

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 57

HON. RALPH W. DAU, JUDGE

4 DOLE FOOD COMPANY, INC.,)

5)
6 PLAINTIFF,)

CASE NO. BC 417435

7 VS.)

8 FREDRIK GERTTEN, ET AL.,)

9 DEFENDANTS.)
10

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12 REPORTER'S TRANSCRIPT OF PROCEEDINGS

13 FRIDAY, OCTOBER 22, 2010
14

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16 APPEARANCES:

17 FOR THE PLAINTIFF:

GIBSON, DUNN & CRUTCHER
BY: SCOTT A. EDELMAN
THEODORE J. BOUTROUS
333 SO. GRAND AVENUE
LOS ANGELES, CALIF. 90071
(213) 229-7000

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21 FOR THE DEFENDANTS:

LATHROP & GAGE
BY: LINCOLN BANDLOW
1880 CENTURY PARK EAST
SUITE 1004
LOS ANGELES, CAL. 90067
(310) 789-4600

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27 OLGA NAVARRO, CSR #2805
OFFICIAL REPORTER

28 **COPY**

1 LOS ANGELES, CALIFORNIA; FRIDAY, OCT. 22, 2010

2 8:30 A.M.

3 DEPARTMENT NO. 57 HON. RALPH W. DAU, JUDGE

4 CASE NUMBER: BC 417435

5 CASE NAME: DOLE VS. GERTTEN

6 APPEARANCES: (AS HERETOFORE NOTED.)

7 REPORTER: OLGA NAVARRO, CSR #2805

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10
11 THE COURT: NUMBER 2, DOLE.

12 MR. EDELMAN: GOOD MORNING, YOUR HONOR, SCOTT
13 EDELMAN AND TED BOUTROUS ON BEHALF OF DOLE FOOD
14 COMPANY.

15 ME. BOUTROUS: GOOD MORNING, YOUR HONOR.

16 MR. BANDLOW: GOOD MORNING, YOUR HONOR,
17 LINCOLN BANDLOW ON BEHALF OF THE DEFENDANTS.

18 THE COURT: GOOD MORNING. WELL, AT LAST.

19 MR. BANDLOW: INDEED.

20 THE COURT: -LET'S START WITH THE OPPOSING
21 PARTY. YOU EACH DID RECEIVE A COPY OF THE
22 TENTATIVE?

23 MR. EDELMAN: YES, YOUR HONOR, I DID RECEIVE
24 YOUR TENTATIVE. THANK YOU. AND IT'S OBVIOUS THAT
25 THE COURT PUT A LOT OF TIME INTO THIS, AND WE
26 APPRECIATE THAT.

27 YOUR HONOR, I KNOW YOU HAVE A PACKED
28 COURTROOM THIS MORNING, SO I WANT TO HIGHLIGHT FOR

1 YOU WHERE I THINK THE COURT HAS GONE WRONG, AND
2 THEN GET INTO IT IN A LITTLE MORE DETAIL.

3 YOUR HONOR, THE FIRST POINT IS THAT YOUR
4 TENTATIVE DOES NOT ADDRESS HALF OF OUR COMPLAINT.
5 YOU HAVE NOT ADDRESSED THE WEBSITE AND YOU HAVE NOT
6 ADDRESSED THE TRAILER. AND WHEN YOU --

7 THE COURT: I'VE LOOKED AT THAT, MR. EDELMAN,
8 IT DOESN'T CHANGE A THING.

9 MR. EDELMAN: WELL, YOUR HONOR, WITH ALL DUE
10 RESPECT, I DON'T KNOW HOW IT COULDN'T, BECAUSE IF
11 YOU LOOK, FOR EXAMPLE, AT THE PRESS PACKET ON THE
12 WEBSITE, WHICH IS EXHIBIT 60, IT TALKS ABOUT
13 "BANANA WORKERS SUFFERING AND DYING FROM THE
14 EFFECTS OF THE PESTICIDE," WHICH IS DIRECTLY
15 ATTRIBUTED TO DOLE.

16 IF YOU LOOK AT EXHIBIT 63, WHICH IS
17 ANOTHER PRESS PAGE, THERE'S A REFERENCE TO "BANANA
18 PLANTATION WORKERS ALL OVER THE WORLD SUFFERING AND
19 DYING, DOLE FOOD COMPANY IS ON TRIAL."

20 IF YOU LOOK AT EXHIBIT 66, WHICH IS
21 AFTER THE RELEASE OF THE FILM, WHICH IS AFTER WE
22 HAVE TOLD MR. GERTTEN AND HIS COMPANY ABOUT JUDGE
23 CHANEY'S FINDINGS OF FRAUD, NOT ONLY AGAINST THE
24 LAWYERS, BUT AGAINST THE PLAINTIFF, WHICH IS
25 SOMETHING THAT I NEED TO TALK ABOUT AS WELL BECAUSE
26 IT'S NOT ACCOUNTED FOR IN YOUR TENTATIVE, BUT AFTER
27 THE RELEASE OF THE FILM, THEY CONTINUE TO TALK
28 ABOUT DOLE USING A DEADLY BANNED PESTICIDE.

1 AND SO, YOUR HONOR, TO THE EXTENT THAT
2 YOU WERE RELYING AND YOU DID SO VERY HEAVILY IN
3 YOUR TENTATIVE ON THE PLACARDS AT THE END OF THE
4 FILM TO ADDRESS THE QUESTION OF DEATH AND TO SAY
5 "WELL, NOBODY SHOULD BELIEVE THIS ANYWAY BECAUSE
6 FRAUD ALLEGATIONS WERE CITED IN THE PLACARDS AT THE
7 END OF THE FILM," ONE, THOSE PLACARDS DON'T EVEN GO
8 TO WHAT IS ON THE WEBSITE, AND ALSO, THEY DON'T GO
9 TO WHAT IS IN THE TRAILER, YOUR HONOR, WHICH IS THE
10 OTHER THING THAT IS IGNORED IN YOUR TENTATIVE.

11 YOU CAN'T LOOK TO A COUPLE OF PLACARDS
12 AT THE END OF AN HOUR AND A HALF MOVIE, BUT YOU
13 CERTAINLY CAN'T LOOK AT IT TO CORRECT EITHER THE
14 TRAILER OR THE CONTENTS OF THE WEBSITE, WHICH
15 DIRECTLY ACCUSED DOLE OF CAUSING DEATH.

16 YOUR HONOR, THE OTHER FUNDAMENTAL
17 PROBLEM THAT I THINK THE COURT HAS IN ITS TENTATIVE
18 IS YOU RELY ON THE PLACARD, WHICH I THINK GROSSLY
19 UNDERSTATES WHAT ACTUALLY HAPPENED BECAUSE THE
20 PLACARD TALKS ABOUT FRAUD ALLEGATIONS, WHEN IN
21 FACT, JUDGE CHANEY MADE SPECIFIC FRAUD FINDINGS,
22 BUT YOU RELY ON THE PLACARDS TO CORRECT WHAT YOU
23 THINK IS THE GIST OF WHAT HAPPENED AT TRIAL.

