

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 324

HON. VICTORIA G. CHANEY, JUDGE

- - -

RODOLFO MEJIA, et al.,)
)
 Plaintiffs,)
)
 vs.) Case No. BC340049
)
 DOLE FOOD COMPANY, INC., et al.,)
)
 _____ Defendants. _____)
)
 AND ALL RELATED CASES. _____)
)
 (RIVERA vs. DOLE FOOD COMPANY, INC.) _____) Case No. BC379820
 _____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, MAY 8, 2009

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FRIDAY, MAY 8, 2009 (3:14 P.M.)

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1 CASE NUMBER: BC340049/BC379820
2 CASE NAME: MEJIA/RIVERA vs. DOLE, et al.
3 LOS ANGELES, CA FRIDAY, MAY 8, 2009
4 DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
5 TIME: 3:14 P.M.
6 REPORTER: TIMOTHY J. McCOY, CSR NO. 4745
7 APPEARANCES: (AS HERETOFORE NOTED)

8 * * *

9
10 (The proceedings commenced in open court, as follows:)

11
12 THE COURT: In the matter of Mejia versus Dole,
13 BC340049, and Rivera versus Dole, BC379820.

14 The record should reflect that present in court
15 are Michael Axline for plaintiff, Scott Edelman and Andrea
16 Neuman for defendant, and Rudy Perrino as the representative
17 of Dole.

18 Present on conference call, on speaker phone,
19 are: Michael Brem for Dow, Daniel Boone for plaintiffs,
20 Richard Poulson for Dow, and Denis Fitzsimons for Amvac.

21 Welcome everybody.

22 We have an agenda for today, and the first
23 thing I'm interested in, when we last saw each other was
24 a couple of weeks ago and I had asked defendants to begin
25 the process of drafting a Statement of Decision. And I
26 gather that's just what was handed to me just now; is that
27 right?

28 MR. EDELMAN: That's right, your Honor.

1 THE COURT: Okay. Have you seen it at all,
2 Mr. Axline?

3 MR. AXLINE: It was handed to me just before this
4 hearing, your Honor, so I haven't had an opportunity to
5 review it.

6 THE COURT: I haven't either. Mine's still sealed.
7 So I haven't either.

8 All right. I thought maybe we could try
9 and work on a timetable so that we could plan on any
10 comments by you, Mr. Axline, and comments by me back
11 to Dole, and also Mr. Brem and Mr. Boone and Mr. Poulson
12 and Mr. Fitzsimons might want to make comments, as well,
13 so I'd kind of like to deal with that, if possible.

14 I can let you folks talk among yourselves,
15 if you want to take a break in a few seconds or minutes
16 and you can talk about it, but we need to have some sort
17 of a clear timeline.

18 Also Mr. Edelman, I would very much like to
19 have electronic copies so I can work on this at midnight,
20 as I tend to do, and at six in the morning as I sometimes
21 do, in addition to here at work. So if you can do that,
22 I'd appreciate it.

23 MR. EDELMAN: Certainly.

24 THE COURT: All right. Next. And this just recently
25 struck me. There is a portion of the Tellez case that
26 is still pending here, and until the last couple of weeks I
27 totally forgot about it, maybe it's on appeal, I'm not sure,
28 but there was somebody that I granted a new trial motion

1 for, and it was a person who did not have azoospermia, that
2 had only oligospermia, his name I cannot remember right now.

3 MR. BREM: Rojas Laguna, your Honor.

4 MR. BOONE: Yes.

5 THE COURT: I'm sorry, Rojas Laguna?

6 MR. BREM: Rojas Laguna. But plaintiffs had appealed
7 that grant, though, your Honor.

8 THE COURT: Okay. So there's nothing in the Tellez
9 case, then, that is actively pending here. _____

10 Is that a correct statement, Mr. Brem?

11 MR. BREM: I believe that's a correct statement,
12 your Honor.

13 MR. BOONE: Actually, your Honor, there is the
14 costs matter in Tellez, which is all the way out to June 23
15 by stipulation. _____

16 THE COURT: Okay. But I meant there's no plaintiff
17 in the Tellez matter that is actively pending here.

18 _____ Is that a correct statement, Mr. Boone?

19 MR. BOONE: Yes.

20 THE COURT: Okay.

21 All right. We have some things on our agenda.
22 Thank you, Dole, for proposing an agenda for today's issues.

23 One of things that I wanted added, and it's
24 not on here so indulge me, mine gets to go first, and it
25 was, I had promised during a hearing about a week or so
26 before the OSC when I denied plaintiff counsel Miller,
27 Axline & Sawyer's motion to withdraw as counsel of record,
28 I denied it without prejudice to being able to bring it

1 again, and Mr. Axline, I understand now, after I sent an
2 e-mail out to everybody saying we need to make sure that
3 that gets done, I did not want that to get lost in the
4 shuffle, I want to remain good for my word, I told you
5 you would be able to do it, and you will.

6 That has been filed. What's the exact status?
7 Help me out.

8 MR. AXLINE: It has been filed. I believe that
9 it's set for hearing on June 15th, and Scott or Mr. Boone
10 can correct me if I'm wrong on that, and I'm not sure when
11 the opposition, if any, is due. So. . .

12 MR. BOONE: The hearing is scheduled for June 15th.

13 MR. AXLINE: It's scheduled for June 15th.

14 THE COURT: Okay. Great.

15 Boss, how much time do we have set aside on
16 June 15th? Is that a good day for other things, as well?

17

18 (Discussion held between the Court and Court Clerk)

19

20 THE COURT: All right. So June 15th right now
21 at 10:00. We're going to look at our calendar, we're going
22 to consider moving our 9:00 somewhere else and then we can
23 maybe put more things on for that morning. It's about a
24 month out from now, so. . .

25 All right. So Mr. Axline, you're all squared
26 away, then, on your motion, whatever you want to call it,
27 motion to be relieved as counsel?

28 MR. AXLINE: I believe we are, your Honor.

1 THE COURT: Okay.

2 All right. I have some concerns about timing
3 for that, so I want to make sure that it gets done while
4 I still have jurisdiction and we can get it ruled on, and
5 if you want to withdraw, if you decide to go ahead with it,
6 that's fine, you can do so in plenty of time before maybe
7 some other things happen.

8 Am I listening to a dog barking on the phone?
9 Or a chair squeaking?

10 MR. BOONE: I'm hearing a dog.

11 MR. BREM: Your Honor, I'm actually in my home
12 office. I thought I had my speaker off. I'll take care
13 of that.

14 THE COURT: Thank you, Mr. Brem.

15 MR. EDELMAN: Your Honor, it seems to me there
16 should be a fine.

17 THE COURT: You're so right.

18 Mr. Brem, next time you come in we'll have to
19 talk about a fine for a dog barking. So OSC for dog barking
20 as to Mr. Brem.

21 THE REPORTER: Was that a Texas dog fall, your Honor?

22 THE COURT: Oh, wait a second. Mr. Brem, Mr. McCoy
23 just asked if that's a Texas dog fall.

24 MR. BREM: No, it's not.

25 THE COURT: For those of you who are sitting out
26 there scratching your heads wondering what is a Texas dog
27 fall, according to Mr. --

28 MR. AXLINE: McKnight.

1 THE COURT: McKnight, that's right.

2 MR. BREM: Who was reporting what Mr. Murphy said,
3 and neither of whom are from here.

4 THE COURT: That's true. But Mr. Brem, I'm going
5 to let you explain what was claimed to be a Texas dog fall
6 so the folks in the audience here will not be wondering
7 what we're talking about.

8 MR. BREM: Well, the current Californian and a
9 transplant said it was when plaintiffs all dropped out of
10 the case just before trial.

11 But I have taken the time to take a little
12 poll down here among real Texans and no one has ever heard
13 of that, your Honor.

14 THE COURT: Well, then, the real Texans must prevail;
15 hmmm?

16 MR. BREM: That's what I would think.

17 THE COURT: I think it came from the idea, you know
18 how a dog will decide he wants to lay down and will go up
19 and sniff the area and then circle around two or three times
20 and then suddenly go kaplop? Well, I think the kaplop part
21 of that is the Texas dog fall. So. . .

22 All right. I had those two things on my mind.

23 Now, next thing. One of the next things up
24 was there was Dole's Motion For Sanctions Pursuant to Code
25 of Civil Procedure Section 128.7. This had been brought
26 before this court against the law firm of Miller, Axline &
27 Sawyer, I guess, and perhaps also against the plaintiffs,
28 for filing the voluntary request for dismissal and for

1 filing the Motion to Withdraw as counsel of record once
2 the OSC had been noticed both orally and in writing and
3 pending. And when that came in here, it was brought in
4 I think on an ex-parte basis by Dole, and I pointed out
5 that there was a safe harbor provision within Code of Civil
6 Procedure section 128.7, and that if Dole wanted anything
7 out of me for sanctions under 128.7, they were going to
8 abide by the requirements of that, and that included the
9 safe harbor to withdraw certain pleadings.

10 So, I reviewed the file for today and I
11 learned that the law firm of Miller Axline & Sawyer
12 on behalf of plaintiffs had withdrawn the request for
13 dismissal in both the Mejia and the Rivera cases and
14 had withdrawn the request to be relieved as counsel --
15 that I had previously ruled on, but anyway, have withdrawn
16 it -- better late than never I guess is the argument, but
17 anyway, had withdrawn it, and removed an issue that had been
18 pending here, and that the withdrawal of both the motions
19 to be relieved as counsel and the voluntary request for
20 dismissal had been done within the safe harbor period.

21 Basically because of that, Mr. Edelman and
22 Ms. Neuman, it is my understanding that any pending motion
23 for sanctions is now moot.

24 Mr. Edelman?

25 MR. EDELMAN: You are correct, your Honor.

26 THE COURT: Okay. So because the, quote, offending
27 pleadings, close quote, have been withdrawn, Dole's motions
28 for sanctions under CCP section 128.7 is off-calendar as

1 moot.

2 Okay. The next issue that I want to talk about
3 is an OSC that I had set for today's date as a placeholder
4 for a date as to both the Miller, Axline & Sawyer firm and
5 the Law Offices of Juan Dominguez. I want to talk about
6 the Miller, Axline & Sawyer OSC first.

