant to this  
14 interrogatory, so maybe it will come up later. But I  
15 think if your request -- your response to supplemental  
16 request to produce number two identifies all these  
17 individuals, that's responsive.

18 Is there an issue I'm missing?

19 MR. FLYNN: I don't think so. Judge, just for the  
20 record, page four is where we begin to identify all the  
21 discovery subpoenas, depositions that were taken. The  
22 entire list is right here.

23 THE COURT: And that's attached to your response?

24 MR. FLYNN: That is the Defendant Hans Mast's

1 Response to Plaintiff's Court-Ordered Additional Request  
2 for Production to Defendant Hans Mast.

3 MR. TALARICO: And so they're not including  
4 depositions, just notices of depositions.

5 MR. FLYNN: Again, depositions were taken, were not  
6 necessarily ordered. So you asked what discovery was  
7 done. We listed it.

8 THE COURT: And that -- if there's a demand for a  
9 production of the transcripts, I haven't seen it yet.  
10 And we'll cross that bridge when we get to it and I'll  
11 address the interrogatory as far as costs are concerned,  
12 but this interrogatory number one has been answered, and  
13 I find the -- it -- the answer is responsive.

14 Is there anything else?

15 MR. TALARICO: Judge, just to clarify, and forgive  
16 me, but I'm trying to make it -- I need the court's help  
17 to get information, I need to explain why I'm trying to  
18 get this help from the court.

19 In the Clinton discovery, they asked for all  
20 documents --

21 THE COURT: That's a different issue.

22 MR. TALARICO: -- in the file.

23 THE COURT: Let's not conflate issues. Number one  
24 asked for the identity of witnesses. Number one is

1 responsive.

2 I'll deal with these based on the language of  
3 the individual requests, not the other problem about  
4 whether or not there was full compliance with Clinton.  
5 I mean, we can come back to that. So can we move on to  
6 number two. Number one is responsive.

7 MR. TALARICO: Judge, -- Oh, there is two things in  
8 here. The statement of -- the defendants -- respondent  
9 is deciding that the lawsuit is in violation of the  
10 statute of limitations and also the word -- the use of  
11 the word "likely." Likely is a nonresponsive answer.  
12 Likely is a range, a percentage --

13 THE COURT: Speculation.

14 MR. TALARICO: -- (indiscernible).

15 THE COURT: He's speculating. He doesn't know. I  
16 mean, that's how I read it. He doesn't know and he's  
17 stuck with that. I mean, I interpret this answer as  
18 saying I don't remember or I don't know. And if there's  
19 -- if there's an issue -- I agree, "likely" doesn't tell  
20 me he did anything; it's just speculation.

21 MR. TALARICO: Judge, likely he can come back later  
22 and say, well, now in October it was likely and here's  
23 more information. If that's stricken, okay.

24 THE COURT: It's -- it is stricken to the extent

1 that it doesn't tell me anything. It's -- I interpret  
2 this answer as saying one of two different things:  
3 Either I don't know or I don't remember. And,  
4 unfortunately, as we all know, people remember things  
5 they forget at their convenience. No offense to  
6 Mr. Popovich or anybody else. It's just, we've all  
7 experienced it, convenient memories.

8 So, I mean, if suddenly there's a detailed  
9 recollection as to what was reviewed, you can attempt to  
10 impeach; but that -- that's the answer. I interpret  
11 this as I don't recall or I don't know.

12 Mr. Flynn, can you weigh in.

13 MR. FLYNN: I believe line two actually even says,  
14 quote, it is difficult to recall each and every --

15 MR. TALARICO: (Indiscernible).

16 MR. FLYNN: I don't see any need to strike the  
17 answer. The answer is what it is.

18 MR. TALARICO: Judge, if I might explain and I'll  
19 move on -- move on after this, but "likely" is a  
20 nonresponsive answer. You can take judicial notice of  
21 that fact. He's already said it is -- it is not an  
22 answer. If it's stricken, I have no problem.

23 THE COURT: See, it's kind of an answer because I  
24 suspect that this is giving you a heads-up that he's



1 going to tell you what his custom and practice is, but  
2 he has no specific recollection of what he did here, and  
3 I think that is responsive. I think that is -- if he  
4 has no records, as I am interpreting this -- and I would  
5 hold them to that -- if he has no records, then he can't  
6 suddenly produce them and say, oh, here's the list of  
7 all the cases I reviewed, so he's stuck with his memory.  
8 I don't -- I don't recall. And he's told you his custom  
9 and practice. I -- where we go with that, I don't know,  
10 but I don't think I have to strike it.

11 To the extent that you want an order, my  
12 interpretation -- or a finding, my interpretation of  
13 number two is that the deponent is saying I don't  
14 recall, and then we have to deal with that at some later  
15 date.

16 MR. TALARICO: Yes, Your Honor.

17 THE COURT: If anybody has case law on all of the  
18 problems raised with "I don't recall," I'm happy to look  
19 at it, but it's always been a problem, probably always  
20 will be.

21 MR. FLYNN: Goes to the weight of the evidence,  
22 doesn't it, Judge?

23 MR. TALARICO: Your Honor, I do have case law on the  
24 "likely" issue, or at least the common -- the court's

1 ability to take judicial notice of common terms and what  
2 they mean, but if that's not what you're aiming at, then  
3 let's just move on.

4 THE COURT: He's saying "my custom and practice is,"  
5 that's how I interpret that, and there may have been a  
6 -- it may be worded differently, but that's how I  
7 interpret this. My custom and practice is X, but I  
8 don't recall.

9 MR. TALARICO: Thank you.

10 THE COURT: All right. Next one?

11 MR. TALARICO: First is an objection as to  
12 duplicative -- of previous discovery, Judge. That's in  
13 opposition to exactly what you said, we're starting  
14 fresh, I can ask what I want. I've cited the place in  
15 the last transcript of report of proceedings that you --  
16 that you made that clear because in lieu of -- in lieu  
17 of deposing Julia Williams, you were giving me ten  
18 interrogatories and ten requests to produce, but you  
19 specifically said that we're starting fresh.

20 MR. FLYNN: I don't recall that being the language.  
21 I thought that the court admonished the plaintiff not to  
22 be duplicative.

23 MR. TALARICO: Actually, I can cite it in the record  
24 if you want to wait a second.

1       THE COURT: Well, here's my interpretation. I don't  
2 think -- I think what I might have been concerned about  
3 is duplicating a prior interrogatory, but your response  
4 tells me that this information is contained in  
5 depositions or in a production response. Is that fair?  
6 Because it just says see POP 192, 93, and I don't know  
7 what that is.

8       MR. FLYNN: That's correct. That's correct, Judge.  
9 And 201(a) prohibits duplicative discovery or at least  
10 it (Zoom audio feed fading).