24 THE PLACARDS DO NOT GO TO THE REST OF
25 THE FILM, WHICH DON'T TALK ABOUT THE TRIAL. AND
26 SO, FOR EXAMPLE, WHEN THE MOVIE STARTS WITH A
27 PRIEST INTONING OVER A FUNERAL PROCESSION ABOUT HOW
28 DBCP CAUSES DEATH, THE FILM IS VERY CLEAR THAT

1 DEATH WAS NOT AT ISSUE IN THE TRIAL.

2 THE TRIAL WAS ONLY ABOUT STERILITY. SO
3 BY DEFINITION, THE PLACARDS CANNOT GO TO THE
4 ALLEGATIONS OF DEATH. PERHAPS YOU'RE THINKING,
5 WELL, JUAN DOMINGUEZ WAS DISCREDITED, SO ANYTHING
6 JUAN DOMINGUEZ SAYS IN THE MOVIE HAS TO BE
7 DISREGARDED AS WELL. IF THAT'S THE COURT'S
8 THINKING, I THINK THAT'S A MISTAKE IN TERMS OF YOUR
9 HONOR WAIVING THE EVIDENCE, WHICH YOU'RE NOT
10 SUPPOSED TO BE DOING.

11 BUT IN ANY EVENT, IT'S NOT JUST JUAN
12 DOMINGUEZ TALKING ABOUT DOLE CAUSING DEATH THROUGH
13 PESTICIDE IN THE MOVIE, THERE ARE ALL SORTS OF
14 REFERENCES FROM THE SON OF THE DECEASED BANANA
15 WORKER WHO TALKS ABOUT HOW HIS MOTHER GOT CANCER
16 AND HOW SHE LOST A BABY. THIS IS ALL ATTRIBUTED TO
17 DOLE. IT'S NOT SOMETHING THAT IS THE SUBJECT OF
18 THE MOVIE. THE PLACARDS CANNOT POSSIBLY CORRECT
19 THAT IMPRESSION.

20 SO WHEN I READ YOUR TENTATIVE VERY
21 CAREFULLY, AND I --

22 THE COURT: IT DIDN'T SEEM IT WAS ATTRIBUTED
23 TO DOLE TO ME.

24 MR. EDELMAN: YOUR HONOR, I RESPECT YOU, I
25 HOPE I DON'T GET YOU ON MY JURY, BUT THAT'S THE
26 ROLE YOU'RE NOT PLAYING. YOU ARE ACTING AS THE
27 FOREPERSON OF THE JURY, BECAUSE YOU'RE THE ONLY
28 ONE --

1 THE COURT: NOT IF IT'S A MATTER OF LAW.

2 MR. EDELMAN: NOT IF IT'S JUST A MATTER OF
3 LAW. BUT, YOUR HONOR, ALL WE HAVE TO DO IS SHOW
4 MINIMAL MERIT. EVERY SINGLE PERSON BESIDES
5 YOURSELF THAT HAS LOOKED AT THIS MOVIE HAS SAID IT
6 SUGGESTS THAT DOLE IS RESPONSIBLE FOR DEATH. IN
7 FACT --

8 THE COURT: THAT'S JUST NOT SO.

9 MR. EDELMAN: WELL, YOUR HONOR, LET ME READ
10 YOU FROM --

11 THE COURT: YOU DON'T KNOW WHO'S LOOKED AT
12 THE MOVIE.

13 MR. EDELMAN: OKAY, SO I CAN'T ARGUE WITH
14 YOU. BUT LET ME READ TO YOU IS ON THE WEBSITE
15 ITSELF.

16 THE COURT: I'VE HAD MY FIRST AMENDMENT TEAM
17 HELPING ME ON THIS.

18 MR. EDELMAN: AND I KNOW YOU GUYS HAVE PUT A
19 LOT OF TIME INTO IT, IT'S OBVIOUS, EVEN THOUGH I
20 REALLY BELIEVE, RIGHT NOW ANYWAY, THE TEAM HAS IT
21 WRONG.

22 BUT ON THE WEBSITE, SO THIS IS
23 MR. GERTTEN SPEAKING :

24 "IT'S NOT ABOUT ALBERTO
25 ROSALES AFTER A WHILE, IT'S
26 ABOUT PESTICIDES. FATHER
27 BAYARDO WAS ACCUSING LANDOWNERS
28 AND U.S. NATIONALS OF IMMORAL

1 PRACTICES WHICH HE SAYS CAUSED
2 THE DEATH AND SUFFERING OF MANY
3 MEMBERS OF HIS COMMUNITY."

4 THE COURT: THIS IS EXHIBIT WHAT?

5 MR. EDELMAN: THIS IS -- THE WEBSITES ARE IN
6 EXHIBITS 62, 66, 63, 60. THERE'S A RECENT ARTICLE
7 THAT CAME OUT IN MEXICO WITH THE NEW SCREENING OF
8 THIS PICTURE.

9 MR. BANDLOW: IS THIS NEW EVIDENCE, YOUR
10 HONOR, NOT PART OF THIS MOTION THAT WE'RE GOING TO
11 HEAR AT THIS HEARING?

12 MR. EDELMAN: THIS IS WHAT THE ARTICLE SAID
13 ABOUT THE --

14 MR. BANDLOW: A WEEK AGO?

15 THE COURT: MR. EDELMAN, COME ON.

16 MR. EDELMAN: YOUR HONOR, THEY JUST
17 RE-RELEASED THE MOVIE. BUT I'M TALKING ABOUT THE
18 PERCEPTION -- JUST HEAR ME OUT ON THIS ONE
19 SENTENCE -- THE PERCEPTION OF THE MOVIE, WHICH YOU
20 DISAGREE WITH, BUT YOU'RE WEIGHING THE EVIDENCE:

21 "THE DROPS OF WATER MIXED
22 WITH THE CHEMICAL LEAVES
23 FALLING FROM LARGE PLANTATIONS
24 DIRECTLY TO MALNOURISHED AND
25 SEMI-NAKED BODIES, THERE WAS
26 NOTHING THAT WOULD PROVIDE
27 PROTECTION."

28 NOW, YOU SAY IN YOUR TENTATIVE, WELL,

1 OKAY, BUT THERE'S A SNIPPET OF TESTIMONY DURING THE
2 TRIAL WHERE ONE OF THE WORKERS SAYS THAT THAT'S NOT
3 HOW IT HAPPENED. AND THEN YOU POINT TO A STATEMENT
4 MADE BY MR. DELORENZO ON THE STAND.

5 YOU KNOW, YOU'RE WEIGHING THE EVIDENCE,
6 YOUR HONOR, AND YOU'RE DECIDING HOW YOU THINK
7 ULTIMATELY IT COMES OUT. BUT IN TERMS OF A MINIMAL
8 MERIT STANDARD, AGAIN, PUTTING ASIDE THE FACT THAT
9 THE ANALYSIS YOU'VE DONE IGNORES THE TRAILER AND
10 IGNORES --

11 THE COURT: IT DOESN'T IGNORE THE TRAILER OR
12 THE WEBSITE, SIR. I'VE LOOKED AT ALL THAT STUFF.

13 MR. EDELMAN: ALL RIGHT.

14 THE COURT: I DON'T HAVE TO WRITE YOU AN
15 ENCYCLOPEDIA --

16 MR. EDELMAN: NO, YOU DON'T, BUT --

17 THE COURT: I THINK IT'S LONG ENOUGH.

18 MR. EDELMAN: WELL, THERE'S NO INDICATION IN
19 YOUR TENTATIVE, THERE'S NO DISCUSSION --

20 THE COURT: -YOU KNOW, YOUR RECORD HERE IS
21 PAST.

22 MR. EDELMAN: IT'S A LONG RECORD. BUT, YOUR
23 HONOR, I'M NOT SAYING IT AS A CRITICISM LIKE YOU
24 WERE NEGLIGENT, I'M SAYING IT AS -- I UNDERSTAND
25 YOUR RATIONALE, WHICH IS YOU'RE RELYING ON THE
26 PLACARDS.