7 I did not know at the time when I set that
8 what the future was going to hold in terms of what we would
9 be hearing in those three days of evidentiary hearings.
10 I think that about the time that I set the OSC Re Sanctions
11 and for Contempt regarding the Miller, Axline & Sawyer
12 firm I had either finished or was fairly close to -- I was
13 somewhere along the way of reading those eight large volumes
14 of evidence that I had been given in preparation for the
15 OSC hearings from April 21st to 23rd.

16 I was concerned at the time that I set it
17 not so much that the Miller, Axline & Sawyer firm was
18 actively involved in any conspiracy to defraud the court
19 and to defraud the defendants in this matter, but I set
20 it for that purpose and also for the failure, apparent
21 failure of Miller, Axline & Sawyer to see that something
22 was wrong somewhere along the way. We then had three days
23 of hearings.

24 Mr. Edelman, I am going to give you a tentative
25 now. If you have any thoughts the other way, I'm interested
26 to hear them, but I do not believe that the law firm of
27 Miller, Axline & Sawyer was involved in the beginnings
28 of the conspiracy, the conspiracy that had its origins in

1 Nicaragua, and I do not believe that the law firm of
2 Miller, Axline & Sawyer knew of the conspiracy and/or of
3 the falsified evidence or of the coaching of the plaintiffs
4 or any of the other wrongdoing that we talked about on April
5 21st to 23rd at the time that Miller, Axline & Sawyer took
6 the case.

7 That then leaves us to what about from the time
8 that Miller, Axline & Sawyer took the case until we noticed
9 the OSC on March 4th, and the written ruling, what was that,
10 on March 11th?

11 Ms. Neuman, you were very good before on those
12 dates. Do I have those dates right?

13 MS. NEUMAN: March 6th.

14 THE COURT: March 6th? Well, as I said before,
15 whatever dates they were. The oral ruling and the written
16 ruling.

17 I had raised the potential because we had
18 had a 76 -- I thought it was 80 percent, but a 76 percent
19 attrition rate in the plaintiffs in the Tellez case. Now,
20 granted, of the 54 we started with and the 12 we ended up
21 with, three were transferred by court mandate, but that
22 still left a large amount of plaintiffs that were falling
23 by the wayside. The allegations have been that many
24 of the plaintiffs were dropping out immediately after
25 either, one, medical exams, or, two, their depositions.

26 That pattern began repeating itself again
27 in the Mejia case where we had a, I don't know, 55 or 60
28 percent attrition rate, it started off as 23 plaintiffs

1 and was down to 10 at the time we started our OSC. Math
2 has never been my strong point, folks, so if I don't have
3 the exact percentages right, it was well over 50 percent,
4 though, and I would have thought that a little bit of
5 vigilance would have suggested to the plaintiffs' counsel
6 that something is awry.

7 Now, I realize that plaintiffs' counsel had
8 encountered many difficulties in dealing with this case,
9 because it's not here in California or even anywhere in
10 the United States, that it's a costly and long flight
11 between here and Nicaragua, and that plaintiffs' counsel
12 was hindered because when they get to Nicaragua they didn't
13 speak the language and, when you think about it, there was
14 a full-fledged agreement among all -- or conspiracy among
15 all of the participants not to let the cat out of the bag
16 about what was going on. So I understand that it would
17 have been difficult for the Miller, Axline & Sawyer firm
18 to have done discovery earlier on. Or so much along the
19 way.

20 In Tellez, the very first witness out of
21 the box or into the box, the first plaintiffs' witness
22 was a gentleman who claimed that he was not the father of
23 a child that he had given his name to, raised in his home,
24 had his name on the birth certificate, had given his name
25 in interrogatory responses from plaintiff to defendants,
26 had told his treating psychologist or psychiatrist in
27 Nicaragua that the child was his, had told examining
28 doctors, both plaintiffs' and defense expert, two of them,

1 that the child was his, and had stated on video tape
2 in deposition that the child was his, and yet he came
3 into court and said, no, the child wasn't mine.

4 If that had been the only incident you might
5 have said, oh, I don't know, it's kind of strange, but I'll
6 buy his story. But things did happen along the way that
7 arguably should have awakened the Miller, Axline & Sawyer
8 office.

9 But I have to tell you that I've watched
10 Mr. Axline go through this journey with me since October
11 or so of last year and have watched Mr. Boone go through
12 this journey with us, as well, since end of September,
13 early October, and their expressions, their behavior, their
14 language, their conduct has demonstrated to me that I do
15 not believe that they knew, actually knew of the fraud at
16 an earlier time, at least whether they should have known.

17 But Mr. Edelman, for the purposes of an OSC,
18 I'm not convinced that this is the correct forum to deal
19 with any alleged deficiencies of the Miller, Axline & Sawyer
20 office on the grounds that they knew or should have known
21 about the fraud that was being perpetrated on everybody,
22 and in many ways I view the Miller, Axline & Sawyer office
23 as much of a victim as Dole and Dow and Amvac and this
24 court.

25 My tentative is to, number one, take the
26 OSC, Order to Show Cause Re Sanctions and Contempt off
27 calendar as to the law firm of Miller, Axline & Sawyer
28 and its various individuals with whom I've interacted,

1 Mr. Miller, Mr. Axline and Mr. Boone, and Mr. Sawyer,
2 although I've only talked to him or dealt with him a
3 couple of times, and I will not be making a referral
4 to the California Bar regarding the law firm of Miller,
5 Axline & Sawyer or any of its attorneys, be they partners
6 or associates.

7 That's by way of a tentative, Mr. Edelman.
8 Do you want to be heard? This leaves open to you any other
9 forum that Dole might feel is appropriate. I just don't
10 think it's appropriate to deal with it here at this time.

11 MR. EDELMAN: Thank you, your Honor.

12 THE COURT: And I'm only talking about Miller,
13 Axline & Sawyer.

14 MR. EDELMAN: Understood.

15 THE COURT: Okay.

16 MR. EDELMAN: And as we expressed in our status
17 conference statement, we do not disagree with you that
18 this is not the appropriate forum for Dole to follow this.

19 I think I put so many negatives into that
20 sentence that nobody knows what I said --

21 THE COURT: Yeah, you did.

22 MR. EDELMAN: -- so let me start over.

23 We agree with you that your court is not the
24 appropriate forum for us to address the question of Miller
25 Axline's culpability and, indeed, it's not an issue that
26 lends itself to determination by looking at the expressions
27 of Mr. Axline and Mr. Boone and then trying to assess
28 what they knew or didn't know.

1 I for one will tell you that I too have been
2 very impressed with how Mr. Axline has handled this since
3 he got into the case, and recently has assisted us in
4 resolving the fraud that has emerged.

5 It's a real concern to my client, though,
6 which has spent many millions of dollars defending these
7 series of cases that were spearheaded by the Miller Axline
8 firm, how it is that they didn't, if they were not involved
9 in the fraud from the outset, figure it out much earlier.

10 Having said that, I agree with you this
11 is not the forum to resolve that issue, and as long as it
12 is understood by everyone concerned that you are vacating
13 your OSC and not addressing the issue of Miller Axline's
14 culpability one way or the other so that it can be resolved
15 in another forum if necessary, then we would agree with
16 you and submit to your tentative.

17 THE COURT: Mr. Axline, do you want to be heard?

18 MR. AXLINE: I probably shouldn't say anything, your
19 Honor, at this point --

20 THE COURT: Mr. Axline, I'm all ears.

21 MR. AXLINE: -- but I will say, obviously we
22 don't dispute your tentative. It has been a long journey.
23 We have at the inception of that journey faced the
24 dual responsibilities, as I wrote you in December, to
25 our clients, each individual client each step of the way,
26 as well as to the Court, and we have attempted to balance
27 and fulfill those dual responsibilities to the best of
28 our ability and with the standards that we expect other

1 attorneys to bring to the profession.

2 We have very much appreciated the Court's
3 fairness in these difficult circumstances, and I do know
4 that when you're at the front end of that process it is
5 extremely difficult to know where the truth lies. And I
6 think one thing that we have all learned from this process
7 is that figuring out where the truth lies in Nicaragua
8 is extremely difficult.

9 So with that said, I think I'll also submit
10 on the tentative.

11 THE COURT: Okay. Thank you, Mr. Axline.

12 I told you before, Mr. Axline, I do want
13 to thank you and your firm for making this last, what,
14 eight months or so at least something that we could all
15 deal with relatively smoothly. There were a lot of bumps
16 along the road, none of which were caused by you or your
17 office, Mr. Axline, none of which was caused by Dole.

18 You know, Mr. Axline, I've been thinking long
19 and hard about this after setting the OSC, I recognize
20 that most people see the good in others, most people expect
21 a professional that approaches them to hire them on or to
22 engage them in legal services, in other words, somebody in
23 Mr. Juan Dominguez's position. One would expect that one
24 attorney approaching another attorney for specialized legal
25 services that your firm offers, which is trial specialty,
26 discovery and trial in toxic tort cases representing
27 plaintiffs, you would expect that the person approaching
28 you is honest, above board, and is representing the facts

1 as they are. I think that's a reasonable expectation,
2 and I understand that it probably was hard for you, as
3 it was hard for me, during the journey that we traveled
4 between the end of September 30th, I guess is when
5 we began this, and the OSC hearing to deal with the
6 allegations. So I recognize that as one problem. I
7 also understand that you had some significant language
8 barriers.

9 I am truly convinced you did not know, that
10 your law firm did not know about the fraud at an earlier
11 time, did not participate actively in the conspiracy,
12 and you found yourself in an untenable position.

13 From my standpoint, and I'm not making any
14 rulings for any other action that might occur at some
15 other time, that's not my point here, but from my point,
16 Mr. Axline, you particularly, and the members of your
17 firm, Mr. Boone, Mr. Miller and Mr. Sawyer, were helpful
18 in allowing us to resolve this.

19 I know you folks didn't want to believe what
20 was going on, but as time went on and the various events
21 occurred, I think everybody -- well, I need to back up.

22 I don't think that anybody could have imagined
23 at the beginning of our journey where we would have ended
24 up and what we would have uncovered or discovered together.
25 It really boggles the mind. On September 30th when Dole
26 brought in its initial motion, or on October 4th or 6th
27 or whatever day it was when I made the initial ruling and
28 I took the unusual steps that I did, I didn't have any

1 idea what would come out here. I truly thought that
2 Mr. Dominguez's name would be cleared in a month or so,
3 or in two months at the most, and that's why I set up
4 that whole process, and I know that Mr. Axline and company
5 maintained that hope, too.