11       THE COURT: Is --

12       MR. FLYNN: (Indiscernible).

13       THE COURT: Well, generally I agree, but --

14       MR. TALARICO: Judge, --

15       THE COURT: Well, hang on. Let me find out a little  
16 bit more.

17               So what is this duplicating? How did they get  
18 this information previously? Because you don't tell me.

19       MR. FLYNN: Through document production and  
20 testimony, so if they're asking for a third -- if  
21 they're asking for a third sworn interrogatory, I don't  
22 think we should be required to do that. It's going to  
23 be used for impeachment.

24       THE COURT: Well, yeah.

1 MR. FLYNN: If there's a comma (indiscernible) -- if  
2 there's a comma that's different or a word that's  
3 different, I can see that this will be used for  
4 impeachment, so --

5 THE COURT: I need to see the other -- the other  
6 request in order to determine this is duplicative and  
7 your response is not telling me it's duplicative. It's  
8 just saying we've addressed this elsewhere. And if it's  
9 duplicative, then it's got to be pretty much exactly the  
10 same, from my perspective, and I -- if you're producing  
11 documents, that tell -- that tells me it's a little bit  
12 different, so I'm not quite sure and since I'm not  
13 looking at the documents, I can't resolve that.

14 MR. FLYNN: The documents are several correspondence  
15 regarding offers and settlement demands that were  
16 contained in the document production.

17 THE COURT: Is that each and every settlement demand  
18 slash offer?

19 MR. FLYNN: Those were all the settlement demands in  
20 writing that we were able to locate.

21 THE COURT: Okay. Mr. Talarico?

22 MR. TALARICO: First of all, Judge, the rule that  
23 Mr. Flynn quoted, that's fine. This honorable court has  
24 plenty of leeway to pursue this -- to pursue discovery

1 and help my client get answers to his questions.

2 THE COURT: I'm not sustaining the objection, so I  
3 want to get to the end here and get you your answers.  
4 And so my question for Mr. Flynn is, are the five  
5 documents identified in your response to interrogatory  
6 number three representative of all written settlement  
7 demands and offers as requested in the interrogatory?

8 MR. FLYNN: I believe so, Your Honor.

9 THE COURT: All right. And --

10 MR. FLYNN: There's extensive testimony regarding  
11 the settlement offers --

12 THE COURT: Yeah, and I -- and --

13 All right. Mr. Talarico, what about oral --

14 MR. TALARICO: That's not specific enough. I need  
15 to know is this his answer or is this part of an answer,  
16 is there more answer?

17 MR. FLYNN: Judge, there's a 79-page deposition  
18 transcript of Hans Mast that was taken in this case.  
19 You know, first (Zoom audio feed fading).

20 THE COURT: You're cutting in and out. It's kind of  
21 weird; but I'm having that problem with a number of  
22 people, so it could be on this end.

23 MR. FLYNN: Okay. It's a 79-page deposition  
24 transcript that the plaintiff is (indiscernible) to read

1 it just as much (Zoom audio feed distortion) --

2 THE COURT: My -- my general rule is that if you're  
3 going to refer to a cache of documents, you've got to  
4 identify where those documents are. You can't say see  
5 the deposition of so-and-so; you've got to say see page  
6 20 of the deposition of so-and-so, and then that's --  
7 that's adequate. So -- and given the nature of this  
8 case, I imagine you're going to say something like see  
9 pages 10 through 30, or something else, of the  
10 deposition, but you've got to direct him of where to  
11 find it.

12 MR. FLYNN: There are a number of -- as you said,  
13 there are a number of pages where settlement demands and  
14 offers are discussed.

15 THE COURT: Yeah.

16 MR. FLYNN: I believe -- I believe it's actually  
17 covered in some of these other discovery responses. We  
18 had talked about this.

19 THE COURT: We'll come back to it if it is.

20 Mr. Talarico, comment?

21 MR. TALARICO: No, Judge, you're ruling that they're  
22 going to direct -- they're going to give me direction in  
23 that answer --

24 THE COURT: Yeah, they're going to give you two

1 things: They're going to make it clear that the five  
2 documents identified are all the written documents, and  
3 if they're going to rely on a discovery deposition,  
4 they've got to tell you whose dep and what pages.

5 MR. TALARICO: All right. Thank you, Judge.

6 THE COURT: All right. Next one?

7 MR. TALARICO: Again, Judge, --

8 THE COURT: Hang on a second. I'm waiting for a  
9 call from the state and this may be it. I'll be right  
10 back.

11 (A recess was had.)

12 THE COURT: Surprise, surprise. It was my warranty  
13 on my car.

14 MR. TALARICO: Uh-oh.

15 THE COURT: Yeah, I've been waiting for the state to  
16 call me back for two days, and when they call, you  
17 better take it or you'll never get back online.

18 Let's go back. We're on number four, I assume?

19 MR. TALARICO: Yes, Judge.

20 THE COURT: All right.

21 MR. TALARICO: The same -- it's basically the same,  
22 duplicative, previous discovery, Hans Mast deposition,  
23 and, by the way, I object to the use of Hans Mast's  
24 deposition because there's exhibits missing. But as it

1 stands right now, as the answer stands, that doesn't  
2 tell me this is his answer, whether or not (Zoom audio  
3 feed distortion).

4 THE COURT: I see that -- I mean, he's told you  
5 exact -- I assume "Popovich documents" refers to a cache  
6 of documents that you both -- that has meaning to both  
7 of you. I -- it doesn't -- I don't know exactly what it  
8 is. And he tells you where to find it and he also  
9 directs you to the pages of Hans Mast's deposition.

10 MR. TALARICO: Yes, Judge, but -- I'm sorry.  
11 Forgive me.

12 But within that range, 205 to 304, are some --  
13 are 23 blacked-out pages. I don't know what that is.

14 THE COURT: And I sure don't.

15 Mr. Flynn?

16 MR. FLYNN: I don't know. In this case, there was  
17 an issue with respect to dividers -- well, --

18 MR. TALARICO: Then, Judge, how can that be  
19 responsive? Giving me --

20 MR. FLYNN: I'm looking at -- I'm looking at the  
21 testimony and the question in the deposition, pages 50  
22 to 52, Julia Williams produced a document, presented it  
23 to the witness, they discussed case law. You know, page  
24 51, Miss Williams: Were there any pinnacle cases that



1 stuck out to you one way or the other as to whether the  
2 McGuires could be liable? Was there any specific cases  
3 that made you think the McGuires may not be liable given  
4 the facts in Paul's case?

5 And then Hans' response: I mean, we deal with  
6 this issue a lot. I can't think of one particular name  
7 of a case, that these cases all go along the same lines,  
8 so there are a lot of cases on this one particular  
9 issue. It wasn't a complicated issue.