27 AND WHAT I'M SAYING TO YOU IS WHEN YOU
28 BALANCE HOW YOU THINK THE FILM COMES OUT, THOSE

1 PLACARDS DON'T ADDRESS THE TRAILER, WHICH DOESN'T
2 HAVE ANY PLACARDS AND WHICH CONTINUES TO RUN AND IT
3 HAS RUN ALL THROUGH THIS TIME.

4 THE COURT: I HAVE YOUR POINT.

5 MR. EDELMAN: I KNOW YOU DO. SECOND POINT,
6 YOUR HONOR, WHICH I THINK IS MISSED IN THE
7 TENTATIVE AND WHICH IS A DEMONSTRABLY FALSE
8 STATEMENT OF FACT, IS PUNITIVE DAMAGES. IF YOU
9 LOOK AT THE PLACARD, WHICH IS EXHIBIT -- GIVE ME
10 ONE SECOND HERE -- EXHIBIT 65, WHAT IT SAYS IS:

11 "DOLE IS ORDERED TO PAY
12 \$2.5 MILLION IN PUNITIVE
13 DAMAGES."

14 DOLE WAS NEVER ORDERED TO PAY ANY
15 PUNITIVE DAMAGES. THE PUNITIVE DAMAGES WERE THROWN
16 OUT BY THE JUDGE.

17 THIS PLACARD WAS DONE WELL AFTER THAT
18 AND AFTER WE HAD NOTIFIED THEM ABOUT THE PUNITIVE
19 DAMAGES, YET THE FILM, IF YOU READ THIS PLACARD IN
20 CONJUNCTION WITH THE REST OF THE FILM WHERE THEY
21 SHOW THE LAWYERS AND THE NICARAGUAN CLIENTS
22 REACTING WITH JUBILATION AT THE ANNOUNCEMENT OF
23 PUNITIVE DAMAGES. AND MINDFUL OF WHAT PUNITIVE
24 DAMAGES MEANS, WE CITED A CASE FOR THIS
25 PROPOSITION. IT'S THE PUNISHMENT, DESERVED
26 PUNISHMENT FOR WRONGDOING.

27 THE COURT: IT ALL HAPPENED, MR. EDELMAN.

28 MR. EDELMAN: NO, DOLE WAS NEVER ORDERED TO

1 PAY 2.5 --

2 THE COURT: WELL, THE JURY RETURNED A
3 VERDICT.

4 MR. EDELMAN: BUT THAT'S NOT THE SAME THING
5 AS BEING ORDERED, YOUR HONOR. AND THE PUNITIVE
6 DAMAGES WERE SET ASIDE BECAUSE THE JUDGE SAID THAT
7 THERE WAS NO CONDUCT TO DETER. SHE FOUND THAT THE
8 PUNITIVE DAMAGES WERE INAPPROPRIATE AND THEY WERE
9 SET ASIDE.

10 YOUR HONOR, AT A MINIMUM --

11 THE COURT: IN COMMON ORDINARY UNDERSTANDING,
12 THE JURY VERDICT HITS RIGHT THERE.

13 MR. EDELMAN: WELL, YOUR HONOR, IF THAT'S HOW
14 YOU FEEL, THEN THE NEXT SENTENCE SHOULD HAVE HAD
15 THE REST TO INDICATE THAT DOLE WAS NEVER ORDERED TO
16 PAY IT BECAUSE THEY WERE SET ASIDE. THAT'S A
17 CRITICAL PART OF THE FACTS. IT'S A FALSE STATEMENT
18 THAT THEY HAD EVERY OPPORTUNITY TO CORRECT AND
19 INSTEAD CONTINUED TO PROPAGATE.

20 YOUR HONOR, I REMAIN VERY CONCERNED WHEN
21 I READ YOUR TENTATIVE THAT YOU HAVE GONE WAY BEYOND
22 THE STANDARD THAT WE ARE REQUIRED TO MEET OF
23 MINIMAL MERIT. YOU ARE WEIGHING THE EVIDENCE --
24 YOU'RE NOT WEIGHING -- YOU DIDN'T DO IT AT LEAST IN
25 YOUR TENTATIVE WITH RESPECT TO EITHER THE TRAILERS
26 OR THE MOVIE. I KNOW YOU HAVE THAT POINT OR THE
27 WEBSITE, BUT EVEN WITH RESPECT TO THE MOVIE, YOU'RE
28 WEIGHING THE EVIDENCE, AND YOU'RE ULTIMATELY

1 CONCLUDING THAT A COUPLE OF PLACARDS AT THE END --
2 THE COURT: SEE, I LOOK AT THE MOVIE AND I
3 DON'T THINK IT CAN POSSIBLY CAN COME OUT ANY OTHER
4 WAY AS A MATTER OF LAW.

5 MR. EDELMAN: AND YOU RELY --

6 THE COURT: THE INFORMATION IS NOT STATED IN
7 THAT.

8 MR. EDELMAN: AND YOU RELY ON PLACARDS, WHICH
9 DON'T ADDRESS OUR PRIMARY CONTENTION.

10 THE COURT: I HAVE YOUR POINT ABOUT THE
11 PLACARDS.

12 MR. EDELMAN: ALL RIGHT. SO IF YOU PUT ASIDE
13 THE PLACARDS, THERE IS NOTHING IN THIS FILM -- AND
14 YOU HAVE TO PUT IT ASIDE BECAUSE IT DOESN'T ADDRESS
15 DEATH BECAUSE THE TRIAL DIDN'T ADDRESS DEATH --
16 THERE IS NOTHING IN THIS FILM THAT REBUTS OR
17 PROVIDES ANY BALANCE TO THE FALSE ASSERTION THAT
18 DOLE HAS KILLED PEOPLE IN NICARAGUA.

19 THE COURT: I HAVE THAT POINT.

20 MR. EDELMAN: "DEATH, DYING, KILLING, TAKING
21 AWAY ITS USE" IS USED 18 TIMES IN THIS FILM.

22 "DOLE" IS MENTIONED 25 TIMES IN THIS FILM.

23 "STANDARD OF PROOF" IS MENTIONED SIX TIMES IN THIS
24 FILM.