6 Anyway, the OSC is discharged from my
7 standpoint. My reason for discharging the OSC is I have
8 no grounds to sanction the Miller, Axline & Sawyer firm
9 or any of its specific members or to hold them in contempt
10 given the state of knowledge that I have now. But I'm
11 not making any rulings for any other legal proceedings
12 that there might be.

13 I also will not be making any referral to
14 the State Bar as it relates to the Miller Axline firm.
15 That's a different ballpark with Mr. Dominguez.

16 But for your firm, again, Mr. Axline, I want
17 to say thank you. And you've been very gracious to me.

18 I drafted this poor man, who had had very
19 little dealings with me, he had come in and argued one
20 or two motions I think, and that was about it. But I
21 wanted you, Mr. Axline, because I knew that you had some
22 appellate background and some law and motion background,
23 I knew that you had had your background as a law professor,
24 I very much appreciated that, and I thought it would allow
25 you to see the world from two different perspectives at
26 the same time, that of a plaintiff's attorney and that of
27 what it must be like to be a judge presiding over something
28 like this.

1 So, thank you for letting me draft you into
2 this nightmare, and thank you for your help.

3 All right. So the OSC is -- technically I
4 think the word is discharged. The OSC is discharged.

5 MR. AXLINE: Thank you very much, your Honor.

6 THE COURT: Okay?

7 Now we have the issue of Mr. Juan Dominguez. I
8 had set again today as a placeholder for Mr. Juan Dominguez
9 for an OSC Re Contempt and Re Sanctions. I have a concern,
10 Mr. Edelman, and I'm trying to balance two very competing
11 concepts.

12 First, if Mr. Dominguez is going to defend
13 himself here, shouldn't he have the right to know what was
14 said in the closed proceedings? That is balanced against
15 my very real conviction that to allow the names of the,
16 quote, John Doe witnesses, close quote, into the public
17 domain, that jeopardizes their safety and health and
18 that of their families.

19 Dole is going to have to make a decision,
20 and that decision is going to have to be the following:
21 In order for me to proceed in an OSC Re Sanctions and
22 Contempt hearing as it relates to Mr. Dominguez, more
23 than the statements that I've already made, that I will be
24 referring this to the State Bar, and I will be referring
25 this to the appropriate prosecutorial agencies, in order
26 for us to go on Dole has to make a decision as to whether
27 or not it will be safe to allow the release of these
28 individuals' personal information.

1 Now, I live in the United States, I don't
2 live in Nicaragua, and I have no jurisdiction over what
3 happens down there. I don't know what Dole can do to
4 ensure the safety of these individuals in Nicaragua.
5 My fear is: not much. Short of helping them relocate
6 to someplace outside of Nicaragua where you can assist
7 in implementing measures to ensure their safety, I
8 don't know that much more can be done.

9 I said before that I believe that Juan
10 Dominguez was an active participant in a conspiracy to
11 defraud this court and to defraud United States companies.
12 I'm not personally comfortable with giving him the
13 information. I have no reason to distrust his attorney,
14 Ms. Aimee Dominguez, but what would she do with the
15 information if she can't relay it to him?

16 So that's my dilemma. Mr. Edelman or
17 Ms. Neuman, and Mr. Axline, I'm interested in any input
18 you can give me.

19 MR. EDELMAN: Your Honor, that is indeed the
20 dilemma, and we have been wrestling with that issue
21 ourselves. Where we come out on it is that we do not
22 want to give that information to Mr. Dominguez. It's
23 just not prudent. We cannot jeopardize the safety of
24 these witnesses, whose identity we've all gone to such
25 great lengths to protect. We think that if Mr. Dominguez
26 knew about them, their safety would be in jeopardy, and
27 we just can't take that risk.

28 So, what we would like to do, your Honor,

1 is to proceed with the contempt proceeding on the basis
2 of information in this case which is public. We think we
3 can do that. We think we can make a sufficient showing,
4 based on suborning of perjury, refusal to cooperate in
5 discovery, and a variety of other things that Mr. Dominguez
6 has done in this case which would support a contempt finding
7 even without reference to the testimony of the individuals
8 whose identity we need to keep secret.

9 And so it's on that basis, and I think
10 that's the only prudent and safe basis on which we can
11 go forward, that we would like to go forward. And if the
12 Court agrees with that, our thought would be that we would
13 need to schedule probably another hearing with Ms. Dominguez
14 present so that we can talk about the mechanics of the
15 procedure, a briefing schedule, and possible discovery.

16 THE COURT: Okay. There is one other fly in
17 the ointment, Mr. Edelman. The allegations against
18 Mr. Dominguez are serious. They have criminal overtones:
19 suborning perjury, obstruction of justice, defrauding the
20 court, setting up a scheme which is in essence extortion
21 of money from U.S. companies by using the courts as the
22 tool. There may be a RICO violation in this. All of the
23 alleged actions by Mr. Dominguez have criminal overtones.

24 I can go ahead and reset or continue a
25 contempt proceeding, bring Ms. Dominguez on in here,
26 along with Mr. Dominguez, but we're lucky in our country
27 to have our constitution and one of the amendments to
28 the constitution is the right against self-incrimination.

1 As long as there is the potential for a criminal
2 prosecution by whatever criminal agency might want to
3 prosecute, and I think that there is a high likelihood
4 of that based on what I've seen, otherwise I wouldn't
5 be making a referral, because I think there's a strong
6 likelihood of some sort of a prosecution, the Fifth
7 Amendment may impair Mr. Dominguez's ability to actively
8 participate in a defense, and we may end up in a situation
9 where any OSC that's set is stayed for some period of
10 time pending the resolution of any criminal matters.

11 So be prepared for that.

12 MR. EDELMAN: Understood, your Honor.

13 THE COURT: Okay.

14 Mr. Axline, I'm interested in your input.
15 Please?

16 MR. AXLINE: It does seem to me -- well, I guess
17 I obviously share the concern for the witness safety,
18 and since Dole's proposal is in favor of witness safety,
19 it makes sense to me.

20 THE COURT: All right. So that is to continue with
21 an OSC against Mr. Dominguez based solely on information
22 within the public domain that was elicited during this
23 trial or in support of this trial, or, of course, any of
24 the plaintiff depositions is fair game and known about to
25 all parties at that time, and not to rely upon in any way
26 any information which was received under a protective order,
27 received by this court under a protective order, because
28 of everyone's grave -- well, strong concerns for the safety

1 of witnesses.

2 Is that what I'm hearing you say, Mr. Axline?

3 MR. AXLINE: That is my reaction, your Honor.

4 Obviously this is not a motion on our part,
5 I'm reacting to your request for my take on it all, and
6 so --

7 THE COURT: That's what I'm asking.

8 Do I have it right?

9 MR. AXLINE: That is my take on it, yes.

10 THE COURT: Okay.

11 Mr. Brem on the phone, your thoughts one way
12 or the other?

13 MR. BREM: I think that that is the only reasonable
14 way to go forward, your Honor, is on the public record.
15 And, in fact, that is identical to what we proposed to
16 Judge Huck in his consideration of a further protective
17 order in Sanchez_Osorio just two days ago or three days ago.

18 THE COURT: And in a minute, Mr. Brem, or somebody
19 from Dole, you can tell me all about that. But right now
20 I'm working on -- I can only do one thing at a time. What
21 can I say.

22 All right. Thank you, Mr. Brem.

23 Mr. Boone, did you have anything you wanted
24 to add?

25 MR. BOONE: No, your Honor. I think the others
26 have articulated very well what the issues are.

27 THE COURT: And Mr. Boone, I didn't make it clear,
28 but I do appreciate your support and help in recent months.

1 I know you and I have gone toe to toe and nose to nose and
2 eyeball to eyeball at times over the various litigation
3 in either Tellez or Mejia, but I do respect you and I also
4 respect somebody who can make changes as the situation
5 demands and not remain rigid.

6 So Mr. Boone, my hat's off to you. Okay?

7 MR. BOONE: The feeling is certainly mutual, your
8 Honor, and it's been a pleasure to be there with you many
9 times, and I certainly share the same kind of feelings back.

10 THE COURT: Even toe to toe, nose to nose and
11 eyeball to eyeball, Mr. Boone?

12 MR. BOONE: You bet. Sometimes those have been the
13 most stimulating and interesting parts of the hearings that
14 we have had. I always enjoy encountering others who can
15 think quickly and articulate facts and law and arguments
16 quickly, and certainly we've had many good exchanges of that
17 type.

18 THE COURT: What I didn't mention to you folks
19 is that Mr. Boone is -- how tall are you, Mr. Boone?
20 Six-four?

21 MR. BOONE: Yes.

22 THE COURT: I'm only five-six, so I had to stand
23 on a huge stepping stool to go toe to toe and eyeball
24 to eyeball with him.

25 All right. Mr. Poulson, any other ideas,
26 suggestions, anything I need to consider?

27 MR. POULSON: No, your Honor.

28 THE COURT: And Mr. Fitzsimons, same question.

1 MR. FITZSIMONS: No, your Honor.

2 THE COURT: All right. I'm going to continue the
3 OSC Re Contempt and Sanctions as to Juan Dominguez and
4 the Law Offices of Juan Dominguez to -- I think I'm going
5 to do this at 9:00 in the morning on June 15th, 2009.

6 Dole is in charge of letting Ms. Dominguez
7 know.

8 Now, I know that there is another hearing set,
9 and I think I'd rather just put it over to that date instead
10 of having everybody come in constantly, I guess it's set for
11 May 15th, and that is the hearing on plaintiffs' motion for
12 protective order or motion to quash.

13 I really would like to get this written order
14 done in this part of the case first, and so I'm going to
15 continue the May 15th 10:00 hearing to June 15th at 9:00
16 in the morning, as well.

17 MR. BOONE: Your Honor, Daniel Boone. I just want
18 to mention one thing.

19 Along with our withdrawals of the other
20 documents that the Court referred to earlier, we also at
21 about the same time filed a withdrawal of plaintiffs' motion
22 regarding the protective order and motion to quash. I don't
23 know exactly what global or semi-global procedural effect
24 that has, but I just did want the Court to be aware that
25 the plaintiffs have withdrawn the motion, we have not had
26 any communications with Aimee Dominguez or Juan Dominguez
27 about their intentions about trying to go forward with
28 that, but since we're rescheduling the motion, I did want

1 the Court and the other parties to be aware that we did
2 file that withdrawal of that motion.