10 They go on (indiscernible) an independent  
11 contractor, so there's several pages of testimony about  
12 this issue. I don't know what else we can do to respond  
13 to this.

14 THE COURT: Well, what are -- I mean, you're  
15 referring to Popovich documents 205 to 304. What are  
16 those?

17 MR. FLYNN: Offhand, I'm not sure. The testimony,  
18 just so you have a reference, is also identified in the  
19 answer here pages 50, 51 and 52.

20 THE COURT: That's fine. But if you are identifying  
21 documents and the plaintiff is telling me he can't see  
22 them, then I -- I have an issue.

23 So, Mr. Talarico, you've got 23 blank pages  
24 that are at issue?

1       MR. TALARICO:   Blacked-out pages.   I submitted them  
2 to the court.

3       THE COURT:   Yeah, I -- well, I, you know -- I -- in  
4 any event, when you say blacked out, redacted?

5       MR. TALARICO:   I don't know.   Mr. Flynn calls them  
6 blank.   At times they're called black.   They appear to  
7 be black.   I don't know what they are, Judge.   But they  
8 are not -- they can't be responsive to -- 23 black,  
9 blanked-out dividers, I don't know, how can they be  
10 responsive --

11       THE COURT:   Mr. Flynn, can you -- can you tell us  
12 what those are?

13       MR. FLYNN:   I'm -- Judge, I'm not sure as I sit  
14 here, but I'm reading the testimony.   It looks to me  
15 like -- at least on the question from  
16 Miss Williams, she had these pages and does not complain  
17 about them being blacked out, so I don't know if this is  
18 an issue of copies on the plaintiff's end now.

19       THE COURT:   All right.

20       MR. FLYNN:   She questioned Hans about some case law,  
21 so I can check and see what those pages in our  
22 production look like.

23       THE COURT:   Okay.

24       MR. FLYNN:   She's actually referring to her own

1 production here, --

2 THE COURT: Yeah.

3 MR. FLYNN: -- Dulberg 304, that's not on me.

4 THE COURT: Okay. But you're referring to them as  
5 Popovich documents, so I'm -- I'm a little confused.

6 MR. FLYNN: 205 through 304, okay. I'll have to  
7 track those down.

8 THE COURT: Is Williams Mr. Dulberg's prior  
9 attorney?

10 MR. FLYNN: Correct.

11 THE COURT: Okay.

12 All right. Mr. Talarico, if they track that  
13 down, I don't know what the end result is, but does that  
14 satisfy you for now?

15 MR. TALARICO: For now, Judge, yes.

16 THE COURT: Okay.

17 MR. FLYNN: But just for the record, Judge, I think  
18 there may have been a typo in the response because  
19 Miss Williams is discussing Dulberg pages 205 -- or 204  
20 through 304.

21 THE COURT: All right.

22 MR. FLYNN: She goes back and forth with the  
23 numbers. This is at page 50 of (Zoom audio feed  
24 fading).

1       THE COURT:   Okay.   Well, I'm going to strike the  
2 answer to number four and let you file an amended  
3 response.

4       MR. FLYNN:   Okay.   Thank you, Your Honor.

5       THE COURT:   All right.   Next one?

6       MR. TALARICO:   Again, Judge, an objection, it's  
7 duplicative of previously discovered -- I'm sorry,  
8 previous discovery.

9       THE COURT:   Well, I struck it, so he has to file a  
10 new response.

11       MR. TALARICO:   No, I'm talking about number five,  
12 Judge.   I'm sorry.   I thought you moved on.

13       THE COURT:   Okay.   I did.   I didn't know you were  
14 talking about number five.

15               All right.   So they -- they object, but then  
16 they answer and he identifies the pages in the  
17 deposition as well as documents.   So tell me what's  
18 nonresponsive.

19       MR. TALARICO:   Well, Judge, I raised this before  
20 verbally and what I'm trying to inform the court is that  
21 the deposition is missing an exhibit.   There is no  
22 record of a -- there's a record of an exhibit, but it's  
23 not attached to defendants' responses, and within the  
24 mini index, it designates or shows that the exhibit is

1 missing --

2 THE COURT: Which exhibit?

3 MR. TALARICO: Exhibit No. 12.

4 THE COURT: Okay. Mr. Flynn, -- And that's  
5 referenced in those deposition pages?

6 MR. FLYNN: It is.

7 THE COURT: All right. So, Mr. Flynn, do you have  
8 number 12?

9 MR. FLYNN: I don't know. Judge, we -- the court  
10 invited the parties to submit documents for purposes of  
11 this hearing. I submitted certain documents, including  
12 the mini-script, and I (indiscernible) include  
13 deposition exhibits because I didn't know that the court  
14 wanted to see everything.

15 THE COURT: Okay. And I --

16 MR. FLYNN: And Mr. Talarico had the opportunity to  
17 (indiscernible) through additional documents, and he  
18 said what he chose to say.

19 THE COURT: All true, perhaps, but do you have  
20 number 12?

21 MR. FLYNN: I may. I don't know. I haven't looked  
22 for it.

23 THE COURT: Can you produce number 12 if it's in  
24 your possession? Which I hope it is.

1 MR. FLYNN: If it is.

2 THE COURT: Is it part of the deposition transcript?

3 MR. FLYNN: It is. It's (indiscernible) -- this is  
4 plaintiff's deposition. They took my client and it was  
5 a Zoom deposition early on in the pandemic.

6 THE COURT: All right.

7 MR. FLYNN: So they have as much access to it as I  
8 do. I may have that. (Indiscernible).

9 THE COURT: If -- and I'm trying to --

10 MR. FLYNN: The court reporter's name is on the  
11 front of the transcript and (indiscernible) page two.

12 MR. TALARICO: Judge, in the mini index it indicates  
13 in the transcript that Exhibit 12 is missing.

14 THE COURT: All right. Who took the dep?

15 MR. FLYNN: Miss Williams.

16 THE COURT: All right. And whose exhibit was it?

17 MR. FLYNN: Plaintiff's exhibit.

18 THE COURT: All right. So how do I penalize or  
19 sanction defendant for the failure to produce a document  
20 that constructively is yours? Unless you can show me  
21 that they removed it.

22 MR. TALARICO: I have no idea, Judge. I just saw  
23 now that 12 was missing when Mr. Flynn's office  
24 submitted the deposition without exhibits to you.

1       THE COURT: Mr. Flynn, can you address that. If you  
2 have number 12, please produce it, and if you do not,  
3 please explicitly say so, that you don't have it, and  
4 I'll -- we'll just have to go from there.