25 IT CANNOT BE THE CASE, AS A MATTER OF
26 LAW, YOUR HONOR, THAT THERE IS NOT SUFFICIENTLY, AT
27 THE EASIEST, MINIMAL MERIT TO THE CLAIM THAT THE
28 IMPLICATION -- AND IT'S NOT JUST AN IMPLICATION, WE

1 ALSO PLEADED SLANDER, PER SE, WE PLEADED LIBEL, PER
2 SE. WE'RE NOT TALKING ABOUT THE BLATTY VS. NEW
3 YORK TIMES TYPE SITUATION WHERE THE COURT WAS
4 CONCERNED THAT UNSPECIFIED MEMBERS OF A RELIGIOUS
5 GROUP, WHO ARE NOT NAMED SPECIFICALLY IN THE CASE,
6 MIGHT PLEAD A DEFAMATION CASE, EVEN THOUGH THEY
7 WEREN'T MENTIONED. THIS IS A CASE WHERE DOLE IS
8 MENTIONED NUMEROUS TIMES SPECIFICALLY.

9 SO, YOUR HONOR, THAT'S THE MAIN PITCH
10 THAT I WOULD LIKE TO MAKE TO THE COURT ABOUT THE
11 EVIDENCE THAT YOU'VE MISSED AND THE MISCONSTRUCTION
12 OF THE FILM.

13 I ALSO JUST WANT TO POINT OUT BRIEFLY,
14 YOUR HONOR, A COUPLE OF OTHER QUICK THINGS. THE
15 ACCUSATION, AS YOU PUT IT, YOU KNOW, THAT DOLE,
16 THEY LOSE BANANA WORKERS WITH PESTICIDES, AGAIN,
17 YOU RELY ON THE PLACARDS TO TRY TO INDICATE THAT,
18 WELL, MR. DOMINGUEZ WAS DISCREDITED TO SOME EXTENT
19 AT THE END OF THE FILM.

20 THOSE -PLACARDS ARE NOT FOUND IN THE
21 TRAILER. YOU'VE GOT TO LOOK AT THE TRAILER ON ITS
22 OWN AS A COMPONENT OF OUR CASE WHEN ANALYZING THE
23 DEFAMATORY CLAIMS HERE.

24 OUR CONCERN ABOUT JUAN DOMINGUEZ BEING
25 PORTRAYED AS A HERO, AND YOU SAID, "WELL, THAT'S
26 NOT CONCERNING DOLE." THAT WAS NOT THE POINT OF
27 THE CONTENTION THAT WE'RE MAKING THERE. WE'RE NOT
28 COMPLAINING ABOUT HOW JUAN DOMINGUEZ IS PORTRAYED,

1 WE'RE COMPLAINING ABOUT HOW THE PORTRAYAL OF DOLE
2 COMES ACROSS, AND JUAN DOMINGUEZ IS PART OF THAT.
3 HE'S THE ONE THAT CALLED DOLE THE MONSTER,
4 PREDATORY CAPITALISTS, ET CETERA.

5 I ALSO WANT TO POINT OUT, YOUR HONOR,
6 THAT YOU HAVE REJECTED THE EXPERT DECLARATIONS OF
7 SCHWARTZMAN AND GINSBERG, WHICH YOU SAY ARE NOT
8 HELPFUL TO DETERMINING WHETHER STATEMENTS ARE
9 FALSE. AND I JUST WANT TO MAKE IT CLEAR THAT WE
10 ARE OFFERING -- WE HAVE OFFERED THAT EXPERT
11 OPINION, NOT JUST FOR THAT POINT, BUT TO SHOW MORE
12 BROADLY WHY THESE STATEMENTS IN THEIR CONTEXT ARE
13 DEFAMATORY AND HOW THEY IMPLY DEFAMATORY FACTS.

14 IN THE CASE OF PROFESSOR GINSBERG
15 THROUGH THE USE OF CINEMATIC DEVICES, LIKE TONE AND
16 JUXTAPOSITION. WELLER VS. ABC IS A CASE WHERE A
17 LINGUIST, EXPERT TESTIMONY FROM A LINGUIST, WAS
18 FOUND PROPER IN CONNECTION WITH EXPLAINING HOW
19 WORDS WERE PUT TOGETHER AND USED IN A BROADCAST TO
20 IMPLY DEFAMATORY MEANING.

21 THERE IS THE CONSUMER UNION'S CASE THAT
22 TALKS ABOUT HOW DEVIATION FROM PROFESSIONAL
23 STANDARDS, WHICH IS EXACTLY WHAT MR. SCHWARTZMAN,
24 WHO WAS THE HEAD OF THE DOCUMENTARY COMMITTEE AT
25 THE ACADEMY OF MOTION PICTURES ARTS AND SCIENCES,
26 HE TESTIFIED TO HOW DEVIATION FROM PROFESSIONAL
27 STANDARDS IS RELEVANT IN THIS CASE, THAT THIS WOULD
28 NEVER HAVE WASHED AS ANY KIND OF DOCUMENTARY. AND

1 THAT'S RELEVANT FOR US TO SHOW ACTUAL MALICE.

2 SO I THINK THAT EVIDENCE SHOULD HAVE
3 BEEN ACCEPTED BY THIS COURT. HAD IT BEEN ACCEPTED
4 BY THIS COURT, IT WOULD HAVE BEEN HELPFUL TO YOU IN
5 UNDERSTANDING THE FILM AND THE OTHER RELATED
6 MATERIAL.

7 THE COURT: I'VE READ IT ALL.

8 MR. EDELMAN: I KNOW YOU'VE READ IT, BUT THEN
9 YOU SCOTED FROM THE RECORD.

10 THE COURT: YES. I SEE THEM AS OATH HELPERS.

11 MR. EDELMAN: YOU SEE THEM AS WHAT?

12 THE COURT: AS OATH HELPERS. THEY'RE ARGUING
13 THE CASE.

14 MR. EDELMAN: OKAY. WELL, I RESPECTFULLY
15 DISAGREE WITH THAT. I THINK THAT, YOU KNOW, THERE
16 ARE PEOPLE WHO MAKE FILMS AND STUDY FILMS AND
17 UNDERSTAND TECHNIQUES AND THAT'S WHAT THEY DO FOR A
18 LIVING, UNLIKE YOU AND I.

19 AND I THINK WHEN YOU LOOK AT THE
20 JUXTAPOSITION OF A FUNERAL WITH A PRIEST AND JUAN
21 DOMINGUEZ SAYING "EVERY DEATH OF A BANANA WORKER IS
22 ANOTHER DEATH FOR DOLE," HEARING FROM AN EXPERT ON
23 WHAT THAT CONVEYS TO THE AVERAGE VIEWER AND THE
24 CINEMATIC TECHNIQUES THAT ARE EMPLOYED TO LEAVE THE
25 IMPRESSION THAT DOLE IS GUILTY OF DEATH, IS
26 HELPFUL.

27 BUT IN A SENSE I DO FALL BACK ON THE
28 FUNDAMENTAL POINT, WHICH IS WHEN YOU HAVE

1 MR. DOMINGUEZ INTONING OVER A CASKET OF A DEAD
2 BANANA WORKER, THAT "EVERY DEATH OF A BANANA WORKER
3 IS A DEATH FOR DOLE," WHEN THE TRIAL, WHICH THE
4 PLACARDS RELATE TO, DOESN'T EVEN ADDRESS THAT, I
5 RESPECTFULLY HAVE TO SCRATCH MY HEAD AND SAY, "I
6 DON'T SEE HOW YOU CAN LOOK AT THAT AND SAY THIS
7 DOESN'T MEET A MINIMAL STANDARD TEST FOR PURPOSES
8 OF A SUGGESTION THAT DOLE IS CAUSING DEATH THROUGH
9 DBCP.