3 THE COURT: You know, Mr. Boone, thank you for
4 reminding me of that. I was a little confused when I read
5 the statements in here because for some reason I thought
6 the motion for protective order and motion to quash were
7 brought by Mr. Dominguez, not on behalf of the plaintiffs.

8 But is there more than one protective -- ah,
9 okay. Help me out, Mr. Edelman. You're nodding your
10 head at me, so help me out. I'm very confused.

11 MR. EDELMAN: You're right that there's more than
12 one.

13 THE COURT: Okay.

14 MR. EDELMAN: So the plaintiffs brought a
15 companion motion to quash the subpoena of Mr. Dominguez.
16 Mr. Dominguez or Ms. Dominguez on behalf of Mr. Dominguez
17 also brought a motion. So Mr. Dominguez's motion remains
18 pending, plaintiffs' motion is withdrawn.

19 And to the extent we're talking about
20 attorney-client privilege issues, which is part of the
21 basis of your finding that we could penetrate based on
22 the crime-fraud exception, plaintiffs' withdrawal of
23 that motion is significant because they're the holders
24 of the privilege. But we can talk about that on June
25 15th.

26 THE COURT: Okay.

27 All right. Thank you for clearing this up,
28 everyone, Mr. Boone and Mr. Edelman. I do appreciate it.

1 For some reason it slipped by me. There's only one or
2 two pieces of paper ever filed in this case.

3 Actually, it's been a relief for the staff.
4 In the last two weeks we actually haven't gotten flooded
5 with paperwork every day. From your case anyway.

6 So thank you for the clarification of the
7 confusion, then. On June 15th at 9:00, just again as a
8 placeholder, I'm putting over Juan Dominguez's motion for
9 a protective order and Juan Dominguez's motion to quash
10 service of subpoena.

11 Mr. Axline, you've got a look on your face
12 like you've got a thought there.

13 MR. AXLINE: Yes. Mr. Edelman, who's a highly
14 skilled attorney, just said something that I think may
15 be stretching things a little bit. By withdrawing the
16 motion for protective order and motion to quash, I don't
17 believe we intended to waive any attorney-client privilege,
18 we were just taking that motion off calendar.

19 THE COURT: Okay.

20 MR. AXLINE: So the impact of that may yet to be
21 resolved, but I don't want the record to reflect that
22 I agreed with his statement.

23 THE COURT: All right. The record strongly
24 demonstrates that Mr. Axline on behalf of plaintiffs does
25 not agree with that statement of Mr. Edelman and the legal
26 effect of the withdrawal of the motion for protective
27 order, and the withdrawal of the motion to quash service
28 of subpoena for a deposition of Mr. Juan Dominguez and/or

1 his employees will remain for another day. All right?

2 Okay. Next. I have here Dole's Motion
3 for Sanctions of Plaintiffs' For Violations of Court Orders.

4 Now, Mr. Edelman, we brought a horse into
5 the courtroom on September 30th, and everybody got their
6 whips out, beat it to death during the hearings of April
7 21st to 23rd. Well, I find that apparently that horse's
8 carcass is still in my courtroom all stinky and people
9 still want to beat it and hit it with whips --

10 MR. EDELMAN: No, your Honor.

11 THE COURT: -- in something called Dole's Motion
12 For Sanctions for Plaintiffs' Violations of Court Orders.
13 And this was discovery orders.

14 Heavens, my friends, what more can I do
15 other than dismiss their claims?

16 MR. EDELMAN: Your Honor, let me explain. If
17 you look at the agenda that we submitted, there are two
18 different animals that are listed, one in Item 1 and one
19 at Item 4. Okay? Item 4 is Dole's Motion For Sanctions
20 For Plaintiffs' Violation of Court Orders. That's gone.
21 That was supposed to be merged into the OSC re possible
22 contempt, which you have discharged and which we've
23 stipulated to the discharge of.

24 THE COURT: All right. So Dole's Motion For
25 Sanctions For Plaintiff's Violations of Court Orders is
26 now moot. Is that what you're saying?

27 MR. EDELMAN: Yes.

28 THE COURT: Thank you.

1 MR. EDELMAN: The motion for terminating sanctions
2 under the Discovery Act, you will recall that when we
3 submitted to your Honor our Memorandum of Points and
4 Authorities in connection with the OSC, we listed several
5 discovery abuses which we contend would separately and
6 independently support the granting of terminating sanctions.

7 THE COURT: And I was unclear as to whether the
8 paperwork that you filed in support of the OSC was meant
9 to also be a motion for terminating sanctions under the
10 Discovery Act without the proper labeling on it and exactly
11 what you wanted, and you clarified that after I sent an
12 e-mail out to everybody saying, in essence, what is your
13 intent here, what are you trying to do, and Dole clarified
14 that by filing a full-fledged motion with all the
15 appropriate notice and labels on it.

16 MR. EDELMAN: Exactly right.

17 THE COURT: Okay.

18 MR. EDELMAN: And so you will see when you review
19 our proposed findings, where we have attempted to organize
20 the evidence that has been presented to your Honor in
21 connection with the OSC proceedings, that we've included
22 in that evidence the evidence of the discovery abuse which
23 we believe supports terminating sanctions.

24 So, we're not here today to separately argue
25 the motion for terminating sanctions under the Discovery
26 Act. All we were trying to do by this, and the reason
27 we put it on today's agenda, was to make it clear that we
28 believe that if you wanted, we think it's appropriate, as

1 one of the many bases for terminating sanctions, to refer
2 to the Discovery Act violations which are in the proposed
3 findings. And so as you go through the proposed findings,
4 I think you'll be able to look at the conduct and decide
5 whether that was something you had in your mind in making
6 the ruling that you made.

7 But it's in the proposed findings, it was
8 put before you in a procedurally proper way so that if you
9 wanted to base your ruling on it, you could.

10 THE COURT: Okay. Mr. Edelman, there are two things
11 I believe requested. One is terminating sanctions, that's
12 number one, that I guess could be subsumed within an OSC
13 Re Dismissal, arguably, and the other thing that you seem
14 to be asking for was sanctions.

15 I can tell you right now I am not about to
16 award sanctions against the law firm of Miller, Axline &
17 Sawyer for this. Based on what I knew, they were getting
18 information at the last minute from --

19 MR. EDELMAN: We're not asking for that.

20 THE COURT: Okay.

21 MR. EDELMAN: We're not asking for monetary
22 sanctions.

23 THE COURT: All right. Are you asking for them
24 against the plaintiffs individually? Because if you are,
25 that's kind of a pyrrhic victory.

26 MR. EDELMAN: We're not asking for that either.

27 THE COURT: Okay. Thank you.

28 So all you're doing, then, is giving me an

1 additional basis on which to deal with the complaint and
2 dismiss the action. Is that it?

3 MR. EDELMAN: That's it.

4 THE COURT: All right. In that case, we can deal
5 with that within the written ruling.

6 MR. EDELMAN: Right.

7 THE COURT: All right. Thank you.

8 MR. EDELMAN: Thank you.

9 THE COURT: Now, have I covered all the -- oh,
10 no. Proposed Amendment to the Amended Protective Order.
11 There's something a little duplicative about that.

12 Is that yours?

13 MS. NEUMAN: Yes, your Honor.

14 THE COURT: Yes. We finally get to hear from you.

15 MS. NEUMAN: Eventually.

16 Your Honor has indicated that she intends
17 to refer these matters to the authorities, and the parties
18 very much want to be in a position to cooperate with those
19 authorities, and your Honor in attempting to make sure
20 everybody's rights were well protected has amended the
21 protective order from time to time so it's now called
22 the Amended Protective Order.

23 THE COURT: I know. I'm just teasing you.

24 MS. NEUMAN: And we have proposed a separate
25 amendment document to the protective order for a couple
26 reasons. The first one is to allow us to cooperate with
27 authorities as laid out in the proposed amendment; the
28 second one is to accurately reflect the way your Honor

1 modified the OSC when she ruled on the public access
2 issues in the media motion; and the third one is,
3 we would like to do it as a separate document.

4 Plaintiffs made the very fair point that it
5 might be more straightforward if we added a paragraph to
6 the overall order, but we would like to be able to take
7 the amendment to Judge Huck down in Osorio and have him
8 make the same amendment to his protective order, by which
9 Dole and Dow at least are bound, so we need to have that
10 one amended, as well, to allow that to occur.

11 THE COURT: Okay. Can we start numbering these?
12 Because otherwise we won't know which amended protective
13 order we're talking about. So either you can call it
14 amended protective order and date it today's date or
15 whatever date, that might be the clearest thing to do
16 rather than calling it the first, second, third, because
17 I'm not sure what iteration we're on right now. But if
18 you call it amended protective order and then put whatever
19 date you're asking for, that's fine.

20 You're right, we do need to amend it, we
21 do need to make sure that any prosecutorial agency or
22 the State Bar, if it's appropriate, can obtain some of
23 the information. The State Bar is probably also going to
24 need only the public documents, now that I think about it.

25 All right. So, can you work that out with
26 Mr. Axline and Mr. Boone, then?

27 MS. NEUMAN: Yes, I think we can, your Honor.

28 THE COURT: You agree?

1 MR. AXLINE: Yes. Yes, we can.

2 THE COURT: Okay. Great.

3 Now, I got an e-mail from you folks, this case
4 is filled with e-mails, although I haven't had as many in
5 the last two weeks, and this e-mail was from -- was this
6 from you, Ms. Neuman?

7 MS. NEUMAN: Yes, your Honor.

8 THE COURT: Okay. And it talked about a film
9 called "Bananas." The problem that I had was I don't
10 have speakers -- oh, I think we may be able to do it.

11 Ms. Piedra, does your computer have speakers
12 on it?

13 THE COURTROOM ASSISTANT: Yes.

14 THE COURT: If I e-mail you a link, can I look at
15 something?

16 You wanted me to watch this; right?

17 MS. NEUMAN: Yes, your Honor, the trailer that we're
18 finding quite objectionable.

19 THE COURT: Okay.

20 Have you seen this link?

21 MR. AXLINE: I saw it yesterday, yes.

22 THE COURT: Okay. Unfortunately, my computer
23 sticks its tongue out at me when I've tried at various
24 times to access that site, including I rebooted it and
25 tried it again. Can't do it. Then I tried it from work.
26 The only problem is, my computer in chambers, government
27 issued, does not have any speakers on it. So, I have
28 not seen it.