5       MR. FLYNN: Okay.

6       MR. TALARICO: Judge, just again remind you that my  
7 experience with the prior counsel, she's been  
8 nonresponsive to me. I can't (indiscernible) -- she did  
9 not respond to the -- We did this before with the  
10 blacked-out pages, that Mr. Flynn (indiscernible)  
11 reached an agreement. I tried to reach that person and  
12 they won't respond. And we made that -- we made that  
13 clear in court and effectively said in lieu of this,  
14 you'll get the ten and ten rather than bring her in for  
15 a deposition.

16       THE COURT: Okay. The issue that I'm dealing with  
17 right now is their production of what ultimately was  
18 your Exhibit No. 12, and I'm asking Mr. Flynn to produce  
19 it if he has it; if he doesn't have it, to tell you.  
20 And if nobody has it, then we're going to have to figure  
21 out how to find it.

22       MR. TALARICO: Yes, Judge.

23       THE COURT: But I can't make him produce it if he's  
24 telling me he doesn't have it. That's not an end,

1 that's just -- particularly under these circumstances, I  
2 can't determine that he's constructively in possession  
3 of something your predecessor had, presumably.

4 Next one?

5 MR. TALARICO: Okay, Judge, that's basically the  
6 same answer. It objects as to duplicative and also  
7 makes reference to the Hans Mast deposition.

8 THE COURT: Okay. But I -- and I -- but he  
9 identifies the pages of Hans Mast.

10 MR. TALARICO: Uh-hum (indicating an affirmative  
11 response).

12 THE COURT: And I think that's adequate.

13 MR. TALARICO: Okay then.

14 THE COURT: The fact that he objects for the record  
15 doesn't make it nonresponsive.

16 Next one?

17 MR. TALARICO: Number seven I ask for facts. Their  
18 response is improperly calls for a legal conclusion. I  
19 didn't ask for a legal conclusion. I asked for facts.  
20 And then later in the answer it says that -- it talks  
21 about, again, what the defendants' going to do in the  
22 future. Will be argued, which will form generally, I  
23 mean, I've got to have answers to deal with -- that's  
24 not an answer to the discovery. This was going to



1    happen in the future.

2           THE COURT:   Okay.  Mr. Flynn, did you provide all  
3   facts on which your client relied in determining that  
4   Mr. Dulberg gave his consent?

5           MR. FLYNN:   Judge, the way I read this, this is an  
6   improper interrogatory seeking a legal conclusion  
7   regarding the -- whether the consent was --

8           THE COURT:   Well, you're --

9           MR. TALARICO:  As I read it --

10          MR. FLYNN:   -- informed consent.

11          THE COURT:   Okay.

12          MR. TALARICO:  Judge, I read this as, the answers to  
13   the question is going to be given in the future  
14   sometime.  They may be.  Because the words are will be  
15   argued, will form the basis for supporting facts  
16   establishing -- again, they have facts, but they're  
17   going to give them to me in the future.

18          THE COURT:   You're -- Mr. Flynn, you're relying on a  
19   deposition and -- and that's fine --

20          MR. FLYNN:   Judge, they want what my argument is  
21   going to be on the summary judgment.  That's what this  
22   is.

23          THE COURT:   Yeah, but I'm assuming that it's more --  
24   there's more than just what Mr. Dulberg said, so I --

1 and forgive me and maybe I'm wrong, but is that -- is  
2 Mr. Dulberg the sole repository of the facts that  
3 support this? That --

4 MR. FLYNN: The informed consent? No, Judge. I  
5 mean, I can summarize how this went down and we already  
6 discussed some of the paperwork relative to the  
7 settlement demand. Dulberg was provided with an offer  
8 of \$5,000 in early December or even November. Then came  
9 in with his friend to see Hans Mast, discussed the  
10 \$5,000 offer --

11 THE COURT: Okay.

12 MR. FLYNN: -- (indiscernible), and this is -- this  
13 is over several, several pages of deposition.

14 THE COURT: Well, do you have -- are there any  
15 written documents? And forgive me for challenging you,  
16 but I --

17 MR. FLYNN: There are --

18 THE COURT: -- I mean, --

19 MR. FLYNN: There are transmittal letters relative  
20 to the demand when he came in for a face-to-face  
21 meeting, and all of this is going to be argued in a  
22 summary judgment motion. They are very well aware of  
23 it. Why we have to regurgitate it here -- and, again,  
24 this is our theory of the case and our -- our motion for

1 summary judgment. Now they're asking, informed consent,  
2 well, that's their -- that's where we --

3 THE COURT: They're asking facts. They're asking  
4 for all the facts that you relied on in determining he  
5 gave his consent, and if all those facts are contained  
6 in his deposition and in the attachments to your -- or  
7 otherwise identified in your summary judgment, I think  
8 it's adequate to identify where in the summary judgment  
9 that can be found as an easy -- as an easy way to  
10 respond to this, but I think you need the answer. I  
11 think you need to answer this a little better.

12 MR. FLYNN: Again, these are (Zoom audio feed  
13 fading).

14 THE COURT: Yes, you're right. But I did allow  
15 these interrogatories with the expectation there would  
16 be overlap. And my goal is to get to the end rather  
17 than to quibble about whether it is 100 percent  
18 duplicative.

19 Yeah, I'm sure this issue's been raised, but  
20 maybe not exactly in this manner, so my preference is to  
21 get an answer to it and move on.

22 MR. FLYNN: My point I was making, though, is this:  
23 So this testimony is from Mast. It's also from Dulberg  
24 and --

1       THE COURT: Okay. Just identify it. And I'm not --  
2 I mean, you're referencing your summary judgment, but  
3 you're not telling me what it is in the summary judgment  
4 is responsive.

5       MR. FLYNN: Well, I haven't filed it yet, so that's  
6 the thing. You're asking for what our theory's going to  
7 be.

8       THE COURT: Of course they are. But the issue of  
9 consent is not limited to the summary judgment and I  
10 think it is in effect a contention interrogatory. We  
11 contend he gave his consent. Please state all those  
12 facts on which you rely on the determination or the  
13 allegation that he gave his consent. I --

14       MR. FLYNN: That's a great point, Judge. We haven't  
15 even made that contention yet. I haven't filed the  
16 summary judgment motion. They're assuming that we're  
17 making the contention that he did give informed consent.  
18 Haven't made that argument.

19       THE COURT: Informed -- informed -- I think when you  
20 say informed consent, I think more -- that's more of a  
21 legal issue, but consent is -- is factual and I --

22       MR. FLYNN: But informed consent is the way the  
23 interrogatory is worded. They even cite to the rule of  
24 professional conduct.