10 YOUR HONOR, THE OTHER POINT, TO THE
11 EXTENT THAT WE GET TO IT, IS THAT THERE ARE BY OUR
12 MEASURE, AND CONTRARY TO MR. BANDLOW'S STATEMENT IN
13 COURT ON WHICH YOU RELY, THERE ARE AT LEAST \$40,000
14 IN FEES IN HIS DECLARATION AND ATTACHED BILLING
15 STATEMENTS THAT DO NOT RELATE TO THE ANTI-SLAPP
16 MOTION.

17 IN FACT, THERE ARE SEVERAL PAGES OF
18 BILLING STATEMENTS BEFORE THERE'S EVEN A REFERENCE
19 TO THE ANTI-SLAPP MOTION. THERE ARE THINGS
20 RELATING TO ALL ASPECTS OF DEFENDING THIS CASE THAT
21 ARE NOT SLAPP-SPECIFIC, AND WE TRIED TO LAY THAT
22 OUT IN THE DECLARATION OF MR. TODD.

23 SO, YOUR HONOR, I APPRECIATE AGAIN, I
24 KNOW YOU'VE PUT A LOT OF TIME INTO THIS, I KNOW YOU
25 KNOW, BECAUSE WE HAVE SUBMITTED IT TO YOU, THAT
26 SINCE WE LAST SUBMITTED PAPERS, ALTHOUGH WE DID
27 SUBMIT THE TRANSCRIPT TO YOU, JUDGE CHANEY HAS
28 FOUND IN AN HOUR LONG ORAL RULING FROM THE BENCH

1 THAT THE TELLEZ CASE, WHICH WAS THE SUBJECT OF THE
2 MOTION PICTURE, THE TRAILER, AND ALL THESE PRESS
3 CLIPPINGS, WAS AN EGREGIOUS AND PROFOUND FRAUD ON
4 THE COURT.

5 YOUR HONOR, SHE FOUND THAT, NOT ONLY
6 WITH RESPECT TO MR. DOMINGUEZ AND HIS ACTIVITIES,
7 SHE FOUND IT WITH RESPECT TO THE PLAINTIFFS. THE
8 IMPORTANCE OF THAT IS THAT WHEN YOU GO THROUGH YOUR
9 TENTATIVE, YOU PLACE A LOT OF STOCK ON THE NOTION
10 THAT THE LAWYER WAS DISCREDITED. BUT AT OTHER
11 POINTS IN YOUR TENTATIVE, YOU RELY ON THINGS THAT
12 THE PLAINTIFFS SAID WHILE ON THE STAND IN TERMS OF
13 HOW THE IRRIGATION TOOK PLACE, FOR EXAMPLE. THE
14 PLACARDS DO NOT INDICATE THAT THE PLAINTIFFS WERE
15 THROWN OUT AS FRAUDS. THE PLACARDS ONLY INDICATE
16 THAT THE JUDGE DISMISSED THE CASE CITING SERIOUS
17 FRAUD ALLEGATIONS.

18 SO THERE IS THIS WHOLE PROBLEM -- I
19 MEAN, YOUR OVER-RELIANCE ON THESE PLACARDS TO CLEAN
20 UP AN HOUR AND A HALF OF A MOTION PICTURE --

21 THE COURT: YOU'VE MADE THAT POINT ABOUT 15
22 TIMES, MR. EDELMAN.

23 MR. EDELMAN: OKAY.

24 THE COURT: I'VE HEARD IT.

25 MR. EDELMAN: ALL RIGHT, YOUR HONOR.

26 YOUR HONOR, I THINK IN CONCLUSION THEN,
27 I THINK YOUR TENTATIVE MISSES THE BOAT. A
28 REASONABLE TRIER OF FACT COULD FIND THAT MANY

1 ASPECTS OF THE FUNDAMENTAL STORY OF THIS MOTION
2 PICTURE, OF THE WEBSITE AND OF THE TRAILERS, ARE
3 FUNDAMENTALLY FALSE; THAT THERE IS DEFAMATION BY
4 ASSERTING DIRECTLY AND BY IMPLICATION THAT DOLE HAS
5 KILLED PEOPLE, THAT DOLE HAS CAUSED CANCER. THE
6 TRIAL JUDGE FOUND THAT MR. DOMINGUEZ AND HIS
7 CLIENTS WERE FRAUD, EVEN HIS CO-COUNSEL WITHDREW
8 AND WROTE TO THE MAKER OF THIS FILM.

9 IF YOU CONSTRUE THE EVIDENCE AND THE
10 DOUBTS IN OUR FAVOR, WHICH I DON'T THINK YOU'VE
11 DONE AND WHICH I THINK YOU NEED TO DO, I DO NOT
12 THINK THAT YOU CAN GRANT THIS MOTION.

13 THE COURT: OKAY.

14 MR. BANDLOW: THAT'S A LOT, YOUR HONOR, AND
15 I'LL TRY TO ADDRESS IT ALL AS CAREFULLY AS I CAN.

16 LISTENING TO MR. EDELMAN, I JUST WATCHED
17 THE FILM AGAIN LAST NIGHT, AND I WONDER IF IT'S
18 BEEN A WHILE SINCE HE WATCHED IT BECAUSE HE'S
19 CONTINUALLY DESCRIBING A FILM THAT DOES NOT EXIST.
20 BUT NOTWITHSTANDING THAT POINT, LET ME TRY TO
21 ADDRESS AS MANY OF THESE POINTS AS I CAN.

22 FIRST OF ALL, HIS FIRST POINT ABOUT HOW
23 WE DON'T ADDRESS HALF OF THEIR COMPLAINT, ET
24 CETERA. THEY FILED A COMPLAINT, WE BROUGHT A SLAPP
25 MOTION.

26 THE COURT: JUST A SECOND. GO AHEAD.

27 MR. BANDLOW: WE BROUGHT A SLAPP MOTION. IN
28 OPPOSITION TO THAT MOTION, AS YOUR HONOR CORRECTLY

1 POINTED OUT IN YOUR VERY THOUGHT-OUT AND I THINK
2 CLEAR TENTATIVE, THEY ONLY SAID THREE STATEMENTS.
3 IT'S NOT THE JOB OF THE COURT OR THE DEFENDANTS TO
4 CULL THROUGH THEIR COMPLAINT AFTER WE'VE BROUGHT A
5 MOTION.

6 YOU SEE IN OUR REPLY BRIEF IN FOOTNOTE
7 12, IT MAKES THIS POINT VERY CLEAR THAT THE COURT
8 DOES NOT HAVE THE DUTY TO CULL THROUGH THEIR
9 COMPLAINT AFTER A MOTION HAS BEEN BROUGHT AND TRY
10 TO FIND OTHER POTENTIAL GROUNDS. THEIR OPPOSITION
11 WAS BASED ON THE THREE STATEMENTS THAT YOUR HONOR
12 VERY CLEARLY WENT OVER.