1 How long is it?

2 MS. NEUMAN: It's less than three minutes, your
3 Honor.

4 MR. EDELMAN: Yeah.

5 THE COURT: Would you mind if we took a break and
6 looked at her -- I mean, do I need to see this thing?

7 MR. AXLINE: That's up to you, your Honor. I have
8 something to say about it, but if you'd like to see it
9 first, though.

10 THE COURT: I should tell you that I have a concern,
11 too. I'm not quite sure what you want, but I'm very proud
12 of our constitution, you've heard me talk about it over
13 and over again, and one of the reasons why I'm very proud
14 of it is the First Amendment right to free speech, and
15 there is a little issue to me about prior restraint on free
16 speech that I think you may be asking me to do something
17 about here.

18 No? What is it you want, then, before I watch
19 this thing, Ms. Neuman?

20 MS. NEUMAN: Your Honor, we just wanted to raise it
21 with the Court and Mr. Axline while we had the opportunity
22 when we were going to be all together, because the film,
23 if I can call it that, purports to be a documentary, and
24 it basically, falsely, in a defamatory manner at a bare
25 minimum, accuses Dole and the other companies of killing
26 people in Nicaragua; it starts with a funeral procession,
27 but it consists primarily, at least based on the trailer,
28 of interviews with Mr. Dominguez and Mr. Miller, I don't

1 know if there's other members of the firm that are
2 interviewed, but Mr. Miller and Mr. Dominguez are the
3 ones that are featured in the trailer during the Tellez
4 trial, showing that to be a valid proceeding, which we
5 now know that it was not.

6 THE COURT: Can I back you up for a second? I
7 remember Tellez very well and all the plaintiffs that
8 I had in here were alive.

9 MS. NEUMAN: Yes. That would be true, your Honor.

10 So, the problem with this film -- and Dole is
11 addressing issues with its release separately, and we don't
12 intend to do that here, but to the extent that Miller Axline
13 could be of assistance in preventing and/or discouraging
14 its release, since it is obviously defamatory to Dole,
15 we wanted to talk to them about that and perhaps have
16 your Honor's guidance on how that might be appropriate
17 to achieve.

18 THE COURT: Were you the one that sent me that?
19 Did it come off your e-mail address?

20 MS. NEUMAN: It came off my e-mail, your Honor.

21 THE COURT: I'm searching for it, that's why I'm
22 asking.

23 MR. AXLINE: And your Honor, you will also recall
24 from the Tellez trial that that trial was broadcast
25 publicly at the request of Dole itself.

26 THE COURT: Actually I thought it was at the request
27 of -- who do you work for? CourtTV Connect?

28 COURTROOM CONNECT VIDEOGRAPHER: Courtroom View

1 Network, or Courtroom Connect.

2 THE COURT: That one.

3 COURTROOM CONNECT VIDEOGRAPHER: Yeah.

4 THE COURT: And you sent this to me when?

5 MS. NEUMAN: I believe it was yesterday, your Honor.

6 THE COURT: Okay. Ms. Piedra, I'm going to be
7 sending you an e-mail, so I can see what this is all about,
8 and I need you to hook on to a link, and we're going to go
9 physically off the record during that time so the reporter
10 doesn't have to try and take it down.

11 Mr. Axline, I just want to know what all the
12 fuss is about. Once I understand what is going on, then
13 we'll deal with it. And I'm interested in what you have
14 to say, but let me at least see what this is.

15 MR. AXLINE: Sounds good.

16 THE COURT: Ms. Neuman, was there something else
17 you wanted to say that I rudely interrupted you on?

18 MS. NEUMAN: I don't think so, your Honor.

19 THE COURT: If I interrupted you, it wasn't rudely;
20 hmmm?

21 Mr. Brem, have you watched this?

22 MR. BREM: I've been be aware of this for some time,
23 your Honor.

24 THE COURT: Mr. Boone, have you watched this thing?

25 MR. BOONE: I've watched the trailer, yes.

26 THE COURT: Mr. Poulson, same question?

27 MR. POULSON: I have seen it, your Honor.

28 THE COURT: Last, Mr. Fitzsimons, same question.

1 MR. FITZSIMONS: I have, your Honor.

2 THE COURT: You mean I'm the only one around here
3 who hasn't? Darn, I feel left out.

4 MR. FITZSIMONS: Although my computer wouldn't allow
5 me to open it either.

6 THE COURT: So you have seen it, but just not on
7 your computer.

8 MR. FITZSIMONS: On my home computer.

9 THE COURT: I wonder what it is about -- I have like
10 a pop-up thing. Do you think that might be the reason?

11 THE COURTROOM ASSISTANT: There's two links. Is it
12 the top, bottom, or both?

13 MR. EDELMAN: Top one.

14 THE COURT: All right. I'm heading over there so
15 I can see this.

16 Turn it up nice and loud so these folks in
17 the courtroom can hear whatever is on there.

18

19 (Off-the-record viewing of movie trailer "Bananas.")

20

21 THE COURT: All right. Back on the record.

22 I just watched a rather short video trailer,
23 it started with scenes of beginning of a funeral and it was
24 something like "Every day somebody dies," and it's something
25 on the order that "It's a victory for Dole," or something on
26 that order. Then it begins showing scenes from the Tellez
27 trial, which I recognized my courtroom and I recognize
28 the plaintiffs, and I recognize some of the scenes from

1 Mr. Miller's argument, some scenes from questions being
2 asked directly of plaintiffs.

3 One of the scenes was of the very first
4 plaintiff who indicated that the child wasn't -- that I
5 had mentioned this person, as well.

6 Rojas Laguna, Mr. Brem? Was that the name?

7 MR. BREM: No, not the first plaintiff, your Honor.
8 That was Morales Mendoza I believe.

9 THE COURT: Thank you. A picture of Mr. Morales
10 Mendoza, who was crying on the stand when he said that
11 he was unable to have children and this was not his child.

12 It then also showed -- it cut to films of
13 people walking in the banana fields in sort of muddy water,
14 and I remember that because I don't think I allowed that
15 in in trial. It's interesting, I found it not relevant and,
16 under 352, had stricken it, but it's a picture of a banana
17 worker walking between the rows of banana trees in sort of
18 muddy water.

19 It showed a picture that was before the jury
20 before of banana fields with the irrigation going round
21 and round; it showed a picture of people actually cutting
22 bananas off trees and/or of taking a machete to stocks; it
23 then showed a little bit more trial scenes, like an expert
24 coming in and setting his box over there on the witness
25 stand; it then went to scenes of Mr. Dominguez, I assume
26 in his law office -- one of the pictures, by the way, was
27 this building, Central Civil West, and the glass-mirrored
28 front and the words "Superior Court" at the top.

1 Then it also it went to Mr. Dominguez's I
2 assume his office, I'm not sure where those were taken,
3 the pictures; it showed Mr. McKnight arguing; the bit about
4 "the nasty, nasty" was Mr. McKnight arguing, Mr. Miller
5 some more, or his voice in the background, and then some
6 various statements by Mr. Dominguez.

7 MR. BREM: Could I add something, your Honor?

8 THE COURT: You can.

9 MR. BREM: In the scene in which you hear
10 Mr. Dominguez's voice over a loudspeaker in Spanish --

11 THE COURT: Oh, I forgot to say that. Yes?

12 MR. BREM: And one of the things he says there
13 is: "Don't sign anything."

14 THE COURT: That's true, he did say that.

15 All right. So I've seen it, I now at least
16 understand what you're talking about. I'm not going to
17 make any comments about it one way or the other, but I
18 do see it.

19 So Ms. Neuman, what do you want from me?

20 MS. NEUMAN: Yes, your Honor. Well, as your Honor
21 saw, that it's a shockingly misleading and defamatory
22 piece. Even if we now know the Tellez trial to have been
23 fraudulent, we certainly know that there was no allegation
24 in that trial that DBPC caused the death of anyone, although
25 there's multiple funeral processions in this trailer,
26 there's also a plane spraying chemical, which we all know
27 never happened with DBCP. Now that we know the Tellez
28 trial was a fraud, the movie is all the more defamatory.

1 What your Honor did not see was also what
2 has been posted as some interviews with the directors
3 of this so-called film, which actually go so far as to
4 accuse Mr. Murdoch personally of causing the death of
5 people in their fifties and trying to belittle his
6 very well-recognized and acclaimed work in the area of
7 prolonging life through his various wellness centers.

8 What concerned us and why we brought it up
9 with your Honor is that it did involve the Tellez trial,
10 it did involve Mr. Dominguez and counsel, Miller, Axline &
11 Sawyer, in this film, and we just wanted to know if there
12 was anything while we had Mr. Axline here and your Honor
13 was addressing all these related issues, if they had given
14 some sort of consent or release that could be withdrawn
15 now, to assist Dole in preventing this from coming out.

16 MR. BREM: There's one scene, your Honor -- I'm
17 sorry.

18 THE COURT: Okay. Mr. Brem?

19 MR. BREM: Your Honor, on the website itself,
20 that you have not seen, there's a scene, there is a shot,
21 a picture with Mr. Miller without a tie on, and so that's
22 clearly in Mr. Dominguez's office or somewhere else.

23 THE COURT: I can't picture Mr. Miller without a tie,
24 because he's very proper.

25 MR. BREM: Well, my point is he certainly was not in
26 court there.

27 THE COURT: Certainly not. All right. I didn't
28 think he -- well, I don't know about the thing you're

1 talking about, I don't remember a picture of Mr. Miller
2 without a tie there. Maybe it was there and it went by
3 me very quickly.

4 MR. BREM: No, your Honor. It's on the website for
5 the movie, it's not in the trailer.

6 THE COURT: Okay. Thank you.

7 All right. So Ms. Neuman, what you want to
8 do is bring it to everybody's attention that this movie
9 is out there, you want to state that Dole believes that
10 it is highly misleading.

11 You're right, there was no spraying, according
12 to the Tellez trial, aerial spraying of DBCP on fields
13 as there was in that picture. All spraying, per the
14 testimony, and I think this is true, was done by like a
15 large RainBird, an oversized RainBird, I don't know how
16 else to describe it, or overhead water irrigation, something
17 on that order. I'm not sure of the exact wording. And
18 there was no mention in the Tellez trial of death from
19 DBCP. Tellez was about sterility, it wasn't about death.
20 There were accurate film clips from the trial because I
21 was there, I saw it.

22 All right. So what you want to know, then,
23 is is there anything that the Miller Axline office can
24 or would like to do or try to do if it's at all possible.