1 MR. TALARICO: And I ask for a fact --

2 THE COURT: Yeah, it was -- You're right, "or was  
3 informed consent." You can't -- you can't answer that.  
4 I'm sorry. And I'm focusing on the first part of your  
5 question. Can you identify the facts that established  
6 that plaintiff gave consent. So --

7 MR. FLYNN: I can and -- but they're well aware of  
8 it, Judge. This is all scattered all throughout the  
9 depositions.

10 THE COURT: They -- I agree they probably are well  
11 aware of it, but they still are entitled to an  
12 answer and -- just to make sure that you don't have any  
13 extra facts, and I -- so this is to pin you down and  
14 they have a right to do that. So --

15 MR. FLYNN: Okay. But, again, if I include 19 pages  
16 of testimony, and there happen to be 20 or 21  
17 (indiscernible), should we be limited to that? I mean,  
18 this is a --

19 THE COURT: I'm sorry.

20 MR. FLYNN: If I cite to, say, 19 pages of testimony  
21 and on this one because there happens to be about 20 or  
22 22 pages, I just don't think we should be limited. I  
23 mean, this is an over-arching theme. They are well  
24 aware of facts --

1           MR. TALARICO: I object to him asking for a ruling  
2 before it's been done. He wants to know what you're  
3 going to rule if he does something.

4           THE COURT: To -- Mr. Talarico has a point, and --  
5 but if you leave stuff out, then we got to fix it; and  
6 if there's an objection as to compliance, then we go  
7 through the hearing and I ask you where else it is, you  
8 tell me and then I say you produce it.

9           So I would prefer to avoid having to come back  
10 and have this argument, so answer -- answer as best you  
11 can.

12          MR. FLYNN: Okay. Thank you.

13          THE COURT: Sorry for the punt -- punting on that,  
14 but I think that's the only answer I can give.

15          MR. FLYNN: Okay.

16          THE COURT: All right. I'm going to close this  
17 particular discovery request.

18                 What's the next one?

19          MR. TALARICO: I believe, Judge, we're done with the  
20 interrogatories. I believe we're -- I think there were  
21 three in the first one, seven in the second, so that's  
22 all ten. I think we should be moving on to the request  
23 for production.

24          THE COURT: Okay. To who? Because I've lost track.

1 Did we do Popovich?

2 MR. TALARICO: Request for production would be  
3 (indiscernible). I mean, with Popovich. We'll start  
4 with Popovich.

5 THE COURT: All right. I'm looking at -- And the  
6 reason I said that is because I'm looking at Defendant  
7 Law Office of Popovich Response to Plaintiff's  
8 Court-Ordered Additional Request for Production. Is  
9 that the one?

10 MR. TALARICO: That's it, Judge.

11 THE COURT: All right. Tell me the first one.

12 MR. TALARICO: Number three is the first and one I  
13 say is nonresponsive.

14 THE COURT: I thought I saw this check.

15 MR. TALARICO: Excuse me?

16 THE COURT: I thought I saw this check.

17 MR. TALARICO: I sent that to you, Judge.

18 THE COURT: Okay. So did they -- did they provide  
19 it to you or did you have it on your own?

20 MR. TALARICO: What they provided -- what they  
21 provided is not the front and back. I asked for it  
22 twice now. It's been asked for twice. They show a  
23 front and they don't show the back.

24 THE COURT: Mr. Flynn, do you have the back of the

1 check?

2 MR. FLYNN: I don't believe so.

3 THE COURT: All right. Then I -- you've got to say  
4 so. Although you say "see front and back of settlement  
5 check contained in documents previously produced, POP  
6 658," so did that have the front and the back?

7 MR. FLYNN: I think there was some question on 658.

8 MR. TALARICO: Judge, you can take judicial notice  
9 that that's not the back of the check.

10 THE COURT: Well, I don't know if that's -- if  
11 that's what he's produced, and if it's -- if he's got  
12 the front and back, problem solved. I don't need to do  
13 anything.

14 MR. FLYNN: I'm not -- We've got the front. What is  
15 (indiscernible) on the back of the check, I don't know,  
16 but --

17 THE COURT: I'm sorry?

18 MR. FLYNN: I don't understand what the relevance of  
19 the back of the check is in this case --

20 THE COURT: Maybe it's not, but he has a right to  
21 ask. So do you have a copy of the back of the check?

22 MR. FLYNN: I don't believe so, but I will  
23 double-check.

24 THE COURT: All right. And if you don't, then



1 please explicitly say so. So I'm going to direct you to  
2 supplement your answer to number three.

3 Mr. Talarico, anything else on that one?

4 MR. TALARICO: Not on number three, Judge.

5 THE COURT: All right. Next one?

6 MR. TALARICO: That's the duplicative -- that's the  
7 -- that's the one that I'll say we had permission.

8 THE COURT: Well, you're talking about request  
9 number four.

10 MR. TALARICO: Yes, I am.

11 THE COURT: All right. And he objects saying it's  
12 duplicative, but then -- Okay.

13 MR. TALARICO: Judge, Popovich 1 through 1455 is not  
14 all inclusive of what the documents that the -- that the  
15 plaintiff -- I mean, sorry, that defendant has that were  
16 revealed in the transcript, in the last report of  
17 proceedings, the last time we were before the court.

18 THE COURT: Mr. Flynn?

19 MR. FLYNN: I'm sorry, I don't understand the --

20 THE COURT: Your volume is a little off.

21 MR. FLYNN: I don't understand --

22 THE COURT: Huge difference when you do that.

23 In fact, Mr. Talarico, is his volume cutting in  
24 and out for you?

1 MR. TALARICO: Yes, Judge.

2 THE COURT: All right. At least it's not just me.

3 Mr. Flynn, it seems that when you lean forward  
4 something -- it cuts off somehow, or it's like there's  
5 an obstruction. Don't ask me to figure it out. That's  
6 what I've noticed.

7 MR. FLYNN: (Indiscernible).

8 THE COURT: The -- so tell me what documents  
9 1 through 1455 are. Is that everything?

10 MR. FLYNN: I believe that's everything that  
11 Williams passed and we produced, and that includes -- As  
12 we get to the next document (Zoom audio feed distortion)  
13 discovery that was done, it includes deposition  
14 transcripts that I obtained after (Zoom audio feed  
15 distortion).

16 THE COURT: Mr. Talarico, what are you looking for?  
17 Because it sounds like you're just saying give me  
18 everything all over again.

19 MR. TALARICO: Well, that was -- that was what was  
20 alleged to be done, that everything was given. Judge,  
21 everything was not given. There were depositions of at  
22 least five physicians that were not turned over --

23 THE COURT: So you're asking for the deposition  
24 transcript.

1           Mr. Flynn, -- and I don't recall -- do you have  
2 those transcripts?

3           MR. FLYNN: We do not have the depositions of the  
4 doctors.

5           THE COURT: Okay. So let -- rather than say give me  
6 everything in your file, if you're looking for something  
7 specific, tell us what that is and then we can address  
8 it. Because I don't like the way this request is  
9 phrased, but you're looking for something, so let's find  
10 out what that is.