13 AND SO THAT'S POINT NUMBER ONE ABOUT HOW
14 THERE'S THESE SUPPOSED ALLEGATION. I ALSO
15 APPRECIATE YOUR HONOR POINTED OUT THAT YOU LOOKED
16 AT THE WEBSITE AND YOU LOOKED AT THE TRAILER, AND
17 AS YOU SAID, IT DOESN'T CHANGE A THING.

18 THEY ALSO TALK ABOUT THE PRESS PACK --
19 THE COURT: WHY DOESN'T IT?

20 MR. BANDLOW: WHY DOESN'T IT CHANGE A THING?

21 THE COURT: RIGHT.

22 MR. BANDLOW: WELL, BECAUSE, FIRST OF ALL, IT
23 WAS NOT THE SUBJECT OF THIS MOTION. IN RESPONSE TO
24 AN ANTI-SLAPP MOTION, THEY ONLY POINTED OUT THREE
25 STATEMENTS THAT THEY COMPLAINED OF AS BEING
26 DEFAMATORY. BUT THE TRAILER ITSELF, AS YOU'VE
27 SEEN, DOESN'T THE MAKE THE STATEMENTS THAT THEY SAY
28 IT MAKES. IT DOESN'T SAY THAT ITS BEEN

1 DEFINITELY SHOWN THAT DOLE OR THESE CHEMICALS
2 CAUSED DEATH. IT DOESN'T MAKE THE KIND OF
3 STATEMENTS THAT THEY'RE SAYING IT MAKES.

4 THE OTHER POINT THAT'S IMPORTANT TO
5 POINT OUT --

6 THE COURT: WHAT ABOUT THE WEBSITE?

7 MR. BANDLOW: THE WEBSITE, IF YOU LOOK AT THE
8 WEBSITE -- WE ADDRESSED THAT IN OUR OPPOSITION. WE
9 ADDRESSED WHAT MR. BURTON SAID ON THE WEBSITE.
10 MR. GERTTEN, IF YOU LOOK AT THE ACTUAL WEBSITE AND
11 YOU LOOK AT THE STATEMENT IN CONTEXT, SAYS IT'S
12 UNCLEAR. AND WHAT'S IMPORTANT IS THAT WHEN WE
13 START TALKING ABOUT AND THINKING ABOUT THESE
14 ISSUES, THERE'S NO DEFINITIVE STATEMENT THAT DOLE
15 IS CAUSING DEATH OR KILLING PEOPLE.

16 THE COURT: AND WHERE DID YOU ADDRESS THAT
17 PRECISELY?

18 MR. BANDLOW: I THINK IT'S ADDRESSED IN THE
19 MOTION. I CAN FIND IT FOR YOU RIGHT NOW.

20 THE COURT: -GIVE ME THE FILING DATE, PAGE AND
21 LINE.

22 MR. BANDLOW: THE FILING DATE OF THE MOTION
23 WAS -- LET ME TRY AND FIND THE PROOF OF SERVICE
24 HERE. WE FILED THE MOTION ON SEPTEMBER 10, 2009,
25 AND IF YOU LOOK AT THE MOTION -- I'M TRYING TO FIND
26 IT EXACTLY.

27 I THINK IT'S AROUND PAGE 14 OR 15 OF THE
28 MOTION WHERE WE ADDRESS THAT, WE ADDRESS THE

1 STATEMENTS. AND I BELIEVE IT'S ALSO ADDRESSED IN
2 THE REPLY BRIEF.

3 THE COURT: WHERE?

4 MR. BANDLOW: LET ME FIND THAT FOR YOU AS
5 WELL.

6 YOUR HONOR, FOR SOME REASON, I'M HAVING
7 PROBLEM FINDING IT RIGHT NOW. I KNOW WE
8 SPECIFICALLY ADDRESSED THE STATEMENTS MADE IN THE
9 WEBSITE AND TALKED ABOUT HOW DOLE HAD TAKEN THOSE
10 STATEMENTS TREMENDOUSLY OUT OF CONTEXT, AND HOW
11 MR. GERTTEN SAID IN THE WEBSITE THAT ESSENTIALLY
12 THAT EVERYTHING WAS SORT OF UP IN THE AIR BECAUSE
13 HE WAS BEING ASKED ABOUT THESE LATEST DEVELOPMENTS
14 WITH JUDGE CHANEY, AND HIS COMMENTS WERE THAT
15 EVERYTHING WAS UNCLEAR AS TO WHERE THINGS WERE
16 GOING TO GO AND WHO WAS RIGHT AND WHO WAS WRONG,
17 AND THAT THE IMPORTANT THING WAS JUST FOR THE
18 PEOPLE TO TALK ABOUT THESE ISSUES. AND I'M REALLY
19 DESPERATELY TRYING TO FIND IT RIGHT NOW.

20 THE COURT: WELL, LET'S KEEP GOING.

21 MR. BANDLOW: OKAY. SO, ANYWAY, THEY'VE
22 TAKEN THOSE STATEMENTS OUT OF CONTEXT.

23 ANOTHER IMPORTANT POINT IS THEY KEEP
24 TALKING ABOUT HOW IT IS DEFAMATORY AND FALSE TO
25 EVEN IMPLY THAT THE USE OF DBCP CAUSES DEATH WHEN
26 THEIR OWN EXPERT, MR. SCHENKER, WHOSE DECLARATION
27 YOU ALLOWED IN, ESSENTIALLY SAYS "WE DON'T KNOW, IT
28 MAY CAUSE CANCER, NOBODY'S SURE."

1 SO IT MAY ACTUALLY BE A TRUE STATEMENT
2 THAT DBCP CAUSES DEATH. I DON'T THINK THE FILM
3 SAYS THAT. I DON'T THINK THE FILM SAYS ANYTHING
4 OTHER THAN THAT PEOPLE BELIEVE IT MIGHT BE, BUT YOU
5 CAN COME TO A DIFFERENT CONCLUSION. BUT EVEN IF
6 THE FILM SAID THAT, THEIR OWN EXPERT ADMITS THAT
7 SOME EXPERTS HAVE CONCLUDED IT COULD CAUSE CANCER.

8 SO YOU HAVE TO GO A NUMBER OF STEPS DOWN
9 THE LINE TO EVEN GET TO BELIEVING THE FILM ACTUALLY
10 SAYS THAT. AND EVEN IF THE FILM ACTUALLY SAID
11 THAT, WHICH IT DOESN'T, THAT'S A STATEMENT THAT HAS
12 BEEN SUPPORTED BY THEIR OWN EXPERT.

13 THE NEXT POINT THEY MADE IS THAT -- HE
14 MADE THE POINT OVER AND OVER THAT YOU WERE BASING
15 YOUR ENTIRE TENTATIVE ON THE PLACARDS, AND I THINK
16 THAT IS A MISREADING OF YOUR TENTATIVE. I THINK
17 YOU BASED THE TENTATIVE ON THE CONTENTS OF THE
18 FILM, THE VERY STATEMENTS MADE THROUGHOUT THE FILM.
19 AND THE PLACARDS ARE JUST ONE ELEMENT, AND
20 CERTAINLY AN IMPORTANT ELEMENT, BUT ONE OF MANY
21 ELEMENTS.