25 MS. NEUMAN: Yes, your Honor.

26 THE COURT: Just so we're clear, I am not in any
27 way going to make, and I will not consider, any request
28 for prior restraint on free speech. Okay? So, don't ask

1 me to go try and contact the film company. I don't have
2 jurisdiction over them. But even if I did, don't ask for
3 it.

4 MS. NEUMAN: Understood, your Honor.

5 THE COURT: Okay. Talk to me, Mr. Axline.

6 MR. AXLINE: Well, your Honor, this is something
7 that I think could have been raised with us outside the
8 courtroom, but I'm happy to address it in front of you.

9 Mr. Dominguez's office prior to the Tellez
10 case had somehow connected with the documentary filmmaker
11 and that filmmaker did do a documentary based on the trial,
12 and then there were apparently some other scenes shot in
13 Nicaragua or elsewhere.

14 Having seen this trailer, which is all I've
15 seen of it, I did inform Dole's counsel before the hearing
16 today that I intend to send a letter to the director of
17 that film -- I don't believe in prior constraint and I don't
18 have any control over this person, but I do intend to send
19 a letter to that director telling him -- well, sending him
20 a copy of your order on the OSC and suggesting that in light
21 of events that have come to light since the Tellez trial, he
22 might want to reconsider releasing his film. _____

23 THE COURT: Okay.

24 Ms. Neuman, that's a very nice offer from
25 Mr. Axline. He's very gentlemanly and I believe his word
26 is as good as gold. Or platinum maybe these days; hmmm?

27 MS. NEUMAN: We appreciate that, your Honor, and
28 we think that may help in our efforts, as well.

1 THE COURT: Okay.

2 Mr. Brem, anything from you about this issue?

3 MR. BREM: No, your Honor.

4 THE COURT: Mr. Boone, anything from you about this
5 issue?

6 MR. BOONE: No, your Honor.

7 THE COURT: Same question, Mr. Poulson?

8 MR. POULSON: No, your Honor.

9 THE COURT: Same question, Mr. Fitzsimons.

10 MR. FITZSIMONS: No, your Honor.

11 THE COURT: Thank you. I appreciate that very
12 much, Mr. Axline. And I'm going to have to figure out
13 why I can't get some of these things up on my computer
14 screen.

15 All right. There was something that I forgot
16 to bring up at the ruling on Thursday the 23rd. For those
17 of you who were in the courtroom with me, you know that
18 we had been through literally a grueling three days. We
19 went long hours. It was a very difficult time for all of
20 us. At the end of the time it was very hard to try and
21 piece together all of my thoughts and sort of make an oral
22 ruling.

23 I did not say, however, that the OSC ruling
24 was only about conduct by plaintiffs, plaintiffs' counsel
25 and those collaborating with them, to defraud the court and
26 to defraud the various parties in this case, or attorneys
27 like the Miller Axline firm. I was not commenting about,
28 did not mean to comment about, did not intend to comment

1 about, anything relating to actual liability. I did not
2 make any findings as to liability for any of the parties,
3 nor do I wish to do so. That's for another proceeding
4 in another time.

5 So just so that we're all clear, I was talking
6 about only whether or not fraud was committed, and what
7 we tried, and what were going to try, was somebody's pipe
8 dreams. That was all.

9 But whether or not there's liability, if there
10 is anybody that was out there that was actually injured as
11 a result of DBCP, as I said before, the tragedy is I don't
12 think we'll ever know. But that's for another forum, it's
13 not for the forum of an OSC.

14 And I just want to make sure that was clear.
15 I'm not ruling on anything in terms of liability. That's
16 for a jury on some other day, assuming there's anybody
17 out there they can find that has reliable evidence that
18 DBCP actually harmed them. And I don't know. I mean,
19 as I said, the tragedy here is we'll never know.

20 But I didn't want somebody to misconstrue
21 my ruling as to be more than it is. My ruling was intended
22 to address, and is only about, the horrific fraud that the
23 parties, the defendants, and the Miller Axline firm, the
24 law firms that have represented the defendants and myself,
25 have lived through for the last few years, in the amount
26 of judicial resources that have been wasted, the jurors'
27 time that was wasted, and the huge amount of money that
28 was spent, not just by Dole, but by Dow and Amvac, and

1 also by the Miller Axline firm.

2 I'm not naive, I recognize that good
3 plaintiff firms invest money in cases at the front end in
4 order to find experts, and that's acceptable, it's fine,
5 but I recognize that this fraud has impacted everybody in
6 various ways.

7 Mr. Edelman, you look a little concerned.
8 I just want to make it clear that the OSC was meant to
9 be only what was before me then, it wasn't a full-fledged
10 trial, and although I did make many findings of fact, and
11 which I truly believe, it was not meant to take the place
12 of, in any way, a trial. That's for a different time if
13 there are any plaintiffs out there. And I don't have a
14 clue if there are.

15 MR. EDELMAN: No, your Honor, I understood. And I
16 didn't mean to demonstrate concern, I was just trying to
17 sit up straight in my seat.

18 THE COURT: Good training by your teachers and your
19 mom; hmmm? Okay.

20 All right. Mr. Edelman, Dole's going to give
21 notice for me.

22 Ms. Neuman, you've got something on your mind.
23 Talk to me.

24 MS. NEUMAN: Thank you, your Honor.

25 Speaking of the OSC and the evidentiary
26 submission, we've had on occurrence since the OSC hearings
27 completed that we thought your Honor would want to know
28 about and have in the evidence in front of her.

1 It's been stipulated to by the plaintiffs
2 and the other parties --

3 THE COURT: More? Even more has happened?

4 MS. NEUMAN: At least one more thing has happened,
5 your Honor.

6 THE COURT: Okay. What is it?

7 MS. NEUMAN: As you'll remember, Dole's investigator,
8 Francisco Valadez, came and testified.

9 THE COURT: That's right. And he was going to go
10 back again and testify or have his trial -- not testify,
11 he was going to continue with the criminal proceedings
12 pending against him in Nicaragua; right?

13 MS. NEUMAN: He was.

14 In the meantime, his judge felt intimidated by
15 Mr. Ordenana and felt that the statements of Mr. Ordenana
16 were undermining her ability to do her job, she referred
17 to them as "statements of bitterness against this
18 authority," and that in light of Mr. Ordenana's continued
19 statements of bitterness and the other actions I think
20 we know that he took, based on Mr. Valadez's testimony,
21 Mr. Valadez's Nicaraguan judge in fact recused herself,
22 and we just wanted to file with the Court, with the
23 stipulation, the prior stipulation of all the parties,
24 the documents that document the fact that she felt the
25 need to do so, if that is acceptable to your Honor.

26 THE COURT: It's fine.

27 Mr. Axline, is that all right with you?

28 MR. AXLINE: Of course, your Honor.

1 THE COURT: Mr. Brem, is that okay with you?

2 MR. BREM: Yes, your Honor.

3 THE COURT: Mr. Fitzsimons for Amvac, is that okay
4 with you?

5 MR. FITZSIMONS: Yes, your Honor.

6 THE COURT: Ms. Neuman, how long is whatever you
7 have there in your hand? Is it something that could
8 be easily and relatively quickly read into the record?
9 Because I'm sure these folks sitting in the back of
10 the courtroom want to know what it is that you have.

11 MS. NEUMAN: The main document is somewhat lengthy,
12 your Honor. But I'm happy to read it if that's your Honor's
13 preference.

14 THE COURT: Do you want to read it or do you want me
15 to read it?

16 MS. NEUMAN: Whatever your Honor prefers.

17 THE COURT: Hand it over. We'll see exactly how
18 lengthy is "somewhat lengthy."

19 Is it that bad, Mr. Axline?

20 MR. AXLINE: I'm just thinking about flights, your
21 Honor. Sorry.

22 THE COURT: I'm sorry. I'll try and make this fast.

23 Is this going to be part of the public record?

24 MS. NEUMAN: Yes, your Honor, it will be part the
25 public record.

26 THE COURT: If I were to read one of these in court,
27 which one should I choose? The first one?

28 MS. NEUMAN: I believe the first one is the English

1 translation of her decision to recuse herself, so that would
2 be probably the most informative.

3 THE COURT: All right. I'm going to start with that.

4 By the way, we had promised a public rendition
5 of the proceedings in chambers that could be done. How is
6 that coming along?

7 MR. EDELMAN: Mr. McCoy is hard at work on the
8 second day, which is the only portion that's not public,
9 and when we get it from him we will sit down with it and
10 work on the redactions and turn it around as quickly as
11 we can.

12 THE COURT: All right.

13 Okay. This is only one page. Granted, it
14 is single spaced, but at least I'll get to read it at
15 the same time everybody gets to hear it.

16 "I, the judge of this court" -- by the way,
17 this is not I, me, it is I, the judge -- I'm sorry, what
18 is her name?

19 MS. NEUMAN: Noguera. N-o-g-u-e-r-a.

20 THE COURT: Okay.

21 "I, the judge of this court, consider
22 that, in all the years that I have been
23 carrying out the function of local criminal
24 judge, I have always acted in accordance with
25 the law and I have always been of the opinion
26 that I should respect the law and comply with
27 the rules established therein.

28 "Also and always in the exercise of my

1 function, I have acted in accordance with the
2 law without favoritism for any of the parties
3 and always ensuring the equality of rights
4 and the parties in the proceedings, all in
5 accordance with Articles 1, 3 and 10, all of
6 the Code of Criminal Procedure.

7 "I consider that, as required by
8 Article 10 of the Code of Criminal Procedure,
9 the proceedings themselves are the parties'
10 proceedings and the judge regulates the
11 process and the guarantee of rights for both
12 parties to the proceedings.

13 "The undersigned has tried at all times
14 to comply with the above in the exercise of
15 the jurisdictional function in hearing all
16 proceedings, including these proceedings.

17 "The situation is that, since before
18 the proceedings and prior to the holding of
19 the initial hearing and after it, the lawyer
20 Antonio Hernandez Ordenana, in his capacity
21 as complainant's lawyer, has made public
22 statements of bitterness against this court
23 and has even regarded the undersigned
24 authority as infringing constitutional and
25 procedural rights in these proceedings and
26 to the prejudice of Doctor Hernandez."