11          MR. TALARICO: Okay. Judge, with all -- I'm sorry.

12          THE COURT: Go ahead.

13          MR. TALARICO: With all due respect, the indication  
14 that page 1 through 1455 is the entire file that they  
15 have is inaccurate. Am I going, you know, --

16          THE COURT: Maybe it is, but I don't like your  
17 request. I think it's just -- I don't think it's  
18 appropriate to say give me everything you got. And --  
19 because that doesn't -- that really doesn't narrow  
20 anything down, doesn't tell me if it's relevant, doesn't  
21 tell me anything, and there is no way they can comply  
22 with that.

23                 So is what you're looking for deposition  
24 transcripts?

1 MR. TALARICO: Yes.

2 THE COURT: All right. Is that the -- is there  
3 anything else --

4 MR. TALARICO: Yes, Mr. Flynn indicated there were  
5 witness trans- -- witness depositions.

6 THE COURT: Okay.

7 MR. FLYNN: So they were included.

8 THE COURT: Anything other than witness -- anything  
9 other than deposition transcripts?

10 MR. TALARICO: If there were other than the three  
11 witnesses that they gave -- that they included, there  
12 were three -- I think the name was Michael Atore  
13 (phonetic) I think. And forgive me if I'm saying it  
14 wrong. And then two defendants. The defendants were  
15 named McGuire, Carolyn and William McGuire.

16 If there are other depositions taken, other  
17 witnesses, or other people they've inquired of --

18 THE COURT: So if he identifies all depositions that  
19 were taken, all transcripts in his possession and as  
20 well as all witness statements that were obtained, is  
21 that what you're looking for in number four?

22 MR. TALARICO: Yes, Judge.

23 THE COURT: All right. Mr. Flynn, I know you had an  
24 attachment.

1           MR. FLYNN: I did.

2           THE COURT: Does that -- does that provide the  
3 information I just mentioned?

4           MR. FLYNN: Yes. I'd like to direct the court's  
5 attention to the response to request for production  
6 number two from Hans Mast.

7           THE COURT: Okay. I deleted it -- or not deleted  
8 it, but I closed it, so I -- and I'd have to look  
9 through all of them again. So tell me what it --

10          MR. FLYNN: (Indiscernible) part of this  
11 page-and-a-half long recitation of the discovery that is  
12 contained in our document production are six deposition  
13 transcripts that are contained in that document  
14 production. They're identified by date range. First  
15 one being POP 1210 to 1244, that is the Carolyn McGuire  
16 deposition transcript; followed by David Gagnon  
17 deposition transcript; Paul Dulberg deposition  
18 transcript; plaintiff's answers to interrogatories; then  
19 the Michael McArtor deposition transcript. That's at  
20 page 1416 through 1436. Popovich 1437 through 1455 is  
21 the William McGuire deposition transcript.

22                   This is in our answer. All you have to do is  
23 read it. I don't understand --

24          THE COURT: See, I don't know in looking at this

1 that documents 1 through 1455 incorporates all  
2 deposition transcripts in your possession. Does it?

3 MR. FLYNN: No, no, I've identified the actual page  
4 ranges here, Judge.

5 THE COURT: All right. Okay. But that -- all those  
6 depositions are included in what you call documents 1  
7 through 1455?

8 MR. FLYNN: All these depositions are included, yes.

9 THE COURT: All right.

10 Mr. Talarico, --

11 MR. TALARICO: But he's not -- I'm not arguing those  
12 depositions. I'm arguing others, witness depositions,  
13 witness interrogatories -- not interrogatories. I'm  
14 sorry. Interviews --

15 THE COURT: Okay. Do you have any other documents,  
16 Mr. Flynn?

17 MR. FLYNN: No.

18 THE COURT: All right. Then --

19 MR. FLYNN: We didn't order the doctors' deposition  
20 transcripts. I don't know how many times --

21 THE COURT: He doesn't have to produce them if he  
22 doesn't have them, and he gave a list of who he has  
23 deposed, which I think gives you more information than  
24 you asked.

1           What else do you need in answer to number four?

2           MR. TALARICO: For now that's all I need.

3           THE COURT: Okay. And -- Well, you've got a list of  
4 the dep transcripts that were not ordered or the witness  
5 -- or the deposition -- depositions, and I'll let you  
6 pursue that on your own.

7           Is there anything else -- can I close this  
8 particular request?

9           MR. TALARICO: Yes, Judge.

10          THE COURT: That's closed.

11                 The next one I have open is Defendant Hans  
12 Mast's Response to Plaintiff's Court-Ordered Additional  
13 Request for Production. Is that -- did we do this one  
14 or --

15          MR. TALARICO: What we had to -- what's left to do,  
16 Judge, is Defendant Hans Mast's Response for Request to  
17 Produce one through six I believe.

18          THE COURT: I think I'm looking at this -- the  
19 correct one.

20          MR. TALARICO: (Indiscernible), Judge?

21          THE COURT: Yeah, okay. Yeah, that's it. That's --  
22 and I am now seeing the list directly Mr. Flynn just  
23 showed me.

24                 In any event, tell me which is the first one at

1 issue.

2 MR. TALARICO: Number two, Judge. I asked for all  
3 discovery served upon defendant by you on behalf of Paul  
4 Dulberg in the underlying matter, and I also asked for  
5 -- but the response I get is served by any party. That  
6 response is not the same as the question.

7 THE COURT: Okay. Well, discovery served by -- All  
8 right. That seems like everything. That sounds like  
9 more than you asked. You wanted served by them, but  
10 they've given you everything.

11 Mr. Flynn, does this include everything you've  
12 served?

13 MR. FLYNN: I'm sorry, Judge, would you say that  
14 again.

15 THE COURT: Let me -- Yeah, it was a bad question.

16 Does the response to number two include  
17 everything the Popovich office served, all the discovery  
18 served by the Popovich office, in the underlying matter?

19 MR. FLYNN: Yes, Judge, this is everything. It  
20 includes, the other documents, the other discovery, that  
21 the other parties did too. If we had it in the file, I  
22 cited (indiscernible) it here.

23 THE COURT: Okay. So I'm -- Mr. Talarico, what are  
24 you missing?



1           MR. TALARICO: I need an answer. Judge, what I  
2 repeated -- what I think I -- what I'm presenting to the  
3 court is that I only want the answer of the discovery  
4 served by defendants. I don't want all the rest of  
5 this.