22 THE NEXT THING THEY TALK ABOUT, AND I
23 THINK YOUR HONOR HANDLED THIS FAIRLY CLEARLY, IS
24 THIS ISSUE OF PUNITIVE DAMAGES, SAYING THEY WERE
25 ORDERED TO PAY. AND AS YOUR HONOR KNOWS, IT'S NOT
26 UP TO COURTS TO PARSE SEMANTICSS SO CAREFULLY.

27 MR. GERTTEN, WHO IS SWEDISH, KNEW THAT
28 THE JURY HAD AWARDED PUNITIVE DAMAGES. TO HIM THAT

1 MEANT DOLE HAS BEEN ORDERED TO PAY, THEY HAD LOST
2 THE PUNITIVE DAMAGES AWARD.

3 THEY MAKE A BIG DEAL ABOUT HOW THE
4 PUNITIVE DAMAGE AWARD WAS REVERSED, BUT THE
5 EVIDENCE IS CLEAR AS TO WHY THE PUNITIVE DAMAGES
6 AWARD WAS REVERSED. IT WAS REVERSED BECAUSE THE
7 JUDGE HELD THAT YOU COULDN'T HAVE PUNITIVE DAMAGES
8 IN CALIFORNIA FOR CONDUCT THAT TOOK PLACE
9 NICARAGUA. IT WAS A LEGAL TECHNICALITY AS TO WHY
10 PUNITIVE DAMAGES HAD TO BE REVERSED.

11 BUT THE UNDERLYING BASIS FOR PUNITIVE
12 DAMAGES, I.E., THAT DOLE ACTED WITH FRAUD,
13 OPPRESSION AND MALICE, THAT WAS NOT OVERTURNED.
14 AND THAT EVIDENCE, IN FACT, IS UNDISPUTED,
15 UNDISPUTED BY DOLE IN THE FILM, IT'S UNDISPUTED IN
16 THIS MOTION.

17 THE BASIS FOR THE PUNITIVE DAMAGES AWARD
18 WAS THE FINDING THAT DOLE, AFTER HAVING BEEN TOLD
19 THAT THIS CHEMICAL CAUSES STERILITY, CONTINUED TO
20 USE IT EVEN WHEN DOW CHEMICAL WAS SAYING, "GIVE IT
21 TO US BACK, WE DON'T WANT YOU TO USE IT ANY MORE,"
22 DOLE SAID, "NO, WE'LL SUE YOU IF YOU DON'T GIVE US
23 MORE OF THIS CHEMICAL, WE'VE GOT A CONTRACT, AND
24 WE'LL INDEMNIFY YOU ANY CLAIMS, BUT WE WANT TO KEEP
25 USING THIS STUFF."

26 IT WAS DOLE'S CONTINUED USE OF THAT
27 CHEMICAL IN THE FACE OF THAT EVIDENCE THAT WAS THE
28 BASIS FOR THE PUNITIVE DAMAGES AWARD. THAT ASPECT

1 WASN'T OVERTURNED. IT WAS SIMPLY OVERTURNED ON A
2 TECHNICALITY ABOUT CALIFORNIA NOT APPLYING PUNITIVE
3 DAMAGES TO CONDUCT THAT TOOK PLACE IN NICARAGUA.

4 AND ALSO, AS YOUR HONOR NOTED, THE
5 PLACARD IS CORRECT, THEY WERE FOUND RESPONSIBLE FOR
6 PUNITIVE DAMAGES. THE FACT THAT IT WAS LATER
7 REVERSED DOESN'T MAKE THE STATEMENT ITSELF UNTRUE.
8 THAT SIMPLY IS ADDITIONAL INFORMATION DOLE THINKS
9 THE WORLD SHOULD KNOW ABOUT.

10 WELL, THAT'S FINE. DOLE'S A VERY BIG,
11 POWERFUL COMPANY, THEY CAN LET THE WORLD KNOW ABOUT
12 THAT. BUT THAT'S NOT A BASIS FOR DEFAMATION
13 LIABILITY. DEFAMATION REQUIRES A FALSE STATEMENT.
14 THAT STATEMENT IS TRUE. JUST BECAUSE SOME OTHER
15 INFORMATION MIGHT HAVE BROADENED THE STORY A LITTLE
16 BIT ISN'T A BASIS FOR DEFAMATION LIABILITY.

17 THE NEXT POINT THAT HE MADE IS THAT --
18 AND BY THE WAY, MR. EDELMAN SAYS, "OH, THEY SHOULD
19 HAVE GOTTEN THE REST OF THE INFORMATION." THAT'S
20 EXACTLY MY POINT. - THAT'S NOT OUR BURDEN AND THAT'S
21 NOT THE BURDEN ON A DEFAMATION CASE.

22 THE BURDEN IS TO GET IT RIGHT, AND WE
23 GOT IT RIGHT. IF THERE ARE ADDITIONAL THINGS THAT
24 HAPPENED, THEY CAN DO A MOVIE, WHICH THEY HAVE,
25 IT'S ON THEIR WEBSITE, THEY CAN GET THEIR SPEECH
26 OUT THERE AND SAY "THERE'S MORE TO THE STORY."
27 THAT'S UP TO THEM. THAT DOESN'T MAKE IT A
28 DEFAMATION CLAIM.

1 I WANT TO ADDRESS THE ISSUE OF THE --
2 THERE'S TWO DECLARATIONS OF THE DOCUMENTARY
3 FILMMAKERS. YOUR HONOR IS ABSOLUTELY RIGHT, THEY
4 BASICALLY WERE DECLARING WHAT THE MOVIE WAS ABOUT.
5 HE EVEN SAID ABOUT THE TONE OF THE MOVIE. YOU'VE
6 GOT A PAIR OF EYEBALLS, YOU'VE GOT A SET OF EARS,
7 YOU CAN LISTEN AND HEAR WHAT THE TONE OF THE MOVIE
8 IS. WE DON'T NEED SOMEONE TELLING US WHAT THE
9 MOVIE HAS IN IT.

10 AND IT'S NOT RELEVANT AT ALL THIS
11 CONCEPT OF DEVIATING FROM STANDARDS. AS YOUR HONOR
12 CORRECTLY NOTED IN THE TENTATIVE, IN AN ACTUAL
13 MALICE CASE INVOLVING A PUBLIC FIGURE, WHICH WE
14 HAVE ADMITTED HERE, YOU DON'T WORRY ABOUT SUPPOSES
15 STANDARDS OF JOURNALISM. THAT'S NOT THE ISSUE.

16 YOU WORRY ABOUT WHAT WAS GOING ON IN THE
17 DEFENDANT'S HEAD WHEN THEY MADE THE STATEMENTS.
18 AND YOUR HONOR, OF COURSE, DIDN'T EVEN NEED TO GET
19 TO THAT. AND THAT'S THE FINAL -- ONE OF THE FINAL
20 POINTS I WANT TO MAKE IS WE HAD A NUMBER OF GROUNDS
21 FOR WHY THIS COMPLAINT HAD TO BE STRICKEN. YOU
22 ONLY WENT TO THE FIRST ONE.