27 Just so you know, Dr. Hernandez is the
28 gentleman we've been calling Mr. Ordenana.

1 "These statements are known to the
2 parties and to the public in general. It
3 should be said that, in dealing with these
4 proceedings, external situations have arisen,
5 for example, people have come to these Court
6 Offices with a letter that was attached to
7 this file and numerous groups of people have
8 also come to these courts and to the
9 surrounding area on the dates of scheduling
10 and re-scheduling of hearings in this case,
11 according to them, demanding justice and
12 impartiality from me in this case and, also,
13 these mentioned people are confused with
14 regard to the information connected to the
15 proceedings and so they have requested justice
16 for third parties who have nothing to do
17 with these proceedings, which are private
18 proceedings, in which only Doctor Hernandez
19 appears in the capacity of complainant.

20 "As I have already said, in these
21 proceedings, so many situations have arisen
22 that are external to them and so the
23 undersigned authority has even taken measures
24 because of these situations, and in a case
25 of private offense such as these proceedings,
26 which in other similar proceedings it has not
27 been necessary to take. These measures consist
28 of requesting police assistance to ensure

1 the peacefulness of the proceedings and the
2 protection and security of the court facilities
3 and its staff, including this court officer
4 and also the parties to the proceedings, which,
5 as I have already said, has never been necessary
6 in private cases of the same sort as that with
7 which we are concerned.

8 "The situation is that, as I have already
9 said, Doctor Hernandez has made statements of
10 bitterness against this authority" -- the word
11 "statements of bitterness against this authority"
12 are underlined -- "and since these statements
13 are regulated in the causes of recusation and
14 withdrawal and, although it is true that this
15 authority has made it clear that I have always
16 acted in all proceedings and in the same way
17 in these proceedings with which we are
18 concerned in accordance with the law and
19 impartiality" -- underlined are the words
20 "this authority has made it clear that I have
21 always acted in all proceedings and in the
22 same way in these proceedings with which we
23 are concerned in accordance with the law and
24 impartiality," end underlining -- "it is also
25 true that Doctor Hernandez has made statements
26 of bitterness against this authority and has
27 also made statements of lack of confidence in
28 the impartiality and transparency with which

1 the undersigned authority acts within these
2 proceedings, and he has made these statements
3 publicly, and also the statements of bitterness
4 and lack of confidence that Doctor Hernandez
5 Ordenana feels for the undersigned have also
6 been made by him to the clerk Xiomara Bustillo,"
7 X-i-o-m-a-r-a, B-u-s-t-i-l-l-o, "when she has,
8 on different occasions, gone to serve this
9 lawyer with formalities concerning this case.

10 "On the basis of the above and since,
11 having regard to the statements made by Doctor
12 Hernandez, this authority is clear that there
13 is bitterness on the part of Doctor Hernandez
14 towards the undersigned authority and these
15 statements are also in the public knowledge,
16 and so, in order to prevent further statements
17 of this nature continuing to be made, in which
18 the lawyer Hernandez has expressed bitterness
19 toward the undersigned authority and, with the
20 mentioned statements, Doctor Hernandez even
21 considers that this authority is not
22 protecting his constitutional rights, when it
23 continues to hear this case, the undersigned
24 authority will always make pronouncements and
25 decisions in accordance with the law and not
26 as the parties wish since, in all proceedings,
27 the judge is the guarantor of constitutional
28 rights both for the accuser or the complainant,

1 and also for the victim and the accused, and
2 I observe that this conduct in accordance
3 with the law by the undersigned court officer
4 will always cause problems in these
5 proceedings and may also be poorly interpreted
6 by Doctor Hernandez, and so I withdraw from
7 hearing this case, all on the basis of Articles
8 1, 10, and 32, subsection 8, all of the Code
9 of Criminal Procedure, and Article 160 of the
10 Political Constitution of Nicaragua.

11 "Therefore, the corresponding report is
12 to be sent to the first [illegible] district
13 court of this city so that it may make a
14 decision in accordance with the law. To be
15 served." And then "[signatures]."

16 Thank you for bringing this to my attention.
17 It only enforces the decisions that I've made before about
18 the difficulties involving the judiciary in Nicaragua and
19 the position that many of the judges are in. They either
20 find themselves bribed or frightened.

21 All I can say is how pathetic this is and
22 how sad, and how sorry I feel for the people that live
23 in Nicaragua that this is allowed to exist and the bench
24 officer has to recuse herself or himself because situations
25 like this are allowed to arise.

26 Mr. Axline, thank you for agreeing to let me
27 see this. Same to you, Mr. Brem and Mr. Fitzsimons, as
28 well.

1 This will be included in my rulings. You
2 know, the ironic thing is that when we started down this
3 path at the end of September and early October my goal had
4 been simply to allow a trial on the severed issue only,
5 the little itty-bitty issue, and this was a jury trial,
6 of whether these plaintiffs were actually employed on a
7 banana farm somewhere between 1970 and 1980 in the banana
8 plantation controlled by Dole. That was the only place
9 where I was going.

10 How ironic that, as time went on,
11 Mr. Dominguez, who I respected as a member of the
12 California State Bar, has had such allegations made
13 against him and apparently participated, actively
14 participated I should say, in much of the events that
15 have occurred by going on radio broadcasts and having
16 pictures in his office of Dole investigators. How
17 sad it is. This still would have just continued had
18 Mr. Ordenana and Mr. Dominguez not stirred the pot in
19 Nicaragua.

20 I would have added a little bit to a jury
21 trial and I would have asked for an advisory ruling
22 from the jury as to the reliability of various types
23 of documents, we would have done bribery discovery, full
24 out bribery discovery -- although, truthfully, I don't
25 believe, and I so find, that there was no bribery that
26 occurred -- but we would have done the bribery discovery,
27 that would have come before a jury this coming September,
28 a jury would have heard all of the allegations regarding

1 whether these plaintiffs did or did not actually perform
2 work between 1970 and 1980 on a Dole farm, they would
3 have given me an advisory opinion about the work
4 certificates and about the lab reports, maybe a couple
5 of other minimal things, and if the plaintiffs, any or
6 all of them, were found to be truthful we would have gone
7 ahead with a trial and Dole would have been precluded at
8 that point on from raising those issues of non-employment
9 in a trial, in future trials. And were it not for the
10 actions of Mr. Dominguez and Mr. Hernandez Ordenana,
11 that's where we would have been heading.

12 Their actions of preventing discovery by all
13 parties, their actions by intimidating witnesses, their
14 actions by falsifying evidence, their actions of having
15 employees hand out fliers in a park, participating in
16 radio broadcasts saying that if you see a Dole-related
17 investigator or somebody apparently related to the
18 transnationals, they should be reported, along with their
19 license number and their car description and their name,
20 all of those things are what precipitated the hearing that
21 we had a couple of weeks ago. Without those actions this
22 hearing would never have occurred.

23 Mr. Axline, I realize that your law firm was
24 in no way part of that, and did not condone these actions
25 that have prevented all parties, and I mean all parties,
26 any potential plaintiffs out there who might have legitimate
27 claims, and again I don't know and we're never going to
28 know, and the defendants, Dole, Dow and Amvac, from having

1 a fair trial and a fair hearing. Their actions are what
2 prevented that.

3 All right. Thank you four bringing this
4 to my attention. And right now what is the status of
5 Mr. Valadez's criminal proceeding?

6 MS. NEUMAN: A new judge has been appointed, and
7 it's continuing at this point in time, your Honor.

8 THE COURT: All right. Well, if there's other
9 additional information that the parties believe should be
10 brought to my attention before the ruling is finalized,
11 I'm open to anything that you folks can bring to me.

12 MR. BOONE: Your Honor, Daniel Boone.

13 May I mention that, according to Mr. Manakides,
14 when he distributed those documents, those were to become
15 Exhibits Nos. 169 through 172?

16 You should have four exhibits there, if
17 Mr. Manakides followed through on what he was saying
18 in the e-mails. And just so we have it in our record
19 for everybody's keeping track, those exhibit numbers
20 were going to be 169 to 172.

21 THE COURT: Mr. Boone, thank you for paying
22 attention to detail. Something I fail at miserably.

23 You're right, the document before me, which
24 will have today's stamp as having been received, but I'm
25 minus a clerk at this point, is entitled "Dole's Evidentiary
26 Submission of Exhibits 169 through 172 for Order to Show
27 Cause Re Terminating Sanctions."

28 169 is entitled "Judge Noguera Recusal Dated

1 April 24, 2009," Noguera is spelled N-o-g-u-e-r-a;
2 170 is "Notice of Judge Noguera's Recusal
3 To Counsel Dated April 24, 2009";

4 Exhibit 171, "Court Certificate Accepting
5 Recusal and Appointing Judge Dated April 27, 2009";

6 And 172, "Judge Noguera's Report About Recusal
7 to Judge of the Chinandega Criminal District Court Dated
8 April 24, 2009."

9 Mr. Boone, again, thank you very much for
10 your attention to detail.

11 All right. You have something else.

12 MR. EDELMAN: Your Honor, this is just a very small
13 housekeeping point.

14 THE COURT: Yes, Mr. Edelman.

15 MR. EDELMAN: There were four exhibits that I -- we
16 referenced and that I think I forgot to move into evidence
17 before my closing argument a couple weeks ago, and I've
18 spoken with Mr. Axline about this, he has no objection,
19 and perhaps I can just give you the exhibit numbers and
20 then I can clarify it with the clerk. But they're Exhibits
21 165, 164, 166, and 167.

22 THE COURT: Would you like to tell me what 165 is?

23 MR. EDELMAN: It's a declaration. It's under seal,
24 your Honor, so I'm not going to identify the name of the
25 declarant.

26 THE COURT: How about John Doe Witness No. X,
27 whatever it might be?

28 MR. EDELMAN: John Doe 16.

1 THE COURT: All right. 165, declaration of John Doe
2 16.

3 What's 164?

4 MR. EDELMAN: 164 is Luis Madrigal Flier No. 2.

5 THE COURT: Luis Madrigal Flier No. 2.

6 Is that the one of him that was handed out in
7 the park? Or something else?

8 MR. EDELMAN: Do you remember?

9 MS. NEUMAN: That was the second one that we didn't
10 have until right before trial started, your Honor, that had
11 the police reference on it.

12 THE COURT: Oh, yes. Okay. "Call your local
13 National Police." Yes. All right.

14 MR. EDELMAN: Right. And then 166, which was
15 also under seal, was a list of the John Doe and John Roe
16 witnesses that was provided to Mr. Madrigal when he was
17 asked some questions.