6           THE COURT: Okay. But it certainly is responsive.  
7 If they give you more than you ask, I'm not going to  
8 strike the question. Is it -- I'm assuming you've got  
9 the documents at issue that they're referencing here.

10          MR. TALARICO: As long as they're within the 1455  
11 pages, yes. Anything outside of that is  
12 (indiscernible).

13          THE COURT: It appears they are, and I think this is  
14 responsive, so I will sustain -- I don't know that I'm  
15 really sustaining. There isn't an objection. I'm  
16 overruling your objection to his response.

17                 So, next one, number three or is it a different  
18 one?

19          MR. TALARICO: Again, it's the same thing. I'm  
20 asking for defendants' discovery served upon -- upon  
21 defendants by co-defendants and that's not the answer.

22          THE COURT: And he gives you everything.

23                 Mr. Flynn?

24          MR. FLYNN: This -- this is everything, Judge. This

1 is everything.

2 THE COURT: Okay. Mr. Talarico, other than the  
3 objection that they failed to differentiate between  
4 their stuff and the stuff served by the co-defendant, do  
5 you have any objection?

6 MR. TALARICO: No, Judge.

7 THE COURT: All right. Because I think each  
8 document is self-explanatory, and they've identified it.  
9 I'm going to overrule your objection to number three  
10 unless you are somehow prejudiced because the documents  
11 speak for themselves as to who served them, and perhaps  
12 they could have presented it in a less -- I won't say  
13 less -- ah, less confusing manner, they still responded.

14 So next one?

15 MR. TALARICO: I believe the response in number five  
16 -- number four is clearly nonresponsive.

17 THE COURT: All right. Number four regarding  
18 assets?

19 MR. TALARICO: Yes, Judge.

20 THE COURT: All right. And they say all three  
21 defendants were deposed in the underlying case. I read  
22 that as saying the same thing as nothing other than  
23 their deposition testimony.

24 And, Mr. Flynn, is there any objection to my

1 interpretation?

2 MR. FLYNN: No.

3 THE COURT: Okay. I mean, they're stuck with that.  
4 That's an answer.

5 MR. TALARICO: Your Honor, the instruction again --  
6 I'm sorry.

7 THE COURT: Go ahead.

8 MR. TALARICO: The instruction to the request  
9 (indiscernible), if there's a document tell me where, if  
10 it's a document already produced.

11 THE COURT: Okay. And I'm assuming that the  
12 deposition transcripts are identified in number three.  
13 Is that fair?

14 MR. FLYNN: Well, two and three.

15 THE COURT: I'm sorry?

16 MR. FLYNN: Number two and three.

17 THE COURT: All right. Can you identify the  
18 deposition -- technically, you gotta. Can you identify  
19 the depositions of the defendants and the page numbers?

20 MR. FLYNN: With respect to --

21 THE COURT: Number four.

22 MR. TALARICO: Judge, with respect to assets and net  
23 worth, I don't know where in those depositions he's  
24 referring me to.

1           THE COURT: That's it. He's telling you. The  
2 deposition. And if there are no questions, I mean, -- I  
3 don't know how he can pin it down further. You said all  
4 investigation or analysis done. The depositions. I  
5 think that's responsive.

6           Next one?

7           MR. TALARICO: And, then, Judge, I'm asking for  
8 specifics and the responses seem like basically see my  
9 deposition.

10          THE COURT: He says there's none. You're talking  
11 about number five.

12          MR. TALARICO: Yes.

13          THE COURT: And he says no litigation risk analysis  
14 in written form exists. And then he references his  
15 deposition, but the answer is none.

16                 Did I pretry this, the underlying matter? I  
17 seem to think I did.

18          MR. TALARICO: You did.

19          MR. FLYNN: I think so, Judge. You did disclose  
20 that to the parties at least one time.

21          THE COURT: All right. Well, this is -- I keep  
22 thinking the answers to some of these would incorporate  
23 pretrial discussions with me, even though I don't have a  
24 recollection of what I would have said, but I'm sure

1 that we discussed these things; and I don't know if  
2 that's makes any difference, but I think that is part of  
3 the answers, if we had these kind of discussions. I'll  
4 defer to Mister --

5 MR. FLYNN: Well, this is a production -- this is a  
6 production request. He's asking for documents that  
7 exist.

8 THE COURT: Okay. But what about the  
9 interrogatories? Didn't they get into that?

10 MR. FLYNN: I'm --

11 THE COURT: All right. Well, it's --

12 MR. FLYNN: (Indiscernible) litigation risk  
13 analysis.

14 THE COURT: I thought there was an interrogatory  
15 that would have somehow incorporated the pretrials and  
16 -- at least in my opinion. I'll leave that to you guys  
17 to figure it out and in case there's any question, I  
18 have no notes or records and barely any recollection of  
19 what transpired at any pretrial. I tend to forget that  
20 quickly, and that's kind of the plan. The -- but I --  
21 did this involve -- Forgive me again. This involved a  
22 chainsaw or trees?

23 MR. FLYNN: Yes.

24 MR. TALARICO: Chainsaw, Judge.

1           THE COURT: All right. Yeah. I -- I remember  
2 aspects of it, but I don't remember too much beyond  
3 that. So I'll share that with you and I'll share it  
4 with you probably a few more times.

5           In any event, I'll let you guys deal with that  
6 as you wish. Is there anything else that we haven't  
7 dealt with?

8           MR. TALARICO: No, Judge.

9           THE COURT: Okay. Mr. Flynn, how long do you need  
10 to file this supplemental answer?

11          MR. FLYNN: Twenty-one days, Judge.

12          THE COURT: All right. I'll give you 21 days. Do  
13 you want to come back in about five or six weeks for  
14 status of compliance?

15          MR. FLYNN: That's fine, Judge. And then we've been  
16 asking for months for fact discovery to be closed so we  
17 can move on to the summary judgment motion.

18          THE COURT: Yeah.

19          MR. FLYNN: (Zoom audio feed distortion) issued --  
20 issued a handful of fact (Zoom audio feed fading).

21          THE COURT: You're -- you're -- I don't know what  
22 the problem is.

23          MR. FLYNN: -- number of them -- Plaintiff has just  
24 issued a number of subpoenas that may cause this to drag

1 on even longer. Just want the court to be aware that  
2 the subpoenas were issued --

3 THE COURT: Well, the subpoenas should be answered  
4 by the time we return in June based on my time schedule,  
5 at least I'm hoping.

6 Comments?

7 MR. TALARICO: Judge, the subpoenas are not at  
8 issue. Have been answered. I've indicated that.

9 THE COURT: All right. Well, --

10 MR. FLYNN: I have not seen any answers to the  
11 subpoenas, so I think those would be responsive --

12 MR. TALARICO: Judge, I need -- I need to address  
13 one of them before I respond. I need to address this to  
14 the court. One of the responses, -- what I have, Judge,  
15 is a question about forged signatures on depositions by  
16 the court reporters -- or the certified court reporters.