23 THE FIRST ONE WAS BASICALLY THE FILM
24 DOESN'T SAY WHAT THEY SAY IT SAYS, WHICH YOU AGREED
25 AND GRANTED THE MOTION. WE HAD THE GROUNDS THAT
26 THE FILM WAS PROTECTED BY A PRIVILEGE BECAUSE IT
27 ESSENTIALLY IS AN ACCOUNT OF A JUDICIAL PROCEEDING.
28 WE HAD THE GROUNDS THERE'S NO ACTUAL MALICE. YOU

1 DIDN'T NEED TO GET INTO ANY OF THAT BECAUSE EVEN
2 THE FIRST GROUND WAS ENOUGH TO THROW THIS CASE OUT.

3 FINALLY, THEY SAY THAT ABOUT THE FEES,
4 IT'S JUST SIMPLY INCORRECT THAT THERE'S FEES THAT
5 AREN'T AWARDABLE HERE. THE CASE LAW IS VERY CLEAR
6 THAT THE STEPS THAT YOU TAKE BUILDING UP TO A SLAPP
7 MOTION, SUCH AS FILING AN ANSWER, PERHAPS
8 INVESTIGATING THE COMPLAINT, THINGS OF THAT NATURE,
9 ALL OF THOSE STEPS ARE COMPENSABLE UNDER A SLAPP
10 MOTION. THAT CASE LAW IS CRYSTAL CLEAR, THERE'S NO
11 DOUBT ABOUT THAT.

12 THE ONLY OTHER ACTION WE DID --

13 THE COURT: WHAT CASE?

14 MR. BANDLOW: I DON'T HAVE THAT RIGHT NOW.
15 IT MIGHT BE IN MY MOTION.

16 THE COURT: WELL, IT ISN'T HELPFUL TO SAY
17 THAT THEN. TELL ME WHAT YOU'RE RELYING ON.

18 MR. BANDLOW: I WOULD HAVE TO FIND THAT, YOUR
19 HONOR. I CAN CERTAINLY SUBMIT THAT TO YOU.

20 BUT FILING AN ANSWER, INVESTIGATING A
21 COMPLAINT, ALL OF THAT IS PART OF THE PROCESS OF
22 PREPARING AN ANTI-SLAPP MOTION AND IS RECOVERABLE.

23 THE ONLY OTHER ADDITIONAL WORK IS WE
24 FILED A COUNTERCLAIM. WE DIDN'T ASK FOR A PENNY OF
25 THAT. AND BY THE WAY, WE DIDN'T ASK FOR A CENT
26 HAVING TO DO WITH ALL OF THIS MOTION PRACTICE. THE
27 AMOUNT YOU'VE AWARDED DOESN'T EVEN APPROACH THE
28 AMOUNT OF FEES THAT HAVE BEEN INCURRED IN THIS

1 CASE.

2 FINALLY, HE TALKS A LOT ABOUT HOW
3 RECENTLY JUDGE CHANEY DISMISSED THE TELLEZ
4 PLAINTIFFS AS WELL. BUT JUDGE CHANEY VERY CLEARLY
5 HELD IN HER ORDER THAT THERE WERE SOME OF THE
6 PLAINTIFFS IN THE TELLEZ CASE THAT HAD LEGITIMATE
7 CLAIMS. IT SAYS RIGHT HERE.

8 "WHETHER THESE POTENTIALLY
9 LEGITIMATE CLAIMS SHOULD AND
10 WOULD REMAIN IN INTACT."

11 SHE WAS CONCERNED THAT THERE WERE SOME
12 PLAINTIFFS -- THERE WERE SOME PLAINTIFFS IN THE
13 TELLEZ CASE --

14 THE COURT: POTENTIALLY. SHE DID NOT HOLD
15 THAT ANYBODY HAD A LEGITIMATE CLAIM.

16 MR. BANDLOW: WELL, SHE SAID THE EVIDENCE
17 REGARDING THESE PLAINTIFFS IS EQUIVOCAL AND THAT
18 SHE DIDN'T KNOW. SHE DIDN'T KNOW WHETHER THEY HAD
19 LEGITIMATE CLAIMS OR NOT, BUT SHE ULTIMATELY SAID
20 BECAUSE SORT OF GUILT BY ASSOCIATION BECAUSE THEY'D
21 BEEN ASSOCIATED WITH THESE OTHER PLAINTIFFS WHO HAD
22 COMMITTED FRAUD, SHE FELT THE NEED TO DISMISS THE
23 WHOLE CASE.

24 SO YOUR HONOR, AS YOU CORRECTLY POINT
25 OUT IN YOUR TENTATIVE, WE'LL NEVER KNOW THE TRUTH,
26 AD THAT'S REALLY THE POINT OF THE FILM. THIS IS AN
27 ISSUE OUT THERE. THIS IS A CASE THAT HAPPENED.
28 WHAT THE TRUTH IS, WHO WILL EVER KNOW. BUT THAT'S

1 ALL THE FILM SAYS, AND THAT'S NOT THE BASIS FOR A
2 DEFAMATION ACTION.

3 MR. EDELMAN: YOUR HONOR, I CAN JUST
4 RESPOND --

5 THE COURT: NO, NO, NO, NO. HE GETS TO OPEN
6 AND CLOSE, IT'S HIS MOTION. HE PASSED ON THE FIRST
7 ROUND, YOU HAD YOUR SAY, HE GETS TO RESPOND.

8 MR. EDELMAN: OKAY.

9 THE COURT: ARE YOU DONE?

10 MR. BANDLOW: I AM DONE, YOUR HONOR, YES.

11 THE COURT: OKAY. THANK YOU VERY MUCH. THE
12 MATTER IS SUBMITTED.

13 MR. EDELMAN: YOUR HONOR, CAN I LEAVE YOU
14 WITH THREE COPIES OF THE EXHIBITS I REFERRED TO
15 FROM THE WEBSITE?

16 THE COURT: I HAVE THEM.

17 MR. EDELMAN: OKAY.

18 THE COURT: PLEASE ORDER A TRANSCRIPT AND
19 SPLIT THE COST, THE ORIGINAL FOR THE COURT.

20 MR. EDELMAN: YES.

21 MR. BANDLOW: WE'LL DO THAT.

22 THE COURT: OKAY, THANK YOU.

23
24 (PROCEEDINGS CONCLUDED.)

25
26 * * * * *

27
28

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 57

HON. RALPH W. DAU, JUDGE

4
5 DOLE FOOD COMPANY, INC.,)

6 PLAINTIFF,)

7 VS.)

8 FREDRIK GERTTEN, ET AL.,)

9 DEFENDANTS.)
10

CASE NO. BC 417435


REPORTER'S
CERTIFICATE11
12 STATE OF CALIFORNIA)

13 COUNTY OF LOS ANGELES)

SS

14 I, OLGA NAVARRO, OFFICIAL REPORTER OF THE
 15 SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY
 16 OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
 17 FOREGOING PAGES 1 THROUGH 26, INCLUSIVE, COMPRISE A
 18 FULL, TRUE AND CORRECT TRANSCRIPT OF THE
 19 PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER ON
 20 OCTOBER 22, 2010. -

21 DATED THIS 25TH DAY OF OCTOBER, 2010.

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 28

OLGA NAVARRO, CSR NO. 2805
 OFFICIAL REPORTER