18 THE COURT: Okay. 166, a list of John Doe and John
19 Roe witnesses.

20 MR. EDELMAN: And then 167 was a letter from the
21 Mexican Embassy to a judge, First Commissioner Aminta
22 Grenara, G-r-a-n-e-r-a, Sacasa, S-a-c-a-s-a, dated April
23 15th, 2009. That was the letter where the Mexican Embassy
24 asked for protection.

25 THE COURT: I remember that.

26 That was easy for you to spell Amita, but I
27 don't have a clue. Help me out here.

28 MR. EDELMAN: A-m-i-n-t-a.

1 THE COURT: All right. 164, 165, 166, and 167 are
2 received into evidence.

3

4 (Exhibit Nos. 164, 165, 166 and 167
5 were received into evidence)

6

7 THE COURT: I assume that's all right with you,
8 Mr. Axline?

9 MR. AXLINE: Yes, it is, your Honor.

10 THE COURT: Mr. Brem, that's okay with you?

11 Mr. Brem?

12 MR. BREM: Yes, it is, your Honor. I'm trying to
13 keep the dog from barking in your ear.

14 THE COURT: Thank you. That's nice.

15 And what about you, Mr. Fitzsimons?

16 MR. FITZSIMONS: No objection, your Honor.

17 THE COURT: Okay. Anything else? I'll go this way
18 now.

19 Ms. Neuman, anything else?

20 MR. BREM: Don't ask Mr. Edelman, your Honor.

21 THE COURT: One second you folks on the phone. I'll
22 get to you. I promise.

23 Ms. Neuman, anything else?

24 MS. NEUMAN: Just one thing, your Honor.

25 THE COURT: There's always one more thing.

26 MS. NEUMAN: It's our specialty.

27 At the beginning of the hearing you said you
28 wanted to set some scheduling for Statement of Decision

1 comments, and I don't think we did.

2 THE COURT: You're right. We're going to do that in
3 a minute.

4 Is there anything else?

5 MS. NEUMAN: No, that was it, your Honor.

6 THE COURT: Mr. Edelman?

7 MR. EDELMAN: No, your Honor.

8 THE COURT: Mr. Axline, are you going to make your
9 plane if you get out of here now?

10 MR. AXLINE: I will, your Honor.

11 THE COURT: Do you have a cab or did you rent a car?

12 MR. AXLINE: I'll call a cab.

13 THE COURT: Are you flying out of Burbank?

14 MR. AXLINE: No. LAX. And I'm fine.

15 THE COURT: Mr. Axline, I don't know if you know
16 this, but with permission of Mr. Edelman and company and
17 Mr. Brem, I gave a ride to Mr. Miller and Mr. Boone in my
18 car to the Burbank Airport. So, if they're copacetic with
19 it, I'll take you to LAX. I won't take to you Burbank.

20 But if you'd like that, I live fairly close
21 to there, so I can do that if you like.

22 MR. AXLINE: I will take you up on that, your Honor.

23 THE COURT: You will?

24 All right. Mr. Brem is that okay?

25 MR. BREM: It's certainly okay with me, your Honor,
26 if you're willing to subject yourself to Mr. Axline.

27 THE COURT: I'll put up with it somehow.

28 MR. AXLINE: We'll discuss that later, Mr. Brem.

1 THE COURT: Mr. Edelman, is that okay?

2 MR. EDELMAN: I think he should have to pay for gas,
3 your Honor, but. . .

4 THE COURT: Don't worry, he's not going to have to.
5 Mr. Fitzsimons, is that okay?

6 MR. FITZSIMONS: That's okay with us, your Honor.

7 THE COURT: You got a ride, Mr. Axline.

8 MR. AXLINE: Thank you.

9 THE COURT: Okay. Now, is there anything else,
10 Mr. Edelman?

11 MR. EDELMAN: No, your Honor.

12 THE COURT: Mr. Axline, anything else?

13 MR. AXLINE: No, your Honor.

14 THE COURT: On the phone, Mr. Fitzsimons, anything
15 else?

16 MR. FITZSIMONS: No, your Honor.

17 THE COURT: Mr. Poulson, anything else from you?

18 MR. POULSON: No, your Honor.

19 THE COURT: Mr. Boone?

20 MR. BOONE: No, your Honor.

21 THE COURT: And I know, Mr. Brem, you always have
22 something else. Come on, you know.

23 MR. BREM: You've got me confused with Mr. Edelman,
24 your Honor. I do not have anything else.

25 THE COURT: Okay.

26 All right. We're going to go off the record
27 really briefly to have a quick discussion and then we'll
28 go back on the record. What I want to do is figure out

1 dates and I don't want the poor reporter to have to take
2 all that down, and then we're going to be done.

3

4 (Discussion held off the record)

5

6 THE COURT: All right. Back in the matter of
7 Mejia versus Dole, and BC340049, and Rivera versus Dole,
8 BC379820.

9 The record should reflect that all parties
10 previously stated are present. Except for the court staff.
11 They got to go home. Except for Mr. McCoy, of course.
12 Ever faithful Mr. McCoy.

13 Anyway, we had an informal chat and we agreed
14 on the following: That plaintiff, Dow, Amvac and myself
15 would have a chance to review the initial draft sent out by
16 Dole of the Statement of Decision and we would get various
17 comments back to Dole by 5:00 on May 15th.

18 Dole would then take the comments from whatever
19 source, assimilate them into round two or draft number two,
20 would make it clear either by color printing or by font
21 whose comments were what. In other words, I don't know,
22 what color would you like? Would you like blue or red or
23 green?

24 MR. AXLINE: Green, obviously, your Honor.

25 THE COURT: Obviously green. Okay. Green for
26 plaintiffs.

27 Mr. Brem, what color would you like?

28 MR. BREM: I'll go with Dole's color, your Honor.

1 I'll just meld mine into theirs.

2 THE COURT: Mr. Fitzsimons, what about you?

3 MR. FITZSIMONS: Same, your Honor.

4 THE COURT: Well, my favorite color is red, so
5 red for me.

6 Anyway, if you could color code it and/or
7 do it by italics, underlining, or all in capitals, I
8 don't care, but something so that we can tell it apart.

9 MR. EDELMAN: I'm sure we'll figure out a way, yeah.

10 THE COURT: And then add your comments for Dole and
11 get that back to the parties by May 22nd.

12 We will have spoken on the 19th, on conference
13 call, so this is a tentative schedule right now, but on
14 conference call. If you need more time or if it looks like
15 you're going to be able to finalize it easily because there
16 were no comments, which I can't believe that I wouldn't have
17 a comment or twelve, and Mr. Axline probably is going to
18 have one or two, so May 22nd Dole is going to give us the
19 thing back again, June 1st plaintiff, Dow, Amvac's and
20 Court's response, and then June 8th Dole, and then we'll
21 plan on trying to work out some way of getting together,
22 either an e-mail chain between us or another conference call
23 to figure out where we're at.

24 MR. EDELMAN: Okay.

25 THE COURT: Okay?

26 Now, I want to make something clear. We will
27 be hearing the Miller Axline Motion to Withdraw before the
28 final dismissal papers are filed. Okay? Just so we're all

1 clear. If that means moving up the time, we'll do that.
2 Whatever we need to do. Or at least your final withdrawal
3 won't be effective until -- sorry, the dismissal won't
4 be effective until. And that's assuming the Miller Axline
5 firm is allowed to withdraw.

6 MR. AXLINE: Thank you, your Honor.

7 THE COURT: I want to make sure I keep jurisdiction
8 over it. I don't want any issues here. I don't want any
9 issue, no problems. We need to make this as smooth as we
10 can for all of us.

11 MR. EDELMAN: And administratively, your Honor,
12 the dismissal does not become effective until -- well,
13 what kind of order will the Court be issuing to cause that
14 to happen? Will it be a proposed judgment that we'll be
15 submitting?

16 THE COURT: Yes. Right. Eventually, yes.

17 MR. EDELMAN: Okay. That will be the act.

18 THE COURT: That's the final act. You would have
19 a judgment.

20 Meanwhile, I need to make sure that the
21 Miller Axline firm is able to do whatever it feels is
22 appropriate, and you have a chance, if Dole believes it's
23 appropriate, and Dow and Amvac believe it's appropriate,
24 to oppose their withdrawal, but I need to make sure that
25 I still have jurisdiction to deal with it. So that's why
26 I'm so interested in doing it in the right order here.
27 I don't want any issues with, you know, Judge Chaney no
28 longer has jurisdiction to rule on this or something like

1 that.

2 MR. EDELMAN: Understood.

3 THE COURT: Okay? Because I did promise Mr. Axline
4 during that hearing I would rule on it. The ruling I gave
5 before was without prejudice to bringing it again, so I
6 want to be known for being good for my promises.

7 Okay. Anything else from anybody else? No?

8 All right. Mr. Axline, I will see you out
9 of those doors in about five minutes ready to go fly to
10 the airport.

11 MR. EDELMAN: Your Honor, did I hear you correctly
12 that Amvac was to give notice?

13 THE COURT: No. You are funny.

14 MR. FITZSIMONS: Thank you, Mr. Edelman.

15 THE COURT: Isn't he good for a laugh?

16 No, if you'd like him to, Amvac to -- but I was
17 really thinking of Dole.

18 MR. EDELMAN: Ah, okay. Just thought I'd check.

19 MR. FITZSIMONS: Yeah, I wish you would have told me
20 at the beginning.

21 THE COURT: So you could have kept better notes;
22 right?

23 MR. FITZSIMONS: So I could have taken notes.

24 THE COURT: There you go.

25 All right. Good-bye everybody.

26 RESPONSE: Thank you, your Honor.

27

28 (At 5:03 p.m., the proceedings were adjourned)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 324

HON. VICTORIA G. CHANEY, JUDGE

- - -

RODOLFO MEJIA, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 DOLE FOOD COMPANY, INC., et al.,)
)
 _____ Defendants. _____)

Case No. BC340049

AND ALL RELATED CASES. _____)

(RIVERA vs. DOLE FOOD COMPANY, INC.) _____) Case No. BC379820

I, TIMOTHY J. McCOY, CSR No. 4745, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 1 through 63, inclusive, comprise a full, true and correct transcript of the proceedings held in the above-entitled matter on Friday, May 8, 2009.

DATED THIS 13TH DAY OF MAY 2009.

TIMOTHY J. McCOY, CSR NO. 4745
OFFICIAL REPORTER