17 THE COURT: Okay.

18 MR. TALARICO: There are questions about that. I  
19 have done -- subpoenaed some of them, got their  
20 documents. Judge, some of those documents contain a lot  
21 of personal information. If I turn that over -- I'm  
22 leery of that. I noted it's a subpoena and response,  
23 but I didn't turn over the documents themselves  
24 (indiscernible) this moment. I'm a little leery of

1 doing that because it has a lot of personal information.

2 THE COURT: Turn over to Mr. Flynn?

3 MR. TALARICO: Yes, to Mr. Flynn or to file it with  
4 the court.

5 THE COURT: All right. Well, I don't know what you  
6 mean by personal information, and you don't have to turn  
7 it over to me, unless it's an exhibit in something, so  
8 what -- what ultimately is your concern?

9 MR. TALARICO: Again, Judge, that I am in possession  
10 of a respondent's very personal information. They gave  
11 me all their mortgage documents, et cetera, signatures,  
12 addresses, Social Security number.

13 THE COURT: From whom -- I'm sorry, from whom?

14 MR. TALARICO: One of the court reporters, one of  
15 the certified court reporters.

16 THE COURT: Why did the court reporter give you  
17 mortgage documents? I'm not looking at the subpoena,  
18 but --

19 MR. TALARICO: I really can't answer that, but that  
20 was what they gave me.

21 THE COURT: All right. Mr. Flynn, comment?

22 MR. FLYNN: I would just make a general comment that  
23 the subpoenas were issued. I have not seen any response  
24 to any of them. To the extent that my -- our -- the



1 defendants' prior discovery requests call for  
2 supplementation and that these subpoena responses are  
3 responsive to prior discovery requests, they should be  
4 produced. I haven't made a specific request for copies  
5 of any subpoena response, but I wasn't aware that they  
6 had been made.

7 THE COURT: All right. With respect to the  
8 seemingly nonresponsive and personal information,  
9 private information, produced by the deponents, I think  
10 you got to disclose that to Mr. Flynn and then agree to  
11 destroy them, but he at least gets to see them so he can  
12 determine that they're -- they should be destroyed.

13 MR. TALARICO: Absolutely.

14 THE COURT: So don't file them with the court. I  
15 don't want them. And if you both agree that there's --  
16 they're not relevant and they should be destroyed, then  
17 let the deponent know and/or destroy them or return  
18 them. I'll let you choose your path.

19 All right. What other issues are out there?  
20 Okay.

21 MR. TALARICO: I have none at the moment.

22 THE COURT: Here's my plan. Let's assume that the  
23 answers are -- that the supplemental answers are  
24 responsive. Then it is my intent to close discovery

1 when we return and if plaintiff is going to argue he  
2 needs more discovery, he can argue it; but I'm going to  
3 need to understand what more you need and why that  
4 should delay things and I may just proceed with the  
5 summary judgment if I don't think that the discovery --  
6 the discovery should hold it up. So I'll cross that  
7 bridge when I come to it.

8 MR. TALARICO: With all due respect, Judge, there is  
9 no summary judgment pending.

10 THE COURT: Yeah, but he keeps saying he's going to  
11 file it.

12 MR. TALARICO: I know.

13 THE COURT: So if he files it, when we come back and  
14 I close discovery and he files the motion, then we'll  
15 proceed with a briefing schedule. So I'm just trying to  
16 map out where we're going to go from here.

17 So let me just pick a date. How is June 8th?  
18 That's a --

19 MR. TALARICO: I think that is not good for me,  
20 Judge.

21 THE COURT: I can do the 7th, 8th or 9th -- or the  
22 10th, really, all at 9:45.

23 MR. TALARICO: Could we have -- Mr. Flynn,  
24 June 10th?

1 MR. FLYNN: Any of those dates are fine.

2 THE COURT: All right. I'm going to say 9:45. I'm  
3 going to need you guys to submit the order because it  
4 isn't -- it's something a little bit beyond just a  
5 continuance. I'm giving you a 9:45 time because I  
6 anticipate we're going to have some discussion beyond  
7 merely status of discovery, so we'll have more time, a  
8 little more time.

9 Is there anything else we need to do today?  
10 I'm going to figure out who's going to send me the  
11 order.

12 MR. TALARICO: With all due respect, I don't have  
13 all the notes clearly to be able to draft it.

14 THE COURT: Okay.

15 MR. TALARICO: I could order the transcript and go  
16 from there.

17 THE COURT: You guys order the transcript anyway,  
18 so, I mean, it's going to be there.

19 MR. TALARICO: Yeah, I mean, but that will take a  
20 few days.

21 THE COURT: Yeah, it will take a few days.

22 Mr. Flynn, comment?

23 MR. FLYNN: I have notes, Judge. I think I could  
24 put it together, but I would just request -- I have a

1 brief that's due by the end of the day, and I have  
2 several hours of work to put in on it.

3 THE COURT: Okay.

4 MR. FLYNN: So could we get you the order tomorrow?

5 THE COURT: Yeah, yeah. That's fine.

6 I mean, if you'd get it -- we have a little bit  
7 of time. We know our timeframe. Please include the  
8 date -- today's date on the order, though, because,  
9 otherwise, I got to plug in my own and then that screws  
10 things up. And, yeah, I'll sign it when I see it.  
11 What's today? Wednesday? If you get it to me by  
12 Friday, that's fine.

13 MR. FLYNN: Okay. Thank you, Your Honor.

14 THE COURT: Okay?

15 MR. TALARICO: Judge, thank you for your time.

16 Mr. Flynn, thank you for your time and good luck on your  
17 brief.

18 THE COURT: Okay. June 10th at 9:45.

19 MR. FLYNN: Thank you.

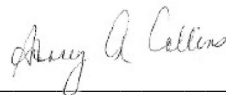
20 MR. TALARICO: Thank you, Judge.

21 THE COURT: Okay. Thank you. Disconnecting.

22 (Which was and is all of the evidence  
23 offered at the hearing of said cause  
24 this date.)

1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF MCHENRY )  
4

5 I, Stacey A. Collins, an Official Court  
6 Reporter of the 22nd Judicial Circuit of Illinois, do  
7 hereby certify the foregoing to be a true and accurate  
8 transcription to the best of my ability and based on the  
9 quality of the recording of all the proceedings heard on  
10 the electronic recording system in the above-entitled  
11 cause.

12  
13 

14 Stacey A. Collins, CSR  
15 Official Court Reporter  